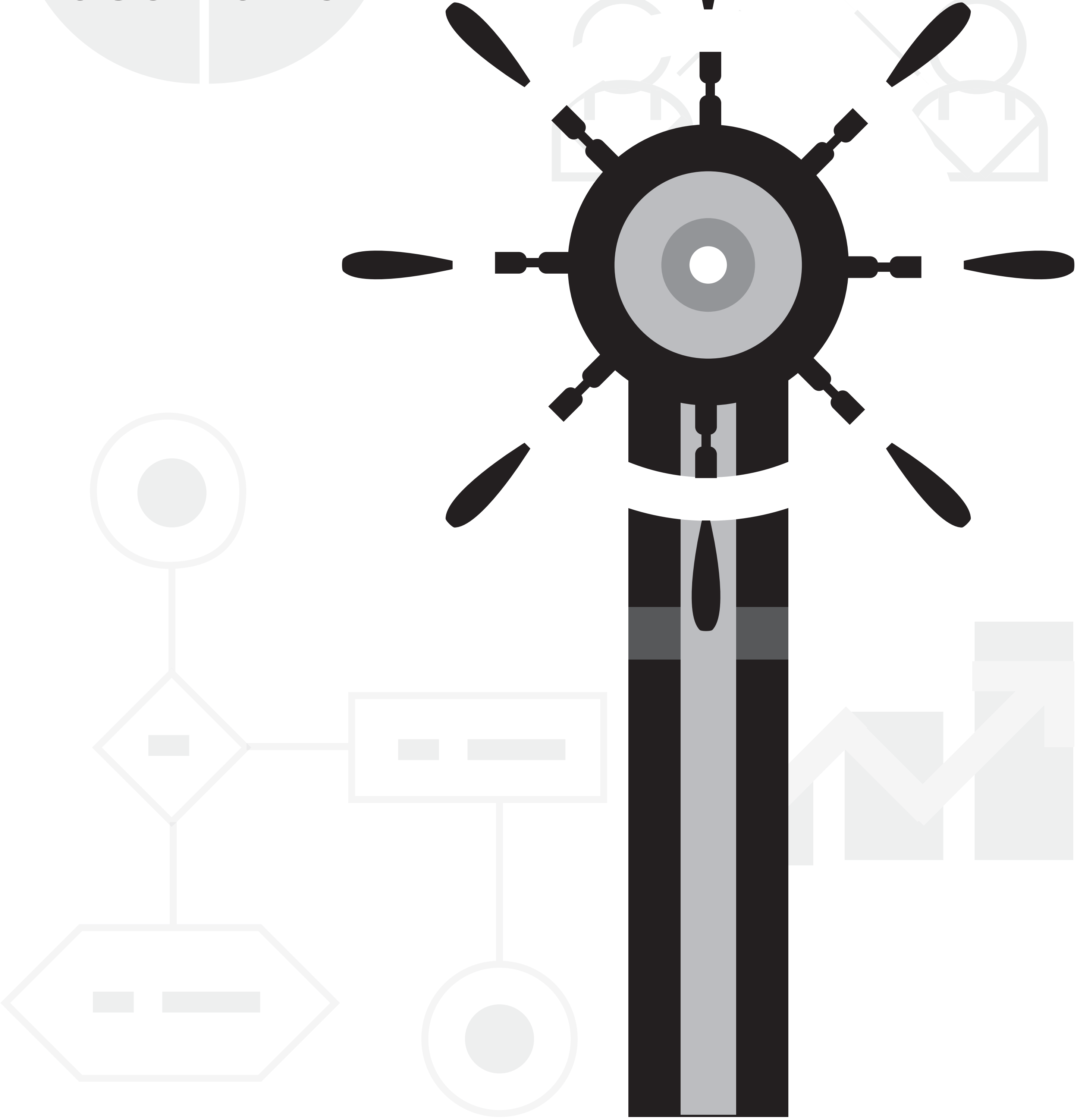
Chapter 3:

National Housing Trust Fund



The National Housing Trust Fund

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Administering agency: HUD's Office of Affordable Housing Programs within the Office of Community Planning and Development (CPD)

History: Enacted by the Housing and Economic Recovery Act of 2008 (HERA) on July 30, 2008

Population targeted: Extremely low income renters

FY16 funding: NLIHC estimates that the National Housing Trust Fund will receive $186.6 million in 2016. The initial infusion of dedicated funds will be transferred to HUD after February 2016.

See also: National Housing Trust Fund: Funding, Mortgage Interest Deduction, Fannie Mae, Freddie Mac, and Housing Finance Reform

The National Housing Trust Fund (NHTF) was established as a provision of the Housing and Economic Recovery Act of 2008, which was signed into law by President George W. Bush. Passage of National Housing Trust Fund legislation was a major victory for the lowest income people in our country with the most serious needs, including people who are homeless.

After many years of delay, the NHTF finally will be implemented in 2016. It is essential that the first year of funding be carried out both creatively and efficiently in order to demonstrate need and to justify continued and increased funding. NLIHC is engaged in a multi-pronged strategy to assure a successful first year as possible.

The primary purpose of the NHTF is to close the gap between the number of extremely low income renter households and the number of homes renting at prices they can afford. The statute calls for at least 90% of the funds to be used to build, preserve, rehabilitate, or operate rental housing, and at least 75% of the funds used for rental housing must benefit extremely low income households. One hundred percent of all NHTF dollars must be used for households with very low income or less.

In the years since enactment of the NHTF, the shortage of rental housing that the lowest income people can afford has only gotten worse. The foreclosure crisis, the recession, and persistent low wages have made millions more at risk of homelessness, including families with children, seniors, people with disabilities, and veterans. The NHTF offers the means to end and prevent homelessness in the United States if funded at the level advocated by NLIHC.

HISTORY AND ADMINISTRATION

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

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

HUD published proposed regulations to implement the NHTF on October 29, 2010. NLIHC and others provided extensive comments on how the regulations could be improved. On January 30, 2015, a NHTF Interim Rule was published in the *Federal Register*. HUD explains that after states have gained experience implementing the NHTF, it will open the interim rule for public comment and possibly amend the rule.

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

PROGRAM SUMMARY

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

The NHTF is a block grant to states. The funds are to be distributed by formula to states based on factors that measure the housing needs of extremely low and very low income renter households (VLI, generally those with income between 31% and 50% of AMI), as well as the costs of housing construction in the state. A state entity will administer the state's NHTF program and make grants to capable entities to create new affordable housing opportunities. The state designated entity might be the state housing finance agency, a state department of housing or community development, or a tribally designated housing entity.

HUD's list of designated entities is at https://www.hudexchange.info/programs/htf/grantees.

KEY PROGRAM DETAILS

Funding. As a result of the decision by FHFA to lift the suspension on Fannie Mae and Freddie Mac's obligation to fund the NHTF and the CMF, the first funds for the NHTF will be available for distribution to the states in summer 2016. The amount of funding will be determined by the volume of the business conducted by Fannie and Freddie in calendar year 2015.

Based on Fannie and Freddie's 2015 reports to the Securities Exchange Commission, NLIHC estimates that the NHTF will receive $186.6 million in 2016.

The statute calls for 65% to go to the NHTF and 35% to the CMF. However, the statute also requires that 25% go to the Hope Reserve Fund, to cover potential losses from the Hope for Homeowners program, also created in HERA. Although it is expected that the 25% that goes to the Hope Reserve Fund in FY16 will more than cover any risk of losses from Hope for Homeowners, an additional 25% is planned for FY 17.

Targeted to rental housing. The overview section of the interim 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. VLI is generally defined as income between 31% and 50% AMI; the NHTF statute adds that for rural areas VLI may also be income below the federal poverty line. The statute limits the amount of NHTF used for homeownership activities to 10%, inferring that at least 90% of a state's annual NHTF allocation must be used for rental housing activities. However, the preamble to the interim rule interprets the law differently, asserting that only 80% must be used for rental activities, because states entities can use up to 10% of the funds to administer the program.

Income targeting. The NHTF statute requires that at least 75% of each grant to a state used for rental housing benefit ELI households or households with income below the poverty line, whichever is higher. No more than 25% may be used to benefit VLI renter households. For homeowner activities, the statue requires that all assisted homeowners have income below 50% of AMI. When there is less than $1 billion for the NHTF, the rule requires 100% of a state's allocation benefit ELI households.

NHTF distribution formula. To distribute NHTF dollars, the statute established a formula based on the number of ELI and VLI households with severe cost burden (households paying more than half of their income for rent and utilities), as well as the shortage of rental properties affordable and available to ELI and VLI households, with priority for ELI households. Small states and the District of Columbia are to receive a minimum of $3 million. On December 4, 2009 HUD issued a proposed rule, endorsed by NLIHC, describing the factors to be used in the formula. Responding to the statute's requirement that the formula give priority to ELI households, HUD's interim rule formula assigns 75% of the formula's weight to the two ELI factors. The interim rule adds a provision for instances in which there are not sufficient funds in the NHTF to allocate at least $3 million to each state and the District of Columbia; HUD will propose an alternative distribution and publish it for comment in the *Federal Register*.

NLIHC has estimated how much each state would receive based on the $186.6 million for 2016, http://nlihc.org/sites/default/files/StateAllocations_2016.pdf. NLIHC has also estimated state allocations when the NHTF reaches $5 billion, http://nlihc.org/sites/default/files/NHTF_State_Allocations_5bill.pdf.

State distribution of NHTF money. States are to designate an entity, such as a housing finance agency, housing and community development entity, tribally designated housing entity, or any other instrumentality of the state to receive NHTF dollars and administer a NHTF program. 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 (ConPlan). See also *Consolidated Planning Process.*

Allocation Plans. 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 interim rule amends the ConPlan regulations by adding NHTF-specific Allocation Plan requirements to the ConPlan's Annual Plan rule.

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

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

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

A state's or subgrantee's Allocation Plan must describe the application requirements for recipients, and the criteria that will be used to select applications for funding. Allocation Plans must give funding priority to applications based on a number of features listed in the statue, including:

- Geographic diversity. Neither the statute nor interim rule explicitly mention rural areas.
- The extent to which rents are affordable, especially for ELI households.
- The length of time rents will remain affordable.
- The project's merit. The interim rule gives as examples, housing that serves people with special needs, housing accessible to transit or employment centers; and, housing that includes green building and sustainable development elements.

HUD is expected to provide a formal CPD notice providing guidance regarding the NHTF Allocation Plan. NLIHC has drafted a model allocation plan with recommendations for the first year. It can be found at http://nlihc.org/issues/nhtf/implementation.

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

Period of affordability. The statute does not prescribe how long NHTF-assisted units must remain affordable. The interim regulation requires both rental and homeowner units to be affordable for at least 30 years, allowing states and any subgrantees to have longer affordability periods. The 30-year affordability period reflects HUD's prediction that the NHTF will be used in conjunction with Low Income Housing Tax Credits

(LIHTCs).

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

The statute allows the poverty level to substitute for 30% of AMI in places where 30% of AMI is lower than the federal poverty level for the purpose of eligibility for NHTF assisted housing. At the time the bill was drafted, the poverty level was lower than 30% of AMI in all but a few rural localities. The statute does not address rent setting other than to call for rents to be affordable. HUD set the rents at 30% of 30% of AMI or 30% of the poverty level, whichever is greater, by regulation.

In the ensuing years, the federal poverty level has risen incrementally based on predetermined factors, but with stagnating wages, AMI has not gone up as much. Now 30% of AMI is lower than the poverty level in 82.6% of the country, expanding the pool of eligible households considerably. Applying this standard to rent setting would allow developers to set rents at levels that are even more unaffordable than 30% of 30% of AMI for ELI households. NLIHC urges states to seek projects that achieve the deepest possible affordability.

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 interim rule does not address tenants' rights to participate in decision making. However, the interim rule provides for a number of tenant protections, including:

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

  The Consortium for Citizens with Disabilities has been trying to convince HUD that these preference provisions might cause states to interpret the rule to mean that they can only do single-site permanent supportive housing, not integrated supportive housing.

Homeowner provisions. As provided by the statute, up to 10% of NHTF money may be used to produce, preserve, or rehabilitate homeowner housing. NHTF money may also be used to provide assistance with down payments, closing costs, or interest rate buy-downs. As required by the statute, homes must be bought by first-time homebuyers with income below 50% of AMI who have had HUD-certified counseling, and the home must be their principle residence. The affordability period is 30 years.

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

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

Lease-purchase. Mirroring the HOME regulations, the interim rule allows NHTF money to help a homebuyer through a lease-purchase arrangement, as long as the home is purchased 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.

General eligible activities. The interim 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. No more than 10% of a state's annual allocation may be used for homeownership. NHTF-assisted units may be in a project that also contains non-NHTF-assisted units. Assistance may be in the form of equity investments, loans (including no-interest loans and deferred payment loans), grants, and other forms. The interim rule limits NHTF assistance to permanent housing.

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

Timeframe for demolition or for acquisition of vacant land. Use of NHTF money for demolition or for acquiring vacant land is limited to projects for which construction of "particular, affordable housing" can reasonably be expected to start within one year.

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

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

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

Loan repayments. NHTF may be used to pay principle and interest on construction loans, bridge financing, a guaranteed loan, and others.

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

The interim rule caps at one-third, the amount of a state's annual grant that may be used for operating cost assistance and for contributing to an operating cost assistance reserve. The preamble explains that HUD established the cap because it 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 the NHTF will be used in combination with other sources to produce and preserve units, mostly in mixed-income projects.

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

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

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

HUD anticipates providing guidance about operating cost assistance and reserves sometime in the future.

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

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

Project-specific administration costs. The staff and overhead expenses of a state or subgrantee directly related to carrying out development *projects* may also be eligible administration and planning costs. Examples include loan processing, work specs, inspections, housing counseling, and relocation services. As with HOME, staff and overhead costs directly related to carrying out projects (as distinct from the NHTF program in general) may instead be charged as project-related soft costs or relocation costs, and therefore not subject to the 10% cap. However, housing counseling must be counted as an administration cost, as per the statute.

Other administration and planning costs.

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

Public housing. In general, the interim regulation prohibits the use of NHTF to rehabilitate or construct new public housing. Nor may NHTF-assisted housing get public housing operating assistance during the period of affordability. The interim rule does allow a project to contain both NHTF-assisted units and public housing units.

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

1. NHTF resources may be used to rehabilitate existing public housing units that are converted under the Rental Assistance Demonstration (RAD) to project-based rental assistance. Currently up to 185,000 public housing units may be converted under RAD, and HUD continues to seek Congressional approval to allow all public housing units to be converted.
2. NHTF resources may be used to rehabilitate or build new public housing as part of the Choice Neighborhoods Initiative (CNI), and to rehabilitate or build new public housing units that have been allocated and will receive Low Income Housing Tax Credit assistance. Public housing units constructed with NHTF must replace public housing units removed as part of a CNI grant or as part of a mixed-finance development under Section 35 of the Housing Act of 1937. The number of replacement units cannot be more than the number of units removed. Public housing units constructed or rehabilitated with NHTF must receive Public Housing Operating Fund assistance, and may receive Public Housing Capital Fund assistance.

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

Ineligible activities. Although not in the statute, the interim rule prohibits the use of NHTF money for a project previously assisted with NHTF during the period of affordability, except for the first year after completion.

Fees for administering the NHTF program are not eligible uses (e.g. servicing or origination fees). However, annual fees may be charged to owners of NHTF-assisted rental projects to cover a state's or subgrantee's cost of monitoring compliance with income and rent restrictions during the affordability period.

The statute expressly prohibits use of NHTF dollars for "political activities, lobbying, counseling, traveling, or endorsements of a particular candidate or party."

NHTF must be committed within two years. As required by the statute, the interim regulation requires NHTF dollars to be committed within 24 months, or HUD will reduce or recapture uncommitted NHTF dollars. Committed is defined in the interim rule as the state or subgrantee having a legally binding agreement with a recipient owner or developer for a specific local project that can reasonably be expected to begin rehabilitation or construction within 12 months. If NHTF is used to acquire standard housing for rent or for homeownership, commitment means the property title will be transferred to a recipient or family within six months. The interim rule adds that NHTF money must be spent within five years.

Public accountability. The statute requires each state to submit an annual report to HUD describing activities assisted that year with NHTF dollars and demonstrating that the state complied with its annual Allocation Plan. This report must be available to the public. The interim rule requires jurisdictions receiving NHTF dollars to submit a performance report according to the ConPlan regulations. The NHTF performance report must describe a jurisdiction's NHTF program accomplishments, and the extent to which the jurisdiction complied with its approved NHTF Allocation Plan and all of the requirements of the NHTF rule. NLIHC will monitor how HUD addresses performance reporting through changes to the ConPlan template.

The interim regulation presents a number of data collection obligations, including actions taken to comply with Section 3 hiring and contracting goals, and the extent to which each racial and ethnic group, as well as single-heads of households, have applied for, participated in, or benefitted from the NHTF. In general, records must be kept for five years after project completion. Records regarding individual tenant income verifications, project rents, and project inspections must be kept for the most recent five-year period until five years after the affordability period ends. Similar language applies to homeowner activities. Regarding displacement, records must be kept for five years after all people displaced have received final compensation payments. The public must have access to the records, subject to state and local privacy laws.

GETTING READY FOR STATE AND LOCAL IMPLEMENTATION

Advocates are urged to be actively engaged in NHTF implementation at the state level, and perhaps also at the local level. In December 2014, FHFA lifted the temporary suspension on set-asides by Fannie Mae and Freddie Mac of the assessment on the volume of their new business, Therefore, money should be transferred to the NHTF soon after February 2016. HUD anticipates states will receive their first NHTF allocations in summer 2016.

Designation of state entity. States must choose a state entity, such as a housing finance agency, a housing department, or a tribally designated housing entity to receive NHTF money from HUD and to administer the state's NHTF program. HUD's list of designated entities is at https://www.hudexchange.info/programs/htf/grantees.

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

- For advocates only accustomed to ConPlan advocacy at the local level because a locality gets CDBG and HOME directly from HUD, the state NHTF process will be an important new experience.
- To better ensure that NHTF dollars get to a locality in the appropriate amounts and for the appropriate uses, it will be necessary for advocates to learn how to influence their state Allocation Plan and ConPlan first.

Advocates should find out which state agency is responsible for the ConPlan – it might not be the same agency that receives and administers the NHTF. Advocates should inform the ConPlan agency (and the NHTF state agency if it is different) that they are interested in being informed about and participating in the process for planning where and how NHTF money will be used.

Keep in mind that the amount of NHTF your a will receive is based on ELI and VLI households spending more than half of their income for rent and utilities (severely cost-burdened), and on the shortage of rental homes that are affordable and available to ELI and VLI households; with 75% of the formula's weight assigned to ELI factors.

For the initial NHTF year, and for each year going forward, it will be important for advocates to work first at the state level, and then perhaps 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, work to ensure that rural areas are included relative to their need in comparison to urban areas, based on cost-burdened ELI renter households and the shortage of affordable rental homes for ELI households.
  - At the state level, work to ensure that there is a fair distribution among localities throughout the state, based on cost-burdened ELI renter households and the shortage of affordable rental homes for ELI households.
  - At the local level, advocate to ensure the neighborhoods you care about are a part of the geographic mix, keeping in mind the obligation to affirmatively further fair housing.
- Ensure that the agency responsible for drafting the NHTF Allocation Plan writes it to meet the genuine, high-priority housing needs of extremely low income people.
  - Advocate for NHTF-assisted projects that are truly affordable to extremely low income people, that they do not pay more than 30% of their income for rent and utilities. The statute offers advocates a handle because it requires funding priority to be based on the extent to which rents are affordable for ELI households.
  - Advocate for NHTF-assisted projects that will be affordable to extremely low income households for as long as possible – aiming for at least 50 years. The statute offers advocates a handle because it requires funding priority to be based on the extent

of the duration for which rents will remain affordable.
  - Advocate for projects that have features that give them merit.
  - Advocate for the types of projects (new construction, rehabilitation, preservation) that are most needed.
  - Advocate for the bedroom size mix that is most needed.
  - Advocate for the populations to be served that are the ones who most need affordable homes (large families, people with special needs, people who are homeless, senior citizens).
- Make sure that the public participation obligations are truly met, that the state does not just "go through the motions".
- Make sure that NHTF-assisted projects affirmatively further fair housing.

FORECAST

HUD is developing guidance to assist grantees and program partners in designing and implementing their programs.

NLIHC is engaged in a multi-pronged strategy to assure a successful first year as possible. NLIHC is training state and local advocates on what the NHTF allocation plan is and how advocates can influence it. NLIHC is also consulting with developers with expertise producing and operating rental housing that is deeply affordable for ELI households beyond relying on federal housing vouchers to advice prospective applicants for NHTF dollars on best practices.

NLIHC will be monitoring implementation throughout the year.

FOR MORE INFORMATION

NLIHC's National Housing Trust Fund webpage, www.nhtf.org

- A five-part series all about the new rules regarding implementation of the NHTF http://nlihc.org/issues/nhtf/videos
- PowerPoint slides highlighting the key features of the NHTF law and regulations, http://nlihc.org/sites/default/files/NHTF_Powerpoint_0915.pdf
- Key features of the NHTF law and interim regulations presented in 15 short papers broken down by topics, http://nlihc.org/issues/nhtf/resources

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

HUD NHTF webpage, https://www.hudexchange.info/htf, including FAQs, https://www.hudexchange.info/resource/4420/htf-faqs ■

National Housing Trust Fund: Funding

By Sheila Crowley, President and CEO, National Low Income Housing Coalition

The National Housing Trust Fund (NHTF) was established in July 2008 as part of the Housing and Economic Recovery Act of 2008 (HERA). This law requires Fannie Mae and Freddie Mac to set aside 4.2 basis points of their volume of business each year for the National Housing Trust Fund (NHTF) and Capital Magnet Fund (CMF). The NHTF is to receive 65% and the CMF 35%. While this requirement was temporally suspended when the companies were taken into conservatorship in September 2008, the suspension was lifted in December 2014. The companies have been directed to begin setting aside the funds on January 1, 2015 and make them available for distribution 60 days after December 31, 2015.

Based on Fannie and Freddie's 2015 reports filed with the Securities Exchange Commission, NLIHC estimates that there will be $186.6 million to distribute for NHTF projects in 2016. This is much lower than the amount originally estimated in 2008 for the NHTF.

HERA also permits Congress to designate other "appropriations, transfers, or credits" to the two funds. This provision provides the statutory authority for dedicated sources of funding for the NHTF in addition to the assessment on Fannie Mae and Freddie Mac. At least two Members of Congress have indicated they want to introduce legislation to create more funding for the NHTF, given how small the 2016 funding level is.

Securing permanent, dedicated sources of revenue for the NHTF is NLIHC's top priority. Our goal is to raise sufficient funds to expand the affordable housing options for 3.5 million extremely low income households over ten years. Although ambitious, an investment of this magnitude is possible without increasing the federal deficit simply by better allocating the total subsidies that the federal government currently provides for housing through direct spending and ax expenditures.

NLIHC is pursuing two other avenues of funding, both of which are long term projects.

HOUSING FINANCE REFORM

See also: *Fannie Mae, Freddie Mac, and Housing Finance Reform*

Fannie Mae and Freddie Mac serve as the secondary mortgage provider for many mortgages made in the United States. In the wake of the financial meltdown precipitated by the foreclosure crisis in 2008, the federal government had to take them over. They were taken into conservatorship by their regulator, the FHFA, a status that continues today.

The Obama Administration, many Members of Congress, and numerous analysts and pundits want to end the conservatorships, wind down Fannie Mae and Freddie Mac, and establish a new model for the secondary mortgage market. While some would like to nationalize the housing finance system and others would like to privatize it, most agree that a hybrid system of private capital backed by federal mortgage insurance is the preferred approach.

As Congress and the Administration moved toward housing finance reform in the last Congress, NLIHC and all NHTF supporters worked to ensure that the NHTF was included in any new housing finance system and that the new system provides robust funding for the NHTF. Three bills emerged that provided significant new resources for the NHTF.

- Senate Committee on Banking, Housing, and Urban Affairs Chair Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) worked together to introduce a bipartisan housing finance reform bill that would have wound down Fannie Mae and Freddie Mac, and created a new Federal Mortgage Insurance Corporation (FMIC) to provide government backing to mortgage securities that meet certain criteria. S. 1217 provided for a 10 basis point fee applied to these securities that would be used to fund the NHTF, the CMF, and a new Market Access Fund (MAF). This fee was estimated to eventually generate $5 billion a year. The Johnson-Crapo bill would allocate 75% of the amounts collected through this fee to the NHTF, estimated to be $3.75 billion a year.

- House Committee on Financial Services Ranking Member Maxine Waters (D-CA) released draft housing finance reform legislation entitled "Housing Opportunities Move the Economy (HOME) Forward Act of 2014." Her bill also would wind down Fannie Mae and Freddie Mac, but would replace them with a newly created lender-owned cooperative, the Mortgage Securities Cooperative (MSC). Like the Johnson-Crapo bill, the Waters bill would require a 10 basis point fee assessment on users of the new system and direct 75% of the amounts collected to the NHTF. No bill was introduced.
- Representatives John Delaney (D-MD), John Carney (D-DE), and Jim Himes (D-CT) introduced H.R. 5055, the "Partnership to Strengthen Homeownership Act of 2014," which also would gradually eliminate Fannie and Freddie and replace them with a beefed-up Ginnie Mae that would be a stand-alone agency, no longer part of HUD. Their bill also included the 10 basis point assessment with 75% to the NHTF, but because they added all Federal Housing Administration (FHA) insured mortgages to those covered by the new system, the fee was estimated to generate another $1 billion a year, for a total of $6 billion or $4.5 billion a year for the NHTF.

NLIHC has estimated state allocations if $5 billion becomes available for the NHTF, http://nlihc.org/sites/default/files/NHTF_State_Allocations_5bill.pdf.

The Johnson-Crapo bill was voted out of the Senate Banking Committee on May 15, 2014 by a bipartisan vote of 13-9.The Obama Administration fully endorsed the bill. But the bill was criticized by the right and the left for doing too much or not enough to assure access to mortgages to all credit worthy borrowers and was never taken up by the full Senate.

Also introduced in the 113th Congress was H.R. 2767, the "Protecting American Taxpayers and Homeowners (PATH) Act of 2013." Its author was House Financial Services Committee Chair Jeb Hensarling (R-TX). The PATH Act would do away with and not replace Fannie Mae and Freddie Mac. It would also eliminate the NHTF and the CMF. The bill was voted out of the Financial Services Committee on July 23, 2013 by a partisan vote of 30-27. Two Republicans and all Democrats opposed the bill. The bill was not taken up by the full House. It was opposed by virtually every segment of the housing industry.

In 2015, Representatives Delaney, Carney, and Himes introduced an updated version of their "Partnership to Strengthen Homeownership Act" (H.R. 1491), the only comprehensive housing finance reform legislation introduced to date in the 114th Congress. There has not been a single hearing in the House or Senate.

In the meantime, several hedge funds and some civil rights and consumer advocacy groups have been pushing the Obama administration and FHFA to recapitalize and release the GSEs from conservatorship. They have authored several proposals, some that would provide funding for the NHTF. While the hedge funds stand to reap financial gains through "recap and release," the civil rights and consumer advocacy organizations argue that the indefinite conservatorship has created uncertainty in the mortgage market, leading mortgages lenders to tighten their credit standards in a way that disproportionally impacts racial minority homebuyers. They also contend that without recap and release, Fannie and Freddie's financial health will deteriorate.

However, recap and release will not necessarily increase affordable lending and does not move Congress any closer to passing housing finance reform legislation, which promises to generate billions of new dollars for rental housing affordable to families with extremely low incomes. For this reason, NLIHC opposes recapitalization efforts.

It is almost certain that there will be no changes to the status of Fannie and Freddie before 2017 and a new administration and Congress. But conservatorship is unsustainable and reform legislation will be taken up eventually. Advocates must be vigilant to protect the gains made on the NHTF in the Johnson-Crapo and Delaney-Carney-Himes bills and assure that when new legislation is taken up, robust funding for the NHTF must be included.

MORTGAGE INTEREST DEDUCTION REFORM

See also: *Mortgage Interest Deduction Reform*

While dedicated revenue from the current and future housing finance system is the most immediate route to funding for the NHTF, it is essential to secure significantly more revenue if the NHTF is to fully address the national shortage of housing that extremely low income people can afford. The place to find revenue of that magnitude is in the tax code. If tax expenditures that subsidize higher income homeowners were modified to make them fairer and flatter, it is possible to generate the level of revenue needed to end homelessness and assure housing security for very poor people.

The mortgage interest deduction (MID) has long been considered an untouchable portion of the tax code, but changes to the MID are now part of the debate on comprehensive tax reform and deficit reduction. Polling shows broad public support for modifying, not eliminating, the MID. The challenge for housing advocates is to ensure that a significant share of any revenue raised by changing the MID stays in housing.

The United for Homes campaign led by NLIHC proposes two modest changes to the MID. First, we would reduce the size of a mortgage eligible for a tax break from $1 million to $500,000, i.e. the interest on only the first $500,000 of a mortgage would be eligible for tax relief. Second, we would convert the deduction to a 15% non-refundable tax credit. We would direct all revenue raised from these changes, estimated to be $213 billion over ten years, to the NHTF. Capping the amount of debt eligible for the MID would generate almost $95 billion dollars over a ten-year period.

Not only would these changes produce revenue for the NHTF, they would also make the tax code work better for low and moderate income homeowners. All homeowners with mortgages would be eligible for tax breaks, not just those who have enough income to file itemized tax returns. Under this proposal, the number of homeowners with mortgages who would get tax breaks would increase from 33 million to 48 million, with most ff the increase being households with incomes less than $100,000 a year.

Representative Keith Ellison (D-MN) introduced H.R. 1662, the "Common Sense Housing Investment Act of 2013," in the 114th Congress. His bill mirrored the United for Homes campaign proposal to reform the MID and directs most of the revenue raised to the NHTF. The United for Homes campaign supports his bill, which has six co-sponsors.

Numerous observers think the mortgage interest deduction is ripe for reform, but only as part of comprehensive tax reform. Comprehensive tax reform is inevitable and overdue, but not politically achievable this year. When it does occur, the MID will change. It is imperative that all housing advocates speak with one voice to make sure that savings gained from MID reform be kept in housing and be used to address the long neglected housing needs of extremely low income renters. We cannot wait until reform is about to occur. The groundwork must be laid now.

HOW ADVOCATES CAN TAKE ACTION

- Advocates should be actively engaged in the process of NHTF implementation in their states to ensure that the first round of funding is successful.

On Housing Finance Reform

- Advocates should urge their Senators and Representatives to support housing finance reform legislation that maximizes resources to the NHTF and oppose any housing finance reform legislation that would negatively impact the NHTF.

On Mortgage Interest Deduction Reform

- Advocates should urge their Representatives to co-sponsor H.R. 1662, the "Common- Sense Housing Investment Act of 2015."
- Advocates should support inclusion of the proposed MID changes in any comprehensive tax reform package, and make sure a significant portion of the new revenue goes to the NHTF.

FOR MORE INFORMATION, GO TO:

www.NHTF.org

www.UnitedforHomes.org ■