



UNITED FOR HOMES

CAMPAIGN FOR THE NATIONAL HOUSING TRUST FUND

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NATIONAL HOUSING TRUST FUND FREQUENTLY ASKED QUESTIONS

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The National Housing Trust Fund (NHTF) is a dedicated fund intended to provide revenue to build, preserve, and rehabilitate housing for people with the lowest incomes. The NHTF was enacted as part of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289 (July 30, 2008).

1. What is the National Housing Trust Fund?

The National Housing Trust Fund is a permanent federal program with dedicated source(s) of funding not subject to the annual appropriations process.

The purposes of the NHTF are to:

- increase and preserve the supply of rental housing for extremely low income households (ELI households, with incomes of 30% of area median or less) and very low income households (VLI households, with incomes of 50% of area median or less), including homeless households, and
- increase homeownership for ELI and VLI households.

2. How is the NHTF funded?

The NHTF is to be funded with dedicated sources of revenue. The initial sources were contributions from the Government Sponsored Enterprises (GSEs), Freddie Mac and Fannie Mae.

The statute also provides that the NHTF can be funded by other dedicated sources of revenue, such as any appropriations, transfers, or credits that Congress may designate in the future. However, the NHTF campaign expects the NHTF to be funded with dedicated revenues generated outside of the current appropriations process. The NHTF should never compete with existing HUD programs funded by appropriations.

Unfortunately, Fannie and Freddie were taken over by the Federal Housing Finance Administration in September 2008 when they ran into financial trouble due to the foreclosure crisis. At that time their contributions to the NHTF were suspended and remain so.

The National Low Income Housing Coalition is now working on other ways of funding the NHTF. See the document entitled "National Housing Trust Fund: Current Avenues for Funding"

3. Have regulations been issued to implement the NHTF?

HUD issued proposed regulations to implement the NHTF on October 29, 2010, <http://edocket.access.gpo.gov/2010/pdf/2010-27069.pdf>. The NHTF rule would be inserted as a subpart of the existing HOME regulations. Key provisions are highlighted in the answers to the following FAQs. The National Housing Trust Fund Campaign submitted comments on the proposed rule. A copy of those comments can be found at http://www.nlihc.org/doc/NHTF_Comments_NHTF_Regs_12_28.pdf.

The Office of Management and Budget (OMB) has announced the final rule will be released in May 2013.

4. Who is served by the NHTF?

The NHTF statute requires that at least 75% of the funds for rental housing benefit extremely low income (ELI) households or households with incomes below the federal poverty line. All funds must benefit very low income (VLI) households.

However, HUD's proposed regulation would require that, for the first year, 100% of both rental and homeowner units be occupied by ELI households. In addition, the proposed rule would give HUD the authority in future years to require grantees to devote more than the statutory minimum to ELI households.

5. How can NHTF dollars be used?

The statute requires that at least 90% of the funds be used for the production, preservation, rehabilitation, or operation of rental housing. Up to 10% can be used for the following homeownership activities for first-time homebuyers: production, preservation, and rehabilitation; down payment, closing cost, and interest rate buy-down assistance.

The proposed regulations follow the statute, limiting the use of NHTF resources for homeowner activities to 10% of a state's allocation, and also limiting to 10% the amount of a state's allocation that can be used for overall program administration and planning. In addition, the proposed rule makes it clear that NHTF-assisted units can be in a project that also contains non-NHTF-assisted units. Also, NHTF resources can be used to buy and/or rehabilitate manufactured homes, or to purchase the land on which a manufactured home sits. Property can be bought or demolished, but only if tied to a specific affordable housing project. Land can be purchased for use for NHTF-assisted housing that will be part of a transit-oriented development. The proposed rule clarifies that NHTF assistance can be in the form of a grant, loan, equity investment, or other forms.

6. How are NHTF dollars distributed?

The NHTF is a HUD-administered block grant to the states, the District of Columbia, and the territories. Under the law, the HUD Secretary must develop a formula for distributing the funds using five specified factors which reflect the number of ELI and VLI households with severe cost burden (paying more than 50% of their income for rent) as well as the shortage of rental properties affordable and available to ELI and VLI households, with priority for ELI households. No state or the District of Columbia can receive less than \$3 million.

A proposed allocation formula mirroring the statutory factors was published in the Federal Register on December 4, 2009 and included in proposed implementation regulations on October 29, 2010. The National Low Income Housing Coalition has calculated the percentage of an allocation of \$5 billion that might be distributed to each state, the District of Columbia, Puerto Rico, and the other territories. A chart with these amounts can be found at http://nlihc.org/sites/default/files/U4H_State_Allocations_5bill.pdf.

7. How would states distribute their NHTF dollars?

The NHTF statute requires states to select a state agency (such as a housing finance agency or a housing department) to receive and administer NHTF resources. Each state must prepare an annual Allocation Plan showing how it will distribute NHTF resources based on its priority housing needs.

HUD's proposed rule requires that the NHTF Allocation Plan be inserted as a component of a state's Consolidated Plan, following the ConPlan public participation requirements.

The proposed regulation would give states the option of passing some or all NHTF dollars to local governments or state agencies as "subgrantees" to in turn provide funds to "recipients" to carry out projects. Any subgrantees would have to have a ConPlan that includes a NHTF Allocation Plan consistent with the state's NHTF requirements.

The law and proposed rule defines "recipients" as organizations and agencies (including nonprofits and for-profits) that receive NHTF dollars from a state or subgrantee to carry out a NHTF-assisted project. In a November 2008 letter, NLIHC urged HUD to explicitly list public housing agencies as potential recipients, but the proposed rule does

not do so. Both the law and the proposed rule require recipients to have demonstrated experience and capacity with creating, rehabilitating, or preserving affordable homes.

8. How are projects selected to receive NHTF dollars?

The NHTF statute requires an Allocation Plan to set for the requirements for selecting applications from potential recipients. In addition to a project meeting the state's priority housing needs, the Allocation Plan must give priority for funding based on the following factors:

- geographic diversity (the proposed rule fails to require states to allocate funds based on the relative need in rural as well as urban areas),
- the applicant's ability to obligate NHTF dollars and undertake funded activities in a timely manner,
- the extent to which rents will be affordable in the proposed project, especially for ELI households,
- the length of time rents will remain affordable in the proposed project,
- the use of other funding sources in the proposed project, and
- the merits of an applicant's proposed activity. (The proposed rule offers as examples of merit: housing accessible to transit or employment centers; housing that includes green building and sustainable elements, and housing that serves people with special needs.)

9. How long does the state have to spend its funds?

The statute requires states to "commit" funds within two years. Uncommitted funds are to be recaptured by HUD and reallocated to other states.

The proposed rule mirrors the statute and defines "commit" as having a legally binding agreement for a specific project that can reasonably be expected to begin construction or rehabilitation within one year. The proposed rule also goes beyond the statute and would require funds to be spent within five years.

10. How are NHTF rents determined?

The NHTF statute is silent regarding the rents that can be charged tenants in NHTF units, except to establish as one of the factors states must use to select projects, "the extent to which rents for units in the project are affordable to extremely low income families." One of the basic tenets of housing policy is the "Brooke rule," which considers housing to be affordable only when assisted households use no more than 30% of their income for rent and utilities.

However, HUD's proposed NHTF regulations reject the Brooke rule and establish maximum rents for NHTF units equal to 30% of the greater of either 30% of the federal poverty line or 30% of area median income (AMI). While such threshold rents 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 AMI will almost certainly pay more than 30% of their income for rent, unless additional subsidies are available. Consequently, many people the NHTF is intended to serve will not be eligible for homes assisted with NHTF dollars because the rents will be more than they can afford. NLIHC, in its comments on the proposed rule, urged HUD to adopt the Brooke rule for NHTF rental units.

11. How long do NHTF units have to remain affordable?

The statute does not require any particular period of affordability, except that states must select projects based in part on the duration of the units' affordability period.

The proposed rule 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 its comments on the proposed rule, 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 public investment of NHTF resources must be retained as long as possible.

12. Can NHTF dollars be used for operating costs for rental housing?

The statute authorizes the use of NHTF dollars for the production, preservation, rehabilitation, and *operation* of rental housing, but the statute does not define what operation means.

The NHTF is intended to provide one-time capital grants. Because operating costs are ongoing and need to be reassessed each year, use of the NHTF for renewable operating costs will be difficult. In 2008, NLIHC urged HUD to allow 20% of a state's funds to be used to capitalize an operating subsidy fund that could be used in conjunction with ELI units produced by the NHTF. With substantial funding to the NHTF, NLIHC would support increasing the percentage allowable for operating costs.

According to the proposed rule's preamble, 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 anticipates NHTF money to be used with other sources, mostly in mixed-income projects. HUD's proposed rule would allow up to 20% of a state's annual NHTF grant to be used for operating cost assistance with NHTF-assisted units, but did not limit the use of operating cost assistance to ELI units. NLIHC has asked that the final regulation limit the use of operating assistance to ELI units that have rents based on 30% of a household's income.

13. Are there prohibitions on the uses of NHTF dollars?

The statute prohibits the use of NHTF dollars for political activities, lobbying, counseling, traveling, and project administrative expenses, or for endorsements of a particular candidate or party.

HUD's proposed rule adds that NHTF cannot be used to rehabilitate or build public housing or HOPE VI units; however, a project may contain both public housing units and NHTF-assisted units. The proposed rule, like the HOME rule, prohibits the use of NHTF money for a project previously assisted with NHTF during the period of affordability – except for the first year of completion.

14. Is the NHTF considered to be federal financial assistance?

The statute considers the NHTF to be “federal financial assistance” for the purposes of federal civil rights laws.

The regulations list a number of fair housing and civil rights laws that apply to the NHTF: The Fair Housing Act; Title VI of the Civil Rights Act of 1964; The Age Discrimination Act of 1973; Section 504 of the Rehabilitation Act of 1973; and, Title II of the Americans with Disabilities Act.

15. Do other federal laws apply to the NHTF?

According to the statute, all activities carried out must comply with federal laws on: tenant protection and tenant participation; public participation relating to the Consolidated Plan, Qualified Allocation Plan, and Public Housing Agency Plan; and, fair housing laws and laws related to accessibility for people with disabilities.

The proposed regulations have a section called “tenant protections,” which does not address tenants' rights to participate in the decision making regarding their homes. It does provide a long list of tenant lease and selection provisions.

The proposed rule ties public participation pertaining to the NHTF's Allocation Plan process to the Consolidated Plan public participation process, but it is silent regarding the Low Income Housing Tax Credit Qualified Allocation Plan and Public Housing Agency Plan.

As noted in #14, the fair housing and accessibility laws are cited in the proposed rule, as is Section 3 of the Housing and Urban Development Act of 1968, which entails an obligation to work toward goals to employ and train low and

moderate income people, as well as to contract with businesses primarily owned by or that primarily hire low and moderate income people.

16. Is there a requirement that NHTF dollars be matched by the state or grant recipients?

No, the statute does not have a match requirement. This is different from other bills that were introduced to establish a National Affordable Housing Trust Fund.

The statute and proposed rule do, however, include as one priority factor for states and subgrantees to consider when allocating NHTF dollars to a project, the extent to which a project will make use of non-federal funding.

17. Are there any reporting requirements?

The NHTF statute requires each state to submit an annual report to HUD that describes the activities assisted with NHTF money and that demonstrates compliance with the state's Allocation Plan. This report must be available to the public.

The proposed rule does not go into detail, but does require states to submit an annual performance report in a format prescribed by HUD. Instead of requiring the state to make the performance report available to the public, HUD indicates that it will do so.

The proposed rule also presents a number of recordkeeping obligations, including actions taken by the state to comply with Section 3 hiring and contracting goals, and the extent to which each racial and ethnic group, as well as single-heads of households, has applied for, participated in, or benefitted from the NHTF. In general records must be kept for five years after project completion. The public must have access to the records, subject to state and local privacy laws.

18. What can state and local advocates do to help implement the NHTF?

- Contact their governors to voice their opinions on which state agency should be designated to administer their NHTF program.
- Participate in the development of the state Allocation Plan, including providing comments on the Allocation Plan before it is finalized.
 - Make sure as many low income people as possible are aware of the Allocation Plan process and have opportunities to participate.
 - Make sure funds are distributed throughout the state according to priority needs.
 - Make sure funds will be distributed to the types of housing projects that will meet the greatest needs of ELI people.
 - Make sure that the relative needs of rural areas are considered as well as those of metropolitan areas.
 - Make sure any subgrantees are selected on a reasonable basis and that subgrantees allocate NHTF dollars to the types of housing in the most appropriate areas.
- Advocate at the national level for dedicated funding.

For more information, go to www.nhtf.org.