National Housing Trust Fund

Frequently Asked Questions

Prepared by the National Low Income Housing Coalition
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The national Housing Trust Fund (HTF) is a dedicated fund intended to provide revenue to build, rehabilitate, and preserve housing for people with the lowest incomes. The HTF 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 HTF are to:

- Increase and preserve the supply of rental housing for extremely low income households (ELI) and very low income households (VLI), including homeless households. ELI households are those with income less than the federal poverty guideline or less than 30% of area median (AMI). VLI households are those with income of 50% of AMI or less.
- Increase homeownership for ELI and VLI households.

2. HOW IS THE HTF FUNDED?

The HTF is to be funded with dedicated sources of revenue. The initial source designated in the statute was as an annual assessment of 4.2 basis points (0.042%) on the volume of business of Freddie Mac and Fannie Mae, 65% of which is to go to the HTF.

When Fannie and Freddie were taken into conservatorship by the Federal Housing Finance Administration (FHFA) in September 2008, their obligation to fund the HTF was suspended. FHFA Director Mel Watt lifted the suspension on December 11, 2014 and directed Fannie and Freddie to begin setting aside the funds in 2015 and make them available by March 1, 2016. Mr. Watt did not make the requirement retroactive. On April 4, 2016, HUD announced that nearly $174 million was available for 2016. On June 23, 2017 HUD announced that more than $219 million was available for 2017.

The statute also provides that the HTF 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 HTF should always be funded with dedicated revenues generated outside of the current appropriations process and never compete with existing HUD programs funded by appropriations.

The National Low Income Housing Coalition is working on other ways of funding the HTF. See United for Homes.

3. WHAT REGULATIONS IMPLEMENT THE HTF?

HUD issued interim regulations at 24 CFR part 93 to implement the HTF on January 30, 2015, http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01642.pdf. The preamble to the interim rule indicates that HUD intends to open the interim rule for public comment once states gain experience administering the program. To the extent that the HTF statute does not require specific provisions (such as targeting to extremely low income renters) the interim rule is modeled on the HOME program regulations. Key provisions of the interim rule are highlighted in the answers to the following FAQs.

4. WHO IS SERVED BY THE HTF?

The HTF statute requires that at least 75% of the funds for rental housing benefit extremely low income (ELI) households, those with income less than the federal poverty guideline or less than 30% of the area median income (AMI). The remaining 25% for rental housing may benefit very low income (VLI) households, those with income at or less than 50% AMI. For homeowner activities, all funds must benefit households with income less than 50% of AMI.

However, HUD's interim regulation requires that in years in which there is less than $1 billion in the HTF, 100% of both rental and homeowner units be occupied by ELI households.

5. HOW CAN HTF DOLLARS BE USED?

The statute requires that at least 90% of the funds be used for the production, rehabilitation, preservation, or operation of rental housing. Up to 10% may be used for homeownership activities for first-time homebuyers. Eligible homeowner activities include producing, rehabilitating, and preserving owner-occupied houses, as well as providing down payment, closing cost, and interest rate buy-down assistance.

The interim regulations follow the statute, limiting the use of HTF 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 interim rule makes it clear that HTF-assisted units can be in a project that also contains non-HTF-assisted units. Also, HTF 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. The interim rule clarifies that HTF assistance can be in the form of a grant, loan, deferred payment loan, equity investment, or other forms.

6. HOW ARE HTF DOLLARS DISTRIBUTED TO STATES?

The HTF is a HUD-administered block grant to the states, the District of Columbia, Puerto Rico, and the Insular Areas (American Samoa, Guam, Northern Mariana, and the Virgin Islands). The statute requires HUD to develop a formula for distributing the funds using four specified factors reflecting the number of ELI and VLI households with severe cost burden (paying more than 50% of their income for rent and utilities) as well as the shortage of rental properties affordable and available to ELI and VLI households, with priority for ELI households. No state or the District of Columbia can receive less than $3 million. Allocations for 2017 are at http://bit.ly/2rs5MkB

The interim rule mirrors the statutory factors, assigning 75% of the formula weight to the two ELI factors. The greater the shortage of rental housing affordable and available to ELI households, and the greater the extent to which ELI renter households have severe cost burden, the more HTF a state will receive.

7. HOW DO STATES DISTRIBUTE THEIR HTF DOLLARS?

The HTF statute requires states to select a state agency (such as a housing finance agency or a housing department) to receive and administer HTF resources. The list of state HTF agencies is at http://bit.ly/1ONwHwN.

Each state must prepare an annual Allocation Plan showing how it will distribute HTF resources based on the priority housing needs identified in the state's Consolidated Plan (ConPlan). HUD's interim rule requires that the HTF Allocation Plan be inserted as a component of a state's ConPlan, following the ConPlan public participation requirements.

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

The law and interim rule define "recipients" as organizations and agencies (including nonprofits and for-profits) that receive HTF dollars from a state or subgrantee to carry out an HTF-assisted project. Both the law and the interim rule require recipients to have demonstrated experience and capacity with creating, rehabilitating, or preserving affordable homes.

8. HOW ARE PROJECTS SELECTED TO RECEIVE HTF DOLLARS?

The HTF statute and interim rule require an Allocation Plan to set forth the requirements for selecting applications from potential recipients. The statute requires an Allocation Plan to give priority in awarding HTF funds to projects based on six factors:

- geographic diversity as reflected in the ConPlan,
- the extent to which rents will be affordable, especially for ELI households,
- the length of time rents will remain affordable,
- the merits of an applicant's proposed activity. (The interim rule offers as examples of merit: housing that serves people with special needs, housing accessible to transit or employment centers, and housing that includes green building and sustainable elements, and.)
- the use of other funding sources, and
- the applicant's ability to obligate HTF dollars and undertake funded activities in a timely manner.

9. HOW ARE HTF RENTS DETERMINED?

The HTF statute is silent regarding the rents that can be charged tenants in HTF 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 interim HTF regulations reject the Brooke rule and sets the maximum rent that an HTF-assisted household pays at a fixed amount equal to the greater of 30% of 30% AMI, or 30% of 30% of the federal poverty guideline. There is no basis in law for HUD for using 30% of the poverty guideline. Because the federal poverty guideline is higher than 30% of AMI for households of two or more people in most of the country, rents will be unaffordable for most extremely low income households, the very population for whom the HTF was created to serve. Consequently, NLIHC urges advocates to have their state's HTF Allocation Plan use "the lesser of" 30% of 30% AMI, or 30% of 30% of the federal poverty guideline.

While 30% of 30% of AMI maximum rents will be close to the acceptable standard for housing affordability for households at or slightly below 30% of AMI, households earning substantially less than 30% of AMI, such as those with Supplemental Security Income (SSI), will almost certainly pay more than 30% of their income for rent and utilities, unless additional subsidies are available. Consequently, many people the HTF is intended to serve will not be assisted because the rents will be more than they can afford. NLIHC urges advocates to promote HTF projects that have units with a mix of rents, including HTF-assisted units that have rents at 30% of 30% AMI, 30% of 20% AMI, and 30% of 10% AMI.

10. HOW LONG DO HTF 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 interim rule requires both rental and homeowner units to be affordable for at least 30 years, allowing states and subgrantees to establish longer affordability periods. (For homeowner activities, if a state chooses to establish "recapture" provisions, should a household sell an HTF-assisted property, the 30-year affordability period only applies if $50,000 or more is invested in the property.) Commenting on the proposed HTF rule, NLIHC 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 HTF resources must be retained as long as possible.

11. CAN HTF DOLLARS BE USED FOR OPERATING COSTS FOR RENTAL HOUSING?

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

According to the interim rule's preamble, HUD views the HTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households, and anticipates HTF money to be used with other sources, mostly in mixed-income projects.

The interim rule allows up to one-third of a state's annual HTF allocation to be used for operating cost assistance for HTF-assisted units. The interim rule also allows, within the one-third cap, creation of an operating cost assistance reserve to be funded upfront for HTF-assisted units to help project financial feasibility for the entire affordability period.

The interim rule defines operating cost as: insurance, utilities, real property taxes, maintenance, and scheduled payments to a reserve for replacement of major systems. States wanting to use HTF for operating cost assistance contend that this definition is too limited and not consistent with general industry standards. HUD has hinted that waivers can be sought and that the definition could be modified when a final rule is published for comment.

NLIHC has two papers discussing operating cost assistance:

- Funding Strategies for Developing and Operating ELI Housing
- HTF Operating Assistance Options and Considerations

12. 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 interim 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 interim rule also goes beyond the statute and requires funds to be spent within five years.

13. IS THE HTF CONSIDERED TO BE FEDERAL FINANCIAL ASSISTANCE?

The statute considers the HTF to be "federal financial assistance" for the purposes of federal civil rights laws.

A HUD FAQ indicates that use of HTF does not trigger Davis-Bacon prevailing wage requirements.

14. DO OTHER FEDERAL LAWS APPLY TO THE HTF?

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 interim regulations require compliance with: 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, Title II of the Americans with Disabilities Act, Section 3 of the Housing and Urban Development Act of 1968, and the Uniform Relocation Act. In addition, the interim regulations require compliance with the lead-based paint regulations at 24 CFR part 35.

15. IS THERE A REQUIREMENT THAT HTF 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 interim rule do, however, include the extent to which a project will make use of non-federal funding as one priority factor for states and subgrantees to consider when allocating HTF dollars to a project.

16. ARE THERE ANY REPORTING REQUIREMENTS?

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

The interim rule does not go into detail, but does require states to submit an annual performance report according to the ConPlan performance report requirements, which include: a description of the HTF made available, how the funds were used, the geographic distribution and location of projects, the households assisted (including the racial and ethnic status of persons assisted), and actions taken to affirmatively further fair housing. Instead of requiring states to make the performance report available to the public, HUD indicates that it will do so.

The interim rule also presents a number of recordkeeping obligations, including: actions taken to comply with Section 3 hiring and contracting goals; the extent to which each racial and ethnic group, as well as single-heads of households, have applied for, participated in, or benefitted from the HTF; and, compliance with affirmative marketing procedures, lead-based paint requirements, and displacement provisions. 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.

17. WHAT CAN STATE AND LOCAL ADVOCATES DO TO HELP IMPLEMENT THE HTF?

- Participate in the development of the state Allocation Plan, including providing comments on the draft 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 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 HTF dollars to the types of housing in the most appropriate areas.
- Advocate at the national level for additional dedicated funding.

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