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Getting Started with the Housing Trust Fund

PART ONE OF TWO

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The National Housing Trust Fund (HTF) is the first entirely new federal source for affordable housing created in many years. This is an introduction for those administering the program and their private-sector partners.

History

The HTF was created in 2008. The Housing and Economic Recovery Act (HERA) mandates that government-sponsored entities (GSEs) Fannie Mae and Freddie Mac contribute 0.042 percent of the unpaid principal balance of their new business to the HTF and Treasury's Capital Magnet Fund. However, the Federal Housing Finance Agency (FHFA), which has jurisdiction over these entities, exercised its authority to immediately suspend any contributions due to the GSEs' financial difficulties.

Despite no funding being available, in 2009 and 2010 the U.S. Department of Housing and Urban Development (HUD) released a proposed allocation formula and rule, respectively. Taking proactive steps turned out to be wise, as circumstances changed: the GSEs returned to profitability, various parties initiated litigation against FHFA on this issue and Mel Watt left Congress to become the FHFA's director. In December 2014, Watt announced the GSEs' contributions to the HTC would start based on activity in 2015.

Because of having laid the groundwork, including making changes based on public comments, HUD was able to issue an interim rule Jan. 30. The title does not mean the rule is a draft; its provisions are fully in effect. Instead, the word "interim" appropriately reflects that future changes are likely as HUD, state agencies and practitioners in the field learn lessons through implementation.

Amount and Administration

Any new program involves uncertainties, but the HTF has a crucial unknown that is unique. The GSEs will transfer funds in early 2016, but the total is unknown. While appropriated and allocated sources may experience small changes for various reasons, well-informed predictions have varied by as much as nine figures. The administration's budget lists $120 million, whereas Novogradac & Company estimates the amount will be closer to $240 million. (More information about that estimate can be found in the Feb. 5 Notes from Novogradac blog post at www.novogradac.wordpress.com.)

Each eligible jurisdiction is slated to receive a minimum of $3 million, but in order for this to happen, the overall amount must be at least $156 million. Otherwise HUD will have to develop a different approach. If there is more, the allocation would be determined using a needs-based formula which considers:

- shortage of units for extremely and very low income households,
- number people cost-burdened and inappropriately housed, and
- states' cost of construction.

Regardless of the total, agencies will have new money to spend, which means new work. The initial steps involve understanding the requirements and planning ahead.

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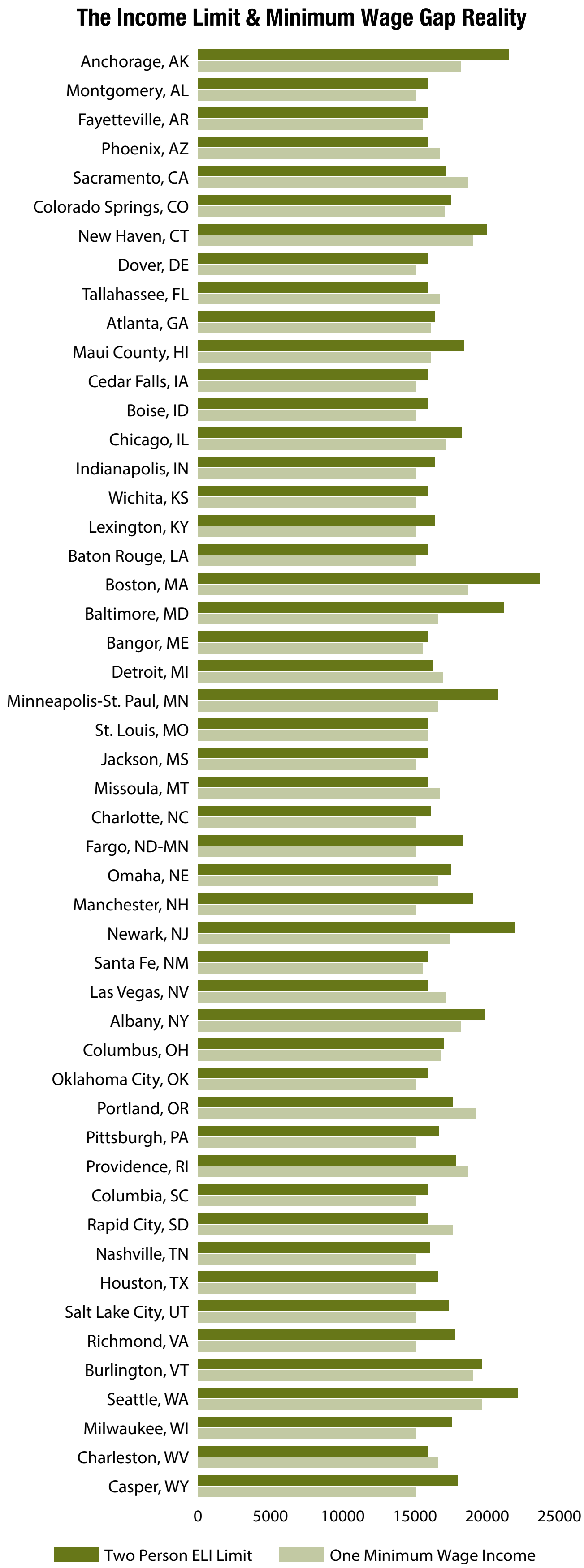

Other than the interim rule, at this early stage, there is little official guidance. What guidance exists can be found on the HUD website page, www.hudexchange.info/htf, and at www.hudresourcecenter.com. Much of the HTF is based on the HOME program, for which there is a great deal of guidance.

The first (and, at the time of this writing, only) frequently-asked-question-and-answer document that has been released about the HTF relates to the first official action, designating an agency. So far, more than half of states have done so. All but a few also allocate 9 percent low-income housing tax credits (LIHTCs), which makes sense, considering HTF will be used at least 90 percent for rental housing and both involve creating an allocation plan.

There are two aspects to thinking ahead–conceptual and formal. The former will vary based on a jurisdiction's needs and capacity. The latter is documented through an allocation plan, which will be a part of HUD's Consolidated Planning (along with HOME and Community Development Block Grants [CDBGs]).

There is no federal reason why the selection of projects has to be separate from the award of LIHTCs through a qualified allocation plan (QAP). The two processes could be combined, even to the extent of having one application for both. Of course doing so would be more difficult in states where the sources are in different agencies.

Incomes

Who will live in HTF-funded units? For the foreseeable future, the household income limit of HTF units must be below 30 percent of area median income (AMI), which also is known as extremely low income (ELI). Targeting some of the funds at 50 percent AMI may be possible in the future.

There is a well-documented need for affordable apartments to serve this population. However, what may be surprising to some is just how little an individual, couple or family can earn and not qualify. A two-person household with one minimum wage income is close to or even over 30 percent AMI in many areas.

By contrast, individuals with disabilities who receive the current Supplemental Security Income (SSI) of $733 per

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month are eligible nationwide. This means HTF will be a natural resource to create supportive housing, including for the homeless and certain elderly populations.

Rents

Unlike other HUD programs designed to serve those with extremely low incomes, rents for HTF units are not based on the occupants' incomes, often referred to as the "Brooke rule." In drafting the rule, HUD realized agencies and owners need to know the amount of potential revenue so as to underwrite capital sources. This necessitated having rents set to be affordable to those at 30 percent AMI, regardless of tenants' actual circumstances, which is a common practice in LIHTC properties.

An unfortunate result is those at lower incomes would be cost-burdened in an HTF unit. On the flip side, a benefit is rents will not increase when residents subsequently earn more (unlike Section 8 Housing Choice Vouchers).

Although the amount of revenue is known, it will not be much. After deducting utilities, the maximum allowable rents for ELI units will be less than $400 almost everywhere. A development's operating expenses alone are often that much or more, let alone covering any debt service.

What this means is agencies and developers have essentially two options:

a. Use project-based rent assistance from HUD, USDA Rural Development or from one of the few states with their own source. In most cases the subsidy has to already be in place, but there are ways for to it become newly available. Also, in what is a different permitted use than HOME, under the interim rule, agencies may use the HTF itself for operating cost assistance.
b. Create an internal subsidy, which is when a project has a small percentage of ELI units and the remaining apartments provide enough revenue. A downside is those residing in these other units may have to pay more in rent than they would otherwise.

Development-Level Considerations

As mentioned above, most of the HTF-designated agencies also allocate LIHTCs. There are several benefits to having both sources in the same development:

- HUD requires the funds be fully committed within two years and disbursed in five. These are very real deadlines, but they are less stringent than what applies to LIHTCs. Under LIHTC statute, owners have to secure a certificate of occupancy by the end of the second calendar year after allocation.
- HTF can go in early with little risk, because LIHTC projects almost always complete construction once underway.
- Many developers are familiar with the applicable federal rules (e.g., environmental reviews) due to having received HOME loans.
- Both restrictions are for 30 years.
- Agencies are essentially on the hook to repay HTF in failed properties and the foreclosure rate for LIHTCs is one of the lowest in any kind of real estate.

There are two main types of LIHTC developments, rehabilitation and new construction. Both are eligible for HTF and there are advantages and challenges with either. A key aspect to understand is the percentage of units required to meet HTF standards must be at least the same percentage that HTF represents as a funding source.

Rehabilitation:

- Some of the existing tenants may be over 30 percent AMI, which would create a problem if there are not enough eligible households for the required number of ELI units.
- The Uniform Relocation Act can add significant time and expense when carrying out rehabilitation of occupied apartments.
- Existing properties often have rent assistance already in place, which solves the rent challenge.

New construction:

- The market study will need to carefully document there being a sufficient number of eligible households that can afford the rents charged.
- The agency and/or developer will need to determine whether there will be project-based assistance, an internal cross subsidy or an HTF operating assistance reserve.
- Although relocation is less of a concern, the environmental review process is more demanding for new construction.

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Forms of Assistance

The interim rule lists several options for how HTF can go to a development. Of these one or possibly two will make the most sense, the first being as a loan.

Any debt service will come from the development as a whole. Payments, whether interest-only or amortizing, will generate program income; over time this can be a substantial source of revenue. Also, grants to LIHTC properties are problematic at best, especially when from a federal source.

The other possibility of creating an operating subsidy reserve creates affordability for very little cost per unit. However the activity can be difficult to administer and creates a long-term, ongoing obligation.

More Information

There is a great deal to learn about this new funding source. Additional information is available in the Feb. 5 Notes from Novogradac blog post.

Supportive Housing

Part two of this discussion, which will appear in the May issue of the Novogradac Journal of Tax Credits, will explore operating assistance and considerations for using HTF to create supportive housing. ❖

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