NHTF: The National Housing Trust Fund

NATIONAL HOUSING TRUST FUND

Getting to Know the NHTF Regulations

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Introduction
National Housing Trust Fund (HTF)

Primary purpose of the national Housing Trust Fund (HTF) is to increase the supply of rental housing for extremely low income (ELI) households, income less than the federal poverty guideline or less than 30% of the area median income (AMI), and homeless households.

Introduction
(continued)

- Became law on July 30, 2008 as part of HERA (Housing and Economic Recovery Act).
- Program for collecting and distributing "dedicated" funds – money not at risk of Congressional appropriations cuts.
- Will not compete with existing HUD programs funded by Congressional appropriations.
- Block grant to states.

Introduction

(continued)

- No money in HTF at first.
  - First dedicated funds were to come from 4.2 “basis points” (0.042%) on new business of Fannie Mae and Freddie Mac.
  - 65% to HTF, 35% to Capital Magnet Fund.
  - But before funds could get to HTF, Fannie and Freddie hit by 2008 banking crisis; this source of dedicated money put on hold.

Introduction
(continued)

- December 11, 2014, FHFA Director Mel Watt removes the hold.
  - Fannie and Freddie began to set aside funds on January 1, 2015.
  - At close of each calendar year, Fannie and Freddie must transfer set aside funds to HUD within 60 days.
  - HUD *Federal Register* notice announces HTF allocations to states later in spring or early summer.

Introduction

(continued)

NATIONAL HOUSING TRUST FUND

- HUD published proposed allocation formula on December 4, 2009.
- HUD published proposed regulations to carry out the HTF on October 29, 2010.
- Interim regulations published, January 30, 2015,
    - HUD will solicit comments after states gain experience.
- HTF rule is at 24 CFR part 93.
- Modeled on HOME regulations.

Need for Affordable ELI Rental Housing

NATIONAL HOUSING TRUST FUND

- National shortage of 7.4 million homes affordable and available to extremely low income (ELI) renter households.
  - ELI means income at or below the federal poverty guideline, or 30% of area median income (AMI).
- There are only 35 rental homes affordable and available for every 100 ELI renter households.
- 71% of ELI renter households spent more than 50% of their income for rent and utilities.

Need for Affordable ELI Rental Housing

(continued)

- National shortage of 3.4 million homes affordable and available to deeply low income (DLI) renter households (2016).
  - DLI means income at or below 15% of area median income (AMI).
- There were only 17 rental homes affordable and available for every 100 DLI renter households.
- 90% of DLI renter households spent more than 50% of their income for rent and utilities.

How Will HTF Block Grant Be Distributed To States?

NATIONAL HOUSING TRUST FUND

- HTF law requires money to be distributed by formula.
- Formula based on four factors:
  - Shortage of rental properties affordable *and* available to ELI and VLI (very low income, < 50% AMI) households.
  - Number of ELI and VLI renter households paying more than 50% of income for rent and utilities (severe cost burden).
  - Priority given to ELI household factors – 75% of formula weight.
- Amount of money a state gets depends on shortage of affordable rental housing for ELI and extent ELI renters are severely cost burdened.

How Will HTF Block Grant Be Distributed To States?

(continued)

- HTF statute: Each state and DC is to receive a minimum of $3 million.
- Rule: If HTF does not have sufficient funds to provide $3 million to each state and DC, HUD will publish notice in *Federal Register* describing alternative method and seek comments.

§93.52

HTF Focus on Renters

- Law creating HTF requires at least 90% of a state's HTF money be used to produce, rehabilitate, preserve, or operate **rental housing**.

- Up to 10% may be used for homeowner activities.

HTF Focus on Extremely Low Income Renters

- Law also requires at least 75% of a state's HTF that is used for rental housing to benefit **extremely low income** (ELI) households,
    - income at or less than poverty level, or
    - income at or less than 30% AMI

HTF Focus on Extremely Low Income Renters

(continued)

NATIONAL HOUSING TRUST FUND

- Law limits to 25%, the amount of a state's HTF used for rental housing to benefit **very low income households**.
- Generally, very low income (VLI) is between 30% and 50% AMI.
- In rural areas HTF law also considers households with income less than the poverty line as very low income.

NHTF

HTF Focus on Extremely Low Income

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- Interim reg introduces $1 billion threshold:
  - When there is less than $1 billion,
    - 100% must benefit ELI.
  - When there is more than $1 billion,
    - a minimum of 75% must benefit ELI;
    - may spend 25% VLI.

§93.250

NHTF

How Will HTF Be Allocated Within States?

NATIONAL HOUSING TRUST FUND

- States must choose a state agency, such as housing finance agency, or housing department, or tribally-designated housing entity
  to receive HTF and administer its program.

How Will HTF Be Allocated Within States?

(continued)

Subgrants to Local Governments?

- HTF formula does not distribute money directly to cities and counties.
- Rule allows states to allocate HTF to “subgrantees”, which are local governments or other state entities.
- Subgrantees would administer part of or all of state’s HTF program.

§93.101(c) & definition §93.2

How Will HTF Be Allocated Within States?

(continued)

HTF Allocation Plan

NATIONAL HOUSING TRUST FUND

- HTF law requires states to prepare an "Allocation Plan" every year.
- Allocation Plan must show how state will distribute HTF it will receive in the upcoming year.
- Distribution of HTF must be based on priority housing needs in state's Consolidated Plan (ConPlan).

How Will HTF Be Allocated Within States?

(continued)

HTF Allocation Plan

(continued)

- Rule requires HTF be distributed "throughout the state."

§93.101(b)

- Rule requires state's HTF Allocation Plan be integrated into its Consolidated Plan.

ConPlan regs: §91.320(k)(5), States; §91.220(l)(5), localities

- For a subgrantee to get HTF money from its state, subgrantee must have its own local HTF Allocation Plan in its local ConPlan.

§93.101(c)

How Will NHTF Be Allocated Within States?

(continued)

Allocation Plan and Public Participation

- When preparing Allocation Plan, law requires states to:
  - Notify the public that Allocation Plan will be drafted.
  - Provide for public comment.
  - Consider public comments.
  - Make final Allocation Plan available.
- HTF law requires compliance with Consolidated Plan public participation requirements.
- Rule inserts HTF Allocation Plan requirements into ConPlan rule.

ConPlan regs: §91.320(k)(5), States; §91.220(l)(5), localities

How Will NHTF Be Allocated Within States?

(continued)

Allocation Plan and Public Participation

Tip for Advocates

- Action around Allocation Plan begins at state level (and might flow to local level if state decides to allocate some or all HTF to local subgrantees).
- Advocates used to advocacy only at local level need to learn how to advocate at state level.
- HTF Allocation Plan agency might be different than the State ConPlan agency.

Allocation Plan
(continued)
"Recipients"

NATIONAL HOUSING TRUST FUND

Allocation Plan must describe requirements "recipients" must meet when applying for money.

- Recipients may be nonprofit, for-profit, or public entity.
- States and/or subgrantees allocate HTF to "recipients" to carry out specific projects.
- Recipient must have relevant experience and financial capacity.

§92.2 definition

Allocation Plan

(continued)

Selecting Applications for HTF Dollars

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- Allocation Plan must describe criteria for selecting applications.
- Allocation Plan must give priority to projects based on:
  1. Extent rents are affordable, especially for ELI households.
  2. Length of time apartments will remain affordable.
  3. "Merit" of a project. HUD gives a few examples:
     a) Serving people with special needs.
     b) Accessible to transit or employment centers.
     c) Energy saving and non-polluting features.
  4. Geographic diversity, as reflected in ConPlan.
  5. Applicant's ability to obligate money and carry out project in timely way.
  6. Extent project will use non-federal funds.

ConPlan regs: §91.320(k)(5)(i), States; §91.220(l)(5)(i)(A), localities

Will Rent Be Affordable?

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- A basic housing policy is the "Brooke rule" which considers housing "affordable" only if households use no more than 30% of their income for rent and utilities.

- Neither HTF law nor HUD's rule cap resident rent and utility payments at 30% of their income.

Will Rent Be Affordable?

(continued)

- HUD's rule sets maximum rent (including utilities) a household pays at a **fixed amount** equal to 30% of 30% AMI, or 30% of federal poverty guideline, whichever is greater. §93.302(b)
- Preamble to proposed rule recognized that a fixed amount means some residents will pay more than 30% of their income (be rent burdened).
- HUD thinks fixed rent is necessary so owners and lenders can budget for future revenues from fixed rents.

Will Rent Be Affordable?

(continued)

- No basis in law for 30% of federal poverty guideline.
- Can cause HTF-assisted households in most areas to be cost-burdened.
- Convince state HTF Allocation Plan to use “lesser of” 30% of 30% AMI or 30% of federal poverty guideline.
- NHTF law: The extent HTF rental homes are affordable to ELI households is one factor a state must consider when awarding HTF dollars to a proposed project.

ConPlan regs: §91.320(k)(5)(i), States; §91.220(l)(5)(i)(A), localities

How Long Will Rental Homes Be Affordable?

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- Regulation requires both rental housing to be affordable for at least 30 years.
- States may have longer affordability periods. §93.302(d)
- Convince state Allocation Plan to set an affordability period period of at least 50 years.
- NHTF law: How long HTF rental homes will be affordable is one factor a state must consider when awarding HTF dollars to a proposed project.

ConPlan regs: §91.320(k)(5)(i), States; §91.220(l)(5)(i)(A), localities

How Can The Money Be Used?
General

- HTF must be used to buy, build, rehabilitate, or preserve rental or owner-occupied homes.
  - HTF may also be used to operate rental housing.
  - HTF may also be used to help first-time homebuyers with downpayment and closing cost assistance.

- No more than 10% may be used for homeowners.

§93.200(a)(1)

How Can The Money Be Used?

(continued)

Forms of Assistance

- HTF assistance may be:
  - Loans, including no-interest loans and deferred payment loans
  - Grants
  - Interest subsidies
  - Equity investments
  - Other forms
- States may decide the terms of assistance.

§93.200(b)

How Can The Money Be Used?

(continued)

Project Costs

Many eligible "project costs" may be met with NHTF:

- Buying property
- Development "hard costs" associated with construction
- Relocation
- Demolition
- Utility connections
- Site improvements
- Project "soft costs" associated with financing and development
  - Affirmative marketing to prospective tenants and homeowners
  - Builders and developers fees
  - Architectural, engineering, related professional services
- Refinancing
- Paying construction loans
- Staff costs directly related to carrying out a project
- Operating assistance

§93.201

How Can The Money Be Used?

(continued)

Operating Cost Assistance

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- HTF may be used in conjunction with HTF-assisted rental homes to:
  - Provide operating cost assistance
  - Provide for operating cost assistance reserve
- Operating cost assistance covers the gap in rent paid by households and cost of operating rental housing.
- Rule has 33% cap on the amount of state's HTF annual grant that may be used for operating cost assistance or reserves.

§93.200(a)(1)

- Rule limits operating costs to maintenance, utilities, insurance, property taxes, and scheduled payments to reserve for replacement of major systems. §93.201(e)

How Can The Money Be Used?

(continued)

Operating Cost Assistance

(continued)

- Rule allows grantee to commit funds from an HTF grant received in a single year to provide funds for operating cost assistance over multiple years.
  - Grantee may renew operating cost assistance with future year HTF grants during the affordability period.
  - Funds committed in that single year must be spent within five years.

§93.201(e)(1)

How Can The Money Be Used?

(continued)

Operating Cost Assistance Reserve

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- Operating cost assistance reserve may be funded upfront for HTF-assisted units to ensure project feasibility for the affordability period – if from **non-appropriated** HTF money, such as assessments on Fannie and Freddie.
- If amount devoted to operating cost assistance reserve would exceed 33% cap, reserve could be funded in phases from future HTF grants.

§93.201(e)(2)

How Can The Money Be Used?

(continued)

Homeowner Features

- HTF law limits amount used for homeowner activities to 10% of a state's total HTF.
- HTF may be used to:
  - Build, rehabilitate, or preserve housing for homeownership.
  - Help homeowners with downpayment or closing cost assistance, and to make interest rate buy-downs.

§93.200(a)(1)

How Can The Money Be Used?
(continued)

Homeowner Features
(continued)

- Eligible Household Requirements:
  - Household income at or less than VLI (ELI in years when HTF less than $1 billion).
  - Be “first-time homebuyer” (not owned previous 3 years).
  - Have homeownership counseling.
  - Use as principal residence.

§93.304(d)

How Can The Money Be Used?

(continued)

Homeowner Features

(continued)

- Home must be occupied by an income-eligible household for at least 30 years. §93.304(e)
- Grantee has options if home sold before 30 years:
  - Resale option:
    - Next owner must be HTF-eligible.
    - Sale price must provide original owner "fair return".
  - Recapture option:
    - To ensure grantee recoups all or a portion of HTF assistance.
    - Affordability period based on amount of HTF assistance:
      - 30 years if more than $50,000
      - 20 years if between $30,000 and $50,000
      - 10 years if less than $30,000

§93.305(b)

How Can The Money Be Used?
(continued)
Homeowner Features
(continued)

- Household may count rent payments toward buying a home within 3 years ("lease-purchase").
- Grantee may buy housing to be sold to homebuyer through lease-purchase program.
  - Must transfer to buyer within 3.5 years, otherwise rental housing affordability requirements kick in.

§93.304(h)

How Can The Money Be Used?

(continued)

Manufactured Homes

- HTF may be used to:
  - Buy and/or rehabilitate manufactured home.
  - Buy land manufactured home sits on.
- At project completion home must be:
  - Connected to permanent utility hook-ups.
  - Located on land:
    - Owned by the unit owner, or
    - For which homeowner has a lease at least as long as length of time home must remain affordable to an income-eligible household (minimum of 30 years).

§93.200(a)(3)

How Can The Money Be Used?

(continued)

General Program Administration

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- Up to 10% of state's annual grant may pay for general program administration and planning.
  - Relates to overall HTF program management and monitoring.
  - Examples:
    - Preparing reports for HUD and ensuring projects comply with regulations.
    - Providing information to residents participating in planning and carrying out HTF projects.
    - Carrying out activities to affirmatively further fair housing.

§93.202

How Can The Money Be Used?
(continued)
General Program Administration
(continued)

- "Project administration" – staff and overhead directly related to a specific housing development –

- Project administration may be considered as either:
  - "general program administration" or

§93.202(c)

  - "project cost" and not count against 10% cap.

§93.201(d)(6) and (f)(2)

§93.202(c)

How Can The Money Be Used?
Public Housing

- In general, rule prohibits use of HTF to rehab or build public housing.
- Rule allows HTF to rehab public housing converted under Rental Assistance Demonstration (RAD).
- Rule allows HTF to rehab or build new public housing if:
  - Part of Choice Neighborhoods Initiative, or
  - Will have Low Income Housing Tax Credits

§93.203

Tenant Protections and Selection

- Must be a written lease for at least one year.

§93.303(a)

- Tenants can only lose tenancy for "good cause."

§93.303(c)

- Owner must:
  - Not turn down applicant with voucher or HOME tenant-based rental assistance.
  - Comply with state's affirmative marketing requirements.
  - Select tenants from written waiting list in chronological order.

§93.303(d)

Tenant Protections and Selection

(continued)

Owner may limit eligibility or give preference to people with disabilities who need services offered at a project only if:

1. Limited to households with disabilities that significantly interfere with ability to obtain and keep housing;
2. Households will not be able to obtain or keep themselves in housing without appropriate supportive services; and,
3. Such services cannot be provided in non-segregated setting.

93.303(d)(3)

Consortium for Citizens with Disabilities concerned many states will interpret rule to mean can only do single-site permanent supportive housing (PSH), not integrated PSH.

Key Timeframes To Know About

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- HTF law requires money to be "committed" in two years.
- Rule adds HTF must be spent in five years. §93.400(d)(2)
- Rule defines "committed" to mean having a legal agreement with a recipient for a specific local project:
  - New construction or rehab – can reasonably be expected to start in 12 months.
  - Acquire standard housing – transfer title in 6 months.

§93.2

- Rule provides that project may be canceled if HTF is committed, but none is requested from HUD (drawn down) within a year. §93.402(b)(2)

More HTF Information

NATIONAL HOUSING TRUST FUND

- NLIHC has additional materials about the national Housing Trust Fund.
- Periodically check www.nhtf.org
- HUD's NHTF webpage, https://www.hudexchange.info/htf

Contact Me

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- Questions?
- Contact outreach@nlihc.org or call 202-662-1530, ask to speak to your Housing Advocacy Organizer.

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