



NHTF • The National Housing Trust Fund

Fair Housing Features

The National Housing Trust Fund (NHTF) statute clearly declares that the NHTF is “federal financial assistance” for the purposes of the application of federal civil rights laws. In addition, any activity funded in whole or in part with NHTF dollars must comply with fair housing laws and laws regarding accessibility in federally assisted housing, including Section 504 of the Rehabilitation Act of 1973.

§1338(a)(2) and (c)(8)(C) statute

The NHTF program run by HUD, states, and any local subgrantees must comply with fair housing laws, including Title VI of the Civil Rights Act of 1964 and the Fair Housing Act of 1968 (also known as Title VIII). In addition, they must comply with other nondiscrimination and equal opportunity laws, regulations, and Executive Orders, such as Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

§93.150(a) and 350(a) regulations

The Fair Housing Act requires jurisdictions to “affirmatively further fair housing” (AFFH). The interim regulations require states and local subgrantees to administer the NHTF in a manner complies with affirmatively furthering fair housing regulations and promotes greater choice of housing opportunities.

§93.150(a)

What Is Affirmatively Furthering Fair Housing?

On July 19, 2013, HUD proposed significant regulations intended to improve and strengthen the obligation to affirmatively further fair housing. To date, final regulations have not been issued, but are expected soon. (Check NLIHC’s website for information about the final AFFH rule, <http://nlihc.org/issues/affh>) Because most states and local subgrantees will not be required to meet the provisions of the regulations for many years, this article is based on old requirements that will remain in effect for most jurisdictions.

"Affirmatively Furthering Fair Housing", (AFFH) is defined in Consolidated Plan (ConPlan) regulations as a jurisdiction:

1. Having an Analysis of Impediments (barriers) to fair housing choice, called an “AI”;
2. Taking appropriate actions to overcome the effects of impediments; and,
3. Keeping records reflecting the analysis and showing the actions taken.

States and any local subgrantees getting NHTF money must have an annual NHTF Allocation Plan, which is part of the ConPlan. The NHTF Allocation Plan connection to the ConPlan is another tie-in to the obligation to affirmatively further fair housing choice.

(See separate article, “How Can I Influence Where The Money Goes” for more details about the NHTF Allocation Plan.)

What Is An Analysis of Impediments To Fair Housing Choice, An “AI”?

An "impediment" can be an action or an inaction which restricts housing choice, or which has the effect of restricting housing choice. Some policies or practices might seem neutral, but really do deny or limit housing availability.

HUD's Office of Fair Housing and Equal Opportunity (FHEO) has a *Fair Housing Planning Guide* which defines an AI as:

1. A comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices.
2. An assessment of how those laws, regulations, and practices affect the location, availability, and accessibility of housing.
3. An assessment of conditions, both public and private, affecting fair housing choice for all protected classes. The "protected classes" are: race, color, religion, gender, disability, national origin, and familial status (in other words, households with children).
4. An assessment of the availability of affordable, accessible housing in a range of unit sizes.

Affirmative Marketing

The interim regulations require NHTF programs and projects to comply with “affirmative marketing” requirements, similar to those in the HOME program’s regulations.

Each state and any local subgrantee must have affirmative marketing procedures and requirements for rental projects that have five or more NHTF-assisted housing units, and for homeownership assistance programs.

Affirmative marketing steps include actions to provide information and otherwise attract eligible households in the housing market area to the NHTF-assisted housing without regard to race, color, national origin, sex, religion, disability, or family status.

The affirmative marketing requirements and procedures must include:

- Methods for informing the public, owners, and potential residents about federal fair housing laws and the jurisdiction’s affirmative marketing policy.
- Practices that the jurisdiction and each owner must follow, such as using community contacts and commercial media.
- Steps jurisdictions and owners must use to seek applications from people in the housing market area who are not likely to apply without special outreach.

Tenant Selection

Owners of NHTF-assisted rental housing must:

- Comply with the state’s or local subgrantee’s affirmative marketing requirements.
- Not exclude an applicant who has a Housing Choice Voucher or who has HOME program tenant-based rental assistance.

If an owner limits or gives preference to a particular segment of the population, that limitation or preference must:

- Not violate the NHTF regulations’ nondiscrimination and equal opportunity provision;
- Be permitted in writing by the jurisdiction and be described in the jurisdiction’s ConPlan;
- Be in the owner’s written tenant selection policy; and,
- Be subject to affirmative marketing procedures that apply to the context of the limitation or preference.

§93.303(d) and §93.350(b)(1)

People with Disabilities

Any activity funded in whole or in part with NHTF dollars must comply with fair housing laws and laws regarding accessibility in federally assisted housing, including Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

§1338(c)(8)(C)
§93.150(a) and 350(a)

The tenant selection portion of the NHTF regulations has a provision regarding NHTF-assisted rental housing that limits or gives preference to people with disabilities.

§93.303(d) and §93.350(b)(1)

The interim regulations also have accessibility provisions in the property standards section.

§93.301

Details are presented in a separate paper titled, “Serving People with Disabilities.”

Displacement

If a NHTF-assisted activity will cause displacement, the household must be advised of their rights under the Fair Housing Act.

If the comparable replacement dwelling used to establish the amount of a minority household’s replacement housing payment is located in an area of minority concentration, the minority household must also be given referrals to comparable housing not located in an area of minority concentration.

§93.352(c)(1)

Site and Neighborhood Standards

In general, states and any local subgrantees must administer their NHTF program in a way that provides housing that furthers full compliance with the Fair Housing Act, complies with regulations issued pertaining to the Fair Housing Act, and that promotes greater choice of housing opportunities.

§93.150(a)

HUD's interim regulations require new construction of NHTF-assisted rental housing to follow the site and neighborhood standards of the Project-Based Voucher program at 24 CFR 983.57(e)(2). In general, these regulations prohibit locating new construction of a NHTF-assisted rental project in:

- An area of minority concentration.
- A racially-mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents.

The regulations allow a new project to be built in an area of minority concentration in certain situations.

§93.150(b)

See the separate paper, "Site and Neighborhood Standards" for details.

NHTF Money May Be Used To Cover Fair Housing Costs

The interim regulations specifically list affirmative marketing and providing fair housing information as eligible project soft costs.

§93.201(d)(4)

The regulations also list as eligible program administration costs, paying for activities to affirmatively further fair housing, complying with fair housing laws, and meeting affirmative marketing requirements.

§93.202(e) and (h)

Records Must Be Kept and Made Public

States and any local subgrantees must keep fair housing records.

- The interim regulations require data about the extent each racial and ethnic group, and single-headed households, have applied for, participated in, or benefitted from any activity funded in whole or in part with NHTF money.
- Also required are records documenting compliance with the affirmative marketing obligations.
- Records must be kept demonstrating that a site and neighborhood standards review was conducted for each new construction rental housing project assisted with NHTF.

Records must be kept for the most recent five-year period.

The public must have reasonable access to records, consistent with state and local privacy laws.

§93.407(a)(2)(x) and (5)(i)(A) and (ii)

REV June 2015