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# **Chapter 3:**

NATIONAL

HOUSING

TRUST FUND

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# The National Housing Trust Fund

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By Ed Gramlich, Senior Advisor,  
National Low Income Housing Coalition

**Administering Agency:** HUD’s Office of Affordable Housing Programs within the Office of Community Planning and Development administers the National Housing Trust Fund.

**History:** The fund was enacted by the “Housing and Economic Recovery Act of 2008” on July 30, 2008 and was implemented in May, 2016.

**Population Targeted:** The target population for the fund is extremely low-income renters.

**Funding:** In FY18, funding was set at \$267 million. FY19 levels will not be known until May 2019.

**See also:** The *National Housing Trust Fund: Funding, Fannie Mae, Freddie Mac, and Housing Finance Reform* sections of this guide.

The national Housing Trust Fund (HTF) was established as a provision of the “Housing and Economic Recovery Act of 2008,” which was signed into law by President George W. Bush. The primary purpose of the HTF is to close the gap between the number of extremely low-income renter households and the number of homes renting at prices they can afford. NLIHC interprets the statute as requiring at least 90% of the funds to be used to build, rehabilitate, preserve, or operate rental housing (HUD guidance sets the minimum at 80%). In addition, at least 75% of the funds used for rental housing must benefit extremely low-income households. One hundred percent of all HTF dollars must be used for households with very low income or less.

In the years since the enactment of the HTF, the shortage of rental housing that the lowest-income people can afford has only gotten worse. The foreclosure crisis, the recession, and persistent low wages have made millions more at risk of homelessness, including families with children, seniors, people with disabilities, and veterans. The HTF offers the means to prevent

and end homelessness if funded at the level advocated by NLIHC.

## HISTORY AND ADMINISTRATION

The HTF was created on July 30, 2008 when the president signed into law the “Housing and Economic Recovery Act of 2008” (HERA), Public Law 110-289, 12 U.S.C 4588. The statute specified an initial dedicated source of revenue to come from an assessment of 4.2 basis points (0.042%) on the new business of Fannie Mae and Freddie Mac (this is unrelated to profits). The HTF was to receive 65% of the assessment, and the Capital Magnet Fund (CMF) was to receive 35%. However, due to the financial crisis in September of 2008, Fannie Mae and Freddie Mac were placed into a conservatorship overseen by the Federal Housing Finance Agency (FHFA), which placed a temporary suspension on any assessments for the HTF and CMF.

On December 11, 2014, the FHFA director lifted the temporary suspension of Fannie Mae and Freddie Mac set-asides for the HTF and CMF, directing Fannie Mae and Freddie Mac to begin setting aside the required 4.2 basis points on January 1, 2015. Sixty days after the close of calendar year 2015, the amounts set aside were to be transferred to HUD for the HTF and to the Department of the Treasury for the CMF.

On April 4, 2016, HUD announced that there was nearly \$174 million for the HTF in calendar year 2016. On May 5, 2016, HUD published a notice in the *Federal Register* indicating how much HTF money each state and the District of Columbia would receive in 2016. For 2017, \$219 million was available for the HTF and for 2018, \$267 million was available.

HUD published proposed regulations to implement the HTF on October 29, 2010. NLIHC and others provided extensive comments on how the regulations could be improved. On January 30, 2015, an HTF Interim Rule was published in the *Federal Register*. HUD explains that after

states have gained experience implementing the HTF, HUD will open the interim rule for public comment and possibly amend the rule.

The HTF is administered by HUD's Office of Affordable Housing Programs within the Office of Community Planning and Development (CPD). The interim HTF regulations are at 24 CFR part 93. Where the HTF statute did not require specific provisions, HUD modeled the HTF interim rule on the Home Investment Partnerships Program (HOME) regulations.

NLIHC has an interim report summarizing how states have awarded their 2016 HTF allocations, called *Getting Started*, available at <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund>.

## PROGRAM SUMMARY

The HTF is principally for the production, rehabilitation, preservation, and operation of rental housing for extremely low-income households (ELI), those with income less than 30% of the area median income (AMI) or with income less than the federal poverty line. It is funded with dedicated sources of revenue on the mandatory side of the federal budget and thus does not compete with existing HUD programs funded by appropriations on the discretionary side of the federal budget.

The HTF is a block grant to states. The funds are to be distributed by formula to states based on four factors that only consider renter household needs. Seventy-five percent of the value of the formula goes to the two factors that reflect the needs of ELI renters because the HTF statute requires the formula to give priority to ELI renters. The other two factors concern the renter needs of very low-income (VLI) households, which are households with income between 31% and 50% of AMI. A state entity administers each state's HTF program and makes grants to entities to create new affordable housing opportunities. The state designated entity might be the state housing finance agency, a state department of housing or community development, or a tribally designated housing entity. HUD's list of designated entities is available at <https://www.hudexchange.info/programs/htf/grantees>

[www.hudexchange.info/programs/htf/grantees](https://www.hudexchange.info/programs/htf/grantees) (although the staff on that list is not kept up-to-date). NLIHC attempts to keep the key staff of state designated entities up-to-date at: <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations>.

## KEY PROGRAM DETAILS

### Funding

As a result of the decision by FHFA to lift the suspension on Fannie Mae's and Freddie Mac's obligations to fund the HTF and the CMF, the first funds for the HTF became available for distribution to the states in summer 2016. The amount of funding was determined by the volume of the business conducted by Fannie and Freddie in calendar year 2015, which yielded nearly \$174 million of the HTF for 2016. Based on their total business for 2017, 4.2 basis points provided \$219 million for the HTF in 2017 and \$267 million in 2018. The amount for 2019 will probably be announced around May 2019.

### Targeted to Rental Housing

The overview section of the interim rule declares that the HTF program will provide grants to states to increase and preserve the supply of housing with primary attention to rental housing for ELI and VLI households. VLI is generally defined as income between 31% and 50% AMI; the HTF statute adds that for rural areas VLI may also be income less than the federal poverty line. The statute limits the amount of HTF used for homeownership activities to 10%, inferring that at least 90% of a state's annual HTF allocation must be used for rental housing activities. However, the preamble to the interim rule interprets the law differently, asserting that only 80% must be used for rental activities.

### Income Targeting

The HTF statute requires that at least 75% of each grant to a state be used for rental housing that benefits ELI households and that no more than 25% may be used to benefit VLI renter households. For homeowner activities, the statute requires that all assisted homeowners have income less than 50% of AMI. When there

is less than \$1 billion for the HTF, the rule requires that 100% of a state's allocation benefits ELI households.

### **HTF Distribution Formula**

To distribute HTF dollars, the statute established a formula based on the number of ELI and VLI households with severe cost burden (households paying more than half of their income for rent and utilities), as well as the shortage of rental properties affordable and available to ELI and VLI households, with priority for ELI households. Small states and the District of Columbia are to receive a minimum of \$3 million. On December 4, 2009, HUD issued a proposed rule, endorsed by NLIHC, describing the factors to be used in the formula.

Responding to the statute's requirement that the formula give priority to ELI households, HUD's interim rule formula assigns 75% of the formula's weight to the two ELI factors. The interim rule adds a provision for instances in which there are not sufficient funds in the HTF to allocate at least \$3 million to each state and the District of Columbia; in such a case, HUD will propose an alternative distribution and publish it for comment in the *Federal Register*.

NLIHC has estimated how much each state would receive based on \$250 million and \$500 million, available at <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations>. NLIHC has also estimated state allocations when the HTF reaches \$5 billion, available at [https://nlihc.org/sites/default/files/NHTF\\_State\\_Allocations\\_5bill.pdf](https://nlihc.org/sites/default/files/NHTF_State_Allocations_5bill.pdf).

### **State Distribution of HTF Money**

States are to designate an entity, such as a housing finance agency, housing and community development entity, tribally designated housing entity, or any other instrumentality of the state to receive HTF dollars and administer an HTF program. Each state must distribute its HTF dollars throughout the state according to the state's assessment of priority housing needs as identified in its approved Consolidated Plan (ConPlan).

HUD's list of designated entities is available at <https://www.hudexchange.info/programs/htf/grantees> and more up-to-date staff of these entities is available from NLIHC at <https://nlihc.org/housing-needs-by-state>. See also the *Consolidated Planning Process* section in Chapter 7 of this guide.

### **Allocation Plans**

The HTF statute requires each state to prepare an Allocation Plan every year, showing how it will distribute the funds based on priority housing needs. The interim rule amends the ConPlan regulations by adding HTF-specific Allocation Plan requirements to the ConPlan's Annual Action Plan rule.

The interim regulation gives states the option of passing funds to local governments or other state agencies as subgrantees to administer a portion or all of the state's HTF program and to in turn provide funds to recipients to carry out projects. If a local subgrantee is to administer HTF dollars, then it too must have a local ConPlan containing a local HTF Allocation Plan that is consistent with the state's HTF requirements. Due to the limited amount of funds in the HTF so far, only Alaska and Hawaii opted to use subgrantees.

A recipient is an agency or organization (nonprofit or for-profit) that receives HTF dollars from a state grantee or local subgrantee to carry out an HTF-assisted project as an owner or developer. To be eligible, a recipient must meet four requirements:

- Have the capacity to own, construct or rehabilitate, and manage and operate, an affordable multifamily rental development; or construct or rehabilitate homeownership housing; or provide down payment, closing cost, or interest rate buy-down assistance for homeowners.
- Have the financial capacity and ability to undertake and manage the project.
- Demonstrate familiarity with requirements of federal, state, or local housing programs that will be used in conjunction with HTF money.
- Assure the state that it will comply with all

program requirements.

A state's or subgrantee's Allocation Plan must describe the application requirements for recipients, and the criteria that will be used to select applications for funding. The statute requires Allocation Plans to give priority in awarding HTF money to applications based on six factors listed in the statute, including:

- The extent to which rents are affordable, especially for ELI households.
- The length of time rents will remain affordable.
- The project's merit. The interim rule gives as examples housing that serves people with special needs, housing accessible to transit or employment centers, and housing that includes green building and sustainable development elements.

Each year HUD issues a CPD Notice providing guidance regarding the HTF Allocation Plan. [Notice CPD 2018-8](#) provided guidance for 2018; look for 2019 guidance at <https://www.hudexchange.info/programs/htf/notices>.

### **Public participation**

The statute requires public participation in the development of the HTF Allocation Plan. However, the interim rule does not explicitly declare that, in order to receive HTF money, states and subgrantees must develop their Allocation Plans using the ConPlan public participation rules. The interim rule merely requires states to submit an HTF Allocation Plan following the ConPlan rule, which does have public participation requirements.

### **Period of Affordability**

The statute does not prescribe how long HTF-assisted units must remain affordable. The interim regulation requires rental units to be affordable for at least 30 years, allowing states and any subgrantees to have longer affordability periods. The 30-year affordability period reflects HUD's prediction that the HTF will be used in conjunction with Low-Income Housing Tax Credits (LIHTCs). The HTF campaign had recommended a 50-year affordability period.

Twenty-one states addressed longer affordability plans in their draft 2016 HTF Allocation Plans. Of these, three states and the District of Columbia required longer affordability periods (California, 55 years; Maine, 45 years; and the District of Columbia and Maryland, 40 years). The other states were either awarded competitive points or given priority to projects with longer affordability periods.

### **Maximum Rent**

NLIHC recommended that the regulations adopt the Brooke rule so that ELI households would not pay more than 30% of their income for rent and utilities. However, the interim rule sets a fixed maximum rent, including utilities, at 30% of 30% AMI, or 30% of the federal poverty level, whichever is greater. Consequently, households earning substantially less than 30% of AMI will almost certainly pay more than 30% of their income for rent, unless additional subsidies are available. HUD acknowledged in the preamble to the proposed rule that some tenants will be rent burdened, but that a fixed rent is necessary for financial underwriting purposes.

NLIHC urges advocates to convince their states to have their Allocation Plans require HTF-assisted units have maximum rent set at "the lesser of" 30% of 30% AMI or 30% of the poverty line. This is because in 92% of the counties in the nation in 2016, 30% of the poverty line is greater than 30% of 30% AMI. If 30% of the poverty line is used in these counties, HTF-assisted households will end up cost burdened, paying more than 30% of their income for rent and utilities. Households with income around 20% of AMI (approximately the income of households with Supplemental Security Income) would almost always be severely cost burdened, paying more than 50% of their income. Advocates can find the 2016 values for their states and counties at <http://bit.ly/2bnPRYZ>.

Although NLIHC does not support cost-burdening of HTF-assisted households, underwriting developments with variable Brooke rents (households paying 30% of their actual income) can be very difficult. One possible approach to avoid or minimize factors causing

HTF-assisted households to be cost-burdened is to give priority to HTF projects that have a mix of units with fixed rents set at 30% of 30% AMI, 30% of 20% AMI, 30% of 15% AMI, and 30% of 10% AMI.

A volunteer Developer Advisory Group prepared two papers addressing *Funding Strategies for Developing and Operating ELI Housing* and *HTF Operating Assistance Options and Considerations*.

### **Tenant Protections and Selection**

According to the HTF statute, activities must comply with laws relating to tenant protections and tenants' rights to participate in the decision making regarding their homes. The interim rule does not address tenants' rights to participate in decision making. However, the interim rule provides for a number of tenant protections, including:

- Owners of HTF-assisted projects may not reject applicants who have vouchers or are using HOME tenant-based rental assistance.
- There must be a lease, generally for one year.
- Owners may only terminate tenancy or refuse to renew a lease for good cause.
- Owners must have and follow certain tenant selection policies. Tenants must be selected from a written waiting list, in chronological order, if practical.
- Eligibility may be limited to or preference may be given to people with disabilities if:
  - The housing also receives funding from federal programs that limit eligibility, or
  - The disability significantly interferes with the disabled person's ability to obtain and keep housing, the disabled person could not obtain or remain in the housing without appropriate supportive services, and the services cannot be provided in non-segregated settings.

The Consortium for Citizens with Disabilities has been trying to convince HUD that these preference provisions might cause states to misinterpret the rule to mean that they can only do single-site permanent supportive housing,

not integrated supportive housing.

### **Homeowner Provisions**

As provided by the statute, up to 10% of HTF money may be used to produce, rehabilitate, or preserve homeowner housing. HTF money may also be used to provide assistance with down payments, closing costs, or interest rate buy-downs. As required by the statute, homes must be bought by first-time homebuyers with income less than 50% of AMI who have had HUD-certified counseling and the home must be their principal residence. The affordability period is generally 30 years (see exception below). To date, no state has used HTF for homeowner activities.

Although not in the statute, the interim rule requires the assisted housing to meet the HOME program definition of single-family housing, which includes one- to four-unit residences, condominiums and cooperatives, manufactured homes and lots, or manufactured home lots only. Following the statute and echoing the HOME regulations, the value of an assisted home must not exceed 95% of the median purchase price for the area.

As required by the statute, the interim rule's homeowner resale provisions echo the HOME regulations. If a homeowner unit is sold during the affordability period, the state or subgrantee must ensure that the housing will remain affordable to a reasonable range (as defined by the state or subgrantee) of income-eligible homebuyers. The sale price must provide the original owner a fair return, defined as the owner's original investment plus capital improvements. The interim rule added a recapture alternative for states and subgrantees to use instead of a resale provision. The purpose of a recapture option is to ensure that a state or subgrantee can recoup some or all of its HTF investment. It modifies the affordability period based on the amount of the HTF assistance: 30 years if more than \$50,000, 20 years if between \$30,000 and \$50,000, and 10 years if less than \$30,000.

### **Lease-Purchase**

Mirroring the HOME regulations, the interim rule

allows HTF money to help a homebuyer through a lease-purchase arrangement, as long as the home is purchased within 36 months. Also, HTF dollars may be used to buy an existing home with the intent to resell to a homebuyer through lease-purchase; if the unit is not sold within 42 months, HTF rent affordability provisions apply.

### **General Eligible Activities**

The interim regulation echoes the statute by providing a basic list of eligible activities such as the production, rehabilitation, and preservation of affordable rental homes and homes for first-time homebuyers through new construction, reconstruction, rehabilitation, or acquisition. No more than 10% of a state's annual allocation may be used for homeownership. HTF-assisted units may be in a project that also contains non-HTF-assisted units. Assistance may be in the form of equity investments, loans (including no-interest loans and deferred payment loans), grants, etc. The interim rule limits HTF assistance to permanent housing (use of HTF for transitional housing or emergency shelter is not allowed).

### **Manufactured Housing**

The interim rule allows HTF money to be used to buy or rehabilitate manufactured homes or to purchase the land on which a manufactured home sits. The home must, at the time of project completion, be on land that is owned by the homeowner or on land for which the homeowner has a lease for a period that is greater than or equal to the affordability period.

### **Timeframe for Demolition or for Acquisition of Vacant Land**

Use of HTF money for demolition or for acquiring vacant land is limited to projects for which construction of affordable housing can reasonably be expected to start within one year.

### **Eligible Project Costs**

Eligible project costs include property acquisition, relocation payments, development hard costs such as construction, soft costs associated with financing and development, and refinancing existing debt on rental property if HTF is also used for rehabilitation. Operating

costs are also eligible project costs.

### **Development Hard Costs**

Development hard costs are the actual costs of construction or rehabilitation, including demolition, laundry and community facilities, utility connections, and site improvements, which include onsite roads, sewers, and water connections.

### **Related Soft Costs**

Mirroring the HOME regulations, other soft costs associated with financing and/or development include: architectural and engineering services, origination fees and credit reports, builder's or developer's fees, audits, affirmative marketing and fair housing information to prospective occupants, initial operating deficit reserves to meet any shortfall in project income during the first 18 months of project rent-up, staff and overhead of the state or subgrantee directly related to carrying out the project (such as work specs, inspections, loan processing), impact fees, and costs to meet environmental and historic preservation requirements.

### **Loan Repayments**

HTF may be used to pay principal and interest on construction loans, bridge financing, a guaranteed loan, and others.

### **Operating Costs and Operating Cost Assistance Reserve**

According to the statute, HTF dollars may be used to meet operating costs at HTF-assisted rental housing. The interim rule allows HTF resources to be used to provide operating cost assistance and to establish an operating cost assistance reserve for rental housing acquired, rehabilitated, preserved, or newly constructed with HTF money. The interim rule strictly defines operating costs as insurance, utilities, real property taxes, maintenance, and scheduled payments to a reserve for replacement of major systems (for example, roof, heating and cooling, and elevators). The purpose of an operating cost assistance reserve is to cover inadequate rent income to ensure a project's long-term financial feasibility.

The interim rule caps at one-third of the amount

of a state's annual grant that may be used for operating cost assistance and for contributing to an operating cost assistance reserve.

The preamble to the rule explains that HUD established the cap because it views the HTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households. HUD assumes that the HTF will be used in combination with other sources to produce and preserve units, mostly in mixed-income projects.

The preamble indicates that states have discretion in how to allocate operating cost assistance. For example, states may decide to limit each development to the one-third cap, or to raise the cap for developments that need more operating cost assistance while lowering the cap for those that do not need as much, as long as no more than one-third of a state's annual grant is used for operating cost assistance and reserves.

States and subgrantees may provide operating cost assistance to a project for a multiyear period from the same fiscal year HTF grant as long as the funds are spent within five years. An operating cost assistance agreement between a state or subgrantee and a property owner may be renewed throughout the affordability period.

For non-appropriated sources, such as the proceeds from the 4.2 basis point assessments on Fannie Mae and Freddie Mac as called for in the HTF statute, the interim rule provides that an operating cost assistance reserve may be funded upfront for HTF-assisted units for the amount estimated to ensure a project's financial feasibility for the entire affordability period. If this amount would exceed the one-third operating cost assistance cap, it could be funded in phases from future non-appropriated HTF grants. This provision can be very helpful for developers of rental homes at rents that ELI households can afford.

HUD anticipates providing guidance about operating cost assistance and reserves sometime in the future. In the meantime, some general thoughts about using the HTF for operating cost assistance were prepared by NLIHC's volunteer Developer Advisory Group, *HTF Operating*

### Assistance Options and Considerations.

Several states wanted to use HTF for operating assistance in 2016 but found that the interim rule's limited definition of operating costs rendered the option financially infeasible. These states noted that the interim rule's definition did not include components typically considered to be part of the operating cost by the development industry, such as property management and personnel costs associated with maintenance. When brought to HUD's attention, HUD indicated a willingness to consider waivers in the future, as well as to modify the rule in its final stage.

### **Administration and Planning Costs**

The statute limits the amount of HTF dollars that may be used for general administration and planning to 10% of each state's annual grant. The interim regulation adds that 10% of any program income (for example, proceeds from the repayment of HTF loans) may also be used for administration and planning. The interim rule also provides that subgrantees may use HTF for administration and planning, but subgrantee use counts toward the state's 10% cap.

### **General Management, Oversight, and Coordination Costs**

HTF may be used for a state's or subgrantee's costs of overall HTF program management, coordination, and monitoring. Examples include staff salaries and related costs necessary to ensure compliance with the regulations and to prepare reports to HUD. Other eligible costs include equipment, office rental, and third-party services like accounting.

### **Project-Specific Administration Costs**

The staff and overhead expenses of a state or subgrantee directly related to carrying out development projects may also be eligible administration and planning costs. Examples include loan processing, work specs, inspections, housing counseling, and relocation services. As with HOME, staff and overhead costs directly related to carrying out projects (as distinct from the HTF program in general) may instead be charged as project-related soft costs

or relocation costs and therefore not subject to the 10% cap. However, housing counseling must be counted as an administration cost as per the statute.

### **Other Administration and Planning Costs**

- Costs for providing information to residents and community organizations participating in the planning, implementation, or assessment of HTF projects.
- Costs of activities to affirmatively further fair housing.
- Costs for preparation of the ConPlan, including hearings and publication costs.
- Costs of complying with other federal requirements regarding non-discrimination, affirmative marketing, lead-based paint, displacement and relocation, conflict of interest, and fund accountability.

### **Public Housing**

In general, the interim regulation prohibits the use of HTF to rehabilitate or construct new public housing. HTF-assisted housing is also ineligible to receive public housing operating assistance during the period of affordability. The interim rule does allow a project to contain both HTF-assisted units and public housing units.

The interim rule allows HTF use for two categories of public housing:

- HTF resources may be used to rehabilitate existing public housing units that are converted under the Rental Assistance Demonstration (RAD) to project-based rental assistance. Currently, up to 455,000 public housing units may be converted under RAD, and HUD continues to seek Congressional approval to allow all public housing units to be converted.
- HTF resources may be used to rehabilitate or build new public housing as part of the Choice Neighborhoods Initiative (CNI) and to rehabilitate or build new public housing units that have been allocated and will receive LIHTC assistance. Public housing units constructed with HTF must replace public

housing units removed as part of a CNI grant or as part of a mixed-finance development under Section 35 of the “Housing Act of 1937.” The number of replacement units cannot be more than the number of units removed. Public housing units constructed or rehabilitated with HTF must receive Public Housing Operating Fund assistance and may receive Public Housing Capital Fund assistance.

NLIHC is extremely concerned about these new provisions regarding public housing because using HTF to rehabilitate or build new public housing units to replace demolished units will not increase housing opportunities for ELI households, and would result in an overall loss of resources for housing if Congress chooses to reduce appropriated resources for public housing due to the availability of HTF resources.

### **Ineligible Activities**

Although not in the statute, the interim rule prohibits the use of HTF money for a project previously assisted with HTF during the period of affordability, except for the first year after completion. Fees for administering the HTF program are not eligible uses (e.g., servicing or origination fees). However, annual fees may be charged to owners of HTF-assisted rental projects to cover a state’s or subgrantee’s cost of monitoring compliance with income and rent restrictions during the affordability period. The statute expressly prohibits use of HTF dollars for “political activities, lobbying, counseling, traveling, or endorsements of a particular candidate or party.”

### **HTF Must be Committed Within Two Years**

As required by the statute, the interim regulation requires HTF dollars to be committed within 24 months, or HUD will reduce or recapture uncommitted HTF dollars. “Committed” is defined in the interim rule as the state or subgrantee having a legally binding agreement with a recipient owner or developer for a specific local project that can reasonably be expected to begin rehabilitation or construction within

12 months. If HTF is used to acquire standard housing for rent or for homeownership, commitment means the property title will be transferred to a recipient or family within six months. The interim rule adds that HTF money must be spent within five years. [Notice CPD 18-12](#) provides guidance to grantees about the commitment and expenditure requirements and explains how HUD determines compliance.

### **Public Accountability**

The statute requires each state to submit an annual report to HUD describing activities assisted that year with HTF dollars and demonstrating that the state complied with its annual Allocation Plan. This report must be available to the public. The interim rule requires jurisdictions receiving HTF dollars to submit a performance report according to the ConPlan regulations. The HTF performance report must describe a jurisdiction's HTF program accomplishments and the extent to which the jurisdiction complied with its approved HTF Allocation Plan and all the requirements of the HTF rule.

The interim regulation presents a number of data collection obligations, including actions taken to comply with Section 3 hiring and contracting goals, and the extent to which each racial and ethnic group, as well as single heads of households, have applied for, participated in, or benefitted from the HTF. Although it is still too soon to determine the level of detail that is to be reported, the CPD Integrated Disbursement and Information System's [IDIS Online Reports User Guide](#), from May 2018, suggests that HUD will be collecting a useful amount of detailed information. How accessible this information will be to the public is unknown. NLIHC will be tracking this as more HTF projects are completed and reported on in the future.

In general, records must be kept for five years after project completion. Records regarding individual tenant income verifications, project rents, and project inspections must be kept for the most recent five-year period until five years after the affordability period ends. Similar language applies to homeowner activities.

Regarding displacement, records must be kept for five years after all people displaced have received final compensation payments. The public must have access to the records, subject to state and local privacy laws.

## **INFLUENCING HOW THE NATIONAL HOUSING TRUST FUND IS USED IN YOUR STATE**

Advocates are urged to be actively engaged in HTF implementation at the state level, and perhaps also at the local level.

### **The HTF Allocation Plan**

The law requires states to prepare an Allocation Plan every year showing how the state will allot the HTF dollars it will receive in the upcoming year. Action around the HTF Allocation Plan begins at the state level, and could then flow to the local level if a state decides to allocate some or all of the HTF to local subgrantees. The state HTF Allocation Plan is woven into a state's ConPlan, and if there is a local subgrantee, then a local government's HTF Allocation Plan will be woven into a locality's ConPlan.

- For advocates only accustomed to ConPlan advocacy at the local level because they have focused on attempting to influence how their local government allocates local Community Development Block Grants (CDBGs) and HOME, the state HTF process will be an important new experience.
- To better ensure that HTF dollars get to a locality in the appropriate amounts and for the appropriate uses, it will be necessary for advocates to learn how to influence their state Allocation Plan and ConPlan.
- Observing most 2017 HTF Allocation Plans, NLIHC finds states inserting "HTF-Specific" sections or an HTF-specific appendix to their ConPlan Annual Action Plans that provide a stand-alone HTF presentation. However, these are at the very back of long documents, so advocates will need to do a key word search.
- The statute requires states to give consideration to six priority factors. NLIHC

asserts that genuine affordability, length of affordability, and merit features of a proposed project warrant greater relative weight or priority than the other three statutory priority factors. Too many states give disproportionate weight to the statutory factor regarding the ability of an applicant to obligate HTF funds and carry out projects in a timely manner. NLIHC thinks this factor should be a threshold factor that ought to be a first-cut consideration before weighing affordability, merit, and length of affordability. If an applicant lacks the capacity to obligate funds and carry out a project in timely fashion, it should not make the initial cut. See NLIHC’s Model Allocation Plan for ideas, <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/basic-htf-information-nlihc>.

Advocates should learn which agency in their state administers the HTF program and get to know the person responsible. Let the state HTF agency know that you are interested in being informed about and participating in the process for planning where and how HTF money will be used. Although HUD’s list of state-designated HTF agencies is available at <http://bit.ly/1ONwHwN>, NLIHC has in many cases identified the person at the state level actually doing the day-to-day work and lists that person on the NLIHC HTF webpage at <https://nlihc.org/housing-needs-by-state>.

Keep in mind that the amount of HTF your state will receive is based on ELI and VLI households spending more than half of their income on rent and utilities (severely cost-burdened), and on the shortage of rental homes that are affordable and available to ELI and VLI households with 75% of the formula’s weight assigned to ELI factors. See NLIHC’s Gap Analysis for information about your state at <https://reports.nlihc.org/gap>.

Each year it will be important for advocates to work first at the state level, and then perhaps at the local level to:

- Ensure that the agency responsible for drafting the HTF Allocation Plan writes it to meet the genuine, high-priority housing needs of extremely low-income people.

- Advocate for HTF-assisted projects that are truly affordable to extremely low-income people, such that they do not pay more than 30% of their income for rent and utilities. The statute offers advocates a handle because it requires funding priority to be based on the extent to which rents are affordable for ELI households.
- Advocate for HTF-assisted projects that will be affordable to extremely low-income households for as long as possible, aiming for at least 50 years. The statute offers advocates a handle because it requires funding priority to be based on the extent of the duration for which rents will remain affordable.
- Advocate for projects that have features that give them special merit, such as serving households with income less than 15% AMI, or serving people who have disabilities, are homeless, or are re-entering the community from correctional institutions.
- Advocate for the types of projects (like new construction, rehabilitation, and preservation) that are most needed.
- Advocate for the bedroom size mix that is most needed.
- Advocate for the populations to be served that are the ones who most need affordable homes (large families, people with special needs, people who are homeless, formerly incarcerated people, senior citizens).
- Make sure that the public participation obligations are truly met and that the state does not just “go through the motions.”
- Make sure that HTF-assisted projects affirmatively further fair housing.

## FORECAST FOR 2019

The HTF faces significant threats and opportunities in 2019.

Contributions to the HTF are at risk if the newly appointed director of the Federal Housing Finance Agency acts to stop contributions to the

Housing Trust Fund. The authorizing statute and FHFA policy are aimed at ensuring the financial stability of the Enterprises, and both allow FHFA to stop payments to the HTF if the director determines that such contributions undermine the financial stability of the Enterprises. While the financial operations of the Enterprises are stable, the next FHFA director could try to stop payments to the HTF in a political effort to force Congress to enact housing finance reform legislation. This would be unacceptable, given the stability of the Enterprises and the clear need for the HTF.

Congress could propose to cut or eliminate the HTF or use its funding to fill gaps in the HUD budget, however, this is less likely with the House under Democratic control.

However, there is an opportunity to greatly expand the HTF through comprehensive housing finance reform legislation. NLIHC will continue to advocate for comprehensive reform, since it offers the best chance of substantial new funding for HTF in the coming years. When Congress does finally tackle housing finance reform, it is critical that low-income housing advocates remain vigilant and protect the gains made in the Johnson-Crapo, Waters, and Delaney-Carney-Himes bills to robustly fund the HTF at a minimum of \$3.5 billion annually.

It is also important that advocates continue to educate their senators and representatives on the HTF and the critical role it plays in serving households with the most acute housing needs.

## FOR MORE INFORMATION

NLIHC's HTF webpage, <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund>

NLIHC's interim report on how states have awarded their 2016 HTF allocations, <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund>.

Information about each state such as key personnel and draft and final HTF Allocation Plans, <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations>.

A five-part series all about the new rules regarding implementation of the NHTF <https://nlihc.org/issues/nhtf/videos>.

PowerPoint slides highlighting the key features of the NHTF law and regulations, [https://nlihc.org/sites/default/files/NHTF\\_Getting-to-Know-NHTF\\_0617.pdf](https://nlihc.org/sites/default/files/NHTF_Getting-to-Know-NHTF_0617.pdf).

Key features of the NHTF law and interim regulations presented in 15 short papers broken down by topics, <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/basic-htf-information-nlihc>.

NLIHC Volunteer Developer Advisory Group, <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/nlihc-resources-developing-eli-housing>.

The interim regulation, <http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01642.pdf>.

HUD NHTF webpage, <https://www.hudexchange.info/htf>, including Frequently Asked Questions, <https://www.hudexchange.info/htf/faqs>.