Oregon Housing and Community Services

NATIONAL HOUSING TRUST FUND (HTF) 2023 PROGRAM MANUAL

Effective as of January 18, 2023

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National Housing Trust Fund (HTF)
2023 Funding Manual

Introduction

The National Housing Trust Fund (HTF) is a formula grant program administered by states which is intended to increase and preserve the supply of decent, safe, sanitary, and affordable housing, primarily rental housing, for extremely low-income and very low-income households.

In January 2015, HUD published an Interim Rule to guide implementation of the Housing Trust Fund. The Interim Rule is still currently in use and structured to mirror the HOME Program regulations in an effort to consolidate largely similar programs, improve the coordination of local and regional planning efforts and activity delivery, and reduce the administrative burden placed on grantees overall.

OHCS uses HTF as a funding source to support Projects applying for other State-administered affordable housing resources. Projects requesting HTF must comply with the requirements included in this manual and are also subject to the provisions of the OHCS General Policy and Guideline Manual (GPGM), which establishes relevant uniform policies applicable to the funding of all OHCS Projects. The requirements of any program from which funding is requested and any other applicable requirements, such as those published in the OHCS NOFA, applicable statues, administrative rules, or state and federal regulations must be satisfied by the HTF recipient if required by OHCS.

Statutory Background

The HTF was established under Title I of the Housing and Economic Recovery Act of 2008 (HERA), Section 1131 (Public Law 110-289). Section 1131 of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) (Act) to add a new section 1337, entitled "Affordable Housing Allocation" and a new section 1338, entitled "Housing Trust Fund." Federal regulations for the HTF Program can be found in 24 CFR Part 93.

State Consolidated Plan Consistency

Consistent with the HTF Interim Rule, the regulations for the Consolidated Plan are applied to the HTF program. As a result, the HTF allocation plan is consistent with Oregon's Citizen Participation Plan, Strategic Plan, and Annual Action Plan. The HTF Allocation Plan, approved by HUD, describes how HTF funds will be distributed, including how priority housing needs will be addressed, what activities may be undertaken with HTF funding, and how recipients and projects will be selected. The OHCS HTF Allocation Plan can be found as Attachment Z of the State Consolidated Plan.
Geographic Priorities

OHCS is committed to ensuring public resources are invested in a way that is responsive to the diversity of low-income housing needs and the need for economic development around the state. Therefore, HTF funding will be allocated to eligible multifamily rental projects, on a statewide basis, through the established competitive NOFA process currently used by OHCS to allocate LIHTC and HOME funds.

HTF Program Deadlines

In accordance with federal regulations, HTF Program funds must meet the following guidelines:

- <u>Commitment</u>: HTF resources must be committed (loan documents closed) to eligible Projects within 24 months of the annual HUD HTF allocation to OHCS. As such, OHCS will prioritize Projects that can move quickly to meet this deadline
- <u>Construction</u>: Once HTF funding is committed at construction closing, the Project must begin construction within 12 months. OHCS may rescind reservations for Projects that do not meet program deadlines. HTF funded Projects not completed within 4 years of commitment will be terminated and HTF funding must be repaid to HUD.

Occupancy: HTF recipients must ensure that HTF-assisted rental units are occupied by income-eligible households within 6 months of Certificate of Occupancy. If any HTF assisted unit remains unoccupied for six months following completion, the recipient must develop an enhanced marketing plan and report this information OHCS. If HTF-assisted units remain unoccupied at 18 months after Certificate of Occupancy, the unit has not met the purpose of the HTF Program, and the costs associated with the unit are ineligible. Federal regulation requires HTF funding to be repaid for any HTF-assisted unit vacant at 18 months after Certificate of Occupancy.

Eligible Projects

Projects proposed for HTF funding must provide **permanent rental housing**. HTF funding is available to projects state-wide. Rental housing owners and developers will be allowed to give preference to a specific population in accordance with 24 CFR Part 93.303(d)(3) only if included in the Oregon Consolidated Plan.

An eligible HTF Project consists of one or more buildings on a single site or multiple sites, which is under common ownership, management, and financing, and is part of a single undertaking. HTF assisted Projects may be privately or publicly owned and contain any number of units, and any combination of unit sizes and styles.

Tenant Protections and Selection

Special Needs Projects: To utilize HTF funding in Projects intended to house special needs population, Applicants must certify to the following requirements:

- Lease Agreement: A one-year lease agreement must be offered to tenants in HTF assisted units. In addition to the one-year term, the lease must stipulate that termination or refusal to renew must be based on serious or repeated violation of the terms and conditions of the lease and be served to the tenant in writing, must specify the grounds for the action, and provide a minimum of 30 day notice before termination of tenancy. For more information on required and prohibited lease provisions, see 24 CFR 93.303(b).
- Services: While OHCS recognizes that appropriate supportive services must be available to help tenants with special needs live as independently as possible, services cannot be required as a condition of tenancy in an HTF assisted Project providing permanent housing.
- Affirmative Marketing Requirements: HTF assisted Projects of five or more units must be affirmatively marketed to all persons within the special needs group. Referrals from a single source or specific social service agency cannot be used exclusively to fill the units. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area. (Group Homes are considered to be "one" assisted unit).

Please Note*:* Unless the project receives development or operating funding for a specific disabled population, HTF assisted Projects that are designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities. Resident services may be specific to subclasses of disabilities, but the housing may not. HTF assisted housing for disabled persons must be open to qualified persons with any type of disability.

Single Room Occupancy Projects: For new construction, conversion of non-residential space, or reconstruction Projects with Single Room Occupancy (SRO) units, each SRO unit must contain either food preparation or sanitary facilities (or both). For acquisition or rehabilitation of an existing residential structure, neither food preparation nor sanitary facilities are required in each SRO unit. If individual units do not contain sanitary facilities, they must be provided in the building for tenants to share.

Group Homes: Group homes are typically a shared residence where tenants have a private bedroom but share kitchen, bathroom, and common living space. A group home is considered to be a one-unit Project. The HTF subsidy maximum is based on the actual number of bedrooms in the group home, while rent limits are based on the actual number of tenants in the Project (not including a bedroom for live-in caregiver).

Projects / Activities Not Eligible for HTF

Transitional housing, overnight shelters, public facilities, residential care facilities, student housing, or housing for workers on a seasonal basis, nursing homes, hospitals, residential treatment facilities, dormitories, or correctional facilities are not eligible for HTF funding.

Debt Reduction is Ineligible: The proposed Project must create and/or preserve affordable housing. Requests for funds to buy-down or refinance current debt are not eligible for OHCS HTF funding.

Construction Prior to Application: Projects that have started construction or rehabilitation or have executed contracts for construction work prior to submission of the NOFA application are not eligible for HTF funding.

Eligible Project Costs

HTF can be used for the following:

- Real property acquisition
- Site improvements and development hard costs
- Related soft costs
- Demolition
- Relocation assistance

Acquisition Costs: Costs of acquiring improved or unimproved real property. Acquisition costs must be supported by an appraisal. Acquisition cost must be the same or less than the market value established by an appraisal.

Site Improvements: Generally, HTF funds can pay for site improvements that are in keeping with improvements of surrounding Projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the Project.

Relocation Costs: HTF funds may pay for the relocation costs of individuals, families, and businesses permanently or temporarily displaced by the Project.

Developer's Fee: Funding of a developer's fee with HTF funds is an eligible expense. OHCS may release up to 50 percent of the applicant's portion of the developer fees upon 50 percent of Project completion if the applicant can demonstrate there is a need for development fees in order for the Project to proceed. Submit a request for developer fees in writing. OHCS will not release the balance of the developer fees until a Certificate(s) of Occupancy is in place and HTF close-out requirements have been met.

Costs Incurred Prior to Grant Agreement: HTF funds cannot be used to reimburse recipients for costs incurred prior to execution of the HTF Grant Agreement. Currently the understanding of "costs incurred" includes any obligations incurred due to contractual agreements to perform work. **Therefore do not enter into an agreement or contract to be paid with HTF funds until the HTF Grant Agreement has been executed.**

Incurring costs may also include entering into an earnest money or sales agreement for acquisition and such agreements should be contingent upon receipt of HTF funds. There is one exception. Some pre-development costs incurred prior to execution of the HTF Grant Agreement (and no earlier than 6 months before application) may be eligible for reimbursement with HTF funds. Reimbursement will be limited to the following costs: legal, consulting, environmental and other studies, engineering and design costs, zoning approvals, inspections and testing for hazards, costs related to obtaining site options, Project financing and fees for loan commitments. These activities must not have a physical impact on the site. OHCS must pre-approve any use of HTF funds for pre-development costs. Reimbursement will only occur after execution of the HTF Grant Agreement.

Ineligible Project Costs

Costs incurred prior to execution of the HTF Grant Agreement are not eligible for reimbursement with HTF funds, with the exception of very specific pre-development expenses which receive prior approval form OHCS. Signing a construction contract prior to execution of the HTF Grant Agreement may result in the Project being ineligible for HTF funding.

HTF funds may not be used for the following:

- Provide assistance to a project previously assisted with HTF funds during the affordability period;
- Pay for the acquisition of property owned by the grantee;
- Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds;
- Pay for political activities, advocacy, lobbying, counseling services, travel expenses, and preparing or providing advice on tax returns;
- Pay for administrative, outreach, or other costs to manage and operate the recipient of HTF funds;
- Pay for any cost that is not eligible under §92.731 and §92.732.

Project owners are prohibited from charging origination fees, or charge more than is customary for parking and laundry room use, among other fees. However, project owners may charge reasonable application fees to prospective tenants.

Eligible Recipients

Eligible recipients are project sponsors, developers, for-profit entities, non-profit entities, and housing authorities. Faith-based organizations are eligible to participate in the HTF program as provided in 24 CFR 92.257. Recipients are required to certify that housing assisted with HTF funding will comply with HTF requirements by signing and recording legal documents with restrictive covenants.

An HTF Recipient Must:

- Make acceptable assurances to OHCS that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities;
- Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;
- Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs; and
- Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development.

DUNS Number

A DUNS number, received at registration in the Central Contractor Registry is a requirement of every entity receiving federal funds. Verification of the registration is required prior to disbursement of HTF funds. Maintaining updated DUNS number through course of development is a requirement**.**

Forms of Assistance

HTF can be awarded in the form of a Grant or a Loan in an amount appropriate to the financing structure of the proposed Project. OHCS reserves the right to adjust the amount of HTF funding awarded to the proposed Project, prior to execution of the grant documents. Subsidy Layering Review of the Project requires examination of multiple factors including financial feasibility, demonstrated economic viability, and financing gap analysis. HTF Grants require execution and recordation of a Grant Agreement and an Assignment and Assumption Agreement and Declaration of Restrictive Covenants.

HTF Rent and Income Restrictions

HTF-assisted units are subject to tenant income and rent restrictions designed to keep rents affordable to extremely-low income tenants (30% of median). HTF rents plus utilities may not exceed the greater of 30% of the federal poverty line or 30% of the income of a tenant family whose annual income equals 30% of the median income for the geographic area, with adjustments for the number of bedrooms in the unit.

HTF rents and income limits are published by HUD on an annual basis. They are posted on the OHCS website.

Project-Based Rental Assistance: The HTF Program makes an exception to the gross rent limits for units with Project-based rental assistance. The Project-based program rent can be charged when tenants pay no more than 30 percent of their income for rent and tenant-paid utilities.

There is no exception to rent limits when an HTF assisted-unit is occupied by a tenant that has a tenant-based rental subsidy, since this subsidy is portable with the tenant.

Utility Allowance

HTF gross rents must include an allowance for the cost of utilities (other than telephone, cable television, or internet) that is paid directly by the tenant. The gross rent in an HTF unit must be reduced by the amount of the utility allowance in order to calculate the maximum tenant rent. HTF Recipients are required to obtain current and accurate utility allowance information which must be reviewed and approved by OHCS. The Utility Allowance established by the local Public Housing Authority is acceptable for HTF units in Projects that do not have other program requirements.

HTF-assisted Projects with funding from Rural Development or HUD that have Project-based rental assistance can use the Utility Allowance required by the rental assistance program. Units with tenant-based vouchers can also use the Utility Allowance required by the voucher program.

Other acceptable methods for determining a project's Utility Allowance include:

- HUD Utility Schedule Model, found at: http://huduser.org/portal/resources/utilmodel.html
- Energy Consumption Model
  (Recipient must choose a pre-approved vendor from the OHCS list that can be found at:
  https://www.oregon.gov/ohcs/compliance-monitoring/Documents/memos/Approved-UA-Calculators.pdf

Note: OHCS must approve utility allowances for HTF funded Projects. Documentation of the utility allowance calculation must be submitted with each proforma submission.

Period of Affordability

OHCS generally requires a 60-year affordability period for multifamily rental housing projects. However, due to the extremely low-income requirement for HTF (tenants must be at or below 30 percent of area MFI); OHCS Housing Stability Council approved a **30-year affordability period for HTF projects**. The affordability requirements will be imposed by deed restrictions and use restrictions. If a project is terminated, the HTF recipient is obligated to repay all HTF funds invested in the project. The termination of the affordability restrictions on a project in foreclosure does not terminate the grantee's repayment obligation.

Maximum Per-unit Development Subsidy Limits

OHCS utilizes per-unit subsidy limits that are "reasonable" based on the actual costs of developing affordable housing in Oregon and are adjusted for the number of bedrooms in the units and the geographic location of the project. OHCS will utilize the same per unit limits for HTF as are used for the LIHTC program.

The maximum amount of HTF subsidy is limited by:

- The total per unit development costs: HTF assistance cannot exceed the actual per unit development costs for the HTF-assisted units in the Project;
- The financial needs of the Project: HTF Projects may not receive more subsidy than is required to produce a financially feasible Project;
- The number of HTF-assisted units in the Project: The HTF assistance cannot exceed the maximum subsidy allowed per unit.

The cost limits below, based on unit size, were established using a five year history of OHCS funded projects.

2019 (used in 2023 NOFA) Oregon LIMIT cost / unit	**Studio**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**	**4 Bedroom**
Urban*	$231,000	$281,000	$330,000	$374,000	$394,000
Balance of State	$182,000	$220,000	$270,000	$308,000	$341,000

*Urban definitions would apply in the Metro Region and to any project where the project meets two of the urban project criteria:

1. more than four (4) stories;
2. elevator;
3. required structured parking;
4. located on urban infill site.

HTF Designated Unit Allocation

In most HTF funded Projects (excluding group homes) not all units must be HTF-assisted. Consequently, it is necessary to distinguish between HTF-assisted and other units. HTF Applicants can estimate the number of HTF units for their project using the HTF Checklist in Section 8 of the NOFA Application. In accordance with HUD regulation, OHCS will confirm the number and bedroom size of designated HTF- assisted units for each HTF funded Project at the time of construction/equity closing. This will be based on the Project's final budget after construction bids have been accepted and final sources and uses have been balanced.

HTF may pay only actual costs of HTF-assisted housing. If the units in a Project are comparable in terms of size, features, number of bedrooms, and amenities then the actual costs can be determined by pro-rating total (HTF-eligible) development costs, then HTF funds can pay the pro-rated share of the HTF-assisted units. When units are not comparable, the HTF costs will be allocated on a unit-by-unit basis, charging only actual costs to the HTF Program.

Comparability of Unit Size: Comparability in size is defined by the bedroom count and square footage of individual units. Not all units with the same number of bedrooms are comparable in size. If there is a substantial difference in the square footage of two units with the same number of bedrooms, the units are not considered comparable.

Comparability of Amenities: Comparability in amenities means similar fixtures, appliances and other features. In many mixed-income Projects, to demand varying rents, the quality and types of amenities may vary among units.

HTF-assisted units should be evenly distributed throughout the Project. There should be an equal percentage of HTF units for each bedroom size in the Project. For example: A 30-unit Project contains 12 two-bedroom units and 18 three-bedroom units. Five of the units are to be HTF-assisted. To assure equal distribution, then 2 of the two-bedroom units (or 16 percent and 3 of the three bedroom units (or 16 percent) should be HTF assisted.

To the extent possible, there should be HTF-assisted units in each building of the Project. For Projects where the number of HTF-assisted units proposed would be less than the number of buildings, OHCS may provide an exception.

Fixed or Floating Units

HTF recipients may, on a Project by Project basis, choose to use either a “fixed” or “floating” designation for HTF-assisted units. A “fixed” designation means the applicant identifies at the onset which specific units are HTF-assisted, and these remain the same units for the entire period of affordability. “Floating” HTF-assisted units may change over time as long as the total number of HTF-assisted units remains constant. In “floating” HTF-assisted units the HTF-units must remain comparable in terms of size, features, and number of bedrooms. The “fixed” or “floating” unit designation must be made prior to financial closing and designated within the HTF Grant/Loan Agreement.

Environmental Assessment

Application Requirement: Complete the current OHCS Site Review Checklist and contact OHCS as instructed in the NOFA to schedule an on-site visit. The on-site review of the Project must be completed by the OHCS representative prior to submission of the HTF application.

HUD has developed HTF Environmental Provisions under the HTF Property Standards at 24 CFR Part 93.301(f)(1) and (2). HTF Projects are subject to the similar environmental regulations that HOME-assisted projects are subject to, for example, if a project site includes a wetland, it cannot be funded by HTF.

If the Project receives a Reservation of HTF Funding, OHCS staff will contact the applicant regarding the Environmental Assessment process. There may be specific information needed or requirements pertinent to the Project. If there are environmental impacts, then mitigation measures must be completed if HTF funds are awarded. If the impacts are severe, the Project may not qualify for HTF funds.

HTF Environmental Assessments require complex documentation about endangered species, including a determination on the Project’s effect on endangered or listed fish, wildlife and plants on or near the site. **The HTF recipient will be required to obtain a Biological Assessment in order to determine the likelihood of endangered or listed species or critical habitat on or near the Project site.** The Project design may be reviewed by U.S. Fish and Wildlife Services (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) biologists and their recommendations may become conditions of the HTF funding.

NOAA’s focus is storm water management. If endangered or listed fish are within a certain distance of the site, NOAA may require that the Project include a system on-site (bio swale or dry well) to capture and process runoff water from the roof, parking lot, or any other impervious surfaces of the development. For a new construction Project, NOAA will not approve connection of storm water drains to a municipal storm drain system under any circumstances. If the Project consists of minor or moderate rehabilitation within the current footprint of the existing building(s), a new storm water system may not be required.

Completion of the Environmental Assessment and receipt of Environmental Clearance are required prior to award of HTF funding.

Wetlands Policy and Review

OHCS will review all applications awarded funding for the possibility of regulated wetlands on the site and may engage the Oregon Department of State Lands in consultation to make the final determination. If DSL determines wetlands are present or likely to be present, applicants must get a qualified wetland consultant’s wetland verification and boundary delineation for submission, review and approval by DSL. DSL may impose additional site or design requirements for the Project. Applicants must provide tax lot numbers for the OHCS submission to DSL. OHCS has provided a space on the Site Review Checklist for this information. Include the tax lot number for every parcel of land in the Project. A failure to provide the tax lot number(s) will delay the review process.

Acquisition Requirements

Acquisition of property in an HTF funded Project is subject to the Uniform Relocation Assistance and Real Property Acquisition Act (URA). Due to the fact that involuntary acquisition can cause indefinite Project delays and potentially increase Project costs, **OHCS requires HTF recipients to use voluntary property acquisition.** OHCS will not use its power of eminent domain to acquire properties under the HTF Program, and requires local governments and housing authorities sponsoring HTF Projects to acquire property using voluntary acquisition procedures.

Application Requirement: Site control documentation. Submit a copy, signed by the seller, of the Notice of Disclosure to Seller with Purchase Offer or Notice of Disclosure to Seller after executing the Purchase Offer. This applies to every site in a scattered site Project.

Requirements Subsequent to Application:

1) Signed Notice of Disclosure to Seller of Market Value, based on
2) Established As-Is Market Value of the property by an appraisal completed by a licensed appraiser and in accordance with Oregon Statutes and OHCS Policy. The HTF Program requires the purchase price be the same as, or less than, the as-is market value established by the appraisal.

Under URA, HTF recipients are required to inform the seller of the property of the following:

- The power of eminent domain will not be utilized, therefore the buyer will not acquire the property if negotiations fail to reach an amicable agreement; and
- The buyer must inform the seller in writing of the property's as-is fair market value as determined by an appraisal; and
- The seller has the opportunity to withdraw from the transaction at the time of notification of the fair market value.
- Provide the above information to the seller at the time that an option or purchase agreement is presented. If a current option or sales agreement is in existence, also provide the notice to the seller. The seller has the opportunity to withdraw from the current agreement after this notification. Submit copies of all signed seller notifications to OHCS.

HUD *Handbook 1378, Tenant Relocation and Real Property Acquisition*, will provide additional information plus sample forms. OHCS provides sample forms as part of the NOFA Application package.

Choice-Limiting Actions: Once the OHCS NOFA application for HTF funding is submitted, do not undertake any action or activity that could limit the Project to a specific site. Choice-limiting actions include, but are not limited to, acquisition, demolition, or construction. Doing so will result in the Project becoming ineligible for HTF funding, regardless of what funding source is used to pay for the activity(s). Develop the Project schedule to allow time for the Environmental Assessment process to be completed prior to making any physical change to the site, including acquisition. The acceptable term of the sales agreement or option must be valid for at least one year from the date of application for HTF funds.

In accordance with 24 CFR Part 58 (HUD environmental review regulations), acquisition of land or land & buildings, as well as construction activities or the letting of contracts, are choice-limiting actions. HUD prohibits choice-limiting actions prior to the receipt of "environmental clearance". Environmental clearance includes completion of the Environmental Assessment, the subsequent publication of findings, the request for release of funds, and the issuance of an Authority to Use Grant Funds by HUD. The following scenarios apply to all Projects receiving reservations of HTF funds from OHCS.

Purchase of Property after Environmental Clearance: This is the preferred method of acquisition.

- At time of application for HTF funds, applicant has a written option or earnest money agreement with the seller.

- The applicant must demonstrate that the purchase of the property is a voluntary transaction by providing notices of disclosure to be signed by the seller. Provide an appraisal of fair market value to the seller. The buyer must purchase the property at the lesser of the market value or the agreed upon sales price. The entire Project is ineligible to receive HTF funds if these disclosure notices are not properly executed.
- No choice-limiting actions (acquisition, demolition, construction, awarding of contracts) can take place until Environmental Clearance has been received.
- The property can be purchased with HTF funds or non-HTF funds after receipt of Environmental Clearance.

Funding Accountability and Transparency

The HTF grant shall be considered a federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

Applicability of Uniform Administrative Requirements

The uniform administrative requirements in 2 CFR Part 200 apply to all projects funded with HTF.

Audit

Audits of the HTF Recipient must be conducted in accordance with 2 CFR Part 200. The use of HTF grant funds by the Recipient must be audited not less than annually to ensure compliance with this subpart

Conflict of Interest

In accordance with 24 CFR Part 92.356, no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement. The Grantee shall incorporate, or cause to be incorporated, in all such contracts, a provision prohibiting such interest pursuant to the purposes of this section.

No person who is an employee, agent, consultant, officer, or elected or appointed officer of the HTF loan recipient, who have exercised or currently exercise any functions or responsibilities with respect to activities assisted with HTF funds may obtain financial interest or benefit from a HTF assisted Project. This includes themselves or those with whom they have family ties or business ties during their tenure and for one year thereafter.

No owner, developer, or Grantee of a Project assisted with HTF funds (or officer, employee, agent, or consultant of the owner, developer, or Grantee whether private, for profit or non-profit, including Community Development Organizations, when acting as an owner, developer, or Grantee) may occupy a HTF-assisted affordable housing unit in the Project. This provision does not apply to an employee or agent of the owner or developer of a rental housing Project who occupies a HTF-assisted unit as the Project manager or maintenance worker, if the employee or agent is otherwise qualified.

HTF Award and Legal Documents

OHCS will provide executed HTF Grant Documents when the recipient meets all of the conditions provided in the NOFA Reservation Letter, some of which are as follows:

<u>Environmental Clearance</u>
One of the conditions of reservation of HTF funding is Environmental Clearance, received at completion of an environmental assessment. Until receipt of Environmental Clearance from HUD, the recipient must not engage in any

"choice limiting" actions on the Project site. In other words, an HTF recipient cannot undertake any action or activity that could limit the Project to the specific site or perform any physical development activities on the site until a release of funds is obtained from HUD. This includes, but is not limited to, property acquisition, demolition, or construction work. It does not matter whether HTF funds or another source of funding or the recipients' own resources pays for these activities. No choice-limiting activities can occur until Environmental Clearance is received. Doing so will jeopardize the HTF award.

Firm Commitment of All Funding
OHCS will execute the HTF loan documents only after all other proposed funding is fully committed to the Project. Once the recipient has submitted evidence of firm and final commitments from all other funding sources and has met all reservation conditions, they should allow four weeks to execute and record the HTF documents and begin drawing down HTF funds. Subsequent to recordation of the OHCS HTF loan documents, the HTF recipient may incur costs and request reimbursement from OHCS.

Construction Start Deadline
HTF recipients will have 240 days from the date of the NOFA Reservation Letter to reach construction closing, which requires all conditions of award to be satisfied. OHCS may grant extensions to the 240 day deadline on a case-by-case basis, dependent on the progress the HTF recipient has taken to meet the conditions of award.

Pre-development Costs Incurred
HTF funds can be used for eligible HTF costs incurred after the grant documents have been fully executed (i.e., signed by both the HTF recipient and OHCS) and filed with the appropriate County Recorder's Office.

Bid Solicitation and Contracting

The HTF Program does not require formal competitive bids, but does require evidence that bids be cost reasonable. Cost analysis must be made and documented in the Project's procurement file. To assure cost reasonableness OHCS highly encourages HTF recipients to get multiple bids for each contract (i.e. at least three bids). HTF recipients must document contractor selection and bid process and provide copies of this process to OHCS upon request.

HUD Requirements for the Selection of Contractor: Once the recipient has selected the general contractor for the Project, the recipient must verify that the general contractor and all subcontractors are eligible (not debarred) to participate in Federal programs. The U.S. General Services Administration maintains a list of debarred contractors (Excluded Parties List System) at: http://www.sam.gov. Submit a copy of the search result performed on the general contractor and all sub-contractors prior to signing the actual construction contract. Do not contract with a contractor who is ineligible under the provisions of any applicable regulations of the US Department of Labor.

Minority Owned Business / Women Owned Business: Additionally HTF recipients must do outreach to encourage participation by minority and women owned business enterprises. When advertising for bids, HTF recipients must include a statement that says "minority and women owned businesses are encouraged to apply."
Find a list of all registered minority and woman owned businesses through Business Oregon's Directory of Certified Firms, available at
https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz. Each recipient should offer these contractors an opportunity to submit a bid. The HTF recipient is required to document and submit evidence of outreach efforts regarding MBE/WBE at completion of the Project.

Section 3
Section 3 is a provision of the Housing and Urban Development Act of 1968 that is regulated by the provisions of 24 CFR 75. Section 3 regulations ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and

regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

The following thresholds must be met for Section 3 compliance:

- 25% or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; **AND**
- 5% or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.

Sponsor/Contractor/Subcontractor must report the following data to OHCS as part of the close out process:

- Total number of labor hours worked.
- Total number of labor hours worked by Section 3 workers.
- Total number of labor hours worked by Targeted Section 3 workers.

The labor hours reported must include the total number of labor hours worked on a Section 3 project by all workers, including labor hours worked by any subrecipients, contractors, and subcontractors that the recipient is required to, or elects to, report.

Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project. They must also require subrecipients, contractors, and subcontractors to meet the prioritization requirements listed above, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Section 3 Opportunity Portal

The Section 3 Opportunity Portal is intended to assist recipients of Section 3 covered funding and Section 3 business concerns in meeting their obligations for employment, hiring, and contracting, and serve as a helpful tool in locating or connecting Section 3 business concerns and Section 3 workers within the community.

Subsidy Layering

Before committing funds to a project, OHCS must evaluate the project in accordance with applicable guidelines and not invest any more HTF funds, alone or in combination with other governmental assistance (including any operating cost assistance or project-based rental assistance), than necessary to provide quality affordable housing that is financially viable for, at a minimum, the affordability period required by regulation. The grantee must also examine the sources and uses of funds for the project and determine that these costs are reasonable and will not provide undue return on the owner's or developer's investment or undue profit. The Subsidy Layering Review can result in a reduction of HTF assistance, reduction in rents, or adjustment in operating expenses.

No Match Requirement

Non-federal match is not a requirement of the HTF program. HTF funds can be leveraged with other federal and state funds, providing an additional source of funding for multifamily rental housing projects.

OHCS Underwriting Guidelines

Program Limits: OHCS has established the following program limits for evaluating Projects. Applicants for HTF funding must demonstrate compliance with all the Program Limits. In determining the amount of HTF funding to allocate to a Project, OHCS may reduce the budget and funding amounts to reflect the Program Limits listed below. If the Applicant varies from the following Program Limits, mitigating factors must be provided by the Applicant, which will be subject to OHCS consideration in its sole discretion.

Maximum Construction Contingencies: The maximum amount of HTF reserved or allocated to a Project will be determined after limiting the rehabilitation contingency to ten percent (10%) of the rehabilitation costs and the new construction contingency to five percent (5%) of the new construction costs. Rehabilitation costs include rehabilitation hard costs, site work costs, general conditions, and contractor profit and overhead. New construction costs include new construction hard costs, site work costs, general conditions, and contractor profit and overhead.

Maximum Developer Fees: OHCS will consider Developer Fees, as specified in the table below; calculated as the Developer Fee plus Consultant Fees divided by the Total Project cost minus Acquisition, Developer Fee, Consultant Fees and Capitalized Reserves.

Developer Fee **PLUS** Consultant Fee

Total Project Cost **MINUS** Acquisition, Developer Fee, Consultant Fee, Capitalized Reserves

Project Size	**New Construction**	**Acquisition/ Rehab**
<31 Units	18%	20% + $4,000/unit **OR** + $5,500/unit for Preservation
31-75 Units	16%	18% + $4,000/unit **OR** + $5,500/unit for Preservation
76-100 Units	14%	16% + $4,000/unit **OR** + $5,500/unit for Preservation
100+ Units	12%	14% + $4,000/unit **OR** + $5,500/unit for Preservation

For this purpose, Developer Fees shall be deemed to include all consultant fees (other than arm's length architectural, engineering, appraisal, market study and syndication costs, URA administration), and all other fees paid in connection with the Project for services that would ordinarily be performed by a developer, as determined by OHCS.

The Developer Fee will be set at the time of the construction/equity closing based on the Project's final budget after construction bids have been accepted and final sources and uses have been balanced, but will not exceed the amount in the application without approval which will be at the sole discretion of OHCS and will not be unreasonably withheld for justifiable increases in the scope of work, as long as the developer fee does not exceed OHCS's approved maximum developer fee. The fee presented at Project completion may not exceed the amount finalized at construction closing.

OHCS may approve release of up to 50% of the total developer fee when the Project has reached 50% completion of construction. This must be evidenced by an AIA statement signed by the Project architect that verifies the percent of construction completed. OHCS will approve release of the balance of the developer fee subsequent to issuance of a Certificate of Occupancy.

OHCS may elect to release a partial development fee in accordance with an executed Development Agreement. The Agreement must detail a disbursement schedule tied to the completion of specific development mileposts. Mileposts can include the completion of pre-development activities, loans, and equity commitments, construction, stabilized occupancy and permanent loan closings.

Operating Expenses: Operating expenses will be reviewed for reasonableness within the budgets submitted; Applicant may be required to submit documentation (including for example three years of audited financials for rehabilitation Projects) to substantiate that any or all of the Projects revenue or costs are reasonable. OHCS will review against its portfolio and take into consideration input from lenders and investors.

Financial Feasibility

Sources and Uses Statement: The Applicant must submit the Sources and Uses statement with its Application or as otherwise required by OHCS. The Sources and Uses statement must describe all of the funds or Sources to be used to pay for all Project costs and the intended Uses of such funds. The statement must identify each separate source and use and the estimated timing of final approval for each. The Sources and Uses must balance fully and no Source may be unknown. If any sources or uses are identified as unknown at the time of review, the Applicant's application may be deemed incomplete and removed from further processing.

Operating Pro Forma: The Applicant must submit with its Application an operating pro forma for the Project satisfactory to OHCS demonstrating financial feasibility and viability of the Project for a typical twenty (20) year permanent loan period. In addition, the Applicant must demonstrate that the Project will continue to be financially feasible and have adequate replacement reserves for the entire period of affordability.

Acquisition cost must be supported by an appraisal	**No exception** Program regulation requires acquisition cost to be the same or less than the as-is market value established by an appraisal
Construction Inflation Factor/Cost Escalator (applies to separate line item above and beyond construction bid)	3 % of total construction cost
Contractor Profit, General Conditions and Overhead – non Identity of Interest (does not include insurance)	14% of total construction cost or less
Contractor Profit, General Conditions and Overhead – Identity of Interest (does not include insurance)	10% of total construction cost or less
Soft Costs	30% of Total Project Cost or less
Operating Reserve	Generally six (6) month of operating expenses or lender / investor conditions
Lease Up Reserve	Submit cash flow analysis utilized to determine the amount
Reserve for Replacement (Capitalized)	Submit evidence of the partner lenders and/or investors to document their requirement. Minimum guideline of $350 per unit per year, or $300 for Senior Projects

Absent a long-term commitment (in excess of ten (10) years), Projects with rental assistance must demonstrate financial feasibility excluding the rent subsidy.

If the Project includes commercial and/or other non-residential space, the Applicant must submit the following information and supporting documentation in addition to the residential pro forma requested above:

a. A breakdown of the total residential and commercial Project costs,
b. A list of the financing sources for the commercial areas,
c. Ownership entity and management agent of the commercial areas; and
d. A twenty (20) year operating pro forma for both the residential and commercial areas.
e. Such other information as OHCS may require.

The pro forma must contain the following data:

a. Growth assumptions that are typically estimated at two percent (2%) per year for income and three percent (3%) per year for expenses.
b. Estimates of income and expenses that are well documented by actual historical amounts, comparable income or expense studies, Applicant market assessment, a market study or an appraisal.
c. Such other information as OHCS may require.

The pro forma also must address the following industry benchmarks:

a. A vacancy rate of not less than seven percent (7%), if a different rate is used, explanation must be provided in the Financial Description section of the application.
b. An expense ratio and expenses per units properly scaled to the size and scope of the improvements, the cost of local utilities and taxes and the makeup of tenant population served.
c. Replacement reserves properly scaled to the size and scope of the improvements and the age and condition of the property. Minimum guideline of $350 per unit per year, $300 for Senior Projects; amounts in excess will be allowed if reasonably justified by Capital Needs Assessment and / or lenders conditions. The CNA is described in the Architectural Appendix.
d. Operating Reserves are generally six (6) months of operating expenses or lender / investor conditions.

While using some benchmarks and industry best practices to evaluate the information, each pro forma will be separately assessed based on its reasonable and well-documented Projection of income and expenses to determine if it effectively demonstrates the Project's financially feasibility and viability.

<u>Minimum Debt Coverage Ratio:</u> The minimum Debt Coverage Ratio (DCR) will be 1.15:1 for all hard amortizing debt through the initial 20-year pro forma period. Projects with debt coverage ratio that exceed 1.30:1 may be eligible for less HTF funding. Projects are underwritten on an individual basis in concert with the lenders to determine an appropriate DCR and perform subsidy layering.

<u>Debt Underwriting</u>: Many Projects require hard amortizing debt as one of the sources of funds. If there is hard amortizing debt, the proposed debt service coverage, and breakeven ratios must be in conformance with OHCS limits and industry norms noted previously. If there is no mortgage debt, then the pro forma must demonstrate a stable positive cash flow over 20 years.

Appraisal / Market Analysis Requirements

<u>Group Home Market Assessment:</u> Generally, a project is considered a group home if it provides permanent housing for non-related residents with special needs where tenants occupy a bedroom in a house with shared kitchen, living areas and bathrooms.

The NOFA Reservation Letter will include a condition that HTF Recipients to provide sufficient information to confirm the community needs the home and there will be an adequate population in the foreseeable future to support the project through the period of affordability. Recipients must provide specific data and sources of information.

Special Needs Market Assessment: The Special Needs Market Assessment must address specific special needs populations including, but not limited to:

- persons with the presence of a disability
- victims of domestic violence
- previously incarcerated persons
- homeless individuals and families
- persons in recovery

The NOFA Reservation Letter will include a condition that HTF Recipients to provide sufficient information to confirm the community needs the housing and there will be an adequate population in the foreseeable future to support the project through the period of affordability. Recipients must provide specific data and sources of information, which includes reasonable, credible, and verifiable market support for the proposed project. Marginal (unmet or surplus) demand and appropriate rents should be estimated for the specific target population.

General Housing Market Assessment:
The General Housing Market Assessment applies to non-LIHTC Projects targeting general family, individuals, elderly/seniors, and farm workers.

The NOFA Reservation Letter will include a condition that HTF Recipients to provide sufficient information to confirm the community needs the housing and there will be an adequate population in the foreseeable future to support the project through the period of affordability. Recipients must provide specific data and sources of information, which includes reasonable, credible, and verifiable market support for the proposed project. Marginal (unmet or surplus) demand and appropriate rents should be estimated for the specific target population.

Research and analysis of the market includes information from market participants such as onsite managers, management companies, and brokers. Additionally, real estate reports from secondary data providers, U.S. Census data, Portland State University (PSU) population data, and demographic vendors provide added data as well.

HTF and LIHTC Funded Projects: A complete market analysis following OHCS Market Analysis Guidelines must be submitted for approval within 90 days following the date of the NOFA Reservation Letter for HTF and LIHTC funding. Accommodation of this requirement may be provided if the construction or permanent lender orders a FIRREA compliant appraisal naming OHCS as an intended user and includes a market analysis prepared in accordance with OHCS Guidelines.

The market analysis must satisfy the requirements of this section, and in an LIHTC funded Project, Section 42 of the Code. An independent third party analyst, using generally accepted principles and theory, must prepare the market analysis. The analyst must be included on the OHCS list of approved providers. The analyst must have demonstrated experience in the proposed Project's market area and with the rent-restricted market. The rental analysis section included in the market analysis report must be completed by a State Certified General Appraiser.

OHCS will accept a recent FIRREA appraisal with an effective date of no more than six (6) months prior to the date of the Reservation Letter in lieu of the required market analysis, provided the market analysis and rent discussion sections include the information detailed in the OHCS Market Analysis Guidelines.

Market Analysis / Appraisal Guidelines: FIRREA standards require that appraisals must be ordered by the lender or other insured financial institution - which must define the purpose of the appraisal and provide guidance to the appraiser as to the bank or financial institution requirements - and the bank or financial institution must engage the appraiser, who cannot be related in any way to the seller or buyer.

- For Projects that currently have restricted rents, the appraisal must include an "As is" Restricted Rent Value.

- For Projects that currently receive or will receive at time of sale "Project based" subsidy, the appraisal must include an "as is" restricted rent value taking into consideration the subsidy that is generally marked to market. ***In most cases, this is the value that must be used to set the price of acquisition***.
- For Projects that do not currently have restricted rents, the appraisal must include an "as is" Market Rent Value.
- In all appraisals an "as is" Market Value for land must be included that reflects all restrictions on the land.
- OHCS must be named as an intended user and permission granted to OHCS to discuss the report with its preparer.

The market analysis must demonstrate to OHCS the Project is creating, preserving, or renovating housing that current market forces are not addressing. In addition, the market analysis must address current market conditions and determine the Project is viable and provides units at below-market rents or provides some other public benefit.

At OHCS's discretion OHCS may require further market support of the Project, or accept a market analysis in a different format. Any deviation from the market analysis Guidelines must be approved in writing by OHCS prior to submission of the report. OHCS reserves the right to contact the market analyst as needed.

OHCS Approved Market Analysts: The list of approved providers may be found on the OHCS website at: http://www.oregon.gov/ohcs/HD/HRS/LIHTC/ApprovedMarketAnalystsList.pdf

Market Analysis Components: All market analyses should include the following summarized sections as well as the more detailed Market Analysis Guidelines:

- Report Title Page
- Letter of Transmittal
- Table of Contents
- Executive Summary
- Photographs of Project
- Assumptions and Limiting Conditions
- Scope of the Assignment
- Regional Analysis
- Primary Market Area (PMA) Analysis
- Site Description & Analysis
- Improvement Description & Analysis
- Target Market Identification
- Demand Analysis
- Supply Analysis
- Reconciled Estimate of Marginal Demand
- Capture Rate Development
- Conventional Market-rate Rents
- Affordable (low income) Market Rents
- Certification
- Addendum

Non-discrimination and Accessibility Standards

Three different sets of nondiscrimination requirements apply to the HTF Program: Section 504 of the Federal Rehabilitation Act of 1973; the Fair Housing Act of 1988; and the Americans with Disabilities Act (ADA). Both new construction and substantial rehabilitation of multi-family housing assisted with HTF funds are subject to and must meet the standards of Section 504. Section 504 standards apply to all units in a Project and not just the HTF-assisted units.

Substantial Rehabilitation Project: defined as a Project with 15 or more units where the rehabilitation cost will equal at least 75 percent of the replacement cost of newly constructed multi-family units. Applicants of such rehabilitation Projects must meet the following Section 504 criteria:

- Five percent of the units in the Project (not just HTF-assisted units) must be accessible to individuals with mobility impairments, and an additional two percent must be accessible to individuals with sight and hearing impairments.
- Distribute the accessible units evenly throughout the Project buildings
- Distribute the accessible units evenly by bedroom size throughout the Project.
- When designing a larger bedroom accessible unit.as in a townhouse with inaccessible living areas on the second floor, Section 504 recommends the unit be a single floor design.
- When designing an accessible bathroom, consider a roll-in shower in lieu of a shower/tub not easily accessed by some physically disabled persons.

When smaller Projects are rehabilitated or when rehabilitation costs are less than 75 percent of the replacement cost then: every alteration to a unit must make the unit accessible to the maximum extent feasible until 5 percent of the units in the Project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the Project accessible to the maximum extent feasible. Consult the Fair Housing Amendments for guidelines about rehabilitation of one to four unit rental properties.

Section 504 accessibility standards are further described in the Uniform Federal Accessibility Standards. HTF applicants should provide this information to their architects early in the process to insure the Project meets the accessibility criteria as defined in Section 504. Section 504 requires that new construction Projects have 5 percent of the units in the Project be accessible to individuals with mobility impairments and an additional 2 percent of the units be accessible to individuals with hearing or visual impairments. Section 504 also requires accessible units to be distributed throughout the Project and must be available in a sufficient range of sizes and amenities so as not to limit choices.

New construction of multi-family housing Projects is also subject to the accessibility requirements in the Fair Housing Act of 1988. The Americans with Disabilities Act (ADA) has a broader application than the Fair Housing Act or Section 504, in that it addresses employment practices, public services, transportation, and public accommodations. Although the ADA does not specifically address residential housing, since housing is covered by Section 504 and the Fair Housing Act of 1988, HTF recipients should be aware of the ADA's scope and requirements. HTF recipients will need to have the Project architect verify that the plans/specifications meet the Section 504, ADA and Fair Housing standards. Architects must verify at the completion of the Project that the constructed/rehabilitated units have met these standards.

HTF Property Standards

HTF assisted housing is required to meet OHCS design and construction standards as well as Rehabilitation Standards as defined in the **OHCS Project Development Manual,** which can be accessed on the OHCS website.

New Construction Projects: In addition to OHCS design and construction standards, HTF assisted new construction projects must meet all State and local residential building codes, as applicable, or in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. All newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

Rehabilitation Projects: A Capital Needs Assessment is required for all multifamily rental projects to determine a scope of work that addresses the following: health and safety, habitability and functionality, useful life or major systems, lead-based paint, accessibility, and other improvements. In addition, OHCS has established rehabilitation standards (see OHCS Project Development Manual) for HTF assisted housing rehabilitation activities that must be met upon project completion.

Acquisition Only Projects: Existing rental housing to be acquired with HTF assistance that is newly constructed or rehabilitated (less than 12 months before application for HTF funding) must meet the HTF Program Property Standards. An inspection to determine eligibility for HTF funding will be conducted within 90 days of a reservation for HTF assistance.

Accessibility: HTF assisted housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

Disaster Mitigation: Where relevant, the housing must be constructed and/or rehabilitated to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or such other requirements as HUD may establish.

Uniform Physical Condition Standard (UPCS): Upon completion, HTF assisted projects and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703.

Summary of Lead-Based Paint Regulations for Rehabilitation Projects: HUD has issued regulations to protect young children under the age of six from lead-based paint hazards in housing that is financially assisted by the federal government. The regulation addresses the requirements for notification, evaluation and reduction of lead-based paint hazards in federally assisted properties. The lead-based paint regulations affect acquisition and rehabilitation of housing projects constructed prior to 1978. All pre-1978 HTF funded projects must comply with the regulations. Every unit in the project must comply with these regulations, not just the designated HTF-assisted units. Lead-based Paint regulations appear within Title 24 of the Code of Federal Regulations (24 CFR 35).

Regulations require four types of notices:

- Distribute lead hazard information pamphlet to all existing tenants and all new tenants. Tenants must sign last page verifying receipt of pamphlet (current EPA/HUD notice still in effect).
- Disclose all known lead hazards that exist in project to occupants.
- Notice to occupants of result of lead hazard evaluation within 15 days of completed evaluation. This notice can be posted in a public place such as lobby or mailroom.
- Notice to occupants of reduction activities undertaken within 15 days of completion. A notice posted in a public area is allowed.

Federal Labor Standards: Davis Bacon and other Federal Labor Standards are not applicable to the HTF Program.

Housing Development and Preservation Standards

OHCS has established a set of design and construction standards to aid in the process of developing quality affordable housing in keeping with the Department's mission and vision.
Architectural design and construction standards, rehabilitation assessment criteria, green building requirements, and architectural submission requirements are discussed in detail in the **OHCS Project Development Manual.** The Project Development Manual defines OHCS requirements and expectations related to the planning, design, rehabilitation and construction of housing and housing related improvements undertaken with funding programs administered by OHCS. The Project Development Manual is available on the OHCS website under *Multifamily Housing Funding Opportunities.*

Projects must be built to be sustainable for a significant period of time without the need of rehabilitation work. This requires careful design, material selection and oversight by Project architects, contractors, developers, and owners. This type of planning and oversight must ensure the Project, including building envelopes and all structural components, has the necessary sustainability to last for a significant period of time with only industry-standard scheduled maintenance.

Construction Guidelines

OHCS supports the development of affordable housing that is safe, sanitary, habitable, well designed, contributes positively to the quality of life in Oregon, adds to the aesthetics and living environment of the community, and enhances the self-esteem and empowerment of the residents it houses and serves. Accordingly, Projects must be built using sustainable and green building practices, and they must comply with the Visitability laws of Oregon.

Confirmation of Status of Review by Local Planning and Code Jurisdictions

The sponsor must provide evidence in the architectural documents that the Project has been properly and sufficiently vetted with any and all local planning and code jurisdictions for Project feasibility. This includes all local planning and building departments as well as any other state agencies; e.g., Department of Transportation, Department of Environmental Quality.

Demolition and Hazardous Materials

Project must meet local and state requirements for handling and the removal of demolition and hazardous materials.

Identification of Easements and Encroachments and Adjacent Land Uses

The preliminary site design and development plan must identify all known, recorded or observed easements and encroachments, property boundaries, and identify all adjacent land uses.

Rehabilitation Requirements

OHCS requires a thorough Capital Needs Assessment (CNA) will help determine the appropriate rehabilitation scope of work and the estimate of probable rehabilitation cost.

Project Sign Requirements

HTF projects with construction costs in excess of $50,000 must have a project sign located prominently at the site. The sign must include the contribution of HTF funds under HUD in lettering no smaller than that used to acknowledge other contributors to the project. Use "HUD" rather than "HTF" when listing the project's contributors. The sign is to be installed prior to construction and is to be maintained for the duration of the construction contract. Photos may be submitted as prints, color photocopies or digital images.

Construction Oversight and Inspections

OHCS has implemented a comprehensive plan for construction and rehabilitation oversight of HTF funded Projects, which is described in the **OHCS Project Development Manual.**

OHCS will review and approve all construction-related documents prior to construction and will monitor construction progress until Project completion. OHCS will review and approve work write-ups (i.e., plans and specifications) and written cost estimates. Based on this review, OHCS will determine that the work write-up and/or plans are in compliance with OHCS design and construction standards as described in the OHCS Project Development Manual.

OHCS will ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The written scope of work to be performed must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with OHCS design and construction standards as described in the Project Development Manual. OHCS will review and approve written cost estimates for construction and/or rehabilitation, as well as change orders, in order to determine that costs are reasonable.

OHCS will conduct an initial property inspection and regular progress inspections during construction and/or rehabilitation in order to ensure work is completed within established standards. Progress payments must be consistent with the amount of work performed. A final inspection will determine if work was done in accordance with the Project's approved work write-up or plans, and final payment will not occur until construction is satisfactorily completed in accordance with the applicable codes, the construction contract, and construction documents. OHCS may utilize qualified in-house staff or secure a qualified third-party inspector to perform inspections.

Summary of Lead-Based Paint Regulations for Rehabilitation Projects

HUD has issued regulations to protect young children (under the age of six) from lead-based paint hazards in housing that is financially assisted by the federal government or that is sold by the government. The regulation addresses the requirements for notification, evaluation and reduction of lead-based paint hazards in federally assisted properties. The regulation appears within title 24 of the Code of Federal Regulations (24 CFR 35). Find more information on the regulation and other educational materials here:
https://www.hud.gov/program_offices/healthy_homes/enforcement/lshr

Regulations and Affected Properties: The lead-based paint regulations affect acquisition and rehabilitation of housing Projects constructed prior to 1978. All pre-1078 HTF funded Projects must comply with the regulations. All units in the Project must comply with these regulations not just the designated HTF-assisted units. All HTF-funded projects must complete the Lead Rule Compliance Advisor form detailing compliance requirements of the specific project.

Rehabilitating Properties Containing Asbestos

Most housing and buildings constructed before 1979 contain some form of asbestos. Undertaking rehabilitation actions where asbestos is present is subject to numerous and increasing regulation at all levels of government. Careless or illegal handling of asbestos-containing materials can subject rehab contractors, workers, and building occupants to health hazards, and can place the contractor, manager and owners in a position of serious civil and possibly criminal liability. If the property was built prior to 1979, submit a written plan to mitigate, abate, and dispose of asbestos. All HTF-funded properties built prior to January 1, 2004 must have an asbestos survey completed prior to project closing in accordance with Oregon Department of Environmental Quality requirements for asbestos surveys:
https://www.oregon.gov/deq/FilterDocs/asb-SurveyFS.pdf

Affirmative Marketing

Affirmative marketing is required for HTF Projects containing five or more units. Affirmative marketing consists of actions to provide information and otherwise attract eligible persons to the available housing from all racial, ethnic, and gender groups in the housing market area. Affirmative Marketing differs from general marketing activities because it specifically targets potential tenants who are least likely to apply for the housing, in order to make them aware of available affordable housing opportunities. OHCS will annually assess a Project's affirmative marketing program to determine the success of affirmative marketing efforts and any necessary corrective actions.

HTF-assisted Projects (five or more units) serving special needs populations must meet all HTF Program requirements regarding affirmatively marketing the units. The units must be marketed to all persons within the special needs group. The units may not be filled exclusively through referrals from a single social service agency. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area.

HTF-assisted Projects designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities (such as developmentally disabled, chronically mentally ill, or persons with only physical disabilities). Resident services may be specific to subclasses of disabilities, but the housing may not. HTF-assisted housing for disabled persons must be open to persons with any type of disability.

Affirmative marketing activities, at a minimum, shall include:

- Develop and submit HUD Form 935.2 Affirmative Fair Housing Marketing Plan.
- Insuring advertised vacant units include the Equal Housing Opportunity logo or statement.
- Posting the HUD Fair Housing poster in common area(s) of housing assisted with HTF funds.

- Soliciting applications for vacant units from persons in the housing market who are least likely to apply for the HTF-assisted housing without the benefit of special outreach efforts.
- Maintaining file records containing all marketing efforts (e.g., newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc.) These records shall be made available to OHCS staff for inspection during normal working hours.
- Maintaining listings of all tenants residing in each unit at the time of application submittal through the end of the HTF compliance period.

OHCS will annually assess a Project's affirmative marketing program to determine the success of affirmative marketing activities and identify any needed corrective actions.

Fair Housing

HTF recipients are responsible for complying with Fair Housing Laws. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination as follows:

In the Sale and Rental of Housing**:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Addition: It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

There is additional protection for persons with disabilities. Tenants with physical or mental disabilities, including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities are protected from landlords who Refuse to let disabled tenants make reasonable modifications to their dwelling or common use areas (at tenant’s expense), if necessary for the disabled person to use the housing or Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

HTF assisted Projects are subject to HUD regulations intended to ensure equal access of LGBT persons, which includes the following:

- A general equal access provision which requires housing to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status;
- Clarification that the terms “family” and “household” as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity or marital status;

- Prohibition on owners and operators from asking about an applicants or occupants sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available;

For additional information, search Fair Housing on the HUD.gov website.

Tenant Selection

An owner of HTF-assisted rental housing must comply with the affirmative marketing requirements established by the grantee pursuant to 24 CFR Part 92.760, and follow written tenant selection policies and criteria that:

- Limit the housing to income-eligible families;
- Are reasonably related to the applicant's ability to perform the obligations of the lease;
- Limit eligibility or give preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if described in the grantee's consolidated plan), in accordance with the requirements further detailed in this section;
- Do not reject an applicant with a voucher under the Section 8: Housing Choice Voucher Program;
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications, as feasible; and
- Give prompt written notification to any rejected applicant describing the grounds for any rejection.

Tenant Protections

Lease Agreement: There must be a written lease between the tenant and the owner of rental housing assisted with HTF funding. The length of a lease for an HTF-assisted unit must not be less than one year, unless otherwise modified by mutual agreement between owner and tenant.

Termination of tenancy or refusal to renew a lease may only be for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period; or for other good cause. Landlords must give the tenant a 30 day notice of termination or refusal to renew.

OHCS does not provide a model lease agreement. However, Owners/Agents must execute Lease Agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions.

In addition to the Owner/Agent required lease, OHCS requires the use of the HTF Lease Compliance Form (OHCS.22H).

Prohibited Lease Terms

- Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Agreement by the tenant that the owner may take, hold, or sell personal property of the household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved from the unit. The owner may dispose of this personal property in accordance with state law.
- Agreement by the tenant not to hold the owner or owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- Agreement by the tenant to waive any right to a trial by jury.

- Agreement by the tenant to waive the right to appeal or otherwise challenge in court a court decision in connection with the lease.
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. If the case is lost, the tenant, however, may be obligated to pay costs.

Nondiscrimination Against Rental Subsidy Holders

HTF recipients cannot refuse to lease HTF-assisted units to a voucher holder under 24 CFR part 982, or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program.

Uniform Relocation Assistance and Real Property Acquisition (URA)

The HTF Program is subject to the Uniform Relocation Assistance and Real Property Acquisition Act (URA). URA requirements and policies must be followed when acquiring property or displacing people or businesses for a Project with federal HTF funds. Under the URA, all persons (families, individuals, businesses, nonprofit organizations and farms) displaced (forced to move) as a direct result of rehabilitation, demolition or acquisition (privately undertaken or public) for a HUD-assisted Project are entitled to relocation benefits.

Providing an incentive to encourage tenants to move from the project is NOT allowed in projects receiving OHCS HTF funding.

<u>OHCS Anti-displacement and Relocation Assistance Policy:</u> OHCS encourages applicants to pursue only those Projects that will not permanently displace tenants, and reserves the right to prioritize funding to Projects with no permanent relocation and/or reasonable temporary relocation.

<u>Over- Income Tenants in a Rehabilitation Project:</u> Tenants residing in a rehabilitation project whose income exceeds Program limits are not to be displaced. In an LIHTC funded project, the unit must be removed from basis.

To the extent feasible, the HTF assisted Projects' Relocation Plan must give residential tenants an opportunity to lease and occupy the same or another suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the Project. HTF recipients are encouraged to stage rehabilitation work to allow tenants to remain in their units as long as possible by working with empty units first.

Displacement not only includes the physical displacement of persons, it also includes "economic displacement" which means that as a direct result of the Project, the existing tenant is not able to afford a new, higher rent for their current unit. If a HTF applicant intends to rehabilitate an occupied property, the issue of economic displacement needs to be of particular concern. Tenants who are economically displayed qualify for relocation benefits, so HTF recipients must modify future rent increases to ensure affordability.

<u>URA Application Requirements:</u>

1. Existing Tenant Survey: This survey identifies who currently occupies the property and potential URA problems. Survey all residential and commercial tenants. Use the Existing Tenant Survey form provided in the NOFA.

2. Develop a Relocation Plan: Provide a description of how the rehabilitation will impact existing tenants:
   - Will any existing tenants be ineligible to remain in the Project and be required to move permanently?
   - Will any tenants need to move temporarily during the rehab?
   - How will temporary moves be accomplished?
   - Does overcrowding exist in any of the units?
   - Is there a way to phase the rehabilitation work to avoid moving tenants?
   - Are there tenants who need specific accommodations such as accessible units?

The Relocation Plan (including an itemized budget for relocation) must be up-dated and submitted to OHCS for approval 30 days before construction closing.

3. General Information Notice: A General Information Notice (GIN) must be sent to all tenants (residential and commercial) prior to submission of an HTF application. The GIN must be sent certified receipt requested or hand-delivered, and a delivery receipt obtained. Copies of sample GINs are provided in the NOFA. There are several different types of GINs: 1) intended for residential tenants who will be permitted to reside in the Project after completion; 2) intended for residential tenants who will be required to move or who may be displaced because of the Project; and 3) sent to commercial tenants. OHCS HTF Program staff can provide guidance.

4. "Relocation Assistance to Persons Displaced from Their Homes": Provide a copy of this HUD brochure to all residential tenants along with the General Information Notice. A copy of the brochure can be found in the NOFA. Contact OHCS for the appropriate brochure if the tenant in the property is a business in order to provide the business brochure with the General Information Notice.

5. Permission to Send Notices: Advise the owner / seller of the property of the noticing requirements for all tenants. Obtain agreement from the property owner that tenants will not be required to move, except for cause.

URA Requirements Subsequent to the Application for HTF Funding

1. New Tenants: Each new prospective tenant must receive a notice informing about the rehabilitation Project before signing a lease or rental agreement. The tenant must sign a form acknowledging receipt of this notice. Failure to issue this notice can be very costly. A copy of the Notice to Prospective Tenants can be found in the NOFA.

2. Tenants Who Move: Each tenant who moves after the HTF application submission date must document the reason for moving in a Vacate Notice. A tenant may be evicted for cause, if properly documented, but not in order to avoid paying relocation assistance.

Requirements on Date of Execution of HTF Loan Documents

Update Relocation Plan and Tenant Survey: Update the tenant survey to reflect tenants who have moved; new tenants, and other new information.

Notice of Displacement/Non-Displacement: As soon as possible after the date the HTF loan document is executed, a notice must be issued to each tenant who was in occupancy on the date the HTF application was submitted. The notice must either contain a specific offer of a suitable, affordable unit in the Project, or provide a Notice of Displacement, if the tenant will be permanently displaced. The notice informs the tenant of their eligibility of any relocation benefits.

1. Temporary Moves: Arrange for temporary moves if necessary. Document temporary move notices and document all temporary moving costs. Tenants must receive reasonable advance written notice, notified of the terms and conditions of the move, and reimbursed for all reasonable out-of-pocket expenses.

2. Lead-Based Paint Disclosure forms: This disclosure form is in effect if the rental units were constructed prior to 1978.

URA – HUD's Seven Things to Know Now

1. HUD cares about this. The federal government takes the rights of tenants in rental rehabilitation properties very seriously.
2. So should we. Recipients and developers who are working on HUD-funded Projects need to understand that the Uniform Relocation Act (URA) is basic consumer legislation that addresses "fairness" issues. Tenants, whose

living circumstances are changed by a Project, either by higher rents or involuntary moves, should and will be protected and compensated.

3. The relocation rules are not all one-sided. The landlord can take actions to control costs and prevent displacement. These actions include informing tenants about the Project, treating them fairly during the process, staging work if it is feasible and keeping their rents affordable. Tenants must continue to pay rent and comply with the lease during the process.
4. Mistakes can be costly. Planning for relocation and tenant concerns is critical because tenants can take actions that cause financial liability for the sponsor/developer. Displaced tenants are entitled to 42 or 60 months of rental assistance, depending on the situation. Many claims exceed $40,000 per household. Although some claims are unavoidable, there is no reason to incur these costs by failure to follow the rules.
5. Planning is critical. Thoughtfully consider relocation concerns early in the process so decisions about rents, construction timing and Project feasibility can be considered before they are a crisis.
6. Cooperation is essential. All parties involved in the Project must "do the right thing" in to make the process work.
7. There are five basic requirements for tenants in rental rehabilitation Projects:
    - Give timely information to tenants about the pending application.
    - If HTF funding is approved, advise the tenants about any changes that could impact them. Without proper notification, they could claim they were displaced even if that was not the recipient's intension.
    - If displacement occurs, offer a comparable replacement unit that is decent, safe and sanitary. Owners must pay Moving expenses.
    - Tenants cannot be required to move without a 90 days' notice.
    - Offer tenants who will stay in the property after the work is completed, a suitable unit that is decent, safe, and sanitary, and affordable to them.

One-for-One Replacement

In accordance with 24 CFR Part 42.375, HTF funds may not be used to reduce the number of affordable housing units available in a community. All affordable occupied or vacant-occupiable dwelling units that are demolished or converted to a use other than affordable housing (including conversion to transitional housing) must be replaced on a bedroom-by-bedroom basis.

In addition to assuring replacement housing will be provided, there are specific public disclosure and submission requirements that must be met as a condition of the funding reservation prior to demolition of the structures and prior to the award of HTF funding.

If a Project receives HTF funding, the recipient must submit the following as a condition of funding:

- A written description of the proposed Project;
- The address, number of bedrooms and map location of the housing to be demolished;
- A time schedule for the commencement and completion of the demolition;
- The address, number of bedrooms and map location of the replacement housing to be provided. Replacement housing must be located in the same geographic area or neighborhood;
- The source of funding and schedule for the proposed replacement housing;
- The basis for concluding the replacement housing will remain lower-income housing for at least 10 years from the date of initial occupancy; and
- Information demonstrating that the replacement units are sufficient in number and size to house the same number of occupants that could have been housed in the converted or demolished unit.
- After OHCS approval of the packet, OHCS will provide recipients instructions to publish a public notice in a newspaper of general circulation. This notice will identify the replacement plan for the existing structures. This newspaper notice should not be located in the legal notice section, but rather as a public notice or a display ad. Recipients must submit a tear sheet of the published notice to OHCS immediately upon publication. OHCS will reimburse publication costs.

Compliance Responsibilities During Period of Affordability

OHCS Approval of Changes to Rent and Utility Allowances: HUD will publish the HTF Program Rents on an annual or periodic basis. Depending upon HUD's calculations, the HTF Program Rents may increase or decrease. The HTF recipient is responsible for recalculating HTF maximum monthly rents and utility allowances on an annual basis. OHCS must review and approve all recalculations of rent and utility allowances prior to any changes being implemented. Tenants must have at least 30 days written notice of any increase. All increases are also subject to other provisions of the lease agreements.

Financial Oversight during Period of Affordability: HTF funded Projects are subject to OHCS examination of the financial condition of the Project. The purpose of this requirement is to identify financially troubled Projects before the problems become severe. OHCS will take action if financial problems are identified.

Inspection Standards during Affordability Period

Uniform Physical Condition Standards (UPCS) are national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. These standards are now adopted for the HTF Program, and will be the basis for ongoing compliance monitoring of HTF funded Projects.

During the period of affordability, the HTF recipient must ensure HTF-assisted units comply with all local housing code requirements as well as the Uniform Physical Condition Standards (UPCS). OHCS will conduct on–site inspections of HYF-assisted rental housing to determine compliance with property standards and to verify compliance with other applicable HTF regulations such as tenant income certifications and rental charges. OHCS will conduct onsite inspections every three years for Projects containing one to four units; every two years from Projects containing five to twenty-five units; and every year for Projects with twenty-six or more units.

HTF Project Close-Out

Once the project is completed and receives a Certificate of Occupancy (or comparable) the HTF recipient can begin the process of “closing-out” the HTF Project. The final 10% of the HTF funding can be requested once close-out documentation is completed and submitted to OHCS.

Close-out documentation includes, but is not limited to, the following:

- updated Applicant and Project Information Form
- notarized Final Sources and Uses
- updated Operating Budget (including HTF utility allowance documentation)
- verification of compliance for any conditions resulting from the Environmental Assessment that are specific to this Project
- MBE/WBE Report
- Section 3 Report
- Tenant Income Certification (TIC) for HTF assisted units (including verifications)
- HTF Monitoring Report with the HTF units identified
- Lead Paint Notification Forms signed by every tenant (if rehab of project built in 1978 or before)
- Satisfaction of Payment or Release of Lien signed by General Contractor
- Photos of Completed Project (electronic version)
- Certificate of Occupancy
- Household Characteristics Form (HTF-assisted units only)
- As Built Certification signed by the project architect that project was built to comply with Section 504 Standards
- documentation needed to complete URA records if applicable

Revocation of a Reservation

OHCS may revoke an existing HTF award, withhold unexpended HTF funds, require repayment of expended HTF funds, and bar a recipient from applying for future HTF assistance if the recipient breaches any deed restrictions.

OHCS may revoke a HTF reservation in the following instances:

- the applicant does not meet development milestones on time;
- the application misrepresented the Project or included false information;
- after application, the purpose or scope of the Project is substantially changed; or
- the applicant changes funding sources or amounts without prior approval from OHCS.

Terminated HTF Projects

If HTF funds are expended for a Project that is terminated prior to completion, for whatever reason, the recipient must repay the HTF funds to OHCS, which will then be repaid to HUD. OHCS is required by HUD to terminate any Project that does not meet the HTF requirements for affordable housing (affordability provisions, income targeting, property standards, etc.).