NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the *foundation.*

About the National Housing Trust Fund

The National Housing Trust Fund (NHTF) is a federal program for collecting and distributing "dedicated" funds, money that is not at risk of cuts each year during the congressional appropriations process.

The National Housing Trust Fund was created, and an initial dedicated source of money for it was established, on July 30, 2008 when the President signed into law, the Housing and Economic Recovery Act of 2008.

The NHTF is a block grant to the states, the District of Columbia, Puerto Rico, and the U. S. territories. The purpose of the NHTF is to increase and preserve the supply of housing, principally rental housing for extremely low income households, but also to a lesser extent homeowner housing, including for very low income households. (See separate article, "Focused on Extremely Low Income Renters" for more detail.)

- Extremely low income is less than 30% of the area median income (AMI).
- Generally, a very low income household has income between 30% and 50% of AMI. However, in rural areas the NHTF law also considers households with incomes below the federal poverty line as very low income.

The U.S. Department of Housing and Urban Development (HUD) will administer the NHTF. HUD published proposed regulations to carry out the NHTF program on October 29, 2010. Final regulations are expected in 2014.

The NHTF will rely on dedicated sources of revenue; it will not compete with existing HUD programs that are funded through Congressional appropriations.

Still Seeking Dedicated Sources of Funds

Even though the NHTF was created in the summer of 2008, the program is not yet in operation. The first dedicated (not appropriated) sources of money the law intended for the NHTF were to come from the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). However, these two government sponsored entities (GSEs) ran into deep financial trouble as the foreclosure crisis hit the nation that fall. (See separate article, "Where Will The Money Come From?".)

Think of the NHTF program as a car. We have the car, because Congress built it in the summer of 2008. However, the car has no gasoline– the first dedicated sources intended to put gasoline in gas tank dried up.

NLIHC is working on getting money to the NHTF through the Congressional efforts to reform housing finance. Money may begin to flow to the NHTF later in 2014. Therefore, advocates will want to make sure their states are ready of NHTF implementation. (See separate article, "How Can I Influence Where the Money Goes?)

The NLIHC, through the United for Homes Campaign is also working on a long-term goal to secure funding for NHTF through federal tax reform. In short, that reform would use some of the savings realized by converting the mortgage interest deduction that some homeowners take on their federal income taxes into a non-refundable tax credit. (See separate article, "Housing Tax Reform To Generate Revenues for NHTF".)

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the foundation.

NATIONAL HOUSING TRUST FUND
How Can I Influence Where the Money Goes?

The law that created the National Housing Trust Fund (NHTF) will use a formula to distribute NHTF dollars directly to states; it does not distribute money directly to cities and counties the way some other HUD money is distributed. To learn how the formula allocates NHTF among the states, see separate article "The Formula for Distributing NHTF to States."

States must choose a state agency, such as a housing finance agency or a housing department, to receive NHTF money from HUD and to administer the state's NHTF program.

Tips for Advocates

After the NHTF was created in 2008, some state governors and legislatures selected a state entity to administer the NHTF.

- *Learn whether your state has decided which agency will run the program. View the latest list at www.nhtf.org/implementation.*
- *If the governor or legislature has not selected an agency yet, advocate for the agency that you think is the best for making the NHTF work for extremely low income renters.*
- *If the governor chose an agency in 2008 or 2009 that is not the best, because funds have not been available it might be possible to advocate with a new governor to select a different agency, one that is most responsive to the needs of extremely low income renters.*

The NHTF Allocation Plan

The law requires states to prepare a NHTF "Allocation Plan" every year. That Allocation Plan must show how the state will allot the NHTF dollars it will receive in the upcoming year. NHTF dollars must be distributed throughout the state based on the priority housing needs in the state's Consolidated Plan (ConPlan)[*]. HUD's proposed regulations require the NHTF Allocation Plan to be integrated into the ConPlan.

The NHTF Allocation Plan, *continues*

---

[*] A Consolidated Plan is a five-year plan that states and most local governments must have in order to receive other federal funds distributed by formulas, such as Community Development Block Grants and HOME grants. Each year, an Annual Action Plan must be completed indicating how federal block grant monies, and any other funds expected to be available for housing activities, will be used in the upcoming year. A ConPlan presents the housing needs of renters and homeowners by income categories and population characteristics. Given the needs, the ConPlan indicates the priorities for addressing those needs. For more about the ConPlan, see NLIHC's *Advocates' Guide*.

States may allocate NHTF money directly to “recipients” or indirectly through “subgrantees”.

- Recipients are public agencies, nonprofits, or for-profits that will carry out a NHTF-assisted housing project as an owner or developer.

- Subgrantees are state agencies or local governments.

    - Subgrantees in turn will award NHTF money they receive from the state to recipients to carry out projects.

    - To get NHTF money from its state, a subgrantee must also have its own NHTF Allocation Plan included in its local ConPlan’s Annual Action Plan.

Public Participation

When preparing an Allocation Plan, the law requires states to:

- Notify the public that an Allocation Plan will be drafted.

- Provide the public an opportunity to make comments about the plan.

- Consider public comments.

- Make the completed Allocation Plan available to the public.

The NHTF law also requires compliance with the Consolidated Plan public participation requirements. For more see the separate article, “Public Participation Requirements of the Consolidated Plan Process”.

Selecting Applications for NHTF Dollars

The Allocation Plan must also describe:

- The requirements recipients must meet when applying for NHTF dollars.
- The criteria that will be used to select applications for funding.

The Allocation Plan must give priority to awarding NHTF money to projects based on:

1. Geographic diversity, as reflected in the ConPlan.
2. The extent to which rents are affordable, especially for extremely low income households*.
3. The length of time the assisted rental housing will remain affordable.
4. The merit of the project. HUD' s examples of "merit" are:
   a. Housing that serves people with special needs.
   b. Housing accessible to transit or employment centers.
   c. Housing that includes green building and sustainable development features.
5. The ability of the applicant to obligate NHTF money (for example, get contracts for carpenters and electricians) and carry out the project in a timely manner.
6. The extent to which the project will make use of other non-federal funding sources.

Advocates Must Monitor their State, and Probably Their Locality – *Tips For Advocates*

Action Begins at the State Level

The action around the NHTF Allocation Plan begins at the state level, and will probably then flow to the local level if your state decides to allocate most or all of the NHTF to local subgrantees. Remember, the state NHTF Allocation Plan will be tied to your state's ConPlan, and then probably to your locality's ConPlan.

For advocates only accustomed to ConPlan advocacy at the local level because your locality gets CDBG and HOME directly from HUD, the NHTF process will be a new experience for you.

- *At the state level, to better ensure that NHTF gets to your locality in the appropriate amounts and for the best uses, it will be necessary for you to learn how to first influence your state Allocation Plan and ConPlan.*
  - *Find out which state agency is responsible for the ConPlan – it might not be the same agency that receives and administers the NHTF.*
  - *Let the state ConPlan agency know that your organization is interested in being informed about and in participating in the ConPlan process for determining housing needs and priorities in your state.*
  - *Let the state NHTF agency know that your organization is interested in being informed about and in participating in the process for planning where and how NHTF money will be used in your state.*
- *At the local level, monitor whether the state has chosen your locality as a subrecipient, and if so be sure to participate in both the local ConPlan process and the NHTF Allocation Plan process.*

---

* Generally, extremely low income is less than 30% of the area median income (AMI), but for NHTF it can also be income less than the federal poverty line if that amount is greater.

Action Takes Place Every Year

For the first year that NHTF money is available, and for each year after, it will be important for advocates to work first at the state level, and then at the local level to ensure that:

- *The geographic areas with the greatest rental housing needs of extremely low income people are fairly included.*
    - *At the state level, are rural areas included relative to their need when compared to urban areas?*
    - *At the state level, is there a fair distribution among localities throughout the state based on the shortage of affordable rental homes for extremely low income people?*
    - *At the local level, are the most appropriate neighborhoods part of the geographic mix?*
- *The agency responsible for drafting the NHTF Allocation Plan writes it to meet genuine, high-priority housing needs of extremely low income people.*
    - *Will the NHTF-assisted housing be truly affordable to extremely low income people, that they do not pay more than 30% of their income for rent and utilities?* (See separate article, "Focused on Extremely Low Income Renters.")
    - *Will NHTF-assisted housing be affordable to extremely low income households for as long* as *possible – aiming for at least 50 years?* (See separate article, "Focused on Extremely Low Income Renters.")
    - *Will developments be funded because they have features you think give them "merit"?*
    - *Will the types of projects (new construction, rehabilitation, or preservation) be those that you agree are most needed?*
    - *Will the bedroom size mix be the one you agree is most needed?*
    - *Will the populations to be served be the ones you think most need affordable homes (large families, special needs, elderly, etc)?*
- *The Allocation Plan complies with the regulations, particularly regarding affordability for extremely low income people.*
- *The public participation obligations are truly met, and that the state does not just "go through the motions".*

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the *foundation.*

NATIONAL HOUSING TRUST FUND
Focused On Extremely Low Income Renters

Rental Housing – 90% of the NHTF Money

The law that created the National Housing Trust Fund (NHTF) requires that at least 90% of a state's NHTF money be used for activities that produce, preserve, rehabilitate, or operate rental housing. Up to 10% of a state's NHTF dollars may be used for homeowner activities.

Extremely Low Income Household Benefit – 75% of the Rental Housing NHTF Money

The law also requires that at least 75% of a state's NHTF money that is used for rental housing benefit extremely low income households or households with incomes below the federal poverty line (whichever is greater, according to the proposed regulations).

- Extremely low income (ELI) is less than 30% of the area median income (AMI). ELI in Chicago is $19,550 for a three-person household in 2014.
- The income level is adjusted for household size.
- The use of the federal poverty level is purposely in the law because in some areas, especially rural areas, extremely low income is so low that many households desperately in need of affordable rental housing would not be eligible. For example, in Biloxi, Mississippi, ELI is $14,050 for a three-person household in 2014; the national poverty threshold is $18,552 for a three-person household in 2014.

The law limits to 25%, the amount of a state's NHTF dollars that may be used for rental housing activities benefiting very low income households.

- Generally, a very low income (VLI) household has income between 30% and 50% of AMI.
- However, in rural areas the NHTF law also considers households with incomes below the federal poverty line as very low income.

HUD's proposed regulations are more targeted than the law for the first year of the program, requiring 100% of a state's NHTF money used for rental housing to benefit households with incomes below 30% of AMI or the federal poverty level. After the first year, HUD will notify states if the extremely low income targeting amount must be greater than 75%.

The Rent Might Not Be Affordable for an Extremely Low Income Household

Maximum Rent Tenants Pay

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

Unfortunately, the NHTF law and proposed rule do not cap resident rent and utility payments at 30% of their income.

Instead, the proposed rule would set the maximum rent (including utilities) that a household pays at a fixed amount equal to 30% of 30% of the area median income, or at 30% of the poverty level, whichever is greater. HUD acknowledges that some tenants will be rent-burdened (pay more than 30% of their income for rent and utilities).

For example, in 2011 Supplemental Security Income (SSI) was the only income for 10.4% of the extremely low income population. SSI income then was just 16% of the national median income. Therefore, even NHTF housing will not be affordable to many of those with the greatest need, unless the maximum rent rule is changed or unless an SSI household also receives a scarce voucher.

HUD thinks that a fixed rent is necessary for property owners and their lenders to predict future revenues from tenant rent payments.

> ***Tip for Advocates***
> *Advocates should remember, according to the NHTF law, the extent to which NHTF housing is affordable to extremely low income households is one factor a state or any local subgrantee must consider when awarding NHTF dollars to a proposed project* (see separate article, "How Can I Influence Where The National Housing Trust Fund Money Goes?").

Utility Allowances

States or any local subgrantees must establish monthly utility allowances for situations where tenants pay their own utility bills.

For households paying their own utility bills, their rent should not be greater than the maximum allowed by the regulation – minus the monthly utility allowance.

> ***Tip for Advocates***
> *Advocates should monitor utility allowances to ensure that they reflect any recent changes in utility costs.*

How Long Will NHTF-Assisted Housing Remain Affordable?

The proposed regulation would require both rental and homeowner housing to be affordable for at least 30 years. States and any local subgrantees could establish longer affordability periods.

> ***Tips for Advocates***
> *Advocates should convince their state or local subgrantee to set an affordability period of at least 50 years.*
>
> *Remember, according to the NHTF law, how long NHTF rental housing will be affordable to extremely low income households is one factor a state or local government must consider when awarding NHTF dollars to a proposed project* (see separate article, "How Can I Influence Where The National Housing Trust Fund Money Goes?").

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the *foundation.*

NATIONAL HOUSING TRUST FUND

Public Participation Requirements of The Consolidated Plan Process

The National Housing Trust Fund is tied to the Consolidated Plan

The National Housing Trust Fund (NHTF) law requires compliance with the Consolidated Plan (ConPlan) public participation requirements. NHTF money must be distributed throughout the state based on the priority housing needs in the state's ConPlan.

The NHTF law also requires states to prepare a NHTF "Allocation Plan" every year. That Allocation Plan must show how the state will distribute the NHTF dollars it will receive in the upcoming year. HUD's proposed regulations require the NHTF Allocation Plan to be integrated into the ConPlan.
(See separate article, "How Can I Influence Where The Money Goes?" for details.)

The ConPlan public participation process provides advocates an opportunity to influence how NHTF resources are allocated throughout the state, and after distribution by the state, also at the local level if the state decides to allot some or all of the NHTF money to local government "subrecipients."

This article outlines the key features of the Consolidated Plan's public participation requirements.

A Consolidated Plan (ConPlan) is a five-year plan that states and most local governments must have in order to receive other federal funds distributed by formulas, such as Community Development Block Grants and HOME grants. Each year, an Annual Action Plan must be completed indicating how federal block grant monies, and any other funds expected to be available for housing activities, will be used in the upcoming year. A ConPlan presents the housing needs of renters and homeowners by income categories and population characteristics. Given the needs, the ConPlan indicates the priorities for addressing those needs. For more about the ConPlan, see NLIHC's *Advocates' Guide*.

The Public Participation Plan

There must be a written public participation plan that describes a state's or local subgrantee's policies and procedures for involving lower income people in the ConPlan process.

The public participation plan must "provide for" and "encourage" public involvement in drafting the ConPlan or Annual Action Plan, any "Substantial Amendment" to it, and the Annual Performance Report.

- The public participation plan must encourage involvement by low income people, especially those living in low income neighborhoods and areas where funds might be spent.

- States and local subgrantees are "expected to take whatever actions are appropriate" to encourage involvement by people of color, people with limited English proficiency, disabled people, and residents of public and assisted housing.

Public Hearings

The law requires public hearings at all stages of the process. At a minimum, hearings must give the public a chance to identify housing needs, review proposed uses of funds, and comment on the past use of funds.

- There must be "adequate" public notice of upcoming hearings.

  - The ConPlan regulations declare, "Publishing small print notices in the newspaper a few days before the hearing is not adequate notice".

  - The ConPlan regulations add, "two weeks' notice is adequate".

- Hearings must be held at times convenient to people who are likely to be affected.

- Hearings must be held in places easy for lower income people to get to.

- Where there are a significant number of people with limited English proficiency, the public participation plan must say how they can be involved.

The ConPlan requires a public hearing specifically to get public views on housing and community development needs. This housing needs hearing must take place before a Proposed ConPlan or Proposed Annual Action Plan is published for public comment.

For local subgrantees, but not states, there must be at least one other public hearing during the development of the ConPlan.

The Proposed ConPlan or Proposed Annual Action Plan

Complete copies of the Proposed ConPlan or Proposed Annual Action Plan must be in public places, such as libraries.

A "reasonable number" of copies of a Proposed ConPlan or Proposed Annual Action Plan must be provided for free.

The public must have at least 30 days to review and comment on the Proposed ConPlan or Proposed Annual Action Plan.

- The state or local subgrantee must "consider" these comments.

- A summary of public comments must be attached to the Final ConPlan or Final Annual Action Plan, along with an explanation why public suggestions were not used.

General Public Participation Provisions

A copy of the Final ConPlan or Annual Action Plan must be available to the public.

States and local subgrantees must respond in writing within 15 days to written complaints.

Access to information must be reasonable and timely.

- There must be reasonable notice that standard ConPlan or Annual Action Plan documents are available for people to review and make comments about.

- The public must be able to review records from the last five years.

- For local subgrantees (not states) the public must have "reasonable and timely" access to local meetings (such as Community Advisory Committee meetings, City Council subcommittee meetings, etc.).

NATIONAL HOUSING TRUST FUND

How Can The Money Be Used?
General Features[*]

At least 90% of the National Housing Trust Fund (NHTF) money must be used to buy, build, rehabilitate, preserve, or operate rental housing.

- At least 75% of the money used for rental housing must benefit extremely low income households or households with incomes below the federal poverty line (whichever is greater).
  Extremely low income (ELI) is less than 30% of the area median income (AMI).

- No more than 25% of the money for rental housing may benefit very low income (VLI) households, those with income more than 30% of AMI but less than 50% of AMI.

  (See separate article, "Focused on Extremely Low Income Renters" for details.)

Up to 10% of NHTF dollars may be used to buy, build, rehabilitate, or preserve housing for first-time homeowners.

- Down payment and closing cost assistance and interest rate buy-downs may also be provided.

- All NHTF homeowner money must benefit very low income or extremely low income households.

  (See separate article, "Homeowner Provisions" for details.)

NHTF housing must be permanent or transitional housing; NHTF may not be used for emergency shelters.

Operating Cost Assistance

NHTF may be used to provide operating cost assistance to NHTF-assisted rental homes.
However, no more than 20% of a state's NHTF annual grant may be used for operating cost assistance.
(See separate article, "Operating Cost Assistance" for details.)

---

[*] For specific eligible activities, see separate articles: "Eligible Project Costs," "Operating Cost Assistance," "Homeowner Features," and "Ineligible Activities."

Forms of Assistance

NHTF assistance may be in the form of equity investments, loans (including no-interest loans and deferred payment loans), interest subsidies, grants, and other forms. States and any local subgrantees may decide the terms of assistance.

General Program Administration and Planning

General program administration and planning relates to the cost of overall NHTF program management, coordination, and monitoring. General program administration differs from "project administration" costs which can be staff and overhead costs directly related to a specific housing development project.

Examples of general administration include state or any local subgrantee staff salaries and related costs necessary for "program administration" such as preparing reports for HUD and ensuring that projects comply with the regulations. Examples of other eligible program administration and planning costs include equipment, office rental, and third party services such as accounting.

Up to 10% of a state's annual NHTF grant may be used to pay for general program administration and planning. In addition, up to 10% of any "program income" may be used for general administration and planning. Program income is money returned to the state or local grantee as a result of the use of NHTF dollars; for example, repayment of a rehabilitation loan.

The proposed rule allows local subgrantees to use NHTF money for administration and planning, but any subgrantee use counts toward the state's 10% cap.

States or local subgrantees may decide whether "project administration" is a "program administration" cost or a "project cost" and therefore does not count against the 10% cap.

Some Other Administration and Planning Costs

The proposed regulations specifically list as allowable program administration and planning costs:

- Providing information to residents and community organizations participating in the planning, implementation, or assessment of NHTF projects.

- Carrying out activities to affirmatively further fair housing (AFFH).

- Preparing the Consolidated Plan, including conducting hearings and publishing materials.

- Complying with other federal requirements regarding: non-discrimination, affirmative marketing, lead-based paint, displacement and relocation, conflict of interest, and fund accountability.

Project Costs

Many eligible "project costs" may be met with NHTF money. They include: property acquisition, development hard costs, relocation, demolition, utility connections, site improvements, project soft costs, refinancing, paying construction loans, operating assistance, and staff costs directly related to carrying out a project.
(See separate articles, "Eligible Project Costs" paper and "Operating Cost.")

Manufactured Homes

NHTF money may be used to buy and/or rehabilitate a manufactured home, or to purchase the land on which a manufactured home sits.

The home must, at the time of project completion, be:

- Connected to permanent utility hook-ups; and,
- Located on land:
  - Owned by the homeowner; or,
  - For which the homeowner has a lease for a period that at least equals the length of time the home must remain affordable to an income-eligible household (minimum of 30 years).

Mixed-Unit Projects

NHTF-assisted housing can be in a project that also contains non-NHTF-assisted housing.
After project completion, the number of NHTF-assisted units may not be reduced.

NHTF may be used for housing in a project that also contains public housing units.
However, NHTF money cannot be used for public housing or HOPE VI-assisted public housing units.

Transit Oriented Development

The introduction to the proposed regulations states that HUD wants to encourage the development of housing affordable to extremely low income people in areas within walking distance of public transit so that residents have better access to areas where jobs and services exist. Therefore the proposed regulation has a unique provision regarding the use of NHTF money with "transit oriented development" (TOD) projects.
(See separate article, "Transit Oriented Development.")

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the foundation.

NATIONAL HOUSING TRUST FUND

Operating Cost Assistance

National Housing Trust Fund (NHTF) money may be used to provide operating cost assistance to NHTF-assisted rental housing.

- Operating cost assistance covers the gap in the amount a household pays in rent and the cost to operate the housing.

- Operating costs include insurance, utilities, real property taxes, maintenance, and scheduled payments to a reserve to replace major systems such as roofs and furnaces.

HUD's proposed regulations limit to 20%, the amount of a state's NHTF annual grant that may be used for operating cost assistance.

- In the introduction to the proposed rule, HUD views the NHTF as primarily a production program meant to add to the supply of affordable housing.

- HUD also anticipates that NHTF will be used with other resources, mostly in mixed-income projects.

- HUD indicated in informal conversations that the 20% cap is based on an assumption that approximately $1 billion would be available during the first few years of the NHTF. HUD indicated that should much more money become available (such as through modification of the mortgage interest deduction and using some of that money saved for the NHTF) the operating subsidy cap would be reconsidered.

States and any local subgrantees may provide operating cost assistance to a project for up to two years from the same fiscal year NHTF grant. Operating cost assistance can be renewed during the entire time the housing must be occupied by an income-eligible household, a minimum of 30 years (See separate article, "Focused on Extremely Low Income Renters" for details).

An operating cost assistance reserve can be created to cover up to a five-year period of inadequate rent income in order to ensure a project's financial feasibility.

NHTF-assisted housing may not receive public housing operating assistance.

NATIONAL HOUSING TRUST FUND

Tenant Selection and Tenant Protections

Tenant Participation

According to the National Housing Trust Fund (NHTF) law, property owners must comply with laws relating to tenant protections and tenants' rights to participate in the decision making regarding their homes.

However, the proposed regulations do not mention tenants' rights to participate in the decision making about their homes.

Tips for Advocates

- *Advocates should convince their state or local subgrantee to formally require NHTF-assisted properties to comply with state or local tenant participation laws, regulations, or ordinances.*
- *Advocates should convince their state or local subgrantee to formally adopt the tenant participation features used by HUD's Office of Multifamily Housing Programs. These are known as the Section 245 regulations, also found in HUD Handbook 4381.5, Chapter 4.*

Tenant Selection

HUD's proposed rule requires owners to have and follow written tenant selection policies.

- Tenants must be selected from a written waiting list, in chronological order, if practical.
- Anyone who applied to rent a NHTF unit but was denied must receive a prompt written notice explaining why the application was rejected.
- Owners may not reject someone with a voucher or with HOME tenant-based assistance.
- Eligibility may be limited to or preference may be given to people from a particular segment of the population, but only if:
    - The state or local subgrantee allows it in a written agreement;
    - The limitation or preference is in the ConPlan; and,
    - The limitation or preference does not violate nondiscrimination requirements.

  The proposed rule does not give any examples of "segment of the population"; however, the changes in the final HOME program rule do give examples, such as teachers, police, and artists.

Tenant Selection, *continues*

- Eligibility may be limited to or preference may be given to people with disabilities or with a particular type of disability if:
    - The housing also receives funding from federal programs that limit eligibility (such as the Section 811 Supportive Housing for Persons With Disabilities program, and the Housing Opportunity for Persons with AIDS program); or
    - If the housing is not tied to such federal programs or other law, the preference must be necessary to benefit people with disabilities and the project must be in the most integrated setting appropriate.

Tenant Protections

The proposed rule requires a written lease between the resident and the owner, generally for one year. A renewed lease must also be in writing.

- A shorter lease is allowed if both the resident and the owner agree.
- For transitional housing, the lease must equal the length of time a resident is allowed to stay according to the transitional housing residency limits set by a state, local subgrantee, or owner.

Owners may only terminate someone's tenancy or refuse to renew a lease if there is "good cause."

- Good cause does not include an increase in household income.
- Examples of good cause are:
    - Serious or repeated violations of the lease;
    - Violations of federal, state, or local laws;
    - The end of the maximum time allowed for a transitional housing program; and,
    - Failure to follow a transitional housing services plan.
- If an owner ends or refuses to renew a lease:
    - There must be written notice specifying the reason.
    - The notice must specify when a household must vacate, consistent with state or local law.

The proposed rule has nine items that must not be in a lease. They include: mandatory supportive services; waiver of right to a jury trial; and, agreement to not hold an owner responsible for any actions or failure to act.

NATIONAL HOUSING TRUST FUND

A home is the foundation.

Visit us online at www.nhtf.org

NATIONAL HOUSING TRUST FUND

Where Will The Money Come From?

The National Housing Trust Fund (NHTF) will rely on dedicated sources of revenue; it will not compete with existing HUD programs that are funded through Congressional appropriations.

Intended First Dedicated Funding Sources – Fannie Mae and Freddie Mac

The law creating the NHTF called for an initial dedicated (not appropriated) source of money for the NHTF to come from a very small amount of money generated from new business purchases[1] of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which are known as government sponsored enterprises (GSEs).

Only 65% of the money to be generated by these GSEs would go to the NHTF; 35% would go to a new fund called the Capital Magnet Fund[2].

Even though the NHTF was created in the summer of 2008, the program is not yet in operation. The dedicated sources of money to be generated by Fannie Mae and Freddie Mac have yet to flow because these two GSEs ran into deep financial trouble as the foreclosure crisis hit the nation that fall.

Now that the GSEs have substantial profits, the NLIHC is pressing the entity overseeing Fannie and Freddie, the Federal Housing Finance Agency (FHFA) to direct funds to the NHTF.

Housing Finance Reform Legislation

All parties agree that the GSEs cannot continue in their current form. Therefore, there are proposals to reform how federal housing finance should work in the future. Funding for the NHTF is expected to be part of any future legislation that reforms federal housing finance policy.

Housing Tax Reform, Potential Additional Dedicated Funding Source, *see next page*

---

[1] The law calls for Fannie Mae and Freddie Mac to set aside an amount equal to 4.2 "basis points" for each dollar of the unpaid principle balance of their total new business purchases each fiscal year. A basis point is 0.01%, or 1/100 of 1%, or 0.0001: so 0.042% in this case.

[2] The Capital Magnet fund, to be run by the Treasury Department, would award grants on a competitive basis to Community Development Financial Institutions (CDFIs) and housing-related nonprofits to provide housing, economic development, and community facilities benefitting people with incomes below 80% of the area median income.

Housing Tax Reform, Potential Additional Dedicated Funding Source

The law did not limit dedicated funding for the NHTF to new business purchases from the GSEs. The statute allows the NHTF to have other dedicated sources of revenue.

A potential major source of dedicated money for the NHTF could come from savings gained by modifying the mortgage interest deduction. The United for Homes Campaign is working on winning Congressional approval of such housing tax reform.

The Campaign's proposal would not eliminate a tax break for mortgage interest payments; rather it would:

- Change the tax benefit from a deduction to a credit, and

- Lower the maximum amount of a mortgage that could be used to calculate the tax credit from $1 million to $500,000.

Changing from a tax deduction to a tax credit would result in more households benefitting from housing tax policy.

Capping the amount of a mortgage for which a tax credit can be used at $500,000 would save the federal government an estimated $200 billion over a ten-year period. That saved money could then be used for the NHTF and help move toward the goal of creating 3.5 million homes that are affordable to extremely low income households in the next ten years.

(See separate article, "Housing Tax Reform To Generate Revenues for NHTF" for details.)

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the foundation.

NATIONAL HOUSING TRUST FUND

Housing Tax Reform To Generate Revenues For NHTF

A potential major source of dedicated money for the National Housing Trust Fund (NHTF) could come from savings gained by modifying the mortgage interest deduction. The United For Homes Campaign is working on winning Congressional approval of such housing tax reform.

The Campaign's proposal would not eliminate a tax break for mortgage interest payments.
The proposal would target mortgage interest tax breaks more toward middle and lower income homeowners.

Specifically the proposal would:

- Change the tax benefit from a deduction to a credit[1], and
- Lower the maximum amount of a mortgage that could be used to calculate the tax credit on the interest a homeowner pays from $1 million to $500,000.

Only 24% of all taxpayers claim the mortgage interest deduction. Changing from a tax deduction to a tax credit would mean that all homeowners with mortgages would get a tax break. Currently, homeowners who do not have large enough incomes to itemize deductions on their tax forms cannot benefit from the mortgage interest deduction. Switching to a tax credit takes care of that problem; if someone has mortgage interest payments, a percentage of that amount will be reduced from their federal tax bill.

With a 15% non-refundable[2] tax credit, the number of homeowners with mortgages who could get a tax break would increase from 39 million to 55 million, with 99% of the increase being households with incomes less than $100,000 per year.

Capping the amount of a mortgage for which a tax credit can be used at $500,000 would save the federal government an estimated $200 billion over a ten-year period. That saved money could then be used for the NHTF and help move toward the goal of creating 3.5 million homes that are affordable to extremely low income households in the next ten years.

More information about the Housing Tax Reform effort is at http://nlihc.org/issues/mid.

[1] A tax deduction reduces one's taxable income on which a total tax bill is based. A tax credit is a direct reduction of one's total tax bill.

[2] A non-refundable tax credit can reduce someone's income tax liability to zero, but cannot produce a tax refund that is greater than the pre-credit tax owed.

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the foundation.

NATIONAL HOUSING TRUST FUND

The Formula For Distributing NHTF To States

The law creating the National Housing Trust Fund (NHTF) required HUD to create a formula, based on needs, for getting money to each state.

There are five factors in the formula (each state is compared to the entire nation):

1. The shortage of standard rental units that are both affordable and available to extremely low income renter households. This factor must be given priority.

2. The shortage of standard rental units that are both affordable and available to very low income renter households.

3. The number of extremely low income renter households:

    a. Paying more than 50% of their income for rent and utilities; or,

    b. Living in overcrowded housing (more than one person per room); or,

    c. Living in a place without complete plumbing or kitchen facilities.

4. The number of very low income renter households paying more than 50% of their income for rent.

5. The cost of construction.

In addition to the states, the proposed regulations make it clear that NHTF money will be distributed to: the District of Columbia, Puerto Rico, Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

No state or the District of Columbia will get less than $3 million.

Some Definitions, *see next page*

Some Definitions

"Extremely low income" is less than 30% of the area median income (AMI).

"Very low income" is between 30% and 50% of AMI.

"Shortage" for extremely low income renters is the gap between:

- The number of extremely low income renter households, and
- The number of units that:
  - Have complete plumbing and kitchen facilities; and,
  - Have rent that is 30% or less of 30% of the area median income; and,
  - Are occupied by extremely low income households, or that are vacant.

"Shortage" for very low income renters is the same, except the definition uses:

- Rent that is 30% or less of 50% of the area median income; and
- Units that are occupied by very low income households, or that are vacant.

NATIONAL HOUSING TRUST FUND

Eligible Project Costs

HUD's proposed regulations spell out eligible uses of National Housing Trust Fund (NHTF) dollars to develop projects, including: buying property, relocating displaced people, development hard costs, soft costs, refinancing, and repaying construction loans. Operating costs are also eligible project costs (see separate article, "Operating Cost Assistance").

Buying Property

NHTF dollars may be used to buy property for a NHTF-assisted project.

If vacant land is purchased with NHTF money, construction of specific "affordable housing" must be reasonably expected to start within one year.

However, if land is for transit-oriented development, there does not have to be a specific NHTF-assisted housing project until three years after the property is bought. (See separate article, "Transit-Oriented Development" for details.)

Development Hard Costs

Development hard costs are the actual costs of constructing or rehabilitating housing. These include:

- Demolition, but only if construction of specific NHTF-assisted housing can be reasonably expected to start within one year.
- Utility connections.
- Site improvements, including onsite roads, sewer lines, and water lines.
- Complying with various standards such as:
  - State and local codes, ordinances, and zoning requirements;
  - Federal lead-based paint requirements;
  - Federal accessibility standards for people with disabilities;
  - Energy and water efficiency standards; and,
  - Environmental review requirements.

Development Soft Costs

Development soft costs include:

- Architectural, engineering, and related professional services.
- Paying some fees, including builder's or developer's fees, attorney's fees, title fees, building permit fees, and impact fees.
- Audits.
- Affirmative marketing to prospective tenants and homeowners.
- Funding an initial operating reserve to meet any shortfall in project income during an 18-month project rent-up period.
- Staff and overhead of the state or any local subgrantees for activities directly related to carrying out the project, such as loan processing, work specification preparation, inspections, and lead-based paint inspections.
- Meeting environmental and historic preservation standards.

Other Eligible Project Costs

Refinancing

Existing debt secured by rental housing being rehabilitated with NHTF can be refinanced.
However, rehabilitation must be: the primary eligible activity; necessary to reduce cost in order to make the housing more affordable; and, at a level that meets a threshold of rehabilitation set by the state or local subgrantee.

Relocation

Eligible relocation costs include: replacement housing payments; moving expenses; temporary relocation expenses; and, staff and overhead directly related to providing relocation services to people displaced by the project, such as referrals to comparable homes, counseling, and inspections.

Costs Relating to Payment of Loans

If NHTF assistance is part of the original project financing, NHTF may also be used to pay principle and interest on construction loans, bridge financing, or guaranteed loans.

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the *foundation.*

NATIONAL HOUSING TRUST FUND

Homeowner Features

10% Cap on Homeowner Uses

The law creating the National Housing Trust Fund (NHTF) limits the amount of this resource that may be used for homeowner activities to 10% of the total amount of NHTF dollars distributed to a state in any year.

Eligible Homeowner Activities

NHTF money may be used to build, rehabilitate, or preserve housing for homeownership.

NHTF may also be used to help homeowners with down payment or closing cost assistance, and to make interest rate buy-downs.

HUD's proposed rule clarifies that homeowner assistance may be provided at one-to-four family residences, condominiums, cooperatives, and manufactured homes and lots or just a manufactured home lot.

An assisted home's value must not exceed 95% of the median purchase price for the area.

Income Targeting

The NHTF law targets homeowner assistance to "extremely low income" and "very low income" households.

- Extremely low income is less than 30% of the area median income (AMI).
- Very low income, generally, is income between 30% and 50% of AMI.
  The NHTF law is different because for rural areas households with incomes below the federal poverty line may also be considered very low income.

However, the proposed regulations would have stricter income targeting.

- For the first year, the proposed regulations would require 100% of a state's NHTF grant that is used for homeowner activities to benefit extremely low income households or households with incomes below the national poverty level, whichever is greater.
- After the first year, the proposed regulations would require 75% of a state's NHTF grant that is used for homeowner activities to benefit extremely low income households or households with incomes below the national poverty level, whichever is greater.

A NHTF-assisted home must be occupied by an income-eligible household for at least 30 years.

Other Eligible Households Requirements

Homes must be bought by income-eligible households who:

- Have not owned a home in the previous three years ("first-time homebuyers");
- Have had homeownership counseling; and,
- Will use the home as their principal residence.

Resale of Homeowner Housing

If homeowner housing is sold during the period that it is required to be occupied by an income-eligible household (a minimum of 30 years), then:

- The next owners must be NHTF-eligible.
- The sale price must provide the original owner a "fair return" (owner's original investment plus capital improvements). The state or any local subgrantee must define "fair return".
- The state or any local subgrantee must ensure the housing will remain affordable to a reasonable range of income-eligible homebuyers.

Lease-Purchase

The proposed rule would allow NHTF money to be used to enable a household to count their rent payments toward buying the home within 36 months.

Also, NHTF 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, the NHTF rent affordability provisions apply (see separate article, "Focused on Extremely Low Income Renters").

NATIONAL HOUSING TRUST FUND

A home is the foundation.

Visit us online at www.nhtf.org

NATIONAL HOUSING TRUST FUND

Key Time Frames To Know About

The National Housing Trust Fund (NHTF) law requires NHTF dollars to be “committed” (used) within two years.

HUD’s proposed regulations add that NHTF money must be spent within five years.

The proposed rule also indicates that a project may be canceled if NHTF money is committed to it but is not drawn down within one year.

Any NHTF not committed within two years or spent within five years will be taken back and redistributed to other states by HUD.

HUD’s proposed regulations define “commit” to mean that a state or any local subgrantee has a legal agreement with a specific timeframe depending on the type of activity:

1. For rehabilitation or new construction, the agreement must be with a recipient owner/developer for a specific project expected to begin within one year.

2. If the state or local any subgrantee provides NHTF to a recipient to buy existing rental housing that does not need rehabilitation, the agreement must require the property’s title to be transferred to the recipient within six months.

3. If the state or any local subgrantee provides NHTF to a first-time homebuyer to buy an existing single-family house that does not need rehabilitation, the agreement must require the property’s title to be transferred to the homebuyer within six months.

4. If the state or any local subgrantee provides NHTF to buy vacant land, construction of specific NHTF-assisted housing must be expected to start within one year.

5. If the state or any local subgrantee provides NHTF to demolish property, construction of specific NHTF-assisted housing must be expected to start within one year, or within 42 months for transit-oriented development.

6. If the state or any local subgrantee provides NHTF to a transit-oriented development activity, there are several steps and timelines. (See separate article, “Transit-Oriented Development” for details.)

NATIONAL HOUSING TRUST FUND

Visit us online at www.nhtf.org

A home is the *foundation.*

NATIONAL HOUSING TRUST FUND

Ineligible Activities

Prohibited Uses of National Housing Trust Fund Resources

The National Housing Trust Fund (NHTF) law lists ways that NHTF money cannot be used, including: outreach, advocacy, counseling (except for housing counseling), or administrative or travel expenses (except as allowed as general administration of the NHTF program – see separate paper, “How Can the Money Be Used: General?” for details).

The NHTF law also prohibits this money from being used for any activity associated with property taken by eminent domain, unless for a public use. The law specifies that an economic development activity that primarily benefits a private entity is not considered a public use. Eminent domain is the power of government to take private property for public uses such as for highways, airports, etc.

HUD’s proposed rule adds additional ways in which NHTF dollars may not be used:

- Public housing may not receive NHTF assistance, including public housing developed under HOPE VI. (A project may have both NHTF-assisted units and public housing units.)

- NHTF-assisted housing may not receive public housing operating assistance.

- NHTF money may not be used for a project previously assisted with NHTF during the years the housing must be affordable to an income-eligible household (a minimum of 30 years). However, additional NHTF money may be used for a NHTF-assisted property during the first year after project completion.

- Pay delinquent taxes or fees.

- Pay to buy property owned by the state or any local subgrantee.

The National Housing Trust Fund (NHTF) law also lists some very obvious ways that NHTF money cannot be used, including: lobbying, preparing or providing advice on tax returns, and political activities such as influencing the selection, nomination, election, or appointment of candidates for elected office.

Charging Fees, *see next page*

Charging Fees

States or any local subgrantees may not charge fees for administering a NHTF program, such as servicing or origination fees (except for those allowed as eligible soft costs – see separate article “Eligible Project Costs” for details).

However, annual fees may be charged to owners of NHTF-assisted rental projects to cover the cost of monitoring compliance with income and rent restrictions during the affordability period (the years a unit must be affordable to an income-eligible household, which is a minimum of 30 years).

States and any local subgrantees must prohibit project owners from charging tenants fees such as origination fees, laundry room access fees, and parking fees (that are greater than is customary).
Owners may charge households applying for housing a reasonable application fee.

NATIONAL LOW INCOME HOUSING COALITION

www.nlihc.org
Dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes
727 15th Street NW, 6th Floor | Washington, D.C. 20005
Tel 202.662.1530 | Fax 202.393.1973

NATIONAL HOUSING TRUST FUND
ANNOTATED SUMMARY OF PROPOSED REGULATIONS

National Low Income Housing Coalition

November 17, 2010

INTRODUCTION

This is an outline of the key features of the proposed regulations implementing the National Housing Trust Fund (NHTF).

The National Housing Trust Fund was created and an initial dedicated source of money for it was established on July 30, 2008 when the President signed into law, the Housing and Economic Recovery Act of 2008 (also known as HERA, PL 109-289). The National Housing Trust Fund is a program for collecting and distributing "dedicated" funds that are not at risk of cuts each year due to the politics of the congressional appropriations process and budget constraints.

HUD published proposed regulations implementing the NHTF on October 29, 2010.
The core of the proposed regulations would be inserted into existing HOME program regulations as a new subpart N to 24 CFR part 92. In general the proposed regulations closely track the statute. Comments to HUD are due December 28, 2010.

Sections of the regulation and authorizing statute are indicated in the outline as §92 or §91 for the regulations and §1338 for the statute[1].

- ❖ Commentary is presented in Times New Roman

FOCUS ON EXTREMELY LOW INCOME RENTERS

Targeted to Rental Housing

The Overview section of the proposed rule declares that the NHTF program will provide grants to states to increase and preserve the supply of housing, with primary attention to rental housing for extremely low income (ELI) and very low income (VLI) families, including homeless families. (ELI households have income below 30% of area median income, AMI; VLI households have income between 30% and 50% AMI, or in rural areas, less than the poverty line.)

§92.701(a)
§1338(a)(1)(A)
§1338(c)(10)(A)
§92.2, definitions
§1338(f)(1) & (5) definitions

The statute limits the amount of NHTF used for homeownership activities to 10%, inferring that at least 90% of a state's annual NHTF grant must be used for rental housing activities.

§92.730(a)(1)
§1338(c)(10)(A)

- ❖ The preamble claims that only 80% of the trust fund dollars must be used for rental activities. See longer discussion as it relates to administration and planning costs (page 15).

---

[1] The reference to §1338 is to §1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, P.L. 102-550. This §1338 was added by §1131 of HERA, P.L. 109-289. FHEFSSA is codified at 12 USC §4501 et seq. The NHTF provision is codified at 12 USC §4568.

Targeted to Extremely Low Income People

The NHTF statute requires that at least 75% of each grant to a state that is used for rental housing benefit ELI households or households with income below the poverty line (whichever is greater according to the proposed rule).

The proposed rule adopts this requirement for rental housing and adds the 75% ELI/poverty level targeting requirement to homeownership activities.

- ❖ The statute does not require 75% ELI targeting for homeownership; it does require all homeowners have incomes below 50% AMI.

- ❖ The proposed regulation does not refer to the statute's provision that no more than 25% of the money used for rental housing can benefit very low income people; in other words, it does not mention the upper income limit of VLI.

- ❖ Because the NHTF rule is embedded in the HOME regulation, without explicit reference to an upper income limit of 50% AMI, some could mistakenly use NHTF for homeowner activity benefitting households at 80% AMI. Therefore, NLIHC will recommend that the regulations be amended to explicitly limit the use of NHTF funds to VLI and ELI.

The proposed rule requires that for the first year, 100% of a grantee's rental and homeowner funds benefit the ELI or poverty income groups.

The proposed rule indicates that in subsequent years HUD will advise states whether the ELI target amount must be greater than 75%.

§92.736 & §92.746(a), renters
§92.737, homeowners
§1338(c)(7)(A), renters
§1338(c)(7)(B)(i)(I), homeowners

The proposed rule requires each NHTF unit in a rental project to be occupied by an ELI household.

- ❖ This language is not tied to the first year of the program; therefore, the proposed rule would in essence require 100% benefit to ELI every year and ignore the statute's leeway allowing up to 25% of the rental funds to benefit VLI households.

§92.746(a)
§1338(c)(7)(A)

DISTRIBUTION OF NHTF DOLLARS

On December 4, 2009 HUD issued a proposed rule, which NLIHC endorsed, describing the factors to be used in the formula for distributing NHTF dollars. The statute established a formula based on the number of ELI and VLI households with severe cost burden (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. The preamble to the October 29 proposed rule indicates that HUD intends to fold the proposed formula rule into subpart N.

§1338(c)(3)(A)&(B)

NHTF funds are distributed to states, which can choose a state-designated 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 and administer the program.

- ❖ The proposed rule does not include housing and community development entities in the definition of "state-designated entity".

§92.702
§92.725(a)
§1338(c)(2)

Each state must distribute its NHTF dollars throughout the state according to the state's assessment of priority housing needs as identified in its approved Consolidated Plan or ConPlan, (see next section "Allocation Plan", page 5).

- ❖ The statute requires an Allocation Plan which the proposed rule creates by amending the requirements for an Annual Action Plan as part of the ConPlan. In order to help readers understand that the NHTF has specific Allocation Plan requirements, NLIHC suggests that §92.725(b) be modified to directly set forth that the Allocation Plan is to be included in the ConPlan's Annual Action Plan:

  > "(b) Each grantee is responsible for distributing HTF funds throughout the state according to the state's assessment of the priority housing needs within the state, as identified in the state's HTF Allocation Plan component of the state's approved consolidated plan, as required by §91.320(k)(5),…"

  More about this is discussed in the "Allocation Plan" section of this summary, page 5.

The proposed rule adds that in some years HUD might direct how NHTF should be distributed by grantees. In the preamble to the rule HUD says it will issue notices to communicate any future policy priorities.

§92.725(b)

Subgrantees

The proposed regulation would give states the option of passing funds to local governments as subgrantees to in turn provide funds to recipients (defined next) to carry out projects. A subgrantee is defined as a unit of general local government or state agency selected by the grantee to administer all or a portion of its NHTF program.

Any subgrantee must have a ConPlan that includes a NHTF Allocation Plan which is consistent with the state's NHTF requirements (Allocation Plan? see next section, page 5), and must select projects according to the subgrantee's NHTF Allocation Plan.

§92.725(c)
§92.702

- ❖ The statute does not provide for the distribution of NHTF to subgrantees.
- ❖ §92.725(c) should be modified to echo §92.725(b) by stating that the subgrantee's ConPlan must be one that is "approved".
- ❖ The definition also says "A local government subgrantee must have an approved consolidated plan submitted in accordance with 24 CFR part 91." NLIHC suggests that the definition include a specific reference to the NHTF Allocation Plan as a required component of the ConPlan, citing §91.220(l)(4).

Recipients

A recipient is an organization, agency, or other entity (including nonprofits and for-profits) that receives NHTF dollars from a grantee to carry out a NHTF-assisted project as an owner or developer.

- ❖ The statute does not specify that a recipient be an owner or developer.

An "eligible" recipient is one which meets four tests:

- Will comply with the program requirements during the entire affordability period.
- Has demonstrated ability and financial capacity.
- Is familiar with the requirements of other federal, state, and local housing programs.
- Has the experience and capacity to either:
    - Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental development;
    - Design, construct, or rehabilitate, and market homeowner housing; or,
    - Provide down payment, closing cost, or interest rate buydown assistance for homeowners.

§92.702
§1338(c)(9)
§1338(f)(2)

- ❖ The Campaign requested that public housing agencies (PHAs) be explicitly listed as potential recipients. The proposed rule does not explicitly list PHAs as eligible recipients.

ALLOCATION PLAN

The NHTF statute requires each state to prepare an Allocation Plan every year, showing how it will distribute the funds based on priority housing needs.

The proposed regulation in subpart N requires states to submit a ConPlan.

In addition, the proposed rule would amend the ConPlan regs by adding NHTF-specific Allocation Plan requirements to the ConPlan's Annual Plan rule.

If a subgrantee is to administer NHTF, then it too must have a ConPlan containing the NHTF Allocation Plan.

- ❖ The proposed rule does not specifically mention the Allocation Plan in subpart N. NLIHC recommends that §92.720(b) also refer to the NHTF Allocation Plan and specifically cite 24 CFR 91.320(k)(5).

§92.720(b)
§91.2, §91.10, §91.215, §91.315
§91.320(k)(5), §91.220(l)(4)
§1338(c)(5)(A)(i)&(ii)

- ❖ The proposed rule does not establish clear criteria for determining how a state can choose subgrantees. However §92.725(b) says that a grantee is responsible for ensuring that NHTF funds are distributed throughout the state according to the state's assessment of priority housing needs, as identified in the state's approved ConPlan. NLIHC recommends that the language of §91.320(k)(5) be amended to require the state Allocation Plan to specify that any decision to use subgrantees, which subgrantees to use, or how to distribute funds among subgrantees be clearly done and based on the state's declared priority housing needs.

In addition to describing how NHTF dollars will be distributed to meet priority housing needs, the Allocation Plan must describe the application requirements for recipients and the criteria that will be used to select applications for funding. Applications from potential recipients must describe activities for which funds are sought.

Allocation Plans must provide priority for funding applications based on a number of features listed in the statue.

- ❖ The statute says the selection shall provide for "**priority funding to be based on**:" and lists six items. Subparagraph (5) does not precisely follow this construction. Consequently, the emphasis on "priority funding [shall] be based on" could be misread to apply only to "geographic diversity". The simple insertion of a colon in (i) could rectify this, "The plan must provide priority for funding based on**:** geographic diversity…"

The key features for priority funding include: (*see next page*)

The key features for priority funding include:

- Geographic diversity.

    ❖ The Campaign had requested that HUD require states to allocate NHTF dollars based on the relative need in rural and urban areas, but this attention to rural needs is not directly included in the proposed rule.

- The extent to which rents are affordable, especially to ELI households.
  The proposed rule modifies this for states by adding the extent to which a project "has federal, state, or local project-based rental assistance" (the rule for local governments does not have the added language regarding project-based assistance).

- The duration of a unit's affordability.

- The "merit" of the project, on which the proposed rule elaborates by providing as examples of features worthy of merit: housing accessible to transit or employment centers; housing that includes green building and sustainable development elements; and, housing that serves people with special needs.

§91.320(k)(5)(i) for states
§91.220(l)(4)(i) for local governments
§1338(c)(5)(A)(ii)&(C)
§1338(g)(2)(D)(i),(iii),(iv), and (vi)

PUBLIC PARTICIPATION

The statute requires public participation in the development of the NHTF Allocation Plan.
The proposed regulation merely requires states to submit a ConPlan following the ConPlan rule – which does have public participation requirements.

❖ The proposed rule does not provide a clear and direct reference to public participation. To demonstrate the importance of public participation in the creation of a NHTF Allocation Plan, the NHTF regulations must explicitly declare that in order to receive NHTF money states and any subgrantees must develop their Allocation Plans using the ConPlan public participation rules.

❖ NLIHC recommends the NHTF regulation contain a §92.720(c) clearly stating that the public participation requirements must be followed at 24 CFR 91.115 for states and 24 CFR 91.105 for local jurisdictions serving as subgrantees.

§92.720(b)
§1338(c)(5)(B)& §1338(c)(8)(B)

The statute also requires states to follow the public participation requirements for the Public Housing Agency Plan as well as the Qualified Allocation Plan, required to receive Low Income Housing Tax Credits

❖ The proposed regulation does not address this statutory requirement.

§1338(c)(8)(B)

PERIOD OF AFFORDABILITY

The statute does not prescribe how long NHTF-assisted units must remain affordable.

The proposed regulation would require both rental and homeowner units to be affordable for at least 30 years, allowing states and any subgrantees to establish longer affordability periods. The preamble explains that the 30-year affordability period anticipates the NHTF being used in conjunction with the LIHTC.

- ❖ The Campaign strongly urged HUD to set a 50-year affordability period and to provide preferences for projects with affordability periods greater than 50 years.

§92.746(d)(1) for rental
§92.748(e) for homeowner

For rental projects, the affordability period applies no matter the term of any loan, repayment of NHTF, or transfer of ownership. Affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. Grantees may use purchase options, rights of first refusal, or other means to purchase housing before foreclosure. Grantees must repay NHTF even if affordability restrictions are ended. (See "Homeowner Provisions" section for details about homeowner activity continued affordability regulations.)

§92.746(d)(2),(3),&(5)

MAXIMUM RENT

The proposed rule would fix rent (including utilities) at 30% of 30% of the area median income, or 30% of the poverty level, whichever is greater. HUD acknowledges in the preamble to the proposed rule that some tenants will be rent-burdened, but that a fixed rent is necessary for underwriting purposes.

- ❖ The Campaign recommended to HUD that the regulations establish the Brooke rule so that ELI households would not pay more than 30% of their income for rent and utilities. The proposed rule does not adopt the Brooke rule.

If an NHTF unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based program.

§92.746(b)

- ❖ NLIHC recommends that the rule clarify that the NHTF maximum rent paid by tenants applies at other housing programs which do not provide project-based subsidies, such as the LIHTC, Section 236, and Section 221(d)(3)BMIR.

TENANT PROTECTIONS and SELECTION

According to the NHTF statute, activities must comply with laws relating to tenant protections and tenants' rights to participate in the decision making regarding their homes.

- ❖ The proposed rule does not address tenants' rights to participate in decision making regarding their residences.

§1338(c)(8)(A)

The proposed rule provides for a number of tenant protections such as prohibiting owners of NHTF-assisted projects from rejecting applicants who have a voucher or are using HOME tenant-based assistance.

- ❖ The Campaign recommended prohibiting denying access to NHTF-assisted homes to people with vouchers.
- ❖ NLIHC will recommend that people with state-issued tenant-based assistance also be protected.

§92.746(h)(i) & §92.747(d)(4)

Examples of tenant protection and selection features in the proposed regulation include:

- There must be a lease, generally for one year, along with a written renewal.
  Transitional housing leases are also described.
- Nine items that are prohibited from being in a lease are specified (eg an agreement to not hold an owner responsible for any actions or failure to act; mandatory supportive services; waiver of right to a jury trial, etc).
- Owners may only terminate tenancy or refuse to renew a lease for good cause.
  - ❖ There is no reference to VAWA, the Violence Against Women Act protections.
- Owners must have and follow tenant selection policies.
  - o Tenants must be selected from a written waiting list, in chronological order, if practical.
  - o 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 (such as the Supportive Housing program); or if not tied to such federal programs or other law, as long as a project is in the most integrated setting appropriate to meet the needs of the people with disabilities.

§92.747

FAIR HOUSING AND CIVIL RIGHTS

The following apply to the NHTF: The Fair Housing Act; Title VI of the Civil Rights Act of 1964; The Age Discrimination Act of 1973; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act; and, Section 3 of the Housing and Urban Development Act of 1968.

§92.760(a)
§1338(c)(8)(C)

DETERMINING TENANT INCOME

The proposed regulations for the NHTF echo the HOME regulations regarding determining tenant income. To determine initial income eligibility for renters, source documents (e.g. wage statement) must be used. In subsequent years there are three ways: source documents; a written statement from an administrator of a government program that already assesses income; or, a written self-certification. Homebuyers must submit source documents.

§92.727(c)&(d)

Income is to be calculated by projecting the prevailing rate of income of the "family" at the time it is determined income eligible.

§92.746(e)(1)

- NLIHC recommends that §727 use the term "household" instead of "family".

Project owners must re-examine each tenant's annual income during the affordability period. If the owner uses the method of accepting a tenant's certification of income, then every 6th year a "source document" (e.g. a wage statement) must be examined. Units receiving federal project-based assistance must be re-examined according to the federal program rules.

§92.746(e)(2)

An NHTF-assisted unit continues to qualify as "affordable" when the income of an existing tenant increases, as long as actions are being taken to ensure that all vacancies are filled by income-eligible tenants until a project is back in compliance. As with the HOME program, the proposed rule provides for fixed and floating NHTF units.

§92.746(f)&(g)

HOMEOWNER PROVISIONS

As required by the statute, homes must be bought by income-eligible "first-time homebuyers" who have had counseling, and the home must be their principle residence.

Although not in the statute, the proposed rule requires the assisted housing to meet the HOME definition of "single family housing", which includes one-to-four family residences, condominiums and cooperatives, a manufactured home and lot or just a manufactured home lot. As indicated earlier, the affordability period is 30 years.

Following the statute and echoing the HOME regs, an assisted home's value must not exceed 95% of the median purchase price for the area. The proposed NHTF rule repeats the HOME regulation for optional means of determining 95%.

§92.748(d)
§92.748(b)
§92.2
§92.748(e)
§92.749
§1338(c)(7)(B)(ii)

HOMEOWNER PROVISIONS, *continues next page*

Resale of Homeowner a Unit During Period of Affordability

As required by the statute, the proposed homeowner resale provisions echo the HOME regulations. To ensure continued affordability, grantees may use the HOME resale provisions or develop their own NHTF provisions and include such provisions in the ConPlan.

If a homeowner unit is sold during the affordability period, subsequent purchasers must be NHTF-eligible, and the sale price must provide the original owner a "fair return" (owner's original investment plus capital improvements). The grantee must specify "fair return". Also, if a homeowner unit is sold during the affordability period, the grantee must ensure the housing will remain affordable to a reasonable range of income-eligible homebuyers. The grantee must specify the meaning of "reasonable range".

Affordability restrictions may terminate upon foreclosure, transfer in lieu, or assignment of an FHA-insured mortgage. The grantee may use purchase options, rights of first refusal, etc. before foreclosure to preserve affordability.

§92.748(f)
§1338(c)(7)(B)(iii)

- NLIHC will recommend that affordability restrictions continue if a mortgage is transferred to FHA.
- The HOME regs at §92.254(a)(5)(ii) provide extensive recapture provisions, requiring grantees to ensure that they recoup all or a portion of HOME if the housing does not continue to be a homeowner's principle residence during the affordability period. The NHTF rule should have equally rigorous provisions.

Lease-Purchase

Mirroring the HOME regs, NHTF money may be used to help a homebuyer through lease-purchase as long as the home is purchased within 36 months. Also, NHTF 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, the rent affordability provisions apply.

§92.748(h)(3)

Preserving Affordability

As in the HOME regulations, additional NHTF resources may be used on an NHTF-assisted home in order to buy it prior to or at foreclosure. Additional NHTF money may also be used to rehabilitate such property or provide assistance to another first-time homebuyer. However, NHTF may not be used if the mortgage in default was funded with NHTF.

§92.748(j)

GENERAL ELIGIBLE ACTIVITIES

The proposed regulation echoes the statute by providing a basic list of eligible activities such as the production, preservation, and rehabilitation of affordable rental homes and homes for first-time homebuyers through new construction, reconstruction, rehabilitation, or acquisition.
NHTF-assisted homes must be permanent or transitional housing.

- ❖ The statute is silent regarding “transitional” or “permanent”.

§92.730(a)(1)
§1338(c)(7)(A)&(B)

No more than 10% of a grantee’s annual grant can be used for homeownership.

§92.730(a)(1)
§1338(c)(10)(A)

Forms of Assistance

NHTF assistance can be in the form of equity investments, loans, grants, and other forms. Grantees may decide the terms of assistance.

- ❖ The Campaign recommended that the rule allow assistance to be available as grants or loans.

§92.730(b)

20% Cap on Operating Assistance

The statute makes operating cost assistance an eligible use of NHTF resources, but only in conjunction with rental housing acquired, rehabbed, preserved, or newly constructed with NHTF money.

The proposed rule caps at 20%, the amount of a grantee’s annual grant that can be used for operating cost assistance. (More at “Eligible Project Costs”, page 13)

§1338(c)(7)(A)
§92.730(a)(1)

> The preamble explains that HUD views the NHTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households.
> HUD assumes NHTF will be used in combination with other sources to produce and preserve units, mostly in mixed-income projects.
>
> The preamble explains that grantees have discretion on how to allocate operating cost assistance. For example, grantees could decide to limit the 20% to all projects or adjust the percentage as needed – as long as no more than 20% of each annual grant received by a grantee is used for operating cost assistance.

GENERAL ELIGIBLE ACTIVITIES, *continues next page*

Manufactured Housing

NHTF money can be used to buy and/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…located on land that is owned by the home owner, or land for which the home owner has a lease for a period that at least equals the affordability period.

§92.730(a)(4)

Mixed-Unit Projects

NHTF-assisted units can be in a project that also contains non-NHTF-assisted units. After project completion, the number of NHTF-assisted units may not be reduced.

§92.730(c)

Timeframe for Demolition or Acquiring Vacant Land

Use of NHTF money for demolition or acquiring vacant land is limited to specific affordable housing projects for which construction can reasonably be expected to start within one year (or 42 months for transit oriented development).

§92.730(a)(2)
§92.702(b)

Transit Oriented Development (TOD)

NHTF dollars may be used by a local government to purchase land to be used for NHTF-assisted units as part of a transit oriented development (TOD). Title to the land must be transferred to the local government within six months and held by the local government. Within 36 months from the date of transfer, the local government must commit additional NHTF money or other resources to a specific housing new construction or rehabilitation project that can reasonably be expected to start within 12 months. If there is no commitment to a specific NHTF project within 36 months, the local government must repay the NHTF amount or the current value of the property, whichever is greater.

The preamble to the proposed rule, in the definition section regarding "commitment", describes this as an attempt to facilitate TOD projects by enabling local governments to buy land before they even have a specific project plan.

§92.730(a)(3)
§92.702

- The relationship between the "unit of local government" and the definitions of grantee, subgrantee and recipient are unclear. For purposes of TOD, is the ULG a grantee, subgrantee or recipient?
- Under TOD, NHTF resources could be tied up for substantial periods (as long as 54 months) without single unit being built (42 months under the definition of TOD "commitment", plus 12 months under definition of specific project "commitment").
- The definition of "commitment" at §92.702(b)(3), which is cited, should be tightened because it could be interpreted to allow units that do not benefit ELI if "other resources" are used.

ELIGIBLE PROJECT COSTS

Eligible project costs include: acquisition; relocation; development hard costs such as construction; soft costs associated with financing and/or development; and, refinancing existing debt on rental property if NHTF is also used to for rehabilitation. Operating costs are also eligible project costs.

§92.731

Operating Costs

The statute makes the use of NHTF dollars for operating costs an eligible activity.

HUD limits operating cost assistance to 20% of a state's annual grant.

- In the preamble, HUD agrees with the Campaign that the NHTF is primarily a production program meant to add units to the supply of affordable housing.
- The Campaign recommended a 20% limit, but also recommended limiting the use of operating costs to ELI units. The proposed reg does not limit operating costs to ELI units, but does limit use to HTF-assisted units.
- The Campaign had also recommended requiring states to give priority to projects that obtained operating subsidies from sources other than the NHTF.
- The Campaign had also recommended limiting the use of operating costs to:
  1) provide project-based rental assistance for not more than 12 months, or
  2) establish a capitalized project operating reserve account in order to realize deeper affordability levels.

§1338(c)(7)(A)
§92.730(a)(1)

Operating cost assistance may only be provided if project-based assistance is not available. The preamble expresses this more clearly by saying a NHTF-assisted unit that has a Section 8 project-based voucher may not also receive NHTF operating cost assistance.

Operating costs include insurance, utilities, real property taxes, maintenance, and scheduled payments to a reserve for replacement of major systems.

States and subgrantees can provide operating cost assistance to a project for up to two years from the same fiscal year NHTF grant; the operating cost assistance can be renewed during the entire affordability period.

An operating cost assistance reserve can be created to cover up to a five-year period of inadequate rent income in order to ensure a project's financial feasibility.

§92.731(e)

- It is not clear how the two year and five year provisions can work together. How can a reserve be established for five years given the two-year limitation? For TOD, more than two years is allowed to secure a commitment.

ELIGIBLE PROJECT COSTS, *continues next page*

Development Hard Costs

Development hard costs are the actual costs of constructing or rehabbing, including: costs to meet property standards set out in the proposed regulations; laundry and community facilities; utility connections; site improvements, including onsite roads, sewer, and water; and, demolition.

§92.731(a)

Related Soft Costs

Mirroring the HOME regs, 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 (unexpended operating deficit reserves may be retained for project reserves); staff and overhead of the grantee directly related to carrying out the project (work specs, inspections, loan processing, etc.); impact fees; and, costs to meet environmental and historic preservation.

§92.731(d)

Other Project Costs

Refinancing: Existing debt secured by rental housing being rehabbed with NHTF can be refinanced, but only if necessary to reduce overall housing cost in order to make units more affordable. Grantees must establish refinancing guidelines that demonstrate that rehab is the primary eligible activity, and that set minimum levels of rehab. The guidelines must be presented in the ConPlan.

§92.731(b)

Acquisition: Real property may be purchased.

§92.731(c)

Relocation Costs: Eligible relocation costs include: replacement housing payments, moving expenses, temporary relocation expenses, staff and overhead directly related to providing relocation services (such as referrals to comparable homes, counseling, and inspections).

§92.731(f)

Costs Relating to Payment of Loans: Principle and interest to pay construction loans, bridge financing, a guaranteed loan, etc.

§92.731(g)

ADMINISTRATION AND PLANNING COSTS

The statute limits the amount of NHTF that can be used for general administration and planning to 10% of a state's annual grant. The proposed regulation adds that 10% of any program income can also be used for admin and planning. The rule also provides that subgrantees may use NHTF for administration and planning, but subgrantee use counts toward the state's 10% cap.

§92.732(a)
§1338(c)(10)(D)(ii)&(iii)

- The rule is silent, but the preamble to the rule and HUD's website use the 10% admin and planning cap to claim that only 80% of NHTF fund dollars must be used for rental activities. HUD explains that it intends to take the 10% allowable for administration and planning from the minimum amount available for rental projects, resulting in HUD's 80% figure.

  However, the statute does not construct the minimum amount for rental activities in this fashion. The statute limits the amount that can be used for homeowner activities to 10%; therefore, 90% of the funds must be used for rental projects. The statute also limits the amount of a NHTF grant that can be used for administration and planning to 10%. The proper approach then, as has been traditionally used with the CDBG program, is to apply the 10% administration and planning cap to the entire NHTF grant amount, and then calculate 90% for rental and 10% for homeowner.

  The rule should explicitly provide that after administrative costs have been determined – which cannot exceed 10% of a grant amount – grantees are required to use at least 90% of an annual NHTF grant for rental activities. The remainder can be used for homeownership activities.

General Management, Oversight, and Coordination Costs

This relates to the cost of overall program management, coordination, and monitoring. Examples include grantee staff salaries and related costs necessary for "program administration" such as ensuring compliance and preparing reports for HUD. Other eligible costs include equipment, office rental, and third party services such as accounting.

§92.732(b)

Staff and Overhead

The staff and overhead expenses of the grantee directly related to carrying out projects can 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 NHTF "program" in general) may instead be charged as "project" related soft costs or relocation costs (however, housing counseling must be counted as an admin cost, as per the statute.)

§92.732(c)
§1338(c)(10)(D)(iii)

ADMINISTRATION AND PLANNING COSTS, *continues next page*

Some Other Administration and Planning Costs

- Providing information to residents and community organizations participating in the planning, implementation, or assessment of NHTF projects.

§92.732(d)

- Activities to affirmatively further fair housing (AFFH).

§92.732(e)

- Preparation of the ConPlan, including hearings, and publication.

§92.732(g)

- Costs of complying with other federal requirements regarding: non-discrimination, affirmative marketing, lead-based paint, displacement and relocation, conflict of interest, and fund accountability.

§92.732(h)

  - ❖ The rule should provide that these administration and planning costs should be proportional to the degree to which NHTF is involved in "public information", AFFH, ConPlan preparation, and compliance with other federal laws. Elsewhere in the proposed rule HUD is rigorous about NHTF cost allocation being proportionate. Without a proportionate allocation requirement with respect to these costs, a grantee could substitute NHTF money intended to increase the supply of affordable ELI homes for CDBG money otherwise being used for ConPlan preparation, etc.

INELIGIBLE ACTIVITIES

NHTF resources cannot be used for public housing, including HOPE VI.
Nor can NHTF housing get public housing operating assistance during the period of affordability.
A project may contain both NHTF-assisted units and public housing units.
The preamble notes that the statute does not explicitly prohibit use of NHTF resources with public housing.

§92.734

Although not in the statute, the proposed rule echoes the HOME regulations, prohibiting the use of NHTF money for a project previously assisted with NHTF during the period of affordability – except for the first year after completion.

§92.735(a)(1)

Grantees may not charge fees (e.g. servicing, origination) except for those allowed as eligible soft costs. However, annual fees may be charged to owners of NHTF-assisted rental projects to cover the cost of monitoring compliance with income and rent restrictions during the affordability period.

§92.735(b)(1)

NHTF MUST BE COMMITTED WITHIN TWO YEARS

As required by the statute, the proposed regulation requires NHTF dollars to be committed within 24 months, or HUD will reduce or recapture uncommitted NHTF dollars.

Although not required by law, the proposed rule adds that NHTF money must be spent within five years.

§92.770(d)
§1338(c)(10)(B)

Committed is defined in the proposed rule as the state or subgrantee having a legally binding agreement with a recipient owner/developer for a specific project that can reasonably be expected to begin rehabilitation or construction within 12 months; or if NHTF is used to acquire standard housing for rent or for homeownership, the property title will be transferred to a recipient or family within six months.

§92.702

MISCELLANEOUS PROVISIONS

Maximum Per-Unit Subsidy Amount and Subsidy Layering

Grantees must establish maximum limitations on the total dollar amount of NHTF invested per unit, with adjustments for size and geographic location. The limits must be in the ConPlan and adjusted annually. This is not required by the statute.

§92.740(a)

Grantees must establish and use subsidy layering guidelines to review all forms of government assistance going into a project in order to ensure that no more government assistance is provided than necessary and to ensure no undue return to owners.

§92.740(b)

Performance Reports

HUD will provide states and subgrantees with formats for submitting annual performance reports. HUD will make grantees' performance reports publicly available.

- ❖ The proposed regulation does not require states and subgrantees to make performance reports directly available to the public by requiring them to provide copies or by requiring them to prominently post performance reports on the state's or subgrantee's website.

§92.779

MISCELLANEOUS PROVISIONS, *continues next page*

Recordkeeping

The proposed regulation presents a number of recordkeeping 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, has applied for, participated in, or benefitted from the NHTF.

§92.778(a)(5)

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, the records must be kept for five years after all people displaced have received final payments.

§92.778(b)

The public must have access to the records, subject to state and local privacy laws.

§92.778(c)

- The Campaign submitted very detailed suggested data collection requirements, which are not included in the regs, but which could conceivably be incorporated into IDIS.

Other Federal Requirements

The Lead-Based paint requirements of 24CFR part 35, subparts A, B,J, K, and R must be followed.

§92.761

The displacement and relocation features of the HOME reg at 92.353 must be followed.

§92.762

The affirmative marketing requirements of the HOME reg at 92.351(a) must be followed.

§92.760(b)

Property Standards

A variety of property standards are listed, with separate sections for new construction and gut rehab; rehab; acquisition of "standard" housing (a term used in HOME but nowhere defined; in context it means acquisition of a home not needing rehab); manufactured homes; and "ongoing" for rental. As indicted in the preamble, there is an emphasis on energy and water efficiency requirements.

§92.741-45

Site and Neighborhood Standards

The HOME standards at §92.202 apply. According to the preamble, if Section 8 project-based vouchers are made available, the Section 8 requirements relating to site and neighborhood standards will apply to an NHTF-assisted unit that has a Section 8 project-based voucher attached to it.

§92.726

NHTF NEEDS CLEARER IDENTITY IN PART 92

As noted at the beginning of this summary, HUD proposes to insert the core (non-ConPlan) provisions of the NHTF implementation regulations in the existing HOME program rule as subpart N of part 92. The preamble explains that this is to "provide a coordinated menu of [housing] production programs".

- ❖ It makes sense to weave the NHTF regs in with the HOME regs. However, as proposed the regs do not provide adequate identification of the NHTF program as a distinct program. There are a number of other examples of this, beginning with the title of part 92:

  The title of 24 CFR part 92, is "Part 92 – HOME Investment Partnership Program".

- ❖ The existence of the NHTF program is hidden unless there is prominent reference to it in the title. HUD's "menu" of housing production programs would seem incomplete.

- ❖ Part 92 should be re-titled to more clearly and directly reflect the complete content of part 92, perhaps to "*Part 92 – HOME and Housing Trust Fund Programs*".

The beginning of the existing HOME regulation, which the proposed rule would not modify, simply states "This part implements the HOME Investment Partnership Act (the HOME Investment Partnerships Program)…", and continues with a long paragraph describing only the HOME program.

§92.1

- ❖ This further obscures the NHTF program at the start of part N.

- ❖ Another example of the potential for the NHTF program to be obscured is in the proposed rule itself which reads:

> "Other subparts of part 92 are not applicable to the HTF program, except as expressly provided in subpart N. To the extent that the sections of other subparts of this part are made applicable, **references to HOME shall mean HTF** and references to participating jurisdictions shall mean grantees."

§92.701 (c)

The proposed rule at item #8 under the current title of part 92 declares that "The authority for 24 CFR part 92 continues to read as follows: Authority: 42 USC 3535(d), 12701-12839, and 12 USC 1301 et seq."

- ❖ The authority for the existence of the NHTF program is not included.

The proposed rule only cites the authority for the NHTF later [at §92.701(a)] as §1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 as amended by the Federal Housing Finance Regulatory Reform Act of 200812 (USC 4568).

- ❖ Therefore, #8 should also include the statutory authority of NHTF.

- ❖ Because the NHTF program could become eclipsed as a result of inadequate references to it in the HOME portions of part 92, those implementing the NHTF program, as well as advocates, might lose or never gain awareness that the NHTF program is a separate and distinct program, rendering it vulnerable to diminished consideration in future years. This problem is easily remedied by simply adding specific references such as "HOME and HTF" when appropriate.

washington low income
housing alliance

All Washington residents should have the opportunity to live in safe, healthy, affordable homes in thriving communities.

Getting Ready for Release of National Housing Trust Fund Dollars

Ben Miksch
&
Ed Gramlich

April 29, 2014

washington low income
housing alliance

Selecting a State Designated Entity - Overview

- NHTF Dollars will be distributed to states as a HUD-administered block grant
- States will designate an entity to administer the program
- States can also give some or all NHTF funds to local governments or state agencies as sub-grantees

washington low income
housing alliance

Why Does the Designated Entity Matter?

This is the agency responsible for drafting the NHTF Allocation Plan and administering the program

- Will they ensure that the Plan meets genuine, high-priority needs of extremely low-income people?
- Will NHTF-assisted units be affordable for as long as possible? 30 years? 50 years?
- Will the right populations be served?
- Will they ensure the needs of rural and urban areas are both addressed relative to their need?
- Will they ensure that the public participation obligations are truly met, and not just "going through the motions?"

"He who controls the purse strings writes the rules" – to badly misquote Mayer Rothschild

Selection Criteria for which projects receive funding

Allocation Plans must provide priority for funding applications based on a number of features:

1. Geographic Diversity
2. Extent to which rents are affordable, especially for ELI households
3. Duration of unit's affordability
4. "Merit" of the project, such as transit, green buildings, special needs populations

washington low income
housing alliance

Advice from the Housing Trust Fund Project

Pick an entity that…

- Has experience operating a program that grants and/or lends funds to housing developers
- Has worked with and respects nonprofit development organizations and other housing organizations in your community
- Understands and is committed to providing housing for your targeted population
- Can entertain and support innovative ways to provide decent, affordable housing
- Can work well with all the partners and industries involved in housing, including HUD, other government agencies, banks and other financial institutions, private developers and planning and zoning commissions
- Is committed to addressing urgent housing needs and demonstrates a willingness to search for solutions

The single most important factor in a housing trust fund's success is its staff's quality and commitment.

What State Entities Are Best Positioned?

washington low income
housing alliance

- State Agency or Department that has the most experience running housing programs like CDBG and HOME
- Quasi-public body such as a housing/redevelopment authority or a state housing finance agency
- In Washington State, I assume we'll designate our State Department of Commerce
- Run our state HTF, administer CDBG and HOME, also several other housing programs
- Do a great job – HTF statute allows up to 80% AMI, but vast majority of our projects go to ELI families. Statute requires 30/70 rural/urban split, they add in a 35/35 split on top of that between Seattle/King County and other urban areas
- Housing Advocates are a major part of the allocation process each year

Or, choose a sub-grantee!

- States may pass some or all of their NHTF dollars to local governments or state agencies as sub-grantees
  - Any sub-grantee must have their own Consolidated Plan which is consistent with the state's Action Plan
- A little different, but in WA we have document recording fees that fund anti-homelessness programs
  - 60% of the revenue stays at the county to allow for flexibility & innovation at the local level – tied to local ConPlans
  - 40% goes to the Department of Commerce to fund programs statewide

Advocates will want to make sure that…

washington low income
housing alliance

1. Their neighborhoods are a part of the geographic mix

2. NHTF-assisted units are truly affordable to ELI people, that they do not pay more than 30% of their income for rents and utilities

3. NHTF-assisted units will be affordable as long as possible to ELI households - aiming for at least 50 years.

4. Developments are funded because they have features you think give them merit

5. the type of project (new construction, rehab, preservation) is one that you agree is most needed

6. Bedroom size mix is the one you agree is most needed

7. The populations to be served are the ones you think most need aft homes (large families, special needs, elderly etc.)

washington low income
housing alliance

Washington's HTF statutory preferences

1. Degree of leverage
2. Commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations
3. Recipient contributions to total project costs
4. Local government contributions such as infrastructure improvements
5. Projects that encourage ownership, management, and other project-related responsibility opportunities
6. Demonstrate a strong probability of serving the original target group or income levels for at least 25 years
7. Demonstrated ability, stability, and resources to implement the project
8. Projects serving the greatest need
9. Projects for persons and families with the lowest incomes
10. Projects serving special needs populations which are under statuary mandate to develop community housing
11. Project location and access to employment centers in the region or area
12. Projects that provide employment and training opportunities for disadvantaged youth under a youth build or youthbuild-type program
13. Project location and access to available transportation services.
14. "Cost"

Also: 30% to rural by statute, 35% to Seattle/King County & 35% to other urban by program design

washington low income
housing alliance

The Long Game

Things change – people change, goals change, strategies change.

Getting the best housing policies in place today is important

A good decision-making process is important as well. Make sure advocates have a voice and can stay part of the process

How to Influence the Decision – State Advocacy!

- Money goes straight to the states and is allocated to local jurisdictions or operate their own programs
  - This means the place to advocate is at the state
  - This is very different than states who are used to only advocating at the local level for HOME & CDBG funds
- The governor is going to select the Designated Entity, or possibly already has
  - That doesn't mean it's too late! This was probably chosen back in 2009, when there definitely wasn't any NHTF funding. Plus you could have a new governor

washington low income
housing alliance

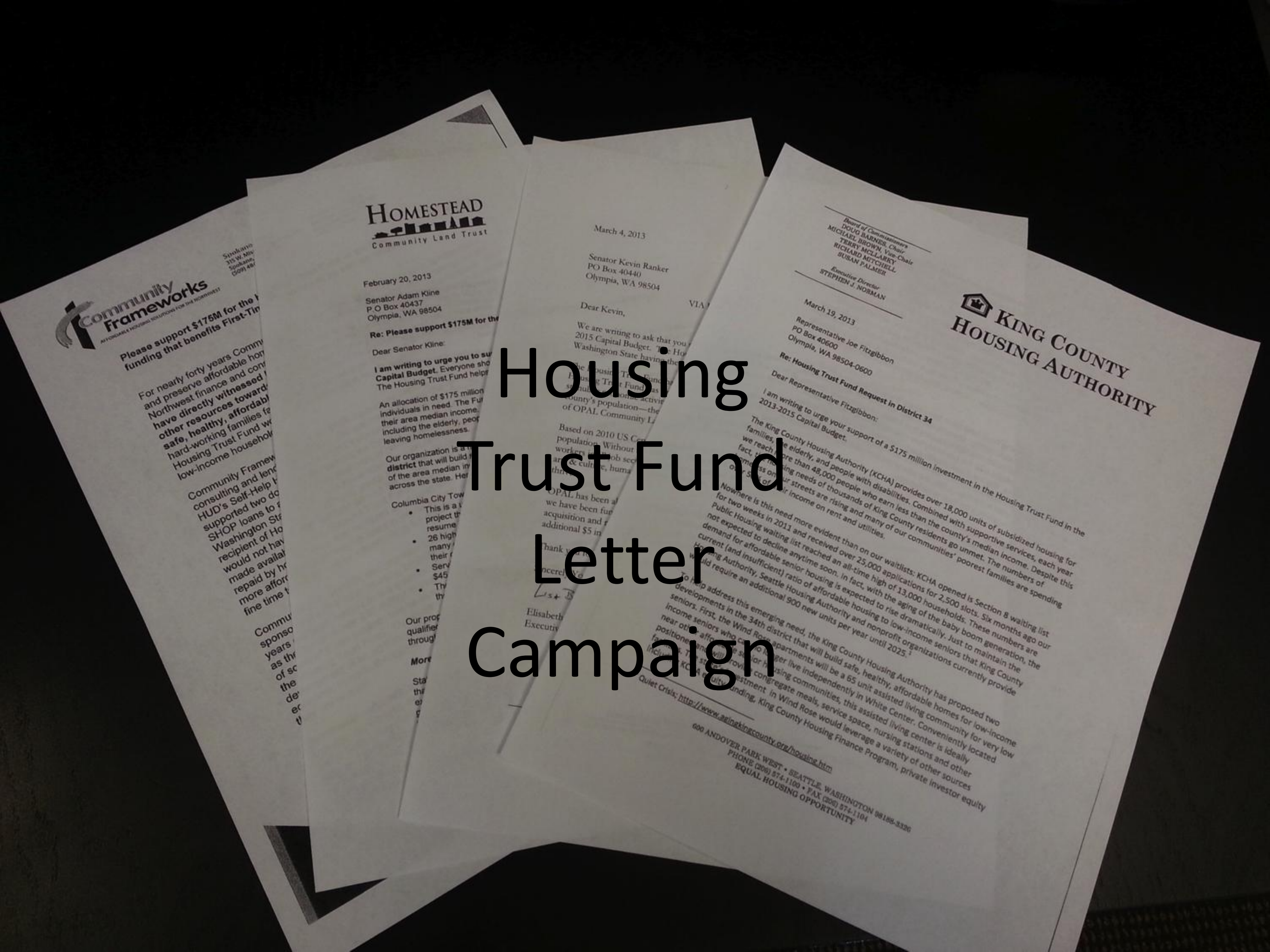
More on State Advocacy

- Form a coalition – churches, nonprofits, housing authorities, local governments, state legislators
- Speak up
  - Site tours, press events, face-to-face meetings with elected officials (and staff!), letters to the editor, mass email/letter/phone call campaigns
- Combine facts and data with an interpretation of what the data is saying with a story to put a face on the problem and tie it together with a clear ask

Housing and Homelessness Advocacy Day, 2014

Housing and Homelessness Advocacy Day, 2014

Housing Trust Fund Letter Campaign




House Judiciary Cmte.
TVW Webcasting
TVW
tvw.org

Today's Program

- ***Welcome***
  Representative Riccelli
  Senator McCoy
  Representative Robinson
  Rachael Myers, Washington Low Income Housing Alliance

- ***Overview of the State Housing Trust Fund***
  The Need
  From Site Control to Opening the Doors
  What is the Trust Fund?
  What is "Affordable"?
  Who is Served?
  Health & Educational Outcomes Are Improved
  Challenges & Opportunities

- ***Questions and Discussion***

- ***Closing***

The Need

- 1 in 4 renter households in Washington State is severely rent burdened, spending more than half of their income on housing costs alone. [1]
- The Point In Time Count in January 2013 found 17,755 homeless that night, across the state.

Sources: 1) NLIHC tabulations of 2011 American Community Survey.

Social Determinants of Health

- *The connection between health and the dwelling of the population is one of the most important that exists*.

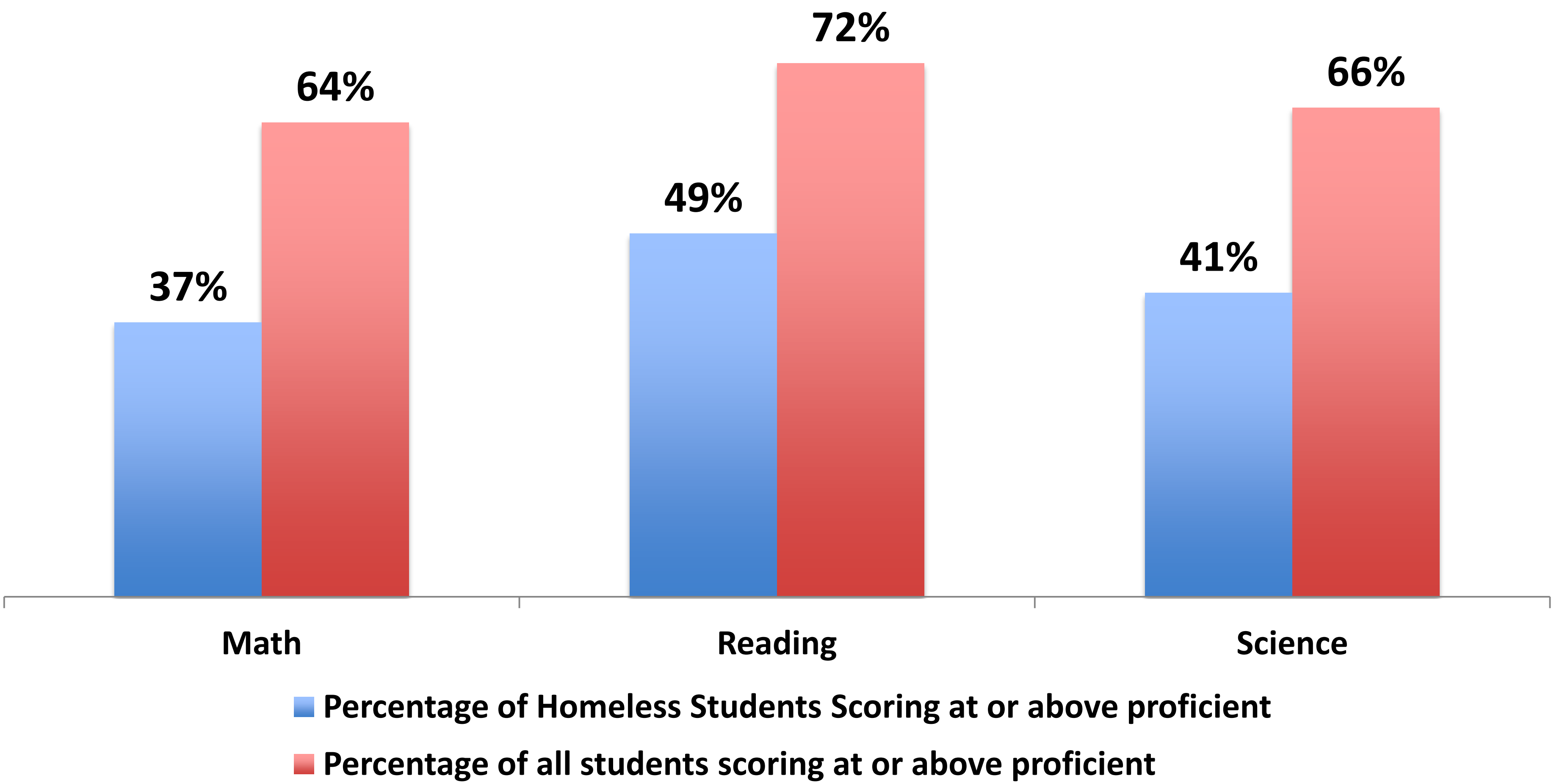
  \- Florence Nightingale

- Poor quality housing and the experience of homelessness impact both immediate and long term health.

- When people are severely rent burdened, they are forced to make impossible choices, like paying the rent or paying for food or medicine.

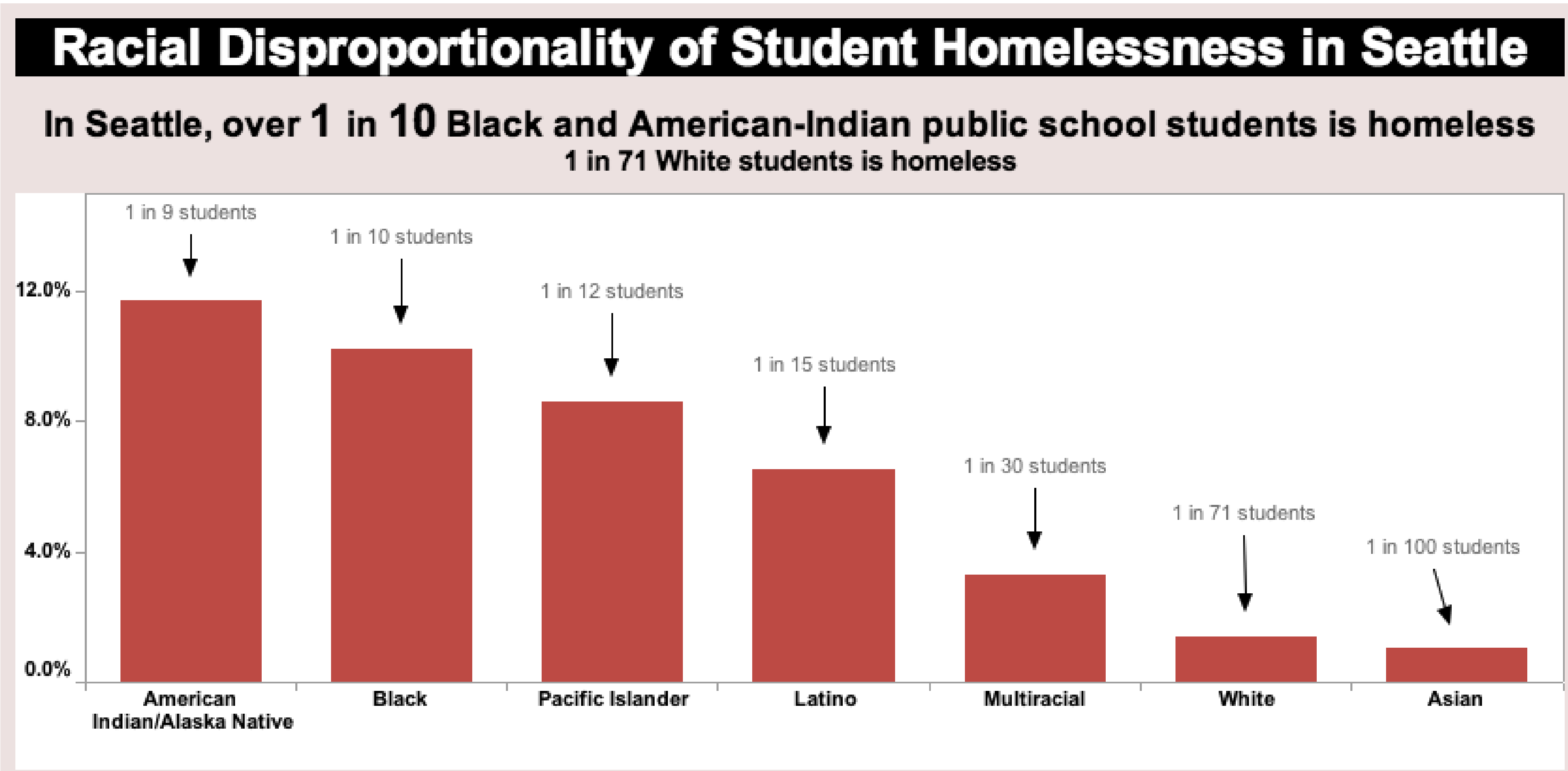
washington low income housing alliance

Homelessness Directly Impacts Student Achievement in Washington



Office of the Superintendent of Public Instruction, Washington State

Student Homelessness is Racially Disproportionate



Analysis by SchoolHouse Washington (schoolhousewa.gov)

The Housing Trust Fund Also Creates Good Jobs

For every 1,000 apartments developed with Housing Trust Fund dollars:

- 1,220 jobs are created and,
- $79 million is generated in local income and,
- $8.3 million is generated in taxes and fees for local governments.[1]

1. National Association of Home Builders.

DVS Sno-Co DV Shelter

Snohomish

Replaces a 15-bed shelter (that turned away more than 1,500 families in 2012) with a 52 bed shelter for domestic violence survivors and their families

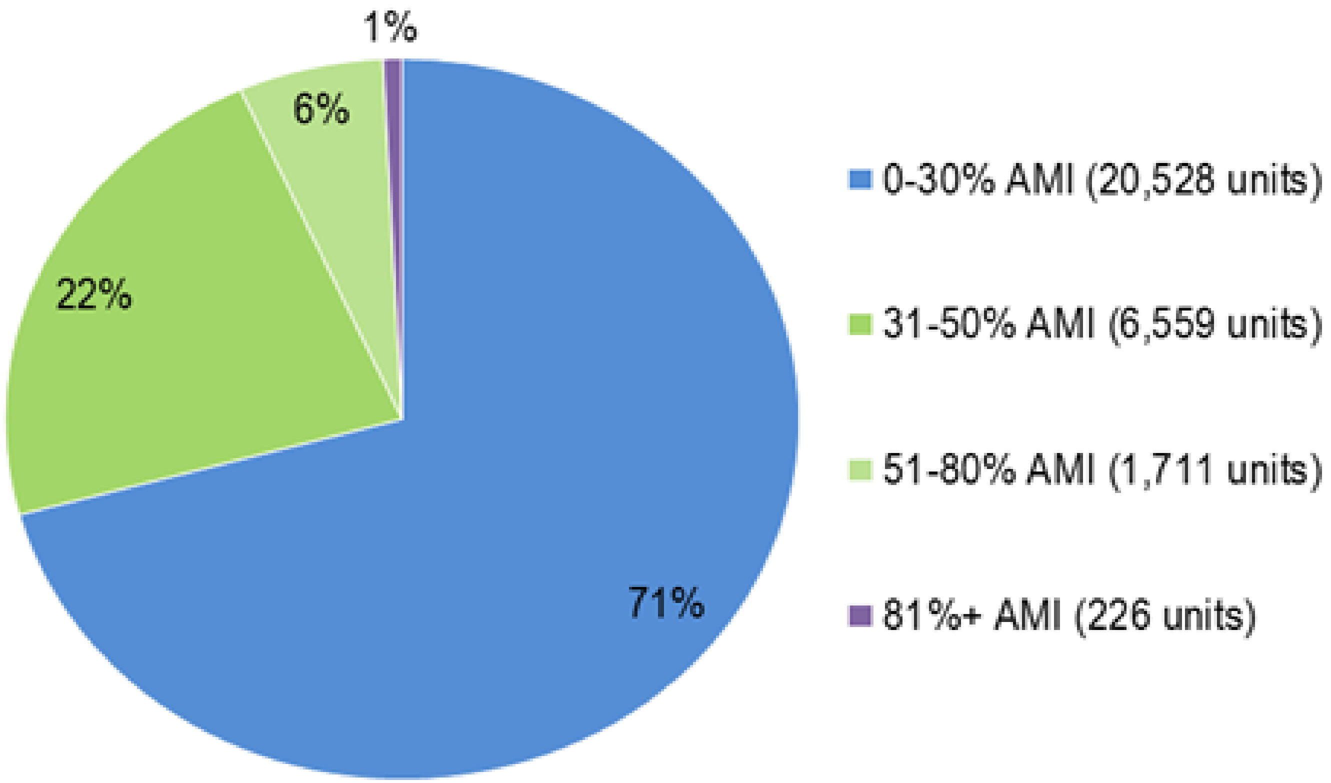
Sponsor: Domestic Violence Services of Snohomish County

Who is Served by the Housing Trust Fund?

Important demographics served by the Housing Trust Fund include:

- Persons with developmental disabilities
- Farmworkers
- Veterans
- Seniors and persons with physical disabilities
- Persons with mental illness
- Families and individuals experiencing homelessness
- Low and moderate income workers
- First time homebuyers

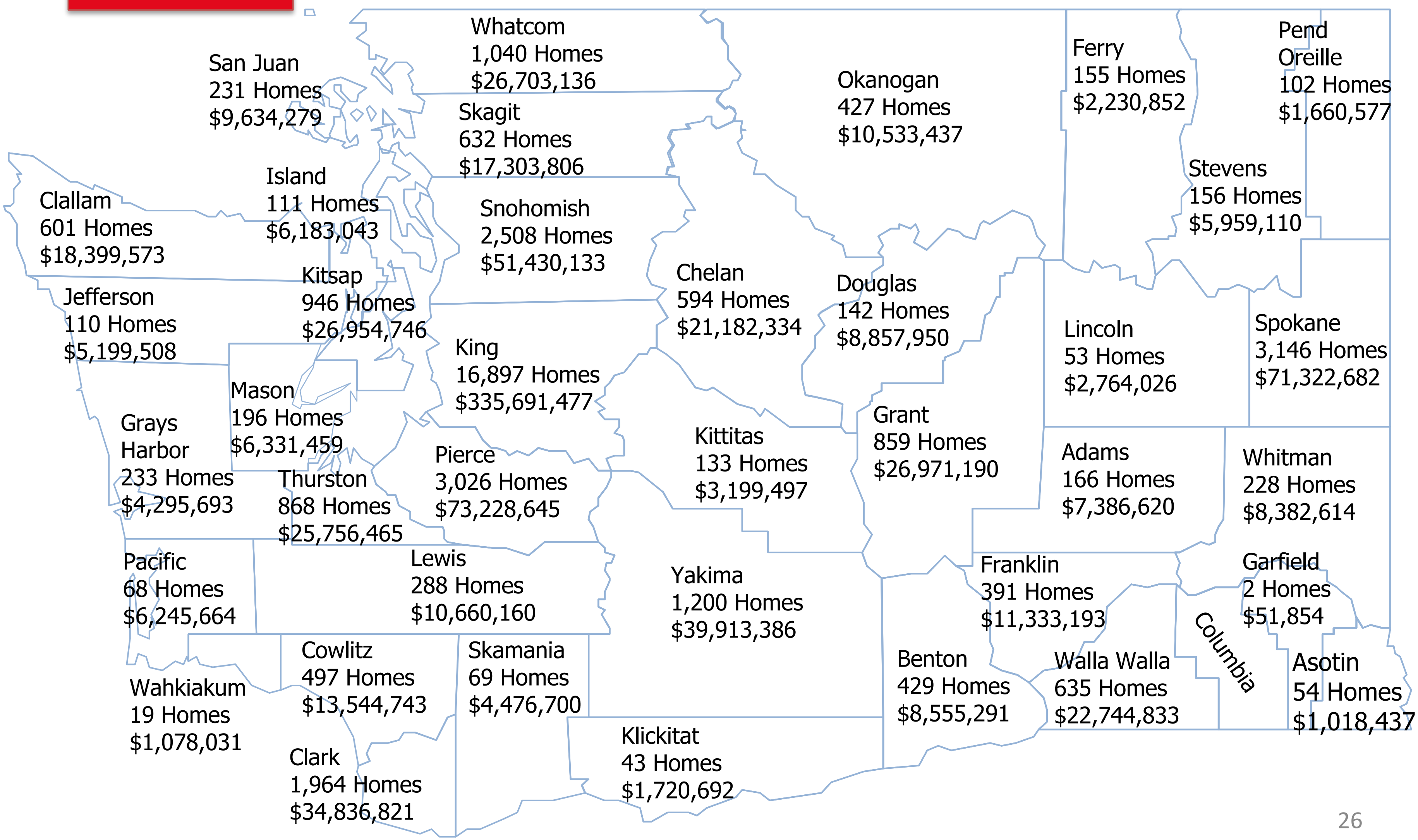
Who is Served by the Housing Trust Fund?



The overwhelming bulk of Housing Trust Fund dollars support homes for those with the lowest incomes, over 70% are extremely low income.
Thanks to Department of Commerce for this slide.

washington low income
housing alliance

Housing Trust Fund Dollars At Work Across the State



Nyer Urness House

Seattle/Ballard Neighborhood

80 studio homes for formerly homeless adults

Sponsor: Compass Housing Alliance

Riverpoint II

Spokane

51 apartments, with a community building – 20% of the homes reserved for families recovering from homelessness, another 20% for families affected by disability, and an additional 20% for large families

Sponsor: Spokane Neighborhood Action Partners

Over 40,000 safe, healthy, affordable homes built or preserved

Affordable Housing Works

Living in these apartments has helped me by feeling motivated and knowing anything is possible. You guys have helped me a lot by giving me information about different opportunities of how to be successful and to attend college. Living here is also comfortable because we collaborate as a family with celebrations at holidays.

It is also good because I live close to my school in which I can participate in different activities. Living here is wonderful. We, the Hispanic people, have a better place to live. Thank you.

– Heidy Rodriquez, resident at Blessed Kateri Village, Wapato

Affordable Housing Works

Blessed Kateri Village in Wapato by Catholic Charities Housing Services of Yakima