

# Getting to Know the NHETF Regulations

(abbreviated)

Housing and Community Development Network  
of New Jersey

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# Introduction

## National Housing Trust Fund (NHTF)



- Became law on July 30, 2008 as part of HERA (Housing and Economic Recovery Act).
- Program for collecting and distributing “dedicated” funds – money not at risk of Congressional appropriations cuts.
- Will not compete with existing HUD programs funded by Congressional appropriations.
- Block grant to states.

# Introduction

*(continued)*



- No money in NHTF at first.
  - First dedicated funds were to come from 4.2 “basis points” (0.042%) on new business of Fannie Mae and Freddie Mac.
  - 65% to NHTF, 35% to Capital Magnet Fund.
  - But before funds could get to NHTF, Fannie and Freddie hit by 2008 banking crisis; this source of dedicated money put on hold.

# Introduction

*(continued)*



- December 11, 2014, FHFA Director Mel Watt lifts suspension.
  - Directs Fannie and Freddie to set aside funds starting January 1, 2015.
  - 60 days after close of 2015, set-aside funds to transfer to HUD.
  - HUD estimates money allocated to states summer of 2016.

# Introduction

*(continued)*



- How much NHTF money will there be in 2016?
  - Administration's 2016 estimate is \$120 million.
  - NLIHC and others have higher estimate – \$200 million in 2016.
  - Fannie and Freddie volume of business expected to be higher in 2015.

# Introduction

*(continued)*



- HUD published proposed allocation formula on December 4, 2009.
- HUD published proposed regulations to carry out the NHTF on October 29, 2010.
- Interim regulations published, January 30, 2015,
  - HUD will solicit comments after states gain experience.
- NHTF rule is at 24 CFR part 93.
- Modeled on HOME regulations.



# Need for Affordable ELI Rental Housing



- National shortage of 7.1 million homes affordable and available to extremely low income (ELI) renter households.
  - ELI means income at or below 30% of area median income (AMI).
- There are only 31 rental homes affordable and available for every 100 ELI renter households.
- 75% of ELI renter households spent more than 50% of their income for rent and utilities.

# Need for Affordable ELI Rental Housing

*(continued)*



- National shortage of 3.4 million homes affordable and available to deeply low income (DLI) renter households.
  - DLI means income at or below 15% of area median income (AMI).
- There are only 17 rental homes affordable and available for every 100 DLI renter households.
- 90% of DLI renter households spent more than 50% of their income for rent and utilities.



# Need for Affordable ELI Rental Housing

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- New Jersey has shortage of 210,481 homes affordable and available to ELI renter households.
- There are only 30 rental homes affordable and available for every 100 ELI renter households.
- 76% of ELI renter households spent more than 50% of their income for rent and utilities.

# Need for Affordable DLI Rental Housing

*(continued)*



- New Jersey has shortage of 86,020 homes affordable and available to DLI renter households.
- There are only 21 rental homes affordable and available for every 100 DLI renter households.
- 85% of DLI renter households spent more than 50% of their income for rent and utilities.

# Need for Affordable ELI Rental Housing



*(continued)*

- Newark/Jersey City/NYC has shortage of 627,196 homes affordable and available to ELI renter households.
- There are only 32 rental homes affordable and available for every 100 ELI renter households.
- 73% of ELI renter households spent more than 50% of their income for rent and utilities.

# Need for Affordable DLI Rental Housing

*(continued)*



- Newark/Jersey City/NYC has shortage of 291,403 homes affordable and available to DLI renter households.
- There are only 17 rental homes affordable and available for every 100 DLI renter households.
- 86% of DLI renter households spent more than 50% of their income for rent and utilities.

# How Will NHTF Block Grant Be Distributed To States?



- NHTF law requires money to be distributed to states by formula.
- Formula based on:
  - Shortage of rental properties affordable *and* available to ELI and VLI households.
  - Number of ELI and VLI renter households paying more than 50% of their income for rent and utilities (severe cost burden).
  - Priority given to ELI households – 75% of formula weight.
- The amount of money your state gets depends on the shortage of affordable rental housing for ELI.

# How Will NHTF Block Grant Be Distributed To States?

(continued)



- NHTF statute: Each state and DC is to receive a minimum of \$3 million.
- Rule: If NHTF does not have sufficient funds to provide \$3 million to each state and DC, HUD will publish notice in *Federal Register* describing alternative method and seek comments.

§93.52



# NHTF Amount for New Jersey in FY16

## A Guess



- For 2016, if there is only \$200 million in NHTF, New Jersey would receive \$4.6 million.
- For 2016, if there is \$250 million in NHTF, New Jersey would receive \$6.5 million.

# NHTF Focus on Renters



- Law creating NHTF requires at least 90% of a state's NHTF money be used to produce, preserve, rehabilitate, or operate **rental housing**.
- Up to 10% may be for homeowner activities.

# NHTF Focus on Extremely Low Income Renters



- Law also requires at least 75% of a state's NHTF used for rental housing benefit **extremely low income** (ELI) households, or households with income below poverty level (whichever is greater, according to regulations).
- Extremely low income (ELI) is less than 30% of area median income, AMI.

# NHTF Focus on Extremely Low Income Renters

*(continued)*



- Law limits to 25%, the amount of a state's NHTF used for rental housing to benefit **very low income households**.
- Generally, very low income (VLI) is between 30% and 50% AMI.
- In rural areas NHTF law also considers households with income below poverty line as very low income.

# NHTF Focus on Extremely Low Income



- Interim reg introduces \$1 billion threshold:
  - When there is less than \$1 billion,
    - 100% must benefit ELI.
  - When there is more than \$1 billion,
    - a minimum of 75% must benefit ELI;
    - may spend 25% for very low income.

§93.250

# How Will NHTF Be Allocated Within States?



- States must choose a state agency, such as housing finance agency, or housing department, or tribally-designated housing entity to receive NHTF and administer its program.
- New Jersey Department of Community Affairs chosen.



# How Will NHTF Be Allocated Within States?

(continued)

## Subgrants to Local Governments?



- NHTF formula does not distribute money directly to cities and counties.
- Rule allows states to allocate NHTF to “subgrantees,” which are local governments or other state entities.
- Subgrantees would administer part of or all of state’s NHTF program.

§93.101(c) & definition §93.2

# How Will NHTF Be Allocated Within States?

*(continued)*

## NHTF Allocation Plan



- NHTF law requires states to prepare an “Allocation Plan” every year.
- Allocation Plan must show how state will distribute NHTF it will receive in the upcoming year.
- Distribution of NHTF must be based on priority housing needs in state’s Consolidated Plan (ConPlan).

# How Will NHTF Be Allocated Within States?

(continued)

## NHTF Allocation Plan

(continued)



- Rule requires NHTF be distributed “throughout the state.”

§93.101(b)

- Rule requires state’s NHTF Allocation Plan be integrated into its Consolidated Plan.

ConPlan regs: §91.320(k)(5), States; §91.220(l)(5), localities

- For a subgrantee to get NHTF money from its state, subgrantee must have its own NHTF Allocation Plan in its local ConPlan.

§93.101(c)

# How Will NHTF Be Allocated Within States?

(continued)

## Allocation Plan and Public Participation



- When preparing Allocation Plan, law requires states to:
  - Notify the public that Allocation Plan will be drafted.
  - Provide for public comment.
  - Consider public comments.
  - Make final Allocation Plan available.
- NHTF law requires compliance with Consolidated Plan public participation requirements.
- Rule inserts NHTF Allocation Plan requirements into the ConPlan rule.

ConPlan regs: §91.320(k)(5), States; §91.220(l)(5), localities

# How Will NHTF Be Allocated Within States?

*(continued)*

## Allocation Plan and Public Participation

*(continued)*



### Tip for Advocates

- Action around Allocation Plan begins at state level and might flow to local level if state decides to allocate some or all NHTF to local subgrantees.
- Advocates used to ConPlan advocacy only at local level need to learn how to advocate at state ConPlan level.

# Allocation Plan

## “Recipients”



Allocation Plan must describe requirements “recipients” must meet when applying for money.

- Recipients may be nonprofit, for-profit, or public entity.
- States and/or subgrantees allocate NHTF to “recipients” to carry out specific projects.
- Recipient must have relevant experience and financial capacity.

§92.2 definition



# Allocation Plan

(continued)

## Selecting Applications for NHTF Dollars



- Allocation Plan must describe criteria for selecting applications.
- Allocation Plan must give priority to projects based on:
  1. Geographic diversity, as reflected in ConPlan.
  2. Extent rents are affordable, especially for ELI households.
  3. Length of time apartments will remain affordable.
  4. “Merit” of a project. HUD gives a few examples:
    - a) Serving people with special needs.
    - b) Accessible to transit or employment centers.
    - c) Energy saving and non-polluting features.
  5. Applicant’s ability to obligate money and carry out project in timely way.
  6. Extent project will use non-federal funds.

ConPlan regs: §91.320(k)(5)(i), States; §91.220(l)(5)(i)(A), localities

# Will Rent Be Affordable?



- A basic housing policy is the “Brooke rule” which considers housing “affordable” only if households use no more than 30% of their income for rent and utilities.
- Neither NHTF law nor HUD’s rule cap resident rent and utility payments at 30% of their income.

# Will Rent Be Affordable?

(continued)



- HUD's rule would set maximum rent (including utilities) a household pays at a **fixed amount** equal to 30% of 30% AMI, or 30% of poverty level, whichever is greater.  
§93.302(b)
- Preamble to proposed rule recognized some residents will pay more than 30% of their income (be rent burdened).
- HUD thinks fixed rent is necessary so owners and lenders can budget for future revenues from rents.

# Will Rent Be Affordable?

(continued)



## Tip for Advocates

Advocates should convince their state or local government to require “Brooke rule.”

### NHTF law:

The extent NHTF rental homes are affordable to ELI households is one factor a state or any local government must consider when awarding NHTF dollars to a proposed project.

ConPlan regs: §91.320(k)(5)(i), States; §91.220(l)(5)(i)(A), localities

# How Long Will Rental Homes Be Affordable?



- Regulation requires both rental and homeowner housing to be affordable for at least 30 years.
- States and any local governments may have longer affordability periods.

§93.302(d) rental, §93.304(e) homeowner

# How Long Will Rental Homes Be Affordable?



*(continued)*

## Tip for Advocates

To avoid losing affordable stock after 30 years, advocates should convince their state or local government to set an affordability period of at least 50 years.

### NHTF law:

How long NHTF rental homes will be affordable is one factor a state or any local government must consider when awarding NHTF dollars to a proposed project.

ConPlan regs: §91.320(k)(5)(i), States; §91.220(l)(5)(i)(A), localities



# HUD FAQ on Allocation Plan



- June 19, 2015 FAQ:
  - State may not submit Allocation Plan to HUD until *Federal Register* announcement of formula allocations, expected April 2016.
  - Probably means ConPlan “Substantial Amendment” every year.
- HUD will publish formal Notice fall 2015

# HUD FAQ on Allocation Plan Modified

## Part 1



- On August 14, HUD modified the FAQ, adding “HUD encourages states and state-designated entities to engage with their stakeholders (e.g. community organizations, general public, housing partners, etc.) through informal meetings or planning sessions that make information available, inform design of their NHTF program, and otherwise contribute to a meaningful citizen participation process.”

# HUD FAQ on Allocation Plan Modified

## Part 2



- HUD also added to its NHTF webpage, “During 2015, states will begin developing their NHTF Allocation Plans and solicit input from their constituents and submit these plans to HUD along with their 2016 Annual Consolidated Plan Action Plans.”

# How Can The Money Be Used?

## General



- NHTF must be used to buy, build, rehabilitate, or preserve rental or owner-occupied homes.
  - NHTF may also be used to operate rental housing.
  - NHTF may also be used to help first-time homebuyers with downpayment and closing cost assistance.
- No more than 10% may be used for homeowners.

§93.200(a)(1)

# How Can The Money Be Used?

(continued)

## Forms of Assistance



- NHTF assistance may be:
  - Loans, including no-interest loans and deferred payment loans
  - Grants
  - Interest subsidies
  - Equity investments
  - Other forms
- States and any local subgrantees may decide the terms of assistance.

§93.200(b)

# How Can The Money Be Used?

(continued)

## Project Costs



Many eligible “project costs” may be met with NHTF:

- Buying property
- Development “hard costs” associated with construction
- Relocation
- Demolition
- Utility connections
- Site improvements
- Project “soft costs” associated with financing and development
  - Affirmative marketing to prospective tenants and homeowners
  - Builders and developers fees
  - Architectural, engineering, related professional services
- Refinancing
- Paying construction loans
- Staff costs directly related to carrying out a project
- Operating assistance

§93.201



# How Can The Money Be Used?

(continued)

## Operating Cost Assistance



- NHTF may be used in conjunction with NHTF-assisted rental homes to:
  - Provide operating cost assistance
  - Provide for operating cost assistance reserve
- Operating cost assistance covers the gap in rent paid by households and cost of operating rental housing.
- Operating costs include maintenance, utilities, insurance, property taxes, scheduled payments to reserve for replacement of major systems, etc.

§93.201(e)

- Rule has 33% cap on the amount of state's NHTF annual grant that may be used for operating cost assistance or reserves.

§93.200(a)(1)

# How Can The Money Be Used?

*(continued)*

## Operating Cost Assistance

*(continued)*



- Rule allows grantee to commit funds from an NHTF grant received in a single year to provide funds for operating cost assistance over multiple years.
  - Grantee may renew operating cost assistance with future year NHTF grants during the affordability period.
  - Funds committed in that single year must be spent within five years.

§93.201(e)(1)

# How Can The Money Be Used?

(continued)

## Operating Cost Assistance Reserve



- Operating cost assistance reserve may be funded upfront for NHTF-assisted units to ensure project feasibility for the affordability period – if from **non-appropriated** NHTF money, such as assessments on Fannie and Freddie.
- If amount devoted to operating cost assistance reserve would exceed 33% cap, reserve could be funded in phases from future NHTF grants.

§93.201(e)(2)

# Tenant Protections and Selection



- Must be a written lease for at least one year. §93.303(a)
- Tenants can only lose tenancy for “good cause.” §93.303(c)
- Owner must:
  - Comply with grantee’s affirmative marketing requirements.
  - Not exclude applicant with voucher or HOME tenant-based rental assistance.
  - Select tenants from written waiting list in chronological order.§93.303(d)

# Key Timeframes To Know About



- NHTF law requires money to be “committed” within two years.
- Rule adds NHTF must be spent in five years. §93.400(d)(2)
- Rule defines “committed” to mean having a legal agreement with a recipient for a specific local project:
  - New construction or rehab – can reasonably be expected to start in 12 months.
  - Acquire standard housing – transfer title within 6 months. §93.2
- Rule provides that project may be canceled if NHTF is committed, but none is requested from HUD (drawn down) within a year. §93.402(b)(2)



# How Can The Money Be Used?

## Public Housing



- In general, rule prohibits use of NHTF to rehab or build public housing.
- Rule allows NHTF to rehab public housing converted under Rental Assistance Demonstration.
- Rule allows NHTF to rehab or build new public housing if:
  - Part of Choice Neighborhoods Initiative, or
  - Will have Low Income Housing Tax Credits

§93.29



# How Can The Money Be Used?

(continued)

## Homeowner Features



- NHTF law limits amount used for homeowner activities to 10% of a state's total NHTF.
- NHTF may be used to:
  - Build, rehabilitate, or preserve housing for homeownership.
  - Help homeowners with downpayment or closing cost assistance, and to make interest rate buy-downs.

§93.200(a)(1)

# How Can The Money Be Used?

*(continued)*

## Homeowner Features

*(continued)*



- Eligible Household Requirements:
  - Household income at or below VLI (ELI in years when NHTF less than \$1 billion).
  - Be “first-time homebuyer” (not owned previous 3 years).
  - Have homeownership counseling.
  - Use as principal residence.

§93.304(d)

# How Can The Money Be Used?

(continued)

## Homeowner Features

(continued)



- Home must be occupied by an income-eligible household for at least 30 years. §93.304(e)
- Grantee has options if home sold before 30 years:
  - Resale option:
    - Next owner must be NHTF-eligible.
    - Sale price must provide original owner “fair return.”
  - Recapture option:
    - To ensure grantee recoups all or a portion of NHTF assistance.
    - Affordability period based on amount of NHTF assistance:
      - 30 years if more than \$50,000
      - 20 years if between \$30,000 and \$50,000
      - 10 years if less than \$30,000

§93.305(b)

# How Can The Money Be Used?

(continued)

## Homeowner Features

(continued)



- Household may count rent payments toward buying a home within 3 years (“lease-purchase”).
- Grantee may buy housing to be sold to homebuyer through lease-purchase program.
  - Must transfer to buyer within 3.5 years, otherwise rental housing affordability requirements kick in.

§93.304(h)

# How Can The Money Be Used?

(continued)

## Manufactured Homes



- NHTF may be used to:
  - Buy and/or rehabilitate manufactured home.
  - Buy land manufactured home sits on.
- At project completion home must be:
  - Connected to permanent utility hook-ups.
  - Located on land:
    - Owned by the unit owner, or
    - For which homeowner has a lease at least as long as length of time home must remain affordable to an income-eligible household (minimum of 30 years).

§93.200(a)(3)

# How Can The Money Be Used?

(continued)

## General Program Administration



- Up to 10% of state's annual grant may pay for general program administration and planning.
  - Relates to overall NHTF program management and monitoring.
  - Examples:
    - Preparing reports for HUD and ensuring projects comply with regulations.
    - Providing information to residents participating in planning and carrying out NHTF projects.
    - Carrying out activities to affirmatively further fair housing.

§93.202



# How Can The Money Be Used?

(continued)

## General Program Administration

(continued)



- “Project administration” – staff and overhead directly related to a specific housing development –
- Project administration may be considered as either:
  - “general program administration” or
  - “project cost” and not count against 10% cap.

§93.202(c)

§93.201(d)(6) and (f)(2)

§93.202(c)

# More NHTF Information



- NLIHC will be preparing additional materials about the National Housing Trust Fund over time.
- Periodically check [www.nhtf.org](http://www.nhtf.org)
- HUD's NHTF webpage, <https://www.hudexchange.info/htf>

# Contact Me



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# Become an NLIHC Member



- Members are essential in helping NLIHC advocate on behalf of low income people in need of safe and affordable housing.
- Membership is open to individuals, organizations, corporations, and government agencies.
- Join NLIHC at <http://nlihc.org/membership>
- Questions?
- Contact [outreach@nlihc.org](mailto:outreach@nlihc.org) or call 202-662-1530, ask to speak to your Housing Advocacy Organizer.

