

**National Low Income Housing Coalition
National Housing Trust Fund
Model Allocation Plan for Missouri
May 2016**

The National Housing Trust Fund (NHTF) will be implemented in 2016, making new funds available for the production, preservation, rehabilitation, and operation of rental housing that is affordable to extremely low income (ELI) households, those with incomes at or below 30% of the area median. The National Low Income Housing Coalition (NLIHC) is engaged in a multi-pronged strategy to assure that implementation is successful and the funds are used for maximum effectiveness.

The purpose of this paper is to inform Missouri housing and homeless advocates about what the NHTF statute and regulations require regarding the NHTF Allocation Plan. It is important that you participate in the public participation process to influence the content of the Missouri NHTF Allocation Plan.

The NHTF is a block grant to the 50 states, the District of Columbia, Puerto Rico, and U.S. territories that is administered by HUD's Office of Community Planning and Development (CPD).

There are two conditions that each state must meet in order to receive its NHTF allocation:

- The state must designate an entity to administer the NHTF and notify the HUD Secretary of the administering entity; and
- The state must prepare and submit a NHTF Allocation Plan to HUD.

The person officially in charge of Missouri's NHTF Allocation Plan is:

Tina Beer
Director of Operations
Missouri Housing Development Commission
920 Main Street, Suite 1400
Kansas City, MO 64105
Phone: 816.759.6600-475-1676
tbeer@mhdc.com

Although Ms. Beer is officially listed on HUD's website, Alissa Ice in Community Initiatives might be the person actually involved on a day-to-day basis at MHDC.

This paper is based on NLIHC's interpretation of the statute that created the NHTF and the NHTF Interim Rule issued by HUD. Material that is specific to Missouri is gleaned from the State of Missouri's 2013-2017 Consolidated Plan <https://www.ded.mo.gov/upload/Consolidated%20Action%20Plan%20FY13.pdf>.

The paper also contains NLIHC's suggestions for what ideal NHTF Allocation Plans should include. For the sake of clarity, some sections are marked **ST** for statute, **REG** for regulation, and **SUG** for suggestions.

Tentative Timeline for 2016 (note: except for April 4 and 26, all the other dates are speculative)

- April 4: HUD announces that nearly \$174 million will be allocated for the NHTF in 2016.
- April 26: HUD publishes NHTF Allocation Plan guidance.
- Early May: HUD publishes NHTF allocations to states in the *Federal Register*. NLIHC estimates that Missouri will receive **\$3 million**.
- May – early June: Missouri Housing Development Commission (MHDC) develops NHTF Allocation Plan following the Missouri Consolidated Plan (ConPlan) public participation procedures, including at least a 30-day comment period. (see ConPlan Citizen Participation Requirements starting on page 12.)
- Late June – early July: MHDC submits NHTF Allocation Plan to HUD, which has 45 days to review it. The Allocation Plan is automatically approved after 45 days if HUD does not comment.
- Summer: When HUD Secretary Castro wants to distribute NHTF funds.

Key facts about the NHTF Allocation Plan

- The NHTF Allocation Plan is part of the Annual Action Plan (REG) that Missouri must submit as an update to your 2013-2017 ConPlan. The ConPlan and the Annual Action Plan must be submitted to HUD for Missouri to receive your annual allocations of CDBG, HOME, HOPWA, ESG, and now NHTF funds.
- The Missouri Department of Economic Development (DED) is the lead entity responsible for submitting Missouri's ConPlan and Annual Action Plans. MHDC prepares the HOME portion of the ConPlan, and will now also prepare the NHTF Allocation Plan for the Missouri ConPlan. Advocates will need to ensure close cooperation between MHDC and DED so that there is a smooth addition of the NHTF Allocation Plan to the Missouri Annual Action Plan.
- It is not clear whether Missouri's state ConPlan only covers non-entitlement jurisdictions that do not do their own ConPlans. Advocates need to clarify this. If it only covers non-entitlement areas, the state ConPlan will be an incomplete picture of housing and homelessness in the state.
- Most people are more familiar with their local jurisdictions' ConPlans. NHTF advocates have to become knowledgeable about the Missouri ConPlan and the state's process for seeking public input on its ConPlan.
- The NHTF Allocation Plan likely will be submitted at a different time than the Annual Action Plan because the annual funding for the NHTF will become known at a time that differs from that of the other CPD block grants: CDBG, HOME, ESG, and HOPWA. A June 2015 HUD FAQ stated that in 2016 the NHTF Allocation Plan will be submitted as a "substantial amendment" to the Annual Action Plan. However, the April 26, 2016 Notice CPD-16-07 indicates that NHTF Allocation Plans will simply be "amendments" to the ConPlan. A "substantial amendment" requires a 30-day comment period. If only considered an "amendment", advocates will still want the state to have at least a 30-day comment period.
- After the ConPlan or Annual Action Plan is submitted, HUD has 45 days to review and reject it. HUD can reject a ConPlan for several reasons, including being incomplete or failing to meet public participation requirements. If HUD does not act, the plan is accepted.
- Typically, ConPlans and Annual Action Plans are submitted via HUD's IDIS electronic system. However, according to Notice CPD-16-07, only some portions of the ConPlan can be entered through IDIS; other portions are to be submitted as a PDF document.

Important Definitions for the NHTF Allocation Plan

- **Grantee (ST).** The state entity that prepares the Allocation Plan, receives the NHTF dollars from HUD, and administers the NHTF in the state. The Grantee for Missouri is the MHDC.
- **Subgrantee (REG).** If Missouri chooses, it may designate local jurisdictions to administer the NHTF in a city or urban county.
- **Eligible Recipient (ST).** The organization or agency that submits an application to MHDC (or subgrantee) for funds to carry out a NHTF project in the state (or locality).

NLIHC's Suggestions and Assumptions

NLIHC is making the following suggestions and assumptions. All are SUGGESTIONS:

- Advocates should seek the deepest possible affordability for rents and the longest possible periods of affordability for NHTF-assisted units.
- All funds in the first year should be used for rental housing, and none should be used for homeownership activities.
- All funds in the first year should be distributed by MHDC to eligible recipients, with no funds going to subgrantees. The allocation in 2016 will be too small to justify subgrantees.
- All funds in first year should be used to expand extremely low income (ELI) rental housing and have maximum impact. NHTF must not be used to supplant other federal or state funds. Please minimize using NHTF for preservation of existing federally assisted housing, including in the context of Rental Assistance Demonstration (RAD) or Choice Neighborhood Initiative (CNI) projects.
- In order to maximize affordability, projects no debt service or as little debt service as possible should be preferred. Therefore, the preferred forms of assistance are grants or no interest loans.
- Given the small amount of money available in the first year, NLIHC recommends focusing on projects with the most impact, as opposed to distributing small amounts of money to many projects.

NHTF Allocation Plan Elements

The interim rule for the NHTF lists the elements that must be included in the NHTF Allocation Plan. They are:

1. Description of distribution of funds (ST).
2. Application requirements (REG).
3. Criteria for selecting applications submitted by recipients.
Criteria must meet priority housing needs the Missouri ConPlan (ST).
4. Missouri's maximum per-unit development subsidy limit for NHTF-assisted housing for all areas of the state (REG).
5. If funds are to be used for first-time homebuyers, identify resale or recapture provisions (REG).
6. Whether Missouri intends to directly select applications from recipients and/or to use subgrantees to select applications (REG).
7. Priority for funding must be based on:
 - a. Geographic diversity (ST); Notice CPD-16-07 adds, must be consistent with affirmatively furthering fair housing.
 - b. Applicant's ability to obligate funds and undertake eligible activities in a timely manner (ST).
 - c. For rental housing, extent to which project has rents that are affordable, especially to extremely low income households (ST); has federal, state, or local project-based rental assistance so that rents are affordable to extremely low income households (REG).
 - d. For rental housing, length of the units' affordability period (ST).
 - e. Merits of the application in meeting state's priority housing needs (ST).
 - f. Extent to which applicant makes use of non-federal funding sources (ST).
8. Description of eligible activities and eligibility requirements for recipients (ST).
9. Certification by each recipient that NHTF-assisted housing units will comply with NHTF requirements (ST).
10. Performance goals and benchmarks consistent with state's proposed accomplishments (ST).
11. Rehabilitation standards that NHTF-assisted projects must meet (REG).
12. NHTF affordable homeownership limits (REG).
13. Preferences or limitations to a particular segment of ELI or VLI (very low income) population (REG).
14. Requirements and conditions under which existing project debt may be refinanced (REG).

Model Allocation Plan for Missouri

To the best of our ability, NLIHC has attempted to discern from the NHTF Interim rule, other HUD documents, and the Missouri ConPlan Plan, what should be included in Missouri's NHTF Allocation Plan. HUD NHTF Allocation Plan guidance was published on April 26, 2016 as Notice CPD-16-07; it is primarily a repeat of the interim regulations, with very little additional information or guidance, <https://www.hudexchange.info/programs/hf/cpd-notices>.

1. Description of Distribution of Funds

ALL SUGGESTIONS

MHDC will prepare a Request for Proposals (RFP) that will describe in detail eligible applicants, eligible activities, what an application is to include, when and where applications are to be submitted, the criteria by which applications will be evaluated, who will review the applications, and when grant awards are to be made.

The RFP will indicate what Missouri has determined to be the priority housing need(s) it intends to address based on the outcome of its public participation process and the priority needs indicated in its current ConPlan. The RFP may also reference other needs assessments that show statewide housing needs.

MHDC will convene an application review panel composed of state officials and at least two private representatives of the housing and homeless advocacy community who are not affiliated with any applicant.

MHDC will determine which applications are responsive to the application requirements and present those to the members of the application review panel. The panel members will independently review each application and rate it according to the published criteria. The panel will then meet to reconcile their scores and settle on agreed upon recipients.

MHDC will be responsible for executing contracts.

2. Application Requirements

ALL SUGGESTIONS

MHDC will detail the application requirements in the Request for Proposals (RFPs), including:

- Project information similar to that required for LIHTC applications.
- How the project responds to priority housing need that Missouri intends to address.
- How the project responds to the six priority factors listed in the statute.
- Description of how NHTF-assisted units will be integrated with units that have higher income targeting.
- Description of how the project affirmatively furthers fair housing.
- Description of the plan and methods for achieving affordability (rent no greater than 30% of household income) for households at 30% AMI, 20% AMI, and 10% AMI.
- Description of tenant recruitment and selection process.
- Definition of a successful resident. Description of services and subsidies that will be provided to maximize resident success.
- Applicant's credentials to carry out project, including evidence of successful completion and operation of similar projects.

3. Criteria for Selecting Applications Submitted by Eligible Recipients (Criteria Must Meet State's Priority Housing Needs)

ALL SUGGESTIONS

a. Threshold criteria

- Responsiveness to application requirements
- Project reflects priority housing need(s) found in ConPlan that the state intends to address.

Final criteria, rating based on:

- Six priority factors listed in the statute
- Creativity and innovation
- Feasibility
- Potential for resident success
- Applicant's credentials

According to Missouri's 2013-2017 ConPlan:

General housing needs

Elderly households are disproportionately impacted by housing cost burden; 24% of senior households pay more than 30% of their income for rent and utilities. [page 16]

MHDC has identified a statewide need for housing within special needs populations, specifically households with disabilities, households with mental illness, households experiencing homelessness and youth aging out of foster care. [page 16]

Missouri's lowest income households (0-30% AMI) report the majority of housing problems. [page 18]

Market Analysis

Starting in 2011, MHDC did start a 33% priority for special needs housing units, which are targeted to developments that provide permanent supportive housing and integrated housing for persons with special needs. [page 38]

Only 10% of housing units in the state are affordable to those renter households earning 30% of the HAMFI (Household Area Median Family Income), which falls far short of meeting the needs of these low-income households. Additionally, twenty-five of Missouri's one-hundred and fifteen counties have over fifteen percent of renter households paying over 30% of their income on housing costs. Many of these cost burdened households are located in rural communities. [page 40]

For households that are 30% or below of the HAMFI, 63% of them have at least one housing problem – substandard housing, overcrowding, and/or cost burden. [page 42]

3. *Criteria for Selecting Applications Submitted by Eligible Recipients
(Criteria Must Meet State’s Priority Housing Needs)* continued

Priority Housing Needs

Missouri’s ConPlan does not establish genuine priority housing needs. The state lists virtually everything as a “high” priority and does not distinguish between income categories such as extremely low, very low, and low income, or among demographic characteristics. [page 68]

For instance, Priority Need 1, “Affordable Housing for Low Income Households”, is a “high” priority with income levels including extremely low and low income. This priority is “targeted” to large families, families with children, and elderly households. For homeless populations it “targets” rural, individuals, families with children, mentally ill, veterans, and unaccompanied youth. For non-homeless special needs populations, the targeting is for elderly, persons with mental disabilities, persons with physical disabilities, and persons with developmental disabilities.

Priority Need 2, “Preservation of Affordable Housing for Low Income”, is a “high” priority and has the same “targeting” as Priority Need 1. [page 69]

Priority Need 3, “Affordable Housing for the Elderly”, is a “high” priority, “targeted” to extremely low and low income. For homeless populations it “targets” rural, individuals, mentally ill, and veterans. For non-homeless special needs populations, the targeting is for elderly, persons with mental disabilities, persons with physical disabilities, and persons with developmental disabilities. [page 70]

Priority Need 6, “Special Needs Housing”, is a “high” priority “targeted” to extremely low, low, moderate, and middle income. Family types include large families, families with children, elderly, and public housing households. For homelessness targeting is for rural, chronic homelessness, individuals, families with children, mentally ill, chronic substance abuse, veterans, persons with HIV/AIDS, victims of domestic violence, unaccompanied youth. For non-homeless special needs targeting is for elderly, persons with mental disabilities, persons with physical disabilities, persons with developmental disabilities, persons with alcohol or other addictions, persons with HIV/AIDS and their families, and victims of domestic violence. [page 73]

4. *State’s Maximum Per-Unit Development Subsidy Limit for Housing Assisted with Funds for All Areas of State*

The state must establish maximum limits on total amount of NHTF funds that can be invested per-unit to develop “non-luxury” housing, with adjustments for number of bedrooms and location. Limits must be reasonable and based on actual costs (REG).

HUD has indicated that it will be issuing guidance on the per-unit development subsidy limit for the NHTF. The limit is likely to be higher than it is for units produced with HOME funds, recognizing that the deeper targeting for NHTF units will require higher levels of subsidy.

5. *If Funds Are to be Used for First-Time Homebuyers, Identify Resale or Recapture Provisions*

SUGGESTION: NLIHC suggests using all funds for rental housing in the first year, so possible Allocation Plan language is: “Missouri does not intend to use any funds for homebuyer activities in the 2016 funding cycle.”

6. *Whether State Intends to Directly Select Applications from Eligible Recipients and/or To Use Subgrantees to Select Applications*

SUGGESTION: NLIHC suggests that all funds be awarded directly by Missouri to eligible recipients in the first year, so possible Allocation Plan language is: “Missouri does not intend to make grants to subgrantees in the 2016 funding cycle.”

7. The Priority That Will Be Placed on the Six Priority Factors for Awarding Funding to Eligible Applicants

Awarding of NHTF to applicants should be based on total maximum points = 100 (SUGGESTION)

a. *Geographic diversity* (ST). **(Maximum points = 0)**

Given the relatively small amount of money available in the NHTF for the first year, NLIHC suggests focusing on projects with the most impact, as opposed to distributing small amounts of money to many projects (SUG).

b. *Applicant's ability to obligate funds and undertake eligible activities in a timely manner* (ST). **(Maximum points = 10)**

While the statute and regulations refer to an applicant's ability to "obligate" funds (ST and REG), obligate is not defined. The regulation refers to the "commitment" of funds (REG).

- MHDC must "commit" its NHTF funds within 2 years (ST and REG), and expend funds within 5 years (REG).
- Factor b concerns the ability of the applicant/potential recipient. The regulation defines "commitment" for eligible recipients as:
 - For new construction or rehabilitation, to start construction within 12 months of date of contract between the recipient and MHDC (REG).
 - For acquisition of existing housing, receipt of title to the property within 6 months of the date of contract between the recipient and MHDC (REG).

c. *For rental housing, the extent to which rents...are affordable, especially for ELI families* (ST); *the extent to which the project has federal, state, or local project-based rental assistance so that rents are affordable to extremely low income families* (REG). **(Maximum points = 40)**

- "Affordable to extremely low income families" is defined as families not paying more than 30% of their household income for housing costs, including utilities (SUGGESTION).
- Project-based rental assistance includes, but is not limited to, unit-based rental assistance, operating subsidies, or cross-subsidization of rents within the project (SUGGESTION).
- Up to 33% of MHDC's allocation may be used for operating cost assistance and/or operating cost assistance reserves for NHTF-assisted units (REG). HUD intends to issue guidance on operating costs for the NHTF later in the year.

d. *For rental housing, the duration of the units' affordability period* (ST) **(Maximum points = 15)**

- Minimum affordability period of 30 years is a threshold requirement (REG).
- The extent to which a project exceeds the 30-year minimum determines its duration points, to a maximum of 15 points for projects that commit to affordability in perpetuity (SUGGESTION).

e. *Merits* (ST) *of the application in meeting priority housing needs of the state* (REG) **(Maximum points = 25)**
see next page

e. *Merits (ST) of the application in meeting priority housing needs of the state (REG) (Maximum points = 25)*

- Meeting Missouri’s priority housing needs, as identified in the 2013-2017 ConPlan, is a threshold requirement.

Missouri’s 2013-2017 ConPlan does not establish genuine priority housing needs. The state lists virtually everything as a “high” priority and does not distinguish between income categories such as extremely low, very low, and low income, or among demographic characteristics. See page 7 of this Model.

- The extent to which a project meets the needs of the lowest income households within the state’s priority housing needs (SUGGESTION), to a maximum of 25 points.
- Examples (SUGGESTION):
 - Projects that serve people with special needs, who are homeless, or ex-offenders.
 - Projects affordable to households with incomes less than 15% AMI or whose sole income is SSI.
 - Projects proposed by nonprofits.
 - Phased rehabilitation projects that do not cause displacement.

f. *Extent to which application makes use of non-federal funding sources (ST). (Maximum points = 10)*

- Extent to which application makes use of state and local publicly-controlled funds and/or land donated by state or local government to achieve deep affordability for ELI households (SUGGESTION).
- Extent to which application makes use of private funds or in-kind commitments, including land donated by state or local government to achieve deep affordability for ELI households (SUGGESTION).

8. *Eligible Activities and Eligibility Requirements for Recipients*

Eligible Activities

The primary purpose of the NHTF is to support the creation or preservation of rental housing that is affordable to extremely low income households. NHTF funds will be focused on activities that acquire, produce, or rehab rental housing for the benefit of ELI households.

NLIHC recommends that eligible activities be limited to:

- The production and rehabilitation of rental housing affordable to extremely low income households (SUG).
- Up to 33% of Missouri’s NHTF allocation for operating cost assistance and/or operating cost assistance reserves (REG).
 - May only be provided to rental housing acquired, rehabilitated, reconstructed, or newly constructed with NHTF funds (REG).
 - Includes costs for insurance, utilities, real property taxes, and maintenance, and scheduled payments to a reserve for replacing major systems (REG).

SUGGESTION: “Missouri does not intend to permit NHTF funds to be used for homeownership activities or for the new construction, rehabilitation, or preservation of federally assisted housing in the 2016 funding cycle.”

Eligible Recipients, see next page

8. Eligible Activities and Eligibility Requirements for Recipients, continued

Eligible Recipients

An eligible recipient is an organization, agency, or other entity, including a for-profit or nonprofit entity (ST) or public housing agency (REG).

Consider limiting eligible recipients to nonprofits in the first year, or to for-profits that limit profits or rate of return to investors (SUGGESTION).

An eligible recipient must:

- Have demonstrated experience and capacity to conduct an eligible NHTF activity as evidenced by its ability to:
 - Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development (ST); and
 - Serve low income households and special needs populations, such as homeless families and people with disabilities (SUGGESTION).
- Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity (ST).
- Demonstrate familiarity with the requirements of other federal, state, or local housing programs that may be used in conjunction with NHTF funds to ensure compliance with all applicable requirements and regulations of such programs (ST).
- Must make acceptable assurances to MHDC that it will comply with NHTF program requirements during the entire period that begins when the recipient being selected to receive NHTF funds and ends at the conclusion of all NHTF-funded activities (ST).

9. Certification by Each Recipient that NHTF-Assisted Housing Units Will Comply with NHTF Requirements

MHDC requires each eligible recipient to certify that housing units assisted with NHTF funds will comply with all NHTF requirements (ST). The certification must include (SUGGESTION):

- The number of units in a NHTF-assisted project by income group: extremely low income, very low income, moderate, and above moderate (SUGGESTION);
- A statement declaring that all tenants of a NHTF-assisted development meet the income limits as required by program guidelines (SUGGESTION); and
- A statement declaring that recipient will comply with rent limits, determined to be no more than 30% of 30% of the area median income (SUGGESTION).

10. Performance Goals and Benchmarks Consistent with State’s Proposed Accomplishments

This section refers to the proposed accomplishments in the affordable housing section of the Strategic Plan part of the ConPlan. The state must specify the number of extremely low income families and homeless persons for whom the state will provide affordable rental housing. Affordable rents are defined as not exceeding the greater of 30% of the federal poverty line or 30% of 30% AMI (REG).

Missouri’s 2013-2017 ConPlan does not provide goals for extremely low income households for the five-year period, even though the ConPlan regulations require such a breakdown by income categories. [page 83-88]

To achieve maximum affordability, an Allocation Plan can set performance goals about (SUGGESTION):

- The number of extremely low income families and homeless people who will be assisted with affordable housing, with affordability defined as 30% of household income (SUGGESTION); or
- The number of families or persons who will have rents set at 30% of 20% AMI or 30% of 10% AMI (SUGGESTION).

11. Rehabilitation Standards that NHTF-Assisted Projects Must Meet

MHDC must establish rehabilitation standards for all NHTF-assisted housing rehabilitation activities. The standards must set forth the requirements that the housing must meet upon project completion. The description of standards must be in sufficient detail to determine the required rehabilitation work, including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes (REG).

Standards must address, at a minimum: health and safety; major systems; lead-based paint; accessibility; disaster mitigation; state and local codes, ordinances, and zoning; uniform physical condition standards; and, capital needs assessment (REG).

MHDC should ensure that it has taken all reasonable steps to minimize the displacement of residents as the result of rehabilitation activities (REG).

Recipients that propose phased rehabilitation activities that do not cause displacement should be given preference, such as receiving more points when MHDC examines the merits of an application – see 7(d) of the Allocation Plan (SUGGESTION).

12. Resale and Recapture Guidelines if Funds Used for First-Time Homebuyers

SUGGESTION: NLIHC suggests using all funds for rental housing in the first year, so possible Allocation Plan language could be: “Missouri does not intend to use any funds for homebuyer activities in the 2016 funding cycle.”

13. NHTF Affordable Homeownership Limits

SUGGESTION: NLIHC suggests using all funds for rental housing in the first year, so possible Allocation Plan language could be: “Missouri does not intend to use any funds for homebuyer activities in the 2016 funding cycle.”

14. Preferences or Limitations to a Particular Segment of ELI Population

MHDC will only limit or give preference to a particular segment of the extremely low income population if based on the state's priority housing needs as described in the Missouri Consolidated Plan and Annual Action Plan.

Any such preference or limitation will be memorialized in the written agreement between the State and eligible recipient (REG).

The Missouri 2013-2017 ConPlan lists as high priority an array of population characteristics too broad to be a genuine indication of priority housing needs. [pages 68-73]

Any limitation or preference must not violate nondiscrimination requirements. Federal fair housing requirements, including the duty to affirmatively further fair housing, are applicable to the NHTF program. A limitation does not violate nondiscrimination requirements if the housing project also receives funding from a federal program that limits eligibility to a particular segment of the population, such as the Housing Opportunity for Persons Living with AIDS program, and the Section 202 and Section 811 programs (REG).

15. Requirements and Conditions Under Which Existing Project Debt May Be Refinanced

MHDC may permit the use of NHTF funds toward the cost of fully or partially refinancing existing debt on a multifamily rental property provided the following conditions are met (REG):

- Refinancing is necessary to reduce overall costs and to make the housing more affordable (REG).
- Refinancing is proportionate to the number of NHTF-assisted units in the property. The proportional rehab cost must be greater than the proportional amount of the debt that is being refinanced (REG).
- MHDC must establish refinancing guidelines and include them in the ConPlan. The guidelines must (REG):
 - Demonstrate that rehab is the primary eligible activity.
 - Establish a minimum level of rehab per unit or a required ratio between rehab and refinancing.
- The new investment is being made to create additional affordable units (SUGGESTION);
- A review of the management practices of the applicant must demonstrate that the proposed rehabilitation is not the result of disinvestment in the property by any entity involved in the application for NHTF funds (SUG).

CONPLAN PUBLIC PARTICIPATION REQUIREMENTS

The Public Participation Plan.

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

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

- The public participation plan must encourage involvement by low income people, especially those living in low income neighborhoods and areas where funds might be spent.
- States and local subgrantees are "expected to take whatever actions are appropriate" to encourage involvement by people of color, people with limited English proficiency, disabled people, and residents of public and assisted housing.

Public Hearings

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

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

The ConPlan regulations only require states to have one public hearing and localities to have two public hearings. For local subgrantees, but not states, that second public hearing must be during the development of the ConPlan.

- There must be "adequate" public notice of upcoming hearings.
 - The ConPlan regulations declare, "Publishing small print notices in the newspaper a few days before the hearing is not adequate notice".
 - The ConPlan regulations add, "two weeks' notice is adequate".
- Hearings must be held at times convenient to people who are likely to be affected.
- Hearings must be held in places easy for lower income people to get to.
- Where there are a significant number of people with limited English proficiency, the public participation plan must say how they can be involved.

The Proposed ConPlan or Proposed Annual Action Plan

- Complete copies of the Proposed ConPlan or Proposed Annual Action Plan must be in public places, such as libraries.
- A "reasonable number" of copies of a Proposed ConPlan or Proposed Annual Action Plan must be provided for free.
- The public must have at least 30 days to review and comment on the Proposed ConPlan or Proposed Annual Action Plan.
 - The state or local subgrantee must "consider" these comments.
 - A summary of public comments must be attached to the Final ConPlan or Final Annual Action Plan, along with an explanation why public suggestions were not used.

General Public Participation Provisions

- A copy of the Final ConPlan or Annual Action Plan must be available to the public.
- States and local subgrantees must respond in writing within 15 days to written complaints.
- Access to information must be reasonable and timely.
 - There must be reasonable notice that standard ConPlan or Annual Action Plan documents are available for people to review and make comments about.
 - The public must be able to review records from the last five years.
 - For local subgrantees (not states) the public must have "reasonable and timely" access to local meetings (such as Community Advisory Committee meetings, City Council subcommittee meetings, etc.).