

November 21, 2008

The Honorable Steven Preston
Secretary, U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-0500

Dear Secretary Preston,

On behalf of the National Housing Trust Fund Campaign, I am pleased to submit the following recommendations for the implementation of the National Housing Trust Fund (NHTF). We are grateful for this opportunity to provide our views on the implementation of this critical program.

The National Housing Trust Fund is the fulfillment of a campaign that began in 2000. The NHTF Campaign is led by 40 national non-profit and faith-based organizations, and has been endorsed by over 5,700 organizations, state and local elected leaders, and editorial boards in every state. The campaign's goal is to establish a National Housing Trust Fund with ongoing, permanent, dedicated and sufficient sources of revenue to build, rehabilitate and preserve 1.5 million units of housing for the lowest income families over the next 10 years.

With the enactment of Public Law 110-289, the Housing and Economic Recovery Act (HERA), the first objective of the Campaign was achieved. HERA section 1131 requires the Secretary of Housing and Urban Development (HUD) to establish a permanent, deeply targeted National Housing Trust Fund, with a dedicated source of funds and the ability to accept additional dedicated sources.

The bill provides that HUD will distribute NHTF funds to states, including the District of Columbia and U.S. territories, according to a detailed formula. This formula must be established by July 30, 2009.

This letter offers suggestions and guidance on the development of the regulations for the implementation of the NHTF. By statute, HUD must develop regulations to implement the NHTF, including regulations to establish the procedural requirements by which states will select designated entities to carry out activities meeting the state's priority housing needs. While the law contains no deadline for these regulations, we recommend developing and publishing these regulations in connection with the development of the allocation formula referenced above.

While HERA provided the basic structure for the NHTF, many details were left to HUD's discretion and definition in promulgating regulations. To assist HUD in expediting this process, the campaign formed a series of working groups to identify areas needing additional explication and to develop recommendations in those areas. The recommendations below reflect the outcome of that process.

Formula Allocation

The statute is relatively straightforward on the details of the formula, but we would like to offer further clarity. Section 1338(c)(3)(B) defines the four housing needs factors on which the distribution of NHTF funds is to be based. In shorthand, these factors are:

- (i) the shortage of affordable and available rental units for Extremely Low Income (ELI) households
- (ii) the shortage of affordable and available rental units for Very Low Income (VLI) households
- (iii) the number of ELI renter households with "worst case needs"
- (iv) the number of VLI renter households with a severe housing cost burden

With regards to weighting, subparagraph (C) specifies that "priority emphasis and consideration" should be given to factor (i), but does not define exactly how the four factors are to be weighted.

In consultation with those involved in developing the formula, we suggest the following weighting: 50% for factor (i); 20% for factor (ii); 20% for factor (iii) and 10% for factor (iv). This proposal places priority emphasis on factor (i), as specified in the statute, and assigns 70% of the weight to factors dealing specifically with ELI households.

We urge that the factors in the distribution formula should be weighted in a way that closely reflects the income targeting of NHTF funds, three-quarters of which must be allocated to providing housing for ELI households. Such weighting ensures that NHTF funds will be allocated to states where the need for housing affordable to ELI households is the greatest.

Lastly, we understand through conversations with HUD staff that a special tabulation of the most recent data from the American Community Survey (ACS) will be used to allocate NHTF funds. We applaud the decision to use the most recent data available because an accurate assessment of housing need, and the subsequent distribution of funds, will be critical to the effectiveness of this new program.

Term of Affordability

Protecting the investment of federally-designated resources is essential. Even if federally appropriated funds are not used, HUD should ensure that any funds designated by Congress remain available for their original purpose as long as possible. The campaign has given a good deal of thought to maximizing NHTF resources, including reviewing the experiences of state and local trust funds. We recommend that, in establishing regulations defining "the extent to which rents...will remain affordable," HUD define the period of affordability as 50 years, with a preference for projects that commit to even longer terms of affordability.

Affordable Rents

We recommend that in establishing regulations defining how states will provide priority for "rents for units in the project [that] are affordable," HUD adhere to the Brooke rule limiting the rent paid by the tenant to 30% of household income.

Compatibility with Other Federal Assistance

NHTF funds will often be used in combination with funds from other federal programs. The NHTF should be implemented in a manner that ensures its compatibility with other federal housing programs, including U.S. Housing Act section 8, HOME and the Low Income Housing Tax Credit program. We also expect that HUD will include in the implementing regulations a prohibition against denying access to NHTF-related housing to those assisted under section 8.

Economic Opportunity and Mixed Income Housing

Families with extremely low incomes should be provided with the opportunity to live in economically diverse communities close to needed transportation, jobs and good schools. Public Law 110-289 requires states to provide priority to applications, based in part on the extent of their use of other funding sources. The use of diverse funding sources should encourage economically diverse housing. But this authority is broad enough to allow HUD to adopt regulations requiring states to consider not only the amount of other funding sources relative to the requested amount of NHTF dollars, but also the extent to which such other funding sources will expand economic and educational opportunities for the residents of assisted units.

Operating Costs

The statute provides that funds may be used for the “production, preservation, and rehabilitation of rental housing...and for operating costs.” It is our position that the reference to “operating costs” in the statute does not create a fourth separate eligible use of NHTF dollars for rental housing. The core purpose of the NHTF is to expand the supply of units affordable to persons with extremely low incomes. We think that the correct interpretation of the statutory language is that operating costs are eligible uses of NHTF funds only if those costs are incurred in connection with extremely low income units/projects produced, rehabilitated, or preserved with NHTF dollars. Consequently, we recommend that HUD limit the use of funds for operating costs at the state level by providing that of the funds allocated to a state in a given year, no more than 20% can be used for operating costs with respect to units affordable to those at 30% of area median or below. Further, to maximize the use of NHTF dollars for preservation, rehabilitation and production, HUD should require states to give priority to projects that obtain operating subsidies from sources other than the Trust Fund. Finally, HUD should limit the mechanisms controlling how funds can be used for “operating costs” to 1) provide project-based rental assistance for not more than 12 months or 2) establish capitalized project operating reserve accounts for the sole purpose of achieving deeper affordability levels for households with incomes equal to or less than 30% of Area Median Income (AMI).

Rural Areas

The need for housing in rural areas targeted to those with the lowest incomes is substantial. Because NHTF funding is allocated to states, it is important that HUD ensure equity in the distribution of funds within each state. In defining “priority in funding... based upon...geographic diversity,” HUD should require that states recognize the needs of rural as well as urban areas and the needs of Native Americans on reservation lands. The campaign recommends that HUD adopt regulations that require states to allocate NHTF dollars based on relative need in rural and urban areas. However, “geographic diversity” is not a reason to require that every county in a state receive Trust Funds or to distribute funds in a manner that sets a “cap” on individual projects to achieve a geographic diversity objective. Finally, we urge HUD to include a requirement that, as states develop their allocation plans, they consult with any tribes with reservation lands in that state.

Make Eligibility of Public Housing Agencies Explicit

HUD should make explicit in its regulations that “agency,” in the list eligible recipients, includes public housing agencies. However, NHTF dollars should not be allowed to be used to supplant the public housing capital fund.

Loans as Eligible Use

NHTF funds should be available to eligible recipients as grants or loans.

Data Collection

The campaign, like HUD and Congress, wants to ensure that the data and information necessary to track expenditures from the NHTF are collected and available to the public. To that end, we propose the attached data collection requirements.

These suggestions are not meant to encompass all of the issues HUD will encounter in establishing the program rules for the NHTF. The campaign recognizes that developing regulations requires an ongoing dialogue. Other issues, such as tenant protections and ensuring public participation are important and we look forward to additional discussions.

Thank you for this opportunity to offer our recommendations to you as HUD decides how best to implement this critical program.

Sincerely,

Sheila Crowley
President and CEO, National Low Income Housing Coalition

CC: Susan D. Pepler, Assistant Secretary, Office of Community Planning and Development
Darlene Williams, Assistant Secretary, Office of Policy Development and Research
Clifford Taffet, Director, Office of Affordable Housing Programs
Todd Richardson, Deputy Assistant Secretary, Office of Policy Development and Research

Data Collection Requirements

1. Project-level data collected from the owner/developer by the state agency
 - a. Unique NHTF ID
 - b. Name
 - c. Address
 - d. Owner name
 - e. Owner contact info
 - f. Minority status of owner/developer ¹
 - g. Type of owner (nonprofit, for-profit, etc.)
 - h. Is there an approved affirmative marketing plan for the property? (yes/no)
 - i. Manager name
 - j. Manager contact info
 - k. Type of structure (high-rise, townhomes, etc.)
 - l. Year built
 - m. Occupancy rate of assisted units
 - n. Length of waiting list for assisted units, where applicable and available
 - o. Start and end dates of the NHTF affordability period
 - p. Income targeting of assisted units (<=30% AMI, <=50% AMI)
 - q. Target population (family, elderly)
 - r. Number of total units by size (studio, 1-bedroom, etc.)
 - s. Number of assisted units by size
 - t. Monthly rent for assisted units by size
 - u. Number of assisted units accessible to disabled individuals ²
 - v. Fields indicating the presence/absence of other project-based subsidies ³

2. Project-level data supplemented by HUD
 - a. ID consistent with other HUD datasets (where applicable) ⁴
 - b. Latitude/longitude
 - c. Physical inspection (REAC) scores
 - d. Any notice of intent filed by the owner to prepay/opt-out of/terminate any subsidy associated with the property
 - e. Fields indicating the presence/absence of other project-based subsidies (see footnote 3)

3. Summary characteristics of tenants collected from the owner/developer by the state agency

¹ Quoting from HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) webpage: "The Federal Government's goal under SBA is to award 23% of its prime contracts to small businesses. Within this goal, there is a subgoal of 5% for small, disadvantaged businesses and minority businesses, and 5% for women-owned small businesses." Data should be collected to ensure compliance, which is monitored by OSDBU.

² Units receiving funds from the NHTF likely must comply with Section 504 in terms of being accessible to disabled individuals. Collecting this information would monitor compliance.

³ See the LIHTC dataset for an example of these fields. Both the state agency and HUD will need to indicate whether an NHTF-funded project receives other federal or state subsidies. While providing an ID consistent with other HUD datasets (specified in 2a) will aid in this determination, there are many federal and state programs for which datasets are not available to the public.

⁴ If a project receives federal subsidies in addition to NHTF funds, it is important to be able to link it with information contained in other HUD databases. An example of this kind of field is the REMS ID, which allows users to identify the same project across several HUD datasets.

- a. Race/ethnicity of tenants (as detailed as possible)
- b. Race/ethnicity of applicants/households on the waiting list (as detailed as possible)
- c. Family composition
- d. Age
- e. Household income
- f. Other forms of rental assistance
- g. Disability status