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.

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

Population Targeted: Extremely low-income (ELI) renters, renters with income equal to or less than 30% of the area median income (AMI), or equal to or less than the federal poverty line.

Funding: In calendar year 2023 $382 million was available, down from $740 million in 2022 and $690 million in 2021, but up from $323 million in 2020.

See Also: The *National Housing Trust Fund: Funding, Fannie Mae, Freddie Mac* section of this guide.

The national Housing Trust Fund (HTF) was established as a provision of the "Housing and Economic Recovery Act of 2008," which was signed into law by President George W. Bush on July 30, 2008. The primary purpose of the HTF is to close the gap between the number of extremely low-income renter households and the number of homes renting at prices they can afford. NLIHC interprets the statute as requiring at least 90% of the funds to be used to build, rehabilitate, preserve, or operate rental housing (HUD guidance sets the minimum at 80%). In addition, at least 75% of the funds used for rental housing must benefit extremely low-income households. When there is less than $1 billion made available for the HTF in a fiscal year, a state must use 100% of its HTF annual allocation for the benefit of ELI households.

In the years since enactment of the HTF, the shortage of rental housing that the lowest-income people can afford has remained at around seven million units. The HTF offers the means to prevent and end homelessness if funded at the level advocated by NLIHC.

HISTORY AND ADMINISTRATION

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

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

On April 4, 2016, HUD announced that there was nearly $174 million for the HTF in calendar year 2016. On May 5, 2016, HUD published a notice in the *Federal Register* indicating how much HTF money each state and the District of Columbia would receive in 2016. The amounts available in subsequent years were $219 million (2017), $267 million (2018), $248 million (2019), $323 million (2020), $690 million (2021), $740 million (2022) and $382 million for 2023.

HUD published proposed regulations to implement the HTF on October 29, 2010. NLIHC and others provided extensive comments on how the proposed regulations could be improved.

On January 30, 2015, an HTF Interim Rule was published in the *Federal Register*. HUD explained that after states gained experience implementing the HTF, HUD would open the Interim Rule for public comment and possibly amend the rule. HUD published a notice in the Federal Register on April 26, 2021, inviting public comment about the HTF Interim Rule. NLIHC's comment letter supported some features of the interim HTF regulations while urging key improvements. According to communication from HUD staff to NLIHC staff, a final rule is not anticipated in 2024.

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

In February 2017, NLIHC published *Housing the Lowest Income People: An Analysis of National Housing Trust Fund Draft Allocations Plans*. Following that, in September 2018, NLIHC published a preliminary report examining the 2016 HTF awards, *Getting Started: First Homes Being Built with National Housing Trust Fund Awards*, later supplementing the report with additional data as more states provided the necessary information ("Supplemental Update to *Getting Started*"). In addition, in September 2022, NLIHC published *The National Housing Trust Fund: An Overview of 2017 State Projects*, which addressed how states proposed awarding their 2017 HTF allocations. On October 27, 2022 another HTF report was released, *The National Housing Trust Fund: A Summary of 2018 State Projects*. As *Advocates' Guide* went to press, NLIHC was preparing a Summary of 2019 and 2020 state projects.

PROGRAM SUMMARY

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

The HTF is a block grant to states. The funds are distributed by formula to states based on four factors that only consider renter household needs. Seventy-five percent of the value of the formula goes to the two factors that reflect the needs of ELI renters because the HTF statute requires the formula to give priority to ELI renters. The other two factors concern the renter needs of very low-income (VLI) households, those with income between 31% and 50% of AMI.

A state entity administers each state's HTF program and awards HTF to other entities to create or preserve affordable housing. The state designated entity might be the state housing finance agency (HFA), a state department of housing or community development, or a tribally designated housing entity. HUD's list of designated entities is available at https://www.hudexchange.info/programs/htf/grantees (although the staff on that list is not kept up-to-date). NLIHC attempts to keep the key staff of state designated entities up-to-date at https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations (scroll down to select a state).

KEY PROGRAM DETAILS

FUNDING

As a result of the decision by FHFA to lift the suspension on Fannie Mae's and Freddie Mac's obligations to fund the HTF and the CMF, the first funds for the HTF became available for distribution to the states in summer 2016. The amount of funding was determined by the volume of the business conducted by Fannie and Freddie in calendar year 2015, which yielded nearly $174 million for the HTF for 2016. Based on their total business for 2017, 4.2 basis points provided $219 million for the HTF in 2017, $267 million in 2018, $248 million in 2019, $323 in million in 2020, $690 million for 2021, $740 million for 2022, and $382 for 2023. Due to the Federal Reserve's efforts to tamp inflation in 2022 by raising interest rates, fewer homebuyers took out new mortgages or sought to refinance existing mortgages, resulting in the reduction in funds available for the HTF in 2023.

TARGETED TO RENTAL HOUSING

The overview section of the Interim Rule declares that the HTF program will provide grants to states to increase and preserve the supply of housing with primary attention to rental housing for ELI and VLI households. ELI is defined as income equal to or less than 30% of the area median income (AMI) or income equal to or less than the federal poverty line. VLI is generally defined as income between 31% and 50% AMI; the HTF statute adds that for rural areas VLI may also be income less than the federal poverty line. The statute limits the amount of HTF used for homeownership activities to 10%, inferring that at least 90% of a state's annual HTF allocation must be used for rental housing activities. However, the preamble to the Interim Rule interprets the law differently, asserting that only 80% must be used for rental activities.

INCOME TARGETING

The HTF statute requires that at least 75% of each grant to a state be used for rental housing that benefits ELI households and that no more than 25% may be used to benefit VLI renter households. For homeowner activities, the statute requires that all assisted homeowners have income equal to or less than 50% of AMI. When there is less than $1 billion for the HTF in an allocation year, the rule requires 100% of a state's allocation benefit ELI households.

HTF DISTRIBUTION FORMULA

To distribute HTF dollars, the statute established a formula based on the number of ELI and VLI households with severe rent 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. The minimum HTF allocation a state (or the District of Columbia) can receive is $3 million. On December 4, 2009, HUD issued a proposed rule, endorsed by NLIHC, describing the factors to be used in the formula.

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

NLIHC has estimated state allocations if the HTF ever reaches $5 billion, available at http://bit.ly/1m9orp0.

STATE DISTRIBUTION OF HTF MONEY

The statute requires states to designate an entity, such as a housing finance agency, housing and community development entity, tribally designated housing entity, or any other instrumentality of the state to receive HTF dollars and administer an HTF program. Each state must distribute its HTF dollars throughout the state according to the state's assessment of priority housing needs as identified in its approved Consolidated Plan (ConPlan). HUD's list of designated entities is available at https://www.hudexchange.info/programs/htf/grantees and more up-to-date staff of these entities is available from NLIHC at https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations (scroll down to Select a State). See also the *Consolidated Planning Process* section in Chapter 8 of this *Advocates' Guide*.

ALLOCATION PLANS

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

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

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

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

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

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

PUBLIC PARTICIPATION

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

PERIOD OF AFFORDABILITY

The statute does not prescribe how long HTF-assisted units must remain affordable. The interim regulation requires rental units to be affordable for at least 30 years, allowing states and any subgrantees to have longer affordability periods. The 30-year affordability period reflects HUD's prediction that the HTF will be used in conjunction with Low-Income Housing Tax Credit (LIHTC) equity. The HTF campaign had recommended a 50-year affordability period. Twenty-one states addressed longer affordability plans in their draft 2016 HTF Allocation Plans. Of these, three states and the District of Columbia required longer affordability periods (California, 55 years; Maine, 45 years; and the District of Columbia and Maryland, 40 years). Since then, Washington's HTF Allocation Plan indicates 50 years in King County or Seattle, and 40 years elsewhere. The other states either awarded competitive points or gave priority to projects with longer affordability periods.

MAXIMUM RENT

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

NLIHC urges advocates to convince their states to have their Allocation Plans require HTF-assisted units have maximum rent set at "the *lesser* of" 30% of 30% AMI or 30% of the poverty line. Wherever the federal poverty guideline is higher than 30% of AMI, renters with household income at 30% of AMI will be cost burdened by the maximum rent. Households with income around 20% of AMI (approximately the income of households with Supplemental Security Income, SSI) will almost always be severely cost burdened, paying more than 50% of their income.

In 2016 NLIHC alerted HUD to the fact that in 92% of the counties in the nation, 30% of the poverty line was greater than 30% of 30% AMI. Advocates can find the 2016 values for their states and counties at http://bit.ly/2bnPRYZ.

In 2021 NLIHC took another look at this problem and found that maximum rents are set at 30% of the federal poverty guideline in the vast majority of all HUD Fair Market Rent (FMR) areas for apartments larger than one bedroom: 87.7% for two-bedroom units, 94.8% for three-bedroom units, and 96.7% for four-bedroom units. Even 49.6% of FMR areas used the federal poverty guideline for one-bedroom units. Maximum rents based on the federal poverty guideline are even more common in non-metro FMR areas than in metro FMR areas. Absent rental assistance, households at 30% AMI renting units with at least two bedrooms will be cost-burdened by maximum HTF rents in most HUD FMR areas.

This is particularly concerning given that the 30% standard of affordability already overestimates what poorer and larger households can afford in terms of housing costs. Using the federal poverty guideline disproportionately impacts larger, poorer households who already have greater difficulty affording rents limited to 30% of their income. The negative impacts, moreover, are most apparent in the poorest communities where the federal poverty guideline is much higher than 30% of AMI. NLIHC included this analysis in response to HUD's April 26, 2021 request for comments regarding the interim regulation. NLIHC also urged HUD to change the rent HTF-assisted tenants pay to *the lesser* of 30% of AMI or 30% of the poverty guideline in order to minimize tenants paying more than 30% or even 50% of their income for rent.

Although NLIHC is concerned about HTF-assisted households experiencing rent cost burdens, NLIHC also recognizes that underwriting developments with variable Brooke rents (households paying 30% of their actual, adjusted income) can be very difficult. One possible approach to avoid or minimize factors causing HTF-assisted households to be cost-burdened is to give priority to HTF projects that have a mix of units with fixed rents set at 30% of 30% AMI, 30% of 20% AMI, 30% of 15% AMI, and 30% of 10% AMI.

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

TENANT PROTECTIONS AND SELECTION

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

- Owners of HTF-assisted projects may not reject applicants who have vouchers or are using HOME tenant-based rental assistance.
- There must be a lease, generally for one year.
- Owners may only terminate tenancy or refuse to renew a lease for good cause.
- Owners must have and follow certain tenant selection policies. Tenants must be selected from a written waiting list, in chronological order, if practical.

- Eligibility may be limited to or preference may be given to people with disabilities if:
  - The housing also receives funding from federal programs that limit eligibility; or
  - The disability significantly interferes with the disabled person's ability to obtain and keep housing, the disabled person could not obtain or remain in the housing without appropriate supportive services, and the services cannot be provided in non-segregated settings.

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

HOMEOWNER PROVISIONS

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

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

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

LEASE-PURCHASE

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

GENERAL ELIGIBLE ACTIVITIES

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

MANUFACTURED HOUSING

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

TIMEFRAME FOR DEMOLITION OR FOR ACQUISITION OF VACANT LAND

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

ELIGIBLE PROJECT COSTS

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

Development Hard Costs

Development hard costs are the actual costs of construction or rehabilitation, including demolition, utility connections, and site improvements such as onsite roads, sewers, and water connections.

Related Soft Costs

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

Loan Repayments

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

Operating Costs and Operating Cost Assistance Reserve

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

The Interim Rule caps at one-third of the amount of a state's annual HTF allocation, the amount of HTF that may be used for operating cost assistance and for contributing to an operating cost assistance reserve. The preamble to the rule explains that HUD established the cap because it views the HTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households. HUD assumes that the HTF will be used in combination with other sources to produce and preserve units, mostly in mixed-income projects.

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

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

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

Some general thoughts about using the HTF for operating cost assistance were prepared by NLIHC's volunteer Developer Advisory Group, *HTF Operating Assistance Options and Considerations*.

Several states wanted to use HTF for operating assistance in 2016 but found that the Interim Rule's limited definition of operating costs rendered the option financially infeasible. These states noted that the Interim Rule's definition did not include components typically considered to be part of operating cost by the development industry, such as property management and personnel costs associated with maintenance. When brought to HUD's attention, HUD indicated a willingness to consider waivers in the future, as well as to modify the rule in its final stage. In response to HUD's April 26, 2021 request for comment regarding the interim rule, NLIHC's comment letter urged HUD to expand the allowable components eligible under the definition of operating costs.

In 2017 Oklahoma awarded HTF funds to one project to fund an operating cost reserve. In 2018 California made four such awards. As the HTF grows, other states are likely to also use some portion of their annual HTF allocation to fund a project's operating cost reserve.

Administration and Planning Costs

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

General Management, Oversight, and Coordination Costs

HTF may be used for a state's or subgrantee's costs of overall HTF program management, coordination, and monitoring. Examples include staff salaries and related costs necessary to ensure compliance with the regulations and to prepare reports to HUD. Other eligible costs include equipment, office rental, and third-party services 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 HTF program in general) may instead be charged as project-related soft costs or relocation costs and therefore not be subject to the 10% cap. However, housing counseling must be counted as an administration cost as per the statute.

Other Administration and Planning Costs

- Costs of providing information to residents and community organizations participating in the planning, implementation, or assessment of HTF projects.
- Costs of activities to affirmatively further fair housing.
- Costs of preparing the ConPlan, including hearings and publication costs.

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

PUBLIC HOUSING

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

The Interim Rule allows HTF use for two categories of public housing:

- HTF resources may be used to rehabilitate existing public housing units that are converted under the Rental Assistance Demonstration (RAD) to project-based rental assistance. Currently, up to 455,000 public housing units may be converted under RAD. For more about RAD, see the *Rental Assistance Demonstration* entry in Chapter 4 of this *Advocates' Guide.*
- HTF resources may be used to rehabilitate or build new public housing as part of the Choice Neighborhoods Initiative (CNI) and to rehabilitate or build new public housing units that will receive LIHTC assistance. Public housing units constructed with HTF must replace public housing units removed as part of a CNI grant or as part of a mixed-finance development under Section 35 of the "Housing Act of 1937." The number of replacement units cannot be more than the number of units removed. Public housing units constructed or rehabilitated with HTF must receive Public Housing Operating Fund assistance and may receive Public Housing Capital Fund assistance.

NLIHC is extremely concerned about these provisions regarding public housing because using HTF to rehabilitate or build new public housing units to replace demolished units will not increase housing opportunities for ELI households. RAD projects are generally multi-million dollar endeavors (in the range of $20 million to $35 million), relying heavily on the LIHTC and other sources such as conventional mortgages. Scarce HTF funds should not be diverted for these very large-scale conversions. In addition, extensive use of HTF for RAD could result in an overall loss of resources for housing if Congress chooses to reduce appropriated resources for public housing due to the availability of HTF resources.

INELIGIBLE ACTIVITIES

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

HTF MUST BE COMMITTED WITHIN TWO YEARS

As required by the statute, the interim regulation requires HTF dollars to be committed within 24 months, or HUD will reduce or recapture uncommitted HTF dollars. "Committed" is defined in the Interim Rule as the state or subgrantee having a legally binding agreement with a recipient owner or developer for a specific local project that can reasonably be expected to begin rehabilitation or construction within 12 months. If HTF is used to acquire standard housing for rent or for homeownership, commitment means the property title will be transferred to a recipient or family within six months. The Interim Rule adds that HTF money must be spent within five years. Notice CPD 18-12 provides guidance to grantees about the commitment and expenditure requirements and explains how HUD determines compliance. In recent appropriations acts, Congress has suspended the two-year commitment provision for HOME; NLIHC continues to advocate for suspension of the two-year commitment requirement for HTF.

PUBLIC ACCOUNTABILITY

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

The interim regulation presents numerous data collection obligations, including actions taken to comply with Section 3 hiring and contracting goals, and the extent to which each racial and ethnic group, as well as single heads of households, have applied for, participated in, or benefitted from the HTF.

HUD has been posting HTF National Production Reports each month showing fairly detailed information. Advocates might be interested in units by: number of bedrooms (page 3), race and ethnicity (page 4), median income, type of rental assistance, and size of household (page 5), and on page 6 type of household and other unit characteristics (e.g. targeted to special needs populations).

In general, records must be kept for five years after project completion. Records regarding individual tenant income verifications, project rents, and project inspections must be kept for the most recent five-year period until five years after the affordability period ends. Similar language applies to homeowner activities. Regarding displacement, records must be kept for five years after all people displaced have received final compensation payments. The public must have access to the records, subject to state and local privacy laws.

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

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

THE HTF ALLOCATION PLAN

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

- For advocates only accustomed to ConPlan advocacy at the local level because they have focused on attempting to influence how their local government allocates local Community Development Block Grant (CDBG) and HOME funds, the state HTF process will be an important new experience.
- To better ensure that HTF dollars get to a locality in the appropriate amounts and for the appropriate uses, it will be necessary for advocates to learn how to influence their state Allocation Plan and ConPlan.
- Observing 2018 HTF Allocation Plans, NLIHC found states inserting "HTF-Specific" sections or an HTF-specific appendix to their ConPlan Annual Action Plans that provide a stand-alone HTF presentation. However, these are at the very back of long documents, so advocates will need to do a key word search.
- The statute requires states to consider six priority factors. NLIHC asserts that genuine affordability, length of affordability, and merit features of a proposed project warrant greater relative weight or priority than the other three statutory priority factors. Too many states

give disproportionate weight to two of the statutory factors: the ability of an applicant to obligate HTF funds and carry out projects in a timely manner, and the extent to which the application makes use of other funding sources. NLIHC thinks these latter two should be threshold factors that ought to be a first-cut consideration before weighing affordability, merit, and length of affordability. If an applicant lacks the capacity to obligate funds and carry out a project in timely fashion, it should not make the initial cut, and given the nature of developing affordable housing, especially housing containing some units affordable to ELI renter households, other sources of funding have always been integral to project financing. See NLIHC's Model Allocation Plan for ideas, http://bit.ly/1WqjT0J.

Advocates should learn which agency in their state administers the HTF program and get to know the person responsible. Indicate interest in being informed about and participating in the process for planning where and how HTF money will be used. Although HUD's list of state-designated HTF agencies is available at http://bit.ly/1ONwHwN, NLIHC has in many cases identified the person at the state level actually doing the day-to-day work and lists that person on the NLIHC HTF webpage at https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund/allocations (scroll down to Select a State).

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

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

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

FORECAST FOR 2024

GOVERNMENT ACCOUNTABILITY OFFICE (GAO) REPORT

It is important for advocates to continue to educate their senators and representatives about the HTF and the critical role it plays in serving households with the most acute housing needs. Such advocacy is especially important because, periodically, there are members of Congress who seek to eliminate the HTF. Another indication of hostility toward the HTF is the letter sent to the Government Accountability Office (GAO) in 2021 by Representatives Patrick McHenry (R-NC), ranking Member of the House Committee on Financial Services, and Steve Stivers (R-OH), ranking Member of the House Subcommittee on Housing, Community Development, and Insurance. They asked GAO to analyze the HTF.

Their letter made a number of claims that were ill-informed or outright erroneous. GAO met with NLIHC, giving NLIHC an opportunity to correct the members' misunderstanding and confusion. NLIHC sent a detailed response to GAO. Highlights of NLIHC's response include:

Claim #1: There have been unreasonable delays in awarding HTF allocations.

Reality: While states were delayed in awarding the first round of HTF resources, these delays were reasonable and have largely been resolved.

Claim #2: It costs $1 million on average to develop each HTF unit.

Reality: According to HUD, the average cost per unit of completed HTF projects at the time cited by McHenry/Stivers was $113,522, an amount on par with or less than market rate. In subsequent months the average HTF cost per unit decreased to averages between $95,000 and $97,000. The November 1, 2023 National Production Report shows the average cost per completed HTF project to be $108,599.

Claim #3: States are using too many HTF resources for acquisition or rehabilitation, and not enough for new construction.

Reality: HUD requires states to report using its standard Integrated Disbursement and Information System (IDIS) which only offers states three reporting options: new construction, rehabilitation, and acquisition and rehabilitation. However, upon further research NLIHC learned that all but three projects in 2016 and 2017, and two projects in 2018, indicated as "rehabilitation" actually preserved scarce affordable housing or created new units. The other projects using HTF kept previous federal investments in Section 8 Project-Based Rental Assistance or USDA Rural Development Section 514 properties from leaving the affordable housing stock. HTF was also used to convert vacant industrial facilities, commercial office spaces, schools, and hospitals into new affordable housing.

The Government Accountability Office (GAO) issued *Affordable Housing: Improvements Needed in HUD's Oversight of the Housing Trust Fund Program* (GAO-23-105370) on August 18. The GAO report provided information about 70 HTF completed projects from 12 states. It described information about those HTF projects, such as activity type (new construction, rehabilitation), number of bedrooms, racial/ethnic composition of occupants, targeted populations, per-unit costs, and other funding sources used to develop the projects. Another section of the GAO report discussed weakness in HUD's oversight and monitoring that have little practical bearing on how HTF is used or who it benefits.

The GAO report did not touch upon the ill-informed or erroneous assertions made by Mr. McHenry and Mr. Stivers. The closest element in the report dealt with per-unit costs. GAO found that the average overall per-unit development cost (including non-HTF-assisted units as well as HTF-assisted units) of the 70 projects was $232,000. In addition, nine of 11 HTF-assisted projects that were similar to LIHTC projects in a prior GAO report had per-unit development costs within the range of the LIHTC comparison projects.

WAITING FOR FINAL HTF RULE

HUD published a notice in the *Federal Register* on April 26, 2021 requesting comments regarding the interim HTF rule with the intent to ultimately publish a final HTF rule. In an email in response NLIHC seeking an update on the status of the final rule, OAHP indicated that it did not anticipate issuing a final rule in 2024.

NLIHC's formal comment letter in response to the *Federal Register* notice urged HUD to:

- Change the rent HTF-assisted tenants pay to *the lesser* of 30% of AMI or 30% of the poverty guideline in order to minimize tenants paying more than 30% or even 50% of their income for rent. See the comment letter for a detailed explanation.
- Maintain the income targeting rule requiring 100% of HTF funds be used for households whose income is equal to or less than 30% of the area median income or at or less than the federal poverty line (whichever is greater) when there is less than $1 billion for the HTF.
- Increase the affordability period to 50 years from 30 years.
- Maintain the limitation on the use of HTF funds for operating cost assistance (including reserves) to one-third of a state's annual grant.
- Modify the definition of operating cost assistance to include other operating costs that match industry standards.
- Modify HTF guidance to indicate that 90% of a state's annual HTF allocation must be used for rental housing activities.
- Modify the final HTF rule to establish as threshold requirements, rather than factors subject to a point system when states set priorities for awarding HTF to projects: an applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner, and the extent to which an application makes use of other funding sources.
- Adopt many of the technical changes suggested by the Technical Assistance Collaborative in order to better serve people with disabilities.

HUD'S LEGISLATIVE PROPOSAL FOR 2024

HUD is asking Congress to make three statutory adjustments to HTF, all of which NLIHC supports:

- Eliminate the two-year commitment requirement, as Congress has done for the HOME program in appropriations acts since 2017.
- Amend the statute so that Davis-Bacon prevailing wages apply to HTF projects as they do for HOME projects.
- Authorize a 24 CFR Part 58 environmental review process for HTF projects so that they will follow the same regulations as other HUD programs.

FOR MORE INFORMATION

NLIHC's HTF webpage is at www.nhtf.org.

NLIHC's formal comment letter in response to the *Federal Register* notice on April 26, 2021.

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

NLIHC's interim report on how states planned to award their 2016 HTF allocations is at https://nlihc.org/sites/default/files/NHTF_Getting-Started_2018.pdf, and a supplement to that report is at https://nlihc.org/sites/default/files/Updated-Supplement-Getting-Started.pdf

NLIHC's report on how states planned to award their 2017 HTF allocations is at https://bit.ly/3TvgcIM.

NLIHC's report on how states planned to award their 2018 HTF allocations is at https://bit.ly/3tQeIOj.

A five-part series about the Interim Rule regarding implementation of the NHTF is at https://nlihc.org/issues/nhtf/videos.

PowerPoint slides highlighting the key features of the NHTF law and regulations is at https://bit.ly/3ESdhWs.

Key features of the NHTF law and interim regulations presented in 15 short papers broken down by topics is at https://bit.ly/3Tx2QLX.

The interim regulations are at https://bit.ly/3TuLT5z.

HUD's NHTF webpage is at https://www.hudexchange.info/htf.