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December 28, 2010

Regulations Division,
Office of General Counsel, Department
of Housing and Urban Development,
451 7th Street, SW., Room 10276,
Washington, DC 20410-0500.

Re: Docket No. FR-5246-P-02, RIN 2506-AC30, Housing Trust Fund

The National Housing Trust Fund Campaign (the Campaign) is pleased to have the opportunity to comment on the October 29, 2010 proposed rule to establish regulations to implement the national Housing Trust Fund, hereafter referred to as NHTF.

The NHTF is the work of thousands of housing advocates, community leaders, elected officials, faith-based leaders and organizations, and a wide array of national organizations. These individuals and groups banded together in 2000 to form the Campaign), which is coordinated by National Low Income Housing Coalition (NLIHC). The Campaign developed and refined legislative proposals for a national housing trust fund with dedicated sources of funding and worked with several Members of Congress to advance legislation. These efforts culminated in the enactment of the NHTF in July 2008 as part of the Housing and Economic Recovery Act.¹ In anticipation of this rulemaking, the Campaign sent a letter to HUD Secretary Steven Preston on November 21, 2008 addressing many of the issues raised in this proposed rule. A copy of this letter is attached to these comments and incorporated by reference.

The Campaign is pleased that HUD has moved forward to implement the NHTF. As HUD notes in §92.701(a), the NHTF program is structured to increase and preserve the supply of decent, safe, sanitary and affordable housing, with primary attention to rental housing for extremely low income (ELI, households with incomes at or below 30% of area median (AMI)) and very low income (VLI, households with incomes at or below 50% of AMI) households, including homeless families. This is a much-needed program

¹ The NHTF was created by §1131 of the Housing and Economic Recovery Act of 2008, P.L. 109-289, (HERA). This section added a new §1338 to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, P.L. 102-550 (FHEFSSA).

to address the critical housing shortage faced by the lowest income households in our country.

In the United States today, there are 9.2 million ELI renter households and only 6.1 million rental homes they can afford (paying no more than 30% of their income for their housing). For every 100 ELI households in the United States, there are just 37 rental homes that are affordable and available to them.² No matter their age, composition, or employment, households at the bottom of the income distribution have to pay unacceptably high portions of their meager incomes for their homes.

The consequences of this scarcity of affordable and available housing are dire for the families most directly affected. High housing cost burdens mean fewer dollars to spend on other necessities. High housing costs mean never saving money and having no cushion for emergencies. High housing cost burdens mean risk of eviction and frequent moves. The shortage of affordable rental homes for extremely low income households is the principle cause of homelessness in the United States.

Income Targeting

The Campaign commends HUD for addressing the gap in affordable and available homes for ELI households by requiring 100% of the rental and homeowner units assisted with NHTF dollars during the first year be occupied by ELI households (*see*, §§92.736 and 92.737). In addition, The Campaign applauds HUD for establishing its authority to require grantees in future years to devote more than the statutorily minimums to ELI households (*see*, §§92.736, 92.737, and 92.746). The Campaign would urge HUD to consider continuing the focus on ELI households until the shortage of units affordable to ELI households is eliminated.

Rents and Operating Assistance

The Campaign has several concerns about the proposed rule as it pertains to tenant rents and the use of NHTF for operating assistance.

Brooke The Campaign is particularly concerned about the absence of income-based rents, or the “Brooke rule,” as required for several other housing programs. The “Brooke rule” provides that assisted households should consume no more than 30% of their income for rent and utilities. The proposed rule, however, rejects this standard and at §92.746(b)

² Pelletiere, D. (2009). *Preliminary assessment of American Community Survey data shows housing affordability gap worsened for lowest income households from 2007 to 2008*. Washington, DC: National Low Income Housing Coalition.

would establish a threshold rent for NHTF units equal to 30% of the greater of 30% of the federal poverty line or 30% of AMI.

While the threshold rents proposed for the NHTF program will be close to the acceptable standard for housing affordability for households at or slightly below 30% of AMI or poverty (whichever is applicable), households earning substantially less than 30% of area median income will almost certainly pay more than 30% of their income for rent, unless additional subsidies are available. This will result in many people the NHTF is intended to serve not being eligible for homes built with NHTF dollars because the rents will be more than they can afford.

For the 13% of ELI renters whose sole income is from Supplemental Security Income (SSI), which is just 18.6% of the national median income, the proposed rule's threshold rent would be particularly devastating, potentially placing NHTF units out of their reach or forcing them to pay unacceptably large amounts of their incomes for housing. The NHTF was created to provide affordable housing for these populations and creating a system that sanctions the continuation of high rent burdens for our lowest income households is unacceptable.

Operating Assistance The failure to adopt the Brooke rule is especially troublesome given the proposed rule's decision to allow NHTF funds to be used for operating subsidies. The Campaign is encouraged by the preamble's explanation that HUD views the NHTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households and appreciates HUD's responsiveness at §92.730(a)(1) to the Campaign's request that the rule limit to 20% the amount of a grantee's annual grant that can be used for operating cost assistance and restricts such assistance to rental housing acquired, rehabilitated, preserved or newly constructed with NHTF funds.

However, as currently constructed the proposed rule could result in a situation where ongoing NHTF operating subsidies are provided to maintain units that are unaffordable to those residing in those units, a result completely at odds with the purpose of the NHTF.

The Campaign proposed in November 2008 that the final rule limit use of NHTF money for operating cost assistance to ELI units with rents governed by the Brooke rule. The Campaign's support for using NHTF funds to cover operating costs was based on the presumption that the Brooke rule would apply to NHTF units and, as a result, some type of ongoing assistance would be needed to maintain the financial viability of ELI units in the future. The Campaign's proposal was designed to balance the need for operating assistance for affordable ELI units (units with where tenant rent contributions are limited to 30% of income) and the need to satisfy the primary purpose of the NHTF which is to

increase the supply of housing available and affordable to households with the lowest incomes.

Because project-based rental subsidies might not be available in all cases, the Campaign chose to recommend that a limited portion of NHTF funds be used for operating expenses to support affordable ELI units. By decoupling the application of the Brooke rule from the use of operating subsidies, the proposed rule fails to provide for the most efficient and effective use of NHTF resources and could create highly subsidized unaffordable NHTF units.³ The Campaign urges HUD to limit the use of operating funds to ELI units with Brooke rents.

One of the rationales put forward by HUD officials for not adopting Brooke rents is that applying Brooke to NHTF units will result in fewer households being served because a greater proportion of NHTF resources will be needed to create and operate a single NHTF unit. The Campaign is concerned that by applying the 30% of 30% standard, the population who is both eligible and can afford NHTF units will be so small that units may go unoccupied. We would rather see fewer units that succeed at serving the intended beneficiaries than more units that fail in doing so.

Period of Affordability

The proposed rule at §§92.746(d)(1) and 92.748(e) would require both rental and homeowner units to be affordable for at least 30 years, allowing states and subgrantees to establish longer affordability periods.

In the letter to Secretary Preston, the Campaign strongly urged HUD to set a 50-year affordability period and to provide preferences for projects with affordability periods greater than 50 years. The Campaign urges the final rule to require a 50-year affordability period and provide preferences for longer terms. The public investment of NHTF funds must be retained as long as possible.

³The proposed rule at §92.731(e) allows states and subgrantees to provide operating cost assistance to a project for up to two years from the same fiscal year NHTF grant; and, the proposed rule adds that operating cost assistance can be renewed during the entire affordability period. The proposed rule also allows for the creation of an operating cost assistance reserve to cover up to a five-year period of inadequate rent income in order to ensure a project's financial feasibility. The Campaign is concerned that the five year limitation is too restrictive and would urge HUD to consider allowing NHTF funds to be used to create operating reserves for the entire period of affordability. The proposed rule should also be amended to address situations where NHTF operating reserves are no longer needed to support the ongoing operations of the project.

The Campaign recognizes long-term affordability for ELI households is challenging without a commitment of operating subsidies of equal term. The loss of subsidies during the affordability period can jeopardize the financial viability of NHTF projects and result in a deterioration or failure of the project. If during the affordability term of a project long-term subsidies are lost, the Campaign recommends that the Secretary retain authority to take the actions needed to protect the tenants and the viability of the project.

Public Housing

The Campaign recommends that public housing agencies (PHAs) be explicitly listed as potential recipients of NHTF funds in the final rule.

The Campaign commends HUD for its determination at §92.734 that NHTF resources cannot be used in existing public housing units. While public housing is an extremely important housing resource, allowing NHTF funds to be used to rehabilitate or operate public housing units will not increase housing opportunities for those with the lowest incomes and could result in an overall loss of resources for housing if Congress were to choose to reduce the appropriated resources for public housing due to the availability of the NHTF.

However, in many communities, PHAs may be the best entity to develop and operate new units using NHTF dollars and should not be precluded from doing so.

Transitional Housing

The final rule should not allow NHTF resources to be used for transitional housing. The statute does not specifically mention transitional housing, but it does declare that the purpose of the program is to increase and preserve the supply of rental and homeowner housing, especially for ELI households, strongly implying that permanent housing is the goal. The Campaign recommends including a definition of “housing” in §92.702 that excludes “transitional housing,” and striking references to “transition housing” from §§92.730, and 92.747. Permanent rental homes for ELI households has been the goal of the Campaign since its inception in 2000.

Distribution of NHTF Dollars

The Campaign supports the allocation formula proposed by HUD December 4, 2009 and looks forward to the final allocation formula to be published with the final rule.

Subgrantees The proposed rule at §92.725(c) would give grantees the option of passing NHTF resources to units of local government or State public agencies as “subgrantees” who would in turn provide NHTF grants to recipients to carry out projects.

While not specifically provided in statute, the use of subgrantees is voluntary, and the Campaign supports this option. However, if subgrantees are used, the state/grantee's NHTF Allocation Plan, as established in §91.320(k)(5), should be required to do more than "reflect the decision to distribute funds through grants to subgrantees." Based on the state's priority housing needs, the state NHTF Allocation Plan must explain any decision to use subgrantees, the means for determining which subgrantees to use, including how the selection of subgrantees is consistent with the geographic diversity requirements of the state's Consolidated Plan (ConPlan), and how NHTF resources are to be distributed among subgrantees.

Rural Areas

The Campaign is pleased that the proposed rule requires states/grantees to distribute NHTF resources throughout the state according to the state's priority housing needs, and (as directed by the statute) requires grantees and subgrantees to choose applications for funding based on priorities which include geographic diversity. These provisions, however, are not sufficient to ensure that rural housing needs are proportionately addressed. The final rule should directly require states/grantees to allocate NHTF resources, including to subgrantees, based on the relative need in rural as well as urban areas and consult with any tribes with reservations in that state.

Transit Oriented Development (TOD)

The Campaign supports the concept of equitable, inclusive TOD without displacement of long-time low income and extremely low income households. However, the Campaign has concerns with the TOD provisions of the proposed rule.

First, the Campaign is concerned that the proposed NHTF rule at §§92.730(a)(3) and 92.702(b)(3) could unnecessarily tie up scarce NHTF resources for up to 4.5 years without providing a single unit of ELI housing. To address this limitation, the Campaign encourages HUD to reduce the 36-month holding period and proposes that the final rule include safeguards to ensure that any NHTF resources used in connection with a TOD project result in the creation of affordable ELI units in a timely manner.

Second, the proposed rule at § 92.703 would provide that NHTF funds have been "committed" to a TOD project when there is an executed agreement between a unit of local government and an owner to purchase a property for a NHTF project, and §92.730 would permit a local government to purchase land for use for NHTF-assisted units to be part of a TOD. However, given the structure of the NHTF, in which funds flow from HUD to a grantee (then to a subgrantee in some cases), and finally to a recipient, consistent with the applicable NHTF Allocation Plans, it is not clear what role the local government is taking or how NHTF funds actually get to the local government for TOD

purposes. The Campaign urges HUD to clarify the role of the local government and require TOD projects to be specifically included in the grantee's or subgrantee's NHTF Allocation Plans, as appropriate, before NHTF funds can be used under the TOD provisions of §§92.730(a)(3) and 92.702(b)(3).

Property Standards

A variety of property standards are listed from §92.741 to §92.745 covering new construction and gut rehabilitation; rehabilitation; acquisition of "standard" housing; manufactured homes; and "ongoing" for rental housing, and these standards place an emphasis on energy and water efficiency requirements.

The Campaign commends HUD for its efforts to increase the energy efficiency of NHTF units and associates itself with the comments of the National Housing Trust on these provisions.

Recordkeeping

The Campaign suggests §92.778(a)(2)(i) be modified to include the project-level data items submitted by the Campaign, which includes:

- a. Unique NHTF ID
- b. Project name
- c. Address
- d. Owner name
- e. Owner contact info
- f. Minority status of owner/developer
- g. Type of owner (nonprofit, for-profit, etc.)
- h. Is there an approved affirmative marketing plan for the property? (yes/no)
- i. Manager name
- j. Manager contact info
- k. Type of structure (high-rise, townhomes, etc.)
- l. Year built
- m. Occupancy rate of assisted units
- n. Length of waiting list for assisted units, where applicable and available
- o. Start and end dates of the NHTF affordability period
- p. Income targeting of assisted units (<=30% AMI, <=50% AMI)
- q. Target population (family, elderly)
- r. Number of total units by size (studio, 1-bedroom, etc.)
- s. Number of assisted units by size
- t. Monthly rent for assisted units by size
- u. Number of assisted units accessible to disabled individuals
- v. Fields indicating the presence/absence of other project-based subsidies

Thank you for the opportunity to provide these comments and the Campaign looks forward to working with HUD to implement the NHTF.