

**National Low Income Housing Coalition  
National Housing Trust Fund  
Model Allocation Plan for Indiana  
June 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 Indiana 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 Indiana 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 Indiana's NHTF Allocation Plan is:

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Although Mr. Sipe is officially listed on HUD's website, Samantha Spergel, Director of Real Estate Production, is the person actually involved on a day-to-day basis at IHCD.

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 Indiana is gleaned from the State of Indiana's 2015-2019 Consolidated Plan, [http://www.in.gov/ocra/files/State\\_of\\_Indiana\\_2015-2019\\_Consolidated\\_Plan\\_060415.pdf](http://www.in.gov/ocra/files/State_of_Indiana_2015-2019_Consolidated_Plan_060415.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.

## Timeline for 2016

- April 4: HUD announces that nearly \$174 million will be allocated for the NHTF in 2016.
- April 26: HUD publishes NHTF Allocation Plan guidance.
- May 5: HUD publishes NHTF allocations to states in the *Federal Register*. Indiana will receive **\$3 million** (the minimum).

The following are simply guesstimates

- May – June: Indiana Housing and Community Development Authority (IHCDA) develops NHTF Allocation Plan following the Indiana Consolidated Plan (ConPlan) public participation procedures, which ought to include at least a 30-day comment period. (see ConPlan Citizen Participation on page 13.)
- Early July: IHCDA 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.
- August: Indiana and HUD sign Grant Agreement.

## Key facts about the NHTF Allocation Plan

- The NHTF Allocation Plan is part of the Annual Action Plan (REG) that Indiana must submit as an update to your 2015-2019 ConPlan. The ConPlan and the Annual Action Plan must be submitted to HUD for Indiana to receive annual allocations of CDBG, HOME, HOPWA, ESG, and now NHTF funds.
- The Indiana Office of Community and Rural Affairs (OCRA) is the lead entity responsible for submitting Indiana's ConPlan and Annual Action Plans. IHCDA administers HOME program and now NHTF.
- Indiana's state ConPlan only covers non-entitlement jurisdictions that do not do their own ConPlans. Consequently, the state ConPlan is an incomplete picture of housing and homelessness in the state because it does not include the entitlement jurisdictions.
- Most people are more familiar with their local jurisdictions' ConPlans. NHTF advocates have to become knowledgeable about the Indiana ConPlan and the state's process for seeking public input on its ConPlan.
- For 2016, the NHTF Allocation Plan 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.
  - An April 26, 2016 Notice CPD-16-07 indicates that NHTF Allocation Plans will simply be "amendments" to the ConPlan.
  - Only a "substantial amendment" requires a 30-day comment period. If Indiana only considers the NHTF Allocation Plan an "amendment", advocates will still want the state to have at least a 30-day comment period.
  - However, a May 17 letter makes it clear that states must conduct public participation for the NHTF Allocation Plan if it was not part of the public participation for the Annual Action Plan. Indiana submitted its Annual Action Plan without including the NHTF.
- After the NHTF Allocation Plan is submitted, HUD has 45 days to review and reject it. As with a ConPlan or Annual Action Plan, HUD can reject a NHTF Allocation Plan 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 NHTF Allocation Plan 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 Indiana is IHCDA.
- **Subgrantee (REG).** If Indiana 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 IHCDA (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 IHCDA 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 with 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.
  - However, if a project will also use Low Income Housing Tax Credit (LIHTC), don't use grants and make sure the loan is structured as a zero-interest loan with a maturity date that is later than the debt on the property (not a source of regular cash flow).
- 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 in the Indiana ConPlan (ST).
4. Indiana'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 Indiana 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 Indiana

To the best of our ability, NLIHC has attempted to discern from the NHTF Interim rule, other HUD documents, and the Indiana ConPlan Plan, what should be included in Indiana'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/htf/cpd-notices>.

### 1. Description of Distribution of Funds

#### ALL SUGGESTIONS

IHCDA 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 Indiana 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.

IHCDA 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.

IHCDA 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.

IHCDA will be responsible for executing contracts.

### 2. Application Requirements

#### ALL SUGGESTIONS

IHCDA 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 needs that Indiana intends to address.
- How the project responds to the six priority factors listed in the statute.
- 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 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 tenant recruitment and selection process.
- Definition of a successful resident. Description of services that will be provided to maximize resident success.
- Evidence of applicant's 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 Indiana’s 2015-2019 ConPlan:

#### General housing needs

“Stakeholders were asked their opinions about top housing and community development needs in Indiana in a survey for this Consolidated Plan. The top housing needs included: housing for persons earning less than 30 percent AMI, housing for low income households in general, housing to help persons who are homeless and housing for seniors.” [page 14]

“The primary needs of persons living with a disability are access to affordable, accessible housing options. This can include modifications to existing structures—especially for aging homeowners who have recently become disabled—or rental subsidies to help persons with a disability living on fixed incomes to find affordable rental options. There are 898,000 Indiana residents with physical, mental, and/or developmental disabilities. Compared to the population as a whole, poverty rates are much higher for people with disabilities: 23 percent of people with a disability are in poverty compared to 16 percent of the population overall.” [page 19]

“Severe housing cost burden—when households pay more than 50 percent of their incomes in housing costs—is the most common housing problem, affecting more than 150,000 renters and 120,000 owners in Indiana’s nonentitlement areas.

“Of the renters experiencing severe cost burden, nearly three-fourths have incomes of less than 30 percent of the AMI, roughly the equivalent of the poverty level.”

“Among households earning less than 30 percent AMI, large households have the highest rate of cost burden. This is consistent with stakeholders’ assessment of disproportionate needs: in the survey conducted for this Consolidated Plan, stakeholders commonly identified large households as the household group most impacted by high housing costs.”

“Both small and large households earning less than 30 percent AMI experience severe cost burden at higher rates than elderly households.”

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

Housing Market Analysis

“The top housing market need identified by stakeholders is rental units affordable to 0-30% AMI, or poverty-level, households (roughly housing that rents for less than \$500 per month). [page 41]

“Stakeholders surveyed and interviewed for this study consistently described a growing and very pronounced need for rental units affordable to 0-30 percent AMI households (roughly housing that rents for less than \$500 per month). [page 43]

“Rental housing is lacking for extremely low income households, whose needs have grown since the Great Recession according to stakeholders. The Census estimates that there are 16,000 more renters earning less than \$20,000 per year in 2013 than in 2007 (includes entitlement areas). Almost 10,000 of these earn less than \$5,000 per year.” [page 45]

Priority Housing Needs

Indiana’s ConPlan lists as “high” priority:

- Low and very low income households
- Visitable homeowner housing
- Housing that allows homeowners to age in place and is accessible for persons with disabilities

[page 71]

Given the needs of ELI renter households with severe cost burden stated in the general needs section and market analysis section, especially for large households and people with disabilities, the above list of “priority” housing needs seems very inadequate.

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 the 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 issued guidance regarding maximum per-unit development subsidy limits as an FAQ on May 12, <https://www.hudexchange.info/faqs/2766/how-should-states-establish-maximum-per-unit-development-subsidy-amounts>. These are not as prescriptive as HOME maximum per unit subsidy limits because HUD recognizes that deeper targeting for NHTF units will require more 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: “Indiana 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 Indiana to eligible recipients in the first year, so possible Allocation Plan language is: “Indiana 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).

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

c. *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).
- There is no basis in the statute for the rule using "has federal, state, or local project-based assistance".
- So, NLIHC suggests that "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 IHCD'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 Indiana’s priority housing needs, as identified in the 2015-2019 ConPlan, is a threshold requirement.

Indiana’s ConPlan lists as “high” priority:

- Low and very low income households
- Visitable homeowner housing
- Housing that allows homeowners to age in place and is accessible for persons with disabilities

[page 71]

Does not give priority to ELI households, renters, large households, or people with disabilities, even though these characteristics were highlighted in the general needs section and housing market analysis sections of the ConPlan.

- 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.
    - Indiana has a shortage of 70,000 rental units affordable and available to households with income less than 15% of the area median income (AMI).
    - For every 100 renter households with income less than 15% AMI, there are only 17 units affordable and available to them.
    - 93% are paying more than half of their income for rent and utilities.
  - 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 Indiana’s NHTF allocation may be used 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: “Indiana 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

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

Consider limiting recipients to nonprofits in the first year, or to for-profits that have a proven track record of providing and operating rental housing for ELI households. (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 extremely 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 IHCD 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

IHCDA 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, low income, and moderate 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).

- There is no basis in law for using 30% of poverty line.
- Will cause NHTF-assisted households to pay more than 30% of income for rent and utilities.

Indiana's 2015-2019 ConPlan does not provide goals for extremely low income households even though ConPlan regulations require such a breakdown by income categories.

- Construct 250 rental units (no income breakdown)
- Rehab 250 rental units (no income breakdown)

[page 81]

To achieve maximum affordability, an Allocation Plan should 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

IHCDA 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. (REG) Also see FAQ on HUD website.

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).

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

HUD issued FAQ in May.

Recipients that propose phased rehabilitation activities that do not cause displacement should be given preference, such as receiving more points when IHCDA 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: “Indiana 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: “Indiana 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

IHCDA 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 Indiana 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 Indiana 2015-2019 ConPlan does not give high priority to extremely low income population.

High priority <sup>[page 71]</sup>:

- Low and very low income households
- Visitable homeowner housing
- Housing that allows homeowners to age in place and is accessible for persons with disabilities

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

IHCDA 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).
- IHCDA 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.).