



NHTF • The National Housing Trust Fund

National Housing Trust Fund

Frequently Asked Questions

Prepared by the National Low Income Housing Coalition
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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 source designated in the statute was as an annual assessment of 4.2 basis points (0.042%) of the volume of business of Freddie Mac and Fannie Mae, 65% of which is to go to the NHTF.

When Fannie and Freddie were taken into conservatorship by the Federal Housing Finance Administration (FHFA) in September 2008, their obligation to fund the NHTF was suspended. Fortunately, FHFA Director Mel Watt announced he was lifting 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.

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



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3. HAVE REGULATIONS BEEN ISSUED TO IMPLEMENT THE NHTF?

HUD issued interim regulations to implement the NHTF 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 NHTF 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 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. The remaining 25% for rental housing may benefit very low income (VLI) households. For homeowner activities, all funds must benefit households with incomes less than 50% of the area median income.

However, HUD's interim regulation requires that in years in which there is less than \$1 billion in the NHTF, 100% of both rental and homeowner units be occupied by 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% may 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 interim 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 interim 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. The interim rule clarifies that NHTF assistance can be in the form of a grant, loan, deferred payment 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. The law requires HUD to develop a formula for distributing the funds using five specified factors reflecting 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.

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 NHTF a state will receive.



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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 the priority housing needs identified in the state's Consolidated Plan (ConPlan). HUD's interim rule requires that the NHTF 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 NHTF dollars to local governments or state agencies as "subgrantees" to in turn provide funds to "recipients" to carry out projects. Any subgrantees have to have a local ConPlan that includes a local NHTF Allocation Plan consistent with the state's NHTF requirements.

The law and interim rule define "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. 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 NHTF DOLLARS?

The NHTF statute and interim rule require an Allocation Plan to set forth 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 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 accessible to transit or employment centers; housing that includes greenbuilding and sustainable elements, and housing that serves people with special needs.)
- the use of other funding sources, and
- the applicant's ability to obligate NHTF dollars and undertake funded activities in a timely manner.

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 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.



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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 interim 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 maximum 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 assisted because the rents will be more than they can afford.

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 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. In its comments on the proposed 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 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.

According to the interim 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.

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

13. ARE THERE PROHIBITIONS ON THE USES OF NHTF DOLLARS?

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



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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. Unofficially, HUD has indicated that use of NHTF does not trigger Davis-Bacon prevailing wage requirements.

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 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.

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 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 NHTF dollars to a project.

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 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 NHTF 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, has applied for, participated in, or benefitted from the NHTF; 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.



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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.