NHTF: The National Housing Trust Fund

Model Allocation Plan National Housing Trust Fund

June 2017

The national Housing Trust Fund (HTF) is entering its second year of operation, making funds available for the production, rehabilitation, preservation, and operation of rental housing that is affordable to extremely low income (ELI) households, those with incomes less than 30% of the area median or less than the federal poverty guideline. The National Low Income Housing Coalition (NLIHC) works to assure that the HTF is successfully implemented for the benefit of ELI households.

The HTF is a block grant to the 50 states, the District of Columbia, Puerto Rico, and U.S. territories (hereafter referred to as states) that is administered by HUD's Office of Community Planning and Development.

There are two conditions that each state must meet in order to receive its HTF allocation:

- The state must designate an entity to administer the HTF. The list of state designated entities can be found at https://www.hudexchange.info/programs/htf/grantees; and
- The state must prepare and submit an HTF Allocation Plan to HUD.

The purpose of this paper is to inform housing and homeless advocates about the required state Allocation Plan process and the importance of their participation in influencing the content of their state's Allocation Plan.

This paper includes information that is from the statute that created the HTF and the HTF interim rule issued by HUD. It also contains NLIHC's recommendations for what ideal HTF Allocation Plans should include. For the sake of clarity, some sections are marked **ST** for statute, **REG** for regulation, and **SUG** for suggestion.

Key Facts about the HTF Allocation Plan

- The HTF Allocation Plan is part of the annual Action Plan (REG) that states must submit as updates to their three- to five-year Consolidated Plans (ConPlans). The ConPlan and the Action Plan are documents that states (and entitlement jurisdictions) must submit to HUD to receive their annual allocations of CDBG, HOME, HOPWA, ESG, and now the HTF funds. The ConPlan process is administered by HUD's Office of Community Planning and Development (CPD). Find your state's ConPlan and Action Plan at https://www.hudexchange.info/consolidated-plan/con-plans-aaps-capers.
  - The HTF administering agency may or may not be the same agency that prepares the state ConPlan.
  - The state ConPlan typically covers only those jurisdictions that do not do their own ConPlans.
- The HTF Allocation Plan is a subpart of a state's ConPlan/Annual Action Plan. It is important that HTF advocates are familiar with their state's ConPlan/Action Plan and the state's process for seeking public input about its ConPlan/Action Plan. Most people are more familiar with their local jurisdictions' ConPlans/Action Plans.
- The timing of the submission of the HTF Allocation Plan will sometimes differ from that of the Action Plan or the ConPlan because the annual funding for the HTF will sometimes become known at a time that differs from that of the other block grants. HTF dollars are from a small assessment (0.042%) on the volume of business of Fannie Mae and Freddie Mac. The

annual amount is to be determined within 60 days after December 31. The other block grants are funded through annual appropriations, the timing of which can vary considerably based on when Congress passes annual appropriations bills.

- For 2017, the HTF Allocation Plan will be submitted at the same time as the Annual Action Plan because Congress made appropriations for the other CPD block grants late in the year. Due to the tardy action by Congress, HUD issued Notice CPD-17-05 waiving the standard 30-day comment period, shortening it to a 14-day comment period so that Annual Action Plans and HTF Allocation Plans can be submitted by the regulatory deadline of August 16 of any given year.
- After the HTF Allocation Plan is submitted, HUD has 45 days to review and reject it. As with a ConPlan or Annual Action Plan, HUD can reject an HTF Allocation Plan for several reasons, including being incomplete or failing to meet public participation requirements. If HUD does not act, the plan is accepted. In 2016 every state's HTF Allocation Plan was sent back; some were sent back multiple times. 2017 should be smoother now that states have had a year of experience with the HTF Allocation Plan.
- Typically, ConPlans and Annual Action Plans are submitted via HUD's IDIS electronic system. However, according to Notice CPD-17-05, only some portions of the HTF Allocation Plan can be entered through IDIS; other portions are to be submitted as a PDF document.

Three Definitions

- **Grantee (ST)**. The state entity that prepares the Allocation Plan, receives the HTF dollars from HUD, and administers the HTF in the state. The grantee is usually the state housing finance agency or the equivalent of a state department of housing community development.
- **Subgrantee (REG)**. If a state grantee chooses, it may designate local jurisdiction(s) to administer the HTF in a city or county.
- **Eligible Recipient (ST)**. The organization or agency that submits an application to the grantee or subgrantee for funds to carry out a NHTF project in the state or locality.

NLIHC's Recommendations and Assumptions

NLIHC makes the following recommendations and assumptions. All are SUGGESTIONS:

- Advocates should seek the deepest possible affordability for rents and the longest possible periods of affordability for HTF-assisted units.
- All funds in the first years will be used for rental housing and none will be used for homeownership activities.
  - All funds in first years should be used to expand ELI rental housing and have maximum impact. It is critical that the HTF not be used to supplant other federal or state funds. Please minimize using HTF for preservation of existing federally assisted housing, including in the context of Choice Neighborhood or Rental Assistance Demonstration (RAD) projects.
  - In order to maximize affordability, projects with no debt service or as little debt service as possible are preferred. Therefore, the preferred forms of assistance are grants or no interest loans.
  - Given the small amount of money available in the first years, NLIHC recommends focusing on projects with the most impact, as opposed to distributing small amounts of money to many projects.

HTF Allocation Plan Elements

The interim rule for the HTF lists the elements that must be included in the HTF Allocation Plan. They are:

1. Description of how funds will be distributed. (ST)
2. The requirements applicants must meet. (ST)
3. Criteria for selecting applications based on the state's priority housing needs in the ConPlan. (ST)
4. Priority for funding must be based on:
   a. For rental housing, the extent to which a project will have rents that are affordable, especially to ELI households (ST); will have federal, state, or local project-based rental assistance so that rents are affordable to extremely low income families. (REG)

b. For rental housing, the length of the units' affordability period. (ST)
c. Merits of the application in meeting the state's priority housing needs. (ST)
d. Geographic diversity. (ST)
e. Applicant's ability to obligate funds and undertake eligible activities in a timely manner. (ST)
f. Extent to which an applicant makes use of non-federal funding sources. (ST)

5. Description of eligible activities. (ST)
6. State's maximum per-unit development subsidy limit for housing assisted with HTF for all areas of state. (REG)
7. If funds are to be used for first-time homebuyers, identify applicable resale and recapture provisions. (REG)
8. Whether state intends to directly select applications from recipients and/or to use subgrantees to select applications. (REG)
9. Certification by each recipient that HTF-assisted housing units will comply with HTF requirements. (ST)
10. Performance goals and benchmarks consistent with state's proposed accomplishments. (ST)
11. Rehabilitation standards that HTF-assisted projects must meet. (REG)
12. HTF affordable homeownership limits. (REG)
13. Preferences or limitations to a particular segment of ELI or VLI population. (REG)
14. Requirements and conditions under which existing project debt may be refinanced. (REG)

Model Allocation Plan

To the best of our ability, NLIHC has attempted to discern from the HTF interim rule, other HUD documents, and samples of state documents what should be included in a model Allocation Plan.

1. DESCRIPTION OF DISTRIBUTION OF FUNDS

ALL SUGGESTIONS

The state agency will prepare a Request for Proposals (RFP) that will describe in detail eligible applicants, eligible activities, what an application is to include, when and where applications are to be submitted, the criteria by which applications will be evaluated, who will review the applications, and when grant awards are to be made.

The RFP will indicate what the state has determined to be the priority housing need(s) it intends to address based on the outcome of its public participation process and priority needs indicated in its current ConPlan (as amended). The RFP may also reference other plans, such as plans to end homelessness or plans to comply with the U.S. Supreme Court's *Olmstead* decision.

The state agency will convene an application review panel composed of state officials and at least two private representatives of the housing and homeless advocacy community who are not affiliated in any way with any applicant.

The state agency will determine which applications are responsive to the application requirements and present those to the members of the application review panel. The panel members will independently review each application and rate it according to the published criteria. The panel will then meet to reconcile their scores and settle on agreed upon recipients.

The state agency will be responsible for executing contracts.

2. APPLICATION REQUIREMENTS

ALL SUGGESTIONS

The state agency will detail the application requirements in the Request for Proposals (RFPs), including:

- Project information similar to that required for LIHTC applications.
- How the project responds to a priority housing need that the state intends to address.
- How the project responds to the six priority factors listed in the statute.
- Description of how HTF-assisted units will be integrated with units that have higher income targeting.
- Description of how the project affirmatively furthers fair housing.
- Description of the plan and methods for achieving affordability,
  (rent no greater than 30% of household income) for households at 30% AMI, 20% AMI, 10% AMI.
- Description of tenant recruitment and selection process.
- Evidence of applicant's successful completion and operation of similar projects.

3. CRITERIA FOR SELECTING APPLICATIONS SUBMITTED BY RECIPIENTS (CRITERIA MUST MEET STATE'S PRIORITY HOUSING NEEDS)

ALL SUGGESTIONS

a. Threshold criteria
   - Responsiveness to application requirements
   - Project reflects priority housing need(s) found in ConPlan that state intends to address

b. Final criteria, rating based on:
   - Six priority factors listed in the statute
   - Creativity and innovation
   - Feasibility
   - Applicant's credentials

4. STATE'S MAXIMUM PER-UNIT DEVELOPMENT SUBSIDY LIMIT FOR HOUSING ASSISTED WITH FUNDS FOR ALL AREAS OF STATE

This information must be in the ConPlan (REG). HUD issued an FAQ providing guidance on the per-unit development subsidy limit for the HTF.

State must establish maximum limitations on total amount of HTF funds that can be invested per-unit to develop "non-luxury" housing, with adjustments for number of bedrooms and location. Limits must be reasonable and based on actual costs (REG).

HUD issued guidance as an FAQ on May 12, 2016, http://bit.ly/1s2xWOv

- These are not prescriptive, compared to HOME limits.
- HUD recognizes that deeper targeting for HTF units will require more subsidy.

5. IF FUNDS ARE TO BE USED FOR FIRST-TIME HOMEBUYERS, IDENTIFY APPLICABLE RESALE OR RECAPTURE PROVISIONS

SUGGESTION: NLIHC recommends using all funds for rental housing for the first years, so possible Allocation Plan language is: "The State does not intend to use any funds for homebuyer activities in the 2017 funding cycle."

6. WHETHER STATE INTENDS TO DIRECTLY SELECT APPLICATIONS FROM RECIPIENTS AND/OR TO USE SUBGRANTEES TO SELECT APPLICATIONS

SUGGESTION: NLIHC recommends that all funds be awarded by the grantee to recipients for the first years, so possible Allocation Plan language is: "The State does not intend to use subgrantees in the 2017 funding cycle."

7. THE PRIORITY THAT WILL BE PLACED ON THE SIX PRIORITY FACTORS FOR AWARDING FUNDING TO APPLICANTS

Awarding of HTF to applicants should be based on total maximum points = 100 (SUGGESTION)

a. *Geographic diversity*. (ST) **(Maximum points = 0)**
- Given the relatively small amount of money available in the first years, NLIHC suggests focusing on projects with the most impact, as opposed to distributing small amounts of money to many projects. (SUGGESTION)
- In future years when the HTF amount is greater, geographic diversity will become important.

b. *Applicant's ability to obligate funds and undertake eligible activities in a timely manner.* (ST) **(Maximum points = 0)**

This should be a threshold requirement, hence zero points.

While the statute and regulations refer to an applicant's ability to "obligate" funds (ST and REG), obligate is not defined. The regulation refers to the "commitment" of funds. (REG)

- Grantees must "commit" HTF funds within 2 years (ST and REG), and expend HTF funds within 5 years. (REG)
- The regulation defines "commitment" for recipients as:
  - For new construction or rehabilitation, to start construction within 12 months of the date of the contract between the recipient and state. (REG)
  - For acquisition of existing housing, receipt of title to the property within 6 months of the date of the contract between the recipient and state. (REG)

c. *The extent to which rents…are affordable, especially for ELI families* (ST); *the extent to which the project has federal, state, or local project-based rental assistance so that rents are affordable to extremely low income families* (REG). **(Maximum points = 50)**
- No basis in the statute for the rule using "has federal, state, or local project-based assistance".
  - "project-based rental assistance" should include, unit-based rental assistance, operating subsidies, or cross-subsidization of rents within the project (SUGGESTION).
- Neither the statute nor the regulations define "affordable".
  - "Affordable to extremely low income" should be defined as household not paying more than 30% of income for rent and utilities. (SUGGESTION)
  - If a project depends on fixed rents, then project should include a mix of units with fixed rents no greater than 30% of household income at 30% AMI, 20% AMI, and 10% AMI. (SUGGESTION)
- Rule sets the maximum rent (including utilities) that an HTF-assisted household pays at a fixed amount equal to the greater of 30% of 30% AMI, or 30% of the federal poverty guideline (REG).
  - There is no basis in statute for using 30% of the federal poverty guidelines.
  - NLIHC strongly suggests HTF Allocation Plans use the "lesser of" 30% of 30% AMI or 30% of the federal poverty guideline to avoid causing HTF-assisted households from being cost-burdened, spending more than 30% of their income for rent and utilities. (SUGGESTION)
- Up to 33% of a state's allocation may be used for operating cost assistance and/or operating cost assistance reserves for HTF-assisted units (REG). HUD intends to issue guidance.

d. *For rental housing, the length of the units' affordability period.* (ST) **(Maximum points = 15)**
- Minimum affordability period of 30 years is a threshold requirement. (REG)
  - The extent to which a project exceeds the 30-year minimum determines its duration points, to a maximum of 15 points for projects that commit to permanent affordability. (SUGGESTION)

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e. *Merits* (ST) *of the applications in meeting priority housing needs.* (REG) **(Maximum points = 30)**
   - Meeting priority housing needs, as identified in the ConPlan, is a threshold requirement.
   - The extent to which a project meets the needs of the lowest income households within the priority housing needs, to a maximum of 30 points. (SUGGESTION)
   - Examples (SUGGESTIONS):
     - Projects that serve people with special needs, who are homeless, or ex-offenders.
     - Projects that are affordable to households with income less than 15% AMI or whose sole income is SSI.
     - Projects proposed by mission-driven nonprofits.
     - Phased rehabilitation projects that do not cause displacement.

f. *Extent to which application makes use of non-federal funding sources.* (ST) **(Maximum points = 5)**
   - Extent to which application makes use of state and local publicly-controlled funds and/or land donated by state or local government to achieve deep affordability for ELI households. (SUGGESTION)
   - Extent to which application makes use of private funds or in-kind commitments, including land donated by state or local government to achieve deep affordability for ELI households. (SUGGESTION)

8. ELIGIBLE ACTIVITIES AND ELIGIBILITY REQUIREMENTS FOR RECIPIENTS

Eligible Activities

The primary purpose of the HTF is to support the creation or preservation of rental housing that is affordable to extremely low income households. HTF funds will be focused on those activities that acquire, produce, or rehab rental housing for the benefit of ELI households.

NLIHC recommends that eligible activities be limited to:

- The production and rehabilitation of rental housing affordable to extremely low income households. (SUGGESTION)
- Up to 33% for operating cost assistance and/or operating cost assistance reserves (REG).
  - May only be provided to rental housing acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. (REG)
  - Includes costs for insurance, utilities, real property taxes, maintenance, and scheduled payments to a reserve for replacing major systems. (REG)
  - HUD may consider waiver to rule's limited definition of "operating costs".

SUGGESTION: "The state does not intend to permit HTF funds to be used for homeownership activities or for the new construction, rehabilitation, or preservation of federally assisted housing."

Eligible Recipients

An eligible recipient is an organization, agency, or other entity, including a for-profit or nonprofit entity (ST) or public housing agency (REG).

Consider limiting eligible recipients to nonprofits in the early years, or limit for-profits to those that have a proven track record of providing and operating rental housing for ELI households. (SUGGESTION).

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An eligible recipient must:

- 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 (ST); and
  - Serve extremely low income households and special needs populations, such as homeless families and people with disabilities (SUGGESTION);
- Demonstrate ability and financial capacity to undertake, comply, and manage the eligible activity (ST);
- Demonstrate 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 (ST); and
- Must make acceptable assurances to the state that it will comply with HTF program requirements during the entire period that begins when the recipient is selected to receive HTF funds and ends at the conclusion of all HTF-funded activities (ST).

9. CERTIFICATION BY EACH RECIPIENT THAT HTF-ASSISTED HOUSING UNITS WILL COMPLY WITH HTF REQUIREMENTS

The state requires each recipient to certify that housing units assisted with HTF funds will comply with all HTF requirements. (ST) The certification must include (SUGGESTION):

- The number of units in an HTF-assisted project by income group: extremely low income, very low income, moderate income, and above moderate income (SUGGESTION);
- A statement declaring that all tenants of an HTF-assisted development meet the income limits as required by relevant program guidelines (SUGGESTION); and
- A statement declaring that the recipient will comply with rent limits, determined to be the lesser of 30% of 30% of the area median income or 30% of the federal poverty guideline (SUGGESTION).

10. PERFORMANCE GOALS AND BENCHMARKS CONSISTENT WITH STATE'S PROPOSED ACCOMPLISHMENTS

This section also refers to the proposed accomplishments in the affordable housing section of the Strategic Plan part of the ConPlan. The state must specify the number of extremely low income families and homeless persons for whom the state will provide affordable rental housing.

Affordable rents are defined as not exceeding the greater of 30% of the federal poverty line or 30% of 30% AMI (REG).

- There is no basis in law for using 30% of the poverty guideline.
- Will cause HTF-assisted household to pay more than 30% of income for rent and utilities most places.

To achieve maximum affordability, an Allocation Plan should set performance goals about (SUGGESTIONS):

- The number of extremely low income households and homeless people will be assisted with affordable housing, with affordable defined as:
  - 30% of household income (SUGGESTION), or
  - Rents set at 30% of 20% AMI or 30% of 10% AMI (SUGGESTION).

11. REHABILITATION STANDARDS THAT HTF-ASSISTED PROJECTS MUST MEET

The state must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities. The standards must set forth the requirements that the housing must meet upon project completion. The description standards must be in sufficient detail to determine the required rehabilitation work, including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. (REG) Also see May 2016 HUD FAQ http://bit.ly/23W2Q7s

Standards must address, at a minimum: health and safety; major systems; lead-based paint; accessibility; disaster mitigation; state and local codes, ordinances, and zoning; uniform physical condition standards; and capital needs assessment. (REG)

The state must ensure that it has taken all reasonable steps to minimize the displacement of residents as the result of rehabilitation activities. (REG)

Recipients who propose phased rehabilitation activities that do not cause displacement will be given preference or receive more points when the state examines the merits of an application – see 7(d) of the Allocation Plan. (SUGGESTION)

12. RESALE AND RECAPTURE GUIDELINES IF FUNDS USED FOR FIRST-TIME HOMEBUYERS

SUGGESTION: NLIHC recommends using all funds for rental housing in the early years, so possible Allocation Plan language could be: "The state does not intend to use any funds for homebuyer activities."

13. HTF AFFORDABLE HOMEOWNERSHIP LIMITS

SUGGESTION: NLIHC recommends using all funds for rental housing in the early years, so possible Allocation Plan language could be: "The state does not intend to use any funds for homebuyer activities."

14. PREFERENCES OR LIMITATIONS TO A PARTICULAR SEGMENT OF ELI POPULATION

The state may limit or give preference to a particular segment of the extremely low income population based on the state's priority housing needs as described in the state's ConPlan and Action Plan. Any such preference or limitation will be memorialized in the written agreement between the state and eligible recipient. (REG)

Any limitation or preference must not violate nondiscrimination requirements. Federal fair housing requirements, including the duty to affirmatively further fair housing, are applicable to the HTF program. A limitation does not violate nondiscrimination requirements if the housing project also receives funding from a federal program that limits eligibility to a particular segment of the population (e.g. Housing Opportunity for Persons Living with AIDS program, the Section 202 and Section 811 programs). (REG)

15. REQUIREMENTS AND CONDITIONS UNDER WHICH EXISTING PROJECT DEBT MAY BE REFINANCED

The state may permit the use of HTF funds toward the cost of fully or partially refinancing existing debt on a multifamily rental property provided the following conditions are met:

- Refinancing is necessary to reduce overall costs and to make the housing more affordable. (REG)
- Refinancing is proportionate to the number of HTF-assisted units. The proportional rehab cost must be greater than the proportional amount of debt that is being refinanced. (REG)
- State must establish refinancing guidelines that include (REG):
  - Rehabilitation must be the primary eligible activity.
  - A minimum level of rehabilitation per unit or a require ratio between rehab and refinancing.
- The new investment is being made to create additional affordable units. (SUG)
- The housing has not been previously financed with HTF funds. (SUG)
- A review of the management practices of the applicant must demonstrate that the proposed rehabilitation is not the result of disinvestment in the property by any entity involved in the application for HTF funds. (SUG)
- A review of the proposed operating budget for the project must demonstrate that both the cost of refinancing and rehabilitation of the project can be met and still result in units affordable to HTF-eligible tenants for a period of 30 years or the term of the refinancing, whichever is longer (SUG).
- The activity does not involve the refinancing of a multifamily loan made or insured by any state or federal program, including the CDBG program, unless additional affordable units will be income-restricted to extremely low-income households. (SUG)