

CHAPTER ONE

GENERAL PROGRAM REQUIREMENTS

1. INTRODUCTION

- A. The National Housing Trust Fund (NHTF) was established under Title I of the Housing and Economic Recovery Act (HERA) of 2008, Section 1131 (Public Law 110-289). Section 1131 of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) (Act) to add a new section 1337, entitled "Affordable Housing Allocation" and a new section 1338, entitled "Housing Trust Fund."
1. The State of Tennessee operates the NHTF program through a competitive grant program. Eligible applicants are public housing authorities, non-profit developers, and for-profit developers. This manual is designed to provide information about how to implement an NHTF Grant program at the grantee level. Each section describes each task needed to accomplish an NHTF project. The supporting materials include samples of forms, documents, letters, and file checklists.
 2. The NHTF program is governed by Title 24 Code of Federal Regulations, Parts 91 and 93, as amended. Those regulations are incorporated by reference and take precedence over any material presented in this manual.

2. ELIGIBLE ACTIVITIES

- A. **NHTF** funds must be used to produce or preserve affordable, permanent rental housing that addresses the needs of extremely low-income households. The housing may be stick built or modular housing, provided that the housing meets all the applicable state and local codes. Eligible housing activities include:
1. **NEW CONSTRUCTION** – New Construction is defined as (1) newly built projects; (2) existing projects which involve the addition of new units outside the existing walls of the structure; and (3) property completed within a one-year period prior to commitment of NHTF funds. Property completion is measured from date of the certificate of occupancy.
 - a. **MULTI UNIT PROJECTS** – NHTF funds may be used to assist in the development of one or more housing units in a multi-unit project.
 - i. Only the actual NHTF eligible development costs of the assisted units may be charged to the NHTF program.
 - ii. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation.
 - iii. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the NHTF-assisted

units can be determined by prorating the total NHTF eligible development costs of the project so that the proportion of the total development costs charged to the NHTF program does not exceed the proportion of the NHTF-assisted units in the project.

2. **ACQUISITION OF PROPERTY** – The acquisition of real estate must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in Chapter 5; Acquisition, of this manual.
3. **REHABILITATION:** The maximum allowable NHTF funds per NHTF unit are capped by the NHTF subsidy limits, which are established by HUD and cannot be exceeded.
 - a. **MULTI UNIT PROJECTS** – NHTF funds may be used to assist in the rehabilitation of one or more housing units in a multi-unit project.
 - i. Only the actual NHTF eligible development costs of the assisted units may be charged to the NHTF program.
 - ii. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation.
 - iii. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the NHTF-assisted units can be determined by prorating the total NHTF eligible development costs of the project so that the proportion of the total development costs charged to the NHTF program does not exceed the proportion of the NHTF-assisted units in the project.
 - b. All units built prior to 1978 require a lead-based paint (LBP) inspection. If hazards are identified, a risk assessment by a qualified lead risk assessor is required. If the risk assessment of a pre-1978 unit discloses no lead, then the cap for rehabilitation costs is capped by the NHTF subsidy limit.
 - c. If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs are less than \$25,000, interim control/lead safe-work practices will apply and the maximum NHTF subsidy for rehabilitation hard costs is limited to \$25,000.
 - d. If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs exceed \$25,000, then abatement using a qualified abatement contractor and will be required to provide assistance up to the NHTF subsidy limits.
4. **SELECTIVE ELIGIBLE ACTIVITIES** – Several activities can be funded with NHTF funds only when conducted in conjunction with the above listed activities. They are:
 - a. Funding of an operating cost reserve associated with the new construction or acquisition and rehabilitation of housing assisted with NHTF funds
 - b. Acquisition of vacant land or demolition must be undertaken only with respect

to a particular housing project intended to provide affordable housing within the timeframes established in the definition of “commitment” in § 93.2

5. **UNIT REDUCTION** – After project completion, the number of units designated as NHTF assisted may be reduced only in accordance with § 93.203, except that in a project consisting of all NHTF-assisted units, one unit may be converted to an onsite manager’s unit if THDA determines the conversion is reasonable and that, based on one fewer NHTF assisted unit, the costs charged to the NHTF program do not exceed the actual costs of the NHTF-assisted units and do not exceed the subsidy limit established pursuant to § 93.300(a).
6. **TERMINATED PROJECTS** – A NHTF assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and the grantee must repay any NHTF funds invested in the project to THDA, in accordance with § 93.403(b).
 - a. A project that does not meet the requirements for affordable housing must be terminated and the grantee must repay the NHTF funds to THDA.

3. PROHIBITED ACTIVITIES

- A. **TENANT BASED RENTAL ASSISTANCE** – Providing tenant-based rental assistance for the special purposes of the existing Section 8 program, in accordance with Section 212(d) of the Act.
- B. **EMERGENCY SHELTERS** – Assisting or developing emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, dormitories, including those for farm workers or housing for students.
- C. **TRANSITIONAL HOUSING** – Providing any form of housing that is considered short term or transitional.
- D. **RECONSTRUCTION** – Providing NHTF assistance to rental units that require reconstruction.
- E. **MANUFACTURED HOUSING** – Providing NHTF assistance to rental units that are Manufactured Housing and/or Manufactured Housing lots.
- F. **REFINANCING** – Using NHTF funds to refinance existing debt
- G. **HOMEOWNER PROGRAMS** – Using NHTF funds for the acquisition and rehabilitation or new construction of housing for sale to home buyers.
- H. **MATCHING CONTRIBUTIONS** – Providing non-federal matching contributions required under any other Federal program.
- I. **OPERATION OF PUBLIC HOUSING** – Providing assistance authorized under Section 9 of the 1937 Act (annual contributions for operation of public housing).
- J. **PUBLIC HOUSNG MODERNIZATION** – Carrying out activities authorized under 24 CFR

Part 968 (Public Housing Modernization).

- K. **REPAYMENT OF LOW INCOME HOUSING MORTGAGES** – Providing assistance to eligible low-income housing under 24 CFR Part 248 (Prepayment of Low Income Housing Mortgages).
- L. **NHTF PREVIOUSLY ASSISTED PROJECTS** – Providing assistance to a project previously assisted with NHTF funds during the period of affordability established by HUD and THDA in the written agreement with the Recipient as stated in § 93.205(a) except as permitted for renewal of funds committed to operating cost assistance.
 - 1. Additional NHTF funds may be committed to a project up to one year after project completion, but the amount of NHTF funds in the project may not exceed the maximum per-unit subsidy amount; Attachment Two: Maximum Federal Subsidy Limit.
- M. **POLITICAL ACTIVITY OR LOBBYING** – Using NHTF funds for political activities; advocacy; lobbying, whether directly or through other parties; counseling services; travel expenses; and preparing or providing advice on tax returns.
- N. **ADMINISTRATIVE** – Using NHTF funds for administrative, outreach, or other costs of the Recipient, or any other Recipient of such grant amounts, subject to the exception in Section 1338(c)(10)(D)(iii) of the Act.
- O. **ANY COST THAT IS NOT ELIGIBLE UNDER 24 CFR 92.730 THROUGH 93.200.**

4. FORMS OF ASSISTANCE

- A. **FORGIVABLE GRANT** – Funds provided to successful applicants will be in the form of a forgivable grant. These are grants that may be completely forgiven after a specified period of time as long as the grantee adheres to the conditions of the grant. Grants may be forgiven at the end of the compliance period but no sooner.

5. AFFORDABILITY REQUIREMENTS

- A. **NHTF PROGRAMS** – NHTF assisted rental units are rent and income limited for the thirty (30) year Period of Affordability. The affordability period will begin at project completion or at the issuance of a certificate of occupancy, or equivalent, whichever occurs first.
- B. The affordability requirements apply without regard to the term of any loan or mortgage, repayment of the NHTF investment, or the transfer of ownership.
 - 1. Affordability requirements will be imposed by a deed restriction, covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD under which the grantee have the right to require specific performance. The affordability requirements will be recorded in accordance with State recordation laws.
 - 2. Recipients/Owners of rental property shall maintain occupancy of NHTF assisted units by Extremely Low Income Persons for the Period of Affordability.

- a. During the Period of Affordability, the Recipient shall:
 - i. Certify annually the income of tenants.
 - a) The income of each tenant must be determined initially in accordance with § 93.151. In addition, in each year during the period of affordability, the project owner must re-examine each tenant's annual income in accordance with one of the options in § 93.151(c) selected by the grantee.
 - ii. Adhere to the currently published NHTF rent and income guidelines.
 - iii. Comply with all applicable adopted housing codes and the Uniform Physical Condition Standards (UPCS).
 - b. Report to THDA in a form and with substance as required by THDA.
3. Fixed or Floating Units - In a project containing NHTF-assisted and other units, the grantee may designate fixed or floating NHTF units.
- a. This designation must be made at the time of project commitment in the written agreement between THDA and the GRANTEE, and
 - b. The NHTF units must be identified not later than the time of project completion.
 - i. Fixed units must remain the same throughout the period of affordability.
 - ii. Floating units must be changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated NHTF-assisted unit.

C. **REPAYMENTS** – If the unit does not remain in compliance for the affordability period then the entire amount of the NHTF subsidy used to develop the unit must be repaid. Please note that the pro-rata forgiveness under the Grantee's Recapture provision does not apply.

A. The NHTF program has income-targeting requirements. Therefore, the grantee must determine

6. INCOME DETERMINATIONS

that each family occupying an NHTF assisted unit is income-eligible by determining the family's annual income.

- 1. **INCOME LIMITS** – NHTF funds can only be used to benefit extremely low income households. The income limits applicable are the current "NHTF Program Income Limits" (adjusted for family size) produced by the Department of Housing and Urban Development. Tennessee income limits are provided at www.thda.org ->

2. **ANNUAL INCOME (GROSS INCOME)** – The State’s NHTF program uses the income definitions of the Section 8 program to determine the annual income (gross income) used to classify a household for purposes of eligibility found at 24 CFR 5.609. Grantees must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the family is determined to be income eligible. Annual income shall include income from all persons in the household. Annual income means all amounts, monetary or not, which:
 3. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
 4. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date. In other words, it is the household’s *future or expected* ability to pay rather than its past earnings that is used to determine program eligibility. If it is not feasible to anticipate a level of income over a 12- month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period; and
 - a. Which are not specifically excluded in paragraph 6.8 (Income Exclusions) below.
 - b. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
 - c. **MONTHLY GROSS INCOME** – Monthly gross income is Annual Gross Income divided by 12 months.
5. **ASSETS** – In general terms, an asset is a cash or noncash item that can be converted to cash. There is no asset limitation for participation in the NHTF program. Income from assets is, however, recognized as part of Annual Gross Income. Assets have both a market value and a cash value.
 - a. **MARKET VALUE** – The market value of an asset is simply its dollar value on the open market. For example, a stock’s market value is the price quoted on a stock exchange on a particular day, and a property’s market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.
 - b. **CASH VALUE** – The cash value of an asset is the market value less reasonable expenses required to convert the asset to cash, including:
 - i. Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value (e.g., penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds, or broker fees for converting stocks to cash); and/or
 - ii. Costs for selling real property. Settlement costs, real estate transaction

fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in the real estate.

- iii. Under Section 8 rules, only the cash value (rather than market value) of an item is counted as an asset.

6. **INCOME FROM ASSETS** – The income counted is the actual income generated by the asset (e.g., interest on a savings or checking account.)

- a. The income is counted even if the household elects not to receive it. For example, although a household may elect to reinvest the interest of dividends from an asset, the interest or dividends is still counted as income.

- i. The income from assets included in Annual Gross Income is the income that is anticipated to be received during the coming 12 months.

- ii. To obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account; or

- iii. If the value of the account is not anticipated to change in the near future and interest rates have been stable, a copy of the IRS 1099 form showing past interest earned can be used.

- iv. Checking account balances (as well as savings account balances) are considered an asset. This is a recognition that some households keep assets in their checking accounts, and is not intended to count monthly income as an asset. Grantees should use the average monthly balance over a 6-month period as the cash value of the checking account.

b. When an Asset Produces Little or No Income:

- i. If the family's assets are \$5,000 or less, actual income from assets (e.g., interest on a checking account) is not counted as annual income. For example, if a family has \$600 in a non-interest bearing checking account, no actual income would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.

- ii. If the family's assets are greater than \$5,000, income from assets is computed as the greater of:

- a. actual income from assets, or

- b. calculate income from assets based on a passbook rate applied to the cash value of all assets. For example, if a family has \$3,000 in a non-interest bearing checking account and \$5,500 in an interest-bearing savings account, the two amounts are added together. Use the standard passbook rate to determine the annual income from assets for this family.

- c. Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an “arm’s length” transaction) have, in essence, voluntarily reduced their ability to afford housing. Section 8 rules require, therefore, that any asset disposed of for less than fair market value during the 2 years preceding the income determination be counted as if the household still owned the asset.
 - i. The value to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset (less any fees associated with disposal of property, such as a brokerage fee).
 - ii. Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce or separation is not included in this calculation.
 - iii. These procedures are followed to eliminate the need for an assets limitation and to penalize people who give away assets for the purpose of receiving assistance or paying a lower rent.

7. ASSETS INCLUDE:

- a. Amounts in savings accounts and six month average balance for checking accounts.
- b. Stocks, bonds, savings certificates, money market funds and other investment accounts.
- c. Equity in real property or other capital investments. Equity if the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset. *DO NOT INCLUDE EQUITY OF PRINCIPAL RESIDENCE AS AN ASSET FOR NHTF OWNER REHABILITATION PROGRAMS.*
- d. The cash value of trusts that are available to the household.
- e. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in penalty.
- f. Contributions to company retirement/pension funds that can be withdrawn without retiring or terminating employment.
- g. Assets which, although owned by more than one person, allow unrestricted access by the applicant.
- h. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
- i. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.

- j. Cash value of life insurance policies.
- k. Assets disposed of for less than fair market value during two years preceding certification or recertification.

8. ASSETS DO NOT INCLUDE:

- a. Necessary personal property, except as noted under paragraph 6.5(9) (Assets Include) above
- b. Interest in Indian Trust lands
- c. Assets that are part of an active business or farming operation.
- d. NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant/tenant's main occupation.
- e. Assets not accessible to the family and which provide no income to the family.
- f. Vehicles especially equipped for the handicapped.
- g. Equity in owner-occupied cooperatives and manufactured NHTFs in which the family lives.

9. INCOME INCLUSIONS – The following are used to determine the annual income (gross income) of an applicant's household for purposes of eligibility:

- a. The full amount, before any payroll deductions, of wages and salaries, over-time pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- b. The net income for the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness cannot be used as deductions in determining net income; however, an allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession is included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- c. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness cannot be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income includes the greater of the actual income derived from net family assets or a percentage of the value of such assets based on the current passbook saving

rate, as determined by HUD.

- d. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except Supplemental Security Income (SSI) or Social Security).
- e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (3) under Income Exclusions).
- f. Welfare Assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income consists of:
 - i. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; **plus**
 - ii. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph is the amount resulting from one application of the percentage.
- g. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.
- h. All regular pay, special pay and allowances of a member of the Armed Forces (see paragraph (8) under Income Exclusions).

10. INCOME EXCLUSIONS – The following are excluded from a household's income for purposes of determining eligibility:

- a. Income from employment of children (including foster children) under the age of 18 years.
- b. Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone). Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
- c. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
- d. Income of a live-in aide.

- e. Certain increases in income of a disabled member of the family residing in NHTF assisted housing or receiving NHTF tenant-based rental assistance (see 6.12 (7) under Determining Whose Income to Count).
 - f. The full amount of student financial assistance paid directly to the student or to the educational institution;
 - g. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - h. Amounts received under training programs funded by HUD.
- B. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).
- C. Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care etc.) which are made solely to allow participation in a specific program.
- D. Amount received under a resident's service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner or manager on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination and serving as a member of the governing board. No resident may receive more than one such stipend during the same period of time.
- E. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded must be received under employment training programs with clearly defined goals and objectives, are excluded only for the period during which the family member participates in the employment training program.
- 1. Temporary, nonrecurring or sporadic income (including gifts).
 - a. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse).
 - b. Adoption assistance payments in excess of \$480 per adopted child.
 - c. For public housing only, the earnings and benefits to any family member resulting from participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, Section 22 of the 1937 Act, or any comparable federal, state or local law during the exclusion period.
 - d. Deferred periodic amounts from supplemental security income and social

security benefits that are received in a lump sum amount or in prospective monthly amounts.

- e. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- f. Amounts paid by a state agency to a family with member who has a developmental disability and is living at NHTF to offset the cost of services and equipment needed to keep the developmentally disabled family member at NHTF.
- g. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which exclusions set forth in 24 CFR 5.609I apply. The following is a list of types of income that qualify for that exclusion (9/27/89 regulations):
 - i. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
 - ii. Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through VISTA; Retired Senior Volunteer Program, Foster Grandparents Program, youthful offenders incarceration alternatives, senior companions);
 - iii. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));
 - iv. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 259e);
 - v. Payments or allowances made under the department of Health and Human Services' Low-Income NHTF Energy Assistance Program (42 U.S.C. 8624(f));
 - vi. Payments received under programs funded in whole or in part under the Job Training Partnership Act;
 - vii. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians; The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117);
 - viii. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
 - ix. Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f));

- x. Any earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
 - xi. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other funds established pursuant to the settlement in the In Re Agent Orange product liability litigation MDL No. 381 (E.D.N.Y.)
 - xii. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
 - xiii. Payments received under the Maine Indian Claims Settlement Act of 1980.
 - xiv. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);
- h. Payments made by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- i. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
 - ii. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
 - iii. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance); and
 - iv. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998.

F. TIMING OF INCOME CERTIFICATIONS – All households that receive NHTF assistance must be income eligible. At a minimum, income certification must be completed before assistance begins. A preliminary determination of eligibility may be made much earlier in the process.

- 1. Application processing is labor intensive. Early screening for income eligibility can eliminate excessive work in processing an ineligible applicant.
- 2. Establishing a deadline for formal eligibility determinations is a challenging part of the planning process. Generally, the NHTF Program permits verification dated no earlier than 6 months prior to eligibility.
- 3. The Grantee must calculate the annual income of the household by projecting the

prevailing rate of income of the family at the time the Grantee determines that the family is income eligible. The eligibility of a household must be re-verified if more than six months elapses between the date the Grantee determines that a household is income-eligible and the date NHTF assistance is provided.

G. INCOME VERIFICATION – Grantees must verify annual income by examining at least two months of source documents evidencing annual income (e.g., wage statements, interest statements, unemployment compensation) for each member of the household and retain documentation of all information collected to determine a household's income. Under the Section 8 Program, there are three forms of verification which are acceptable: third-party, review of documents, and applicant certification. Applicant certification is not allowed in the NHTF program.

1. **THIRD-PARTY VERIFICATION** – Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person and date of the call.

- a. To conduct third party verifications, a Grantee must obtain a written release from the household that authorizes the third party to release required information.
- b. Third-party verifications are helpful because they provide independent verification of information and permit Grantees to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.

2. **REVIEW OF DOCUMENTS** – Documents provided by the applicant (such as pay stubs, IRS returns, etc.) may be most appropriate for certain types of income and can be used as an alternative to third-party verifications. Copies of documents should be retained in project files.

- a. Grantees should be aware that although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, a pay stub may not provide sufficient information about average number of hours worked, over-time, tips and bonuses.

3. **CALCULATION METHODOLOGIES** – Grantees must establish methodologies that treat all households consistently and avoid confusion.

- a. It is important to understand the basis on which applicants are paid (hourly, weekly or monthly, and with or without over-time). An applicant who is paid “twice a month” may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).
- b. It is important to clarify whether over-time is sporadic or a predictable component of an applicant's income.
- c. Annual salaries are counted as Annual Income regardless of the payment method. For instance a teacher receives an annual salary whether paid on a 9- or

12-month period.

4. **DETERMINING WHOSE INCOME TO COUNT** – Knowing whose income to count is as important as knowing which income to count. Under the Section 8 definition of income, the following income *is not counted*:
- a. **INCOME OF LIVE-IN AIDES** – If a household includes a paid live-in aide (whether paid by the family or a social service program), the income of the live-in aide, regardless of its source, is not counted. (Except under unusual circumstances, a related person can never be considered a live-in aide);
 - b. **INCOME ATTRIBUTABLE TO THE CARE OF FOSTER CHILDREN** – Foster children are not counted as family members when determining family size to compare with the Income Limits. Thus, the income a household receives for the care of foster children is not included; and
 - c. **EARNED INCOME OF MINORS** – Earned income of minors (age 18 and under) is not counted. However, unearned income attributable to a minor (e.g., child support, TANF payments, and other benefits paid on behalf of a minor) is counted.
 - d. **TEMPORARILY ABSENT FAMILY MEMBERS** – The income of temporarily absent family members is counted in Annual Income – regardless of the amount the absent family member contributes to the household. For example, a construction worker earns \$600/week at a temporary job on the other side of the State. He keeps \$200/week for expenses and sends \$400/week NHTF to his family. The entire \$600/week is counted in the family's income; **ADULT STUDENTS LIVING AWAY FROM NHTF** – If the adult student is counted as a member of the household in determining the Income Limit used for eligibility of the family, the first \$480 of the student's income must be counted in the family's income. Note, however, that the \$480 limit does not apply to a student who is head of household or spouse (their full income must be counted); and
 - e. **PERMANENTLY ABSENT FAMILY MEMBER** – If a family member is permanently absent from the household (e.g., a spouse who is in a nursing NHTF), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.
 - f. **PERSONS WITH DISABILITIES** – During the annual recertification of a family's income, increases in the income of a disabled member of qualified families residing in NHTF assisted housing or receiving NHTF tenant-based rental assistance is excluded. 24 CFR 5.61(a) outlines the eligible increases in income. These exclusions from annual income are of limited duration. The full amount of increase to an eligible family's annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, 50 percent of the increase in income is excluded. The disallowance of

increased income of an individual family member who is a person with disabilities is limited to a lifetime 48- month period.

5. **USING ADJUSTED GROSS INCOME** – Adjusted Gross Income is needed only to calculate:

- a. The subsidy and tenant's share of rent. This calculation is done when the tenant first receives assistance and whenever the tenant's income is recertified.
- b. The rent for a tenant in an NHTF assisted rental unit whose rent must be adjusted because the household income increases above 30 percent of the area median; and
- c. A household's eligibility for and the amount of assistance to be provided under the Uniform Relocation Act or Section 104(d) relocations and tenant assistance requirements.

6. **CALCULATING ADJUSTED GROSS INCOME** – Adjusted gross income is the annual gross income minus any of the five following deductions (also called allowances) that apply to the household. The household's eligibility for deductions depends, in part, on the type of household that it is. Monthly adjusted income is Annual Adjusted Income divided by 12 months. *An existing tenant in an NHTF rental project whose income has increased above the income limits must pay 30% of adjusted gross income as rent.*

a. **FOR ALL HOUSEHOLDS:**

- i. \$480 for each dependent. (A dependent is a person, other than the head or spouse, who is under 18, or handicapped or disabled, or a full-time student of any age.)
- ii. Reasonable child care expenses (for children 12 and under) that enable a family member to work or go to school and are not reimbursed. The allowable expenses cannot exceed the income generated by that household member during the period the care is being provided. To document that the anticipated child care expenses can be deducted, the household must
 - a) identify the child(ren) who will be cared for;
 - b) identify the family member who is enabled to work or attend school because of child care (generally the person with the lowest income – the person who would quit work to take care of the children if no child care were available – is considered the family member enabled to work). This family member must provide documentation that he or she is employed, actively looking for work or is currently enrolled in a vocational program or degree-granting institution. The family member does not need to be a full time student.
 - c) demonstrate that no other adult household member is available

to care for the child;

d) identify the child care provider; and

e) provide documentation of costs.

iii. Expenses (in excess of 3% annual gross income) for the care of a handicapped or disabled family member that enable that person or another person to work (includes care attendant and necessary equipment and apparatus). Expenses may be deducted only if (1) they are reasonable; (2) they are not reimbursed from another source, such as insurance; (3) they do not exceed the amount of income generated by the person enabled to work; and (4) they are in excess of three percent of annual income.

b. FOR ELDERLY OR DISABLED HOUSEHOLDS ONLY:

i. An elderly household is any household in which the head, spouse, or sole member is 62 years of age or older. For example, a husband, age 59, and wife, age 62, would be considered an elderly household.

ii. A disabled household is any household in which the head, spouse or sole member is a person with disabilities. For example, a husband, age 42, and wife, age 38 and disabled, would be considered a disabled household.

iii. Living with an elderly or disabled relative does not qualify a household for this deduction unless the relative is the head or spouse of the family. For example, if a non-elderly, non-disabled couple take in an elderly parent; this is not a qualified elderly or disabled household. But if the couple moves in with the elderly or disabled parent, the parent is the head of household and the family is qualified for the deduction.

iv. Medical expenses in excess of 3% of annual income that are not reimbursed by insurance or other sources.

v. Any household that meets the definition of an elderly or disabled household is entitled to a deduction of \$400 per household.

7. PROPERTY STANDARDS

A. Property standards must be met when NHTF funds are used for a project. All rental housing constructed or rehabilitated with NHTF funds must meet all THDA Design Standards, applicable local, county and state codes, rehabilitation standards, Uniform Property Condition Standards (UPCS), and zoning ordinances at the time of project completion.

1. THDA must review and approve plans, work write-ups and written cost estimates and determine cost reasonableness for both new construction and rehabilitation prior to putting the project out to bid

B. **APPLICABLE CODES** – Housing that is constructed or rehabilitated with NHTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.

1. In the absence of a local code, new construction of single-family units for rental must meet the current, State-adopted edition of the International Residential Code for One- and Two-Family Dwellings.
2. Newly constructed units must meet accessibility requirements and mitigate disaster impact as applicable per State and local codes, ordinances, etc. Rehabilitation of existing single-family units for rental must meet the current, State-adopted edition of the International Existing Building Code.

C. **DESIGN STANDARDS** – NHTF funded units must also conform to the THDA Minimum Design Standards for New Construction of Single Family and Multifamily Units or to the THDA Design Standards for Rehabilitation of Single Family and Multifamily Housing Units, as applicable. THDA must review and approve plans, work write-ups and written cost estimates and determine cost reasonableness for both new construction and rehabilitation prior to putting the project out to bid.

1. These design standards, when used in conjunction with applicable codes and the UPCS checklist will ensure the work fully complies with regulatory requirements.
2. New construction - projects must meet the current, State-adopted edition of the International Energy Conservation Code;
3. New Construction - projects must be Energy Star qualified as certified by an independent Home Energy Rating System (HERS) rater.
4. Broadband Infrastructure - THDA requires that newly constructed rental units and those which are substantially rehabilitated must be wired for broadband internet access.
5. Modular Housing – All Modular Housing must be certified by the State of Tennessee.
6. All NHTF-assisted housing (e.g. acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are not such standards or code requirements, the housing must meet the ongoing property standards as specified by HUD based on the HUD Uniform Physical Standards (UPCS), Pursuant to 24CFR5.705.

D. **UNIVERSAL DESIGN AND VISITABILITY** – THDA encourages the inclusion of features that allow individuals with physical disabilities to reside and/or visit the units constructed or rehabilitated with federal NHTF funds through the use of Universal Design and Visitability.

1. Universal Design is a building concept that incorporates products, general design layouts and other characteristics to a housing unit in order to:
 - a. Make the unit usable by the greatest number of people
 - b. Respond to the changing needs of the resident

- c. Improve the marketability of the unit
- 2. Universal design features include, but are not limited to:
 - a. Stepless entrances. Minimum 5' x 5' level clear space inside and outside entry door.
 - b. Broad blocking in walls around toilet, tub and shower for future placement of grab bars.
 - c. Full-extension, pull-out drawers, shelves and racks in base cabinets in kitchen.
 - d. Front mounted controls on all appliances.
 - e. Lever door handles.
 - f. Loop handle pulls on drawers and cabinet doors.
- E. **ACCESSIBILITY** – The housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
 - 1. For new construction of multi-family projects (five or more units), a minimum of 5% of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. The total number of units in an NHTF-assisted project, regardless of whether they are all NHTF-assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are NHTF-assisted, the accessible units may be either NHTF-assisted or non-NHTF-assisted.
 - 2. The Section 504 definition of substantial rehabilitation for multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75% or more of the replacement cost. In such developments, a minimum of 5% of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2% (but not less than one unit) must be accessible to individuals with sensory impairments. As in the case of new construction, the total number of units in an NHTF-assisted project, regardless of whether they are all NHTF-assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are NHTF-assisted, the accessible units may be either NHTF-assisted or non-NHTF-assisted.
 - 3. When rehabilitation is undertaken in projects of 15 or more units, alterations must, to the maximum extent feasible, make the units accessible to and usable by individuals with handicaps, until a minimum of 5% of the units (but not less than one unit) are accessible to individuals with mobility impairments. For this category of rehabilitation, the additional 2% of unit's requirement for individuals with sensory impairments does not apply. Alterations to common spaces must, to the maximum extent feasible, make those areas accessible.

4. In addition to housing units, management offices and onsite amenities must also be accessible to program applicants under Section 504.

8. CONTRACTOR QUALIFICATIONS

- A. **GENERAL CONTRACTOR'S LICENSE** – All general contractors for new construction or rehabilitation projects must have a general contractor's license issued by the Board for Licensing Contractors, State of Tennessee. For a listing of Tennessee Licensed Contractors contact:
Board for Licensing Contractors
500 James Robertson Parkway, Suite 110
Nashville, TN 37243-1150
Telephone: (615)741-8307
- B. **EXCLUDED PARTIES** – All contractors must certify that neither they nor their principals are presently excluded from working under a Federal government award. Excluded parties covers: debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction. The System for Awards Management (SAM) covers excluded parties: <https://www.sam.gov/portal/public/SAM/#1>. Documentation of contractor and subcontractor eligibility must be maintained in the project record.
- C. The above are minimum licensing standards required by the State of Tennessee. Grantees may choose to impose stricter requirements for local programs. A Grantee choosing to require more than the minimum standards would incorporate those requirements in the policies and procedures adopted for the operation of its NHTF program.

9. NHTF INVESTMENTS PER UNIT

- A. **MINIMUM NHTF DOLLARS** – \$1,000 PER UNIT
- B. **MAXIMUM NHTF DOLLARS** – (See Property Value Limits at www.thda.org -> Business partners -> Grant Administrators -> NHTF Program -> Resource Links

10. UNDERWRITING & SUBSIDY LAYERING

- A. Layering is the combining of other federal resources on an NHTF assisted project which results in an excessive amount of subsidy for the project.
 1. Grantees will analyze each project to insure that only the minimum amount of assistance is allocated to the project.
 2. In no case may the amount of NHTF funds exceed the Maximum per Unit Subsidy Limits.

11. CONFLICT OF INTEREST & PROCUREMENT

- A. **PROCUREMENT** – In the procurement of property and services by THDA and Recipients, the conflict of interest provisions in 2 CFR 200.318 apply.
- B. **OTHER CONFLICTS** – In all cases not governed by 2 CFR 200.318, the provisions described in this Section 24 apply.
- C. **PERSONS COVERED** – The NHTF conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of THDA or the Recipient.
1. No person listed above who exercise or have exercised any functions or responsibilities with respect to activities assisted with NHTF funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from an NHTF-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to the NHTF-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.
 2. No owner of a project assisted with NHTF funds (or officer, employee, agent, elected or appointed official, board member, consultant, of the owner or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, board member, consultant, of the owner) whether private, for profit or non-profit may occupy an NHTF-assisted affordable housing unit in a project during the required period of affordability. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person. This provision does not apply to an employee or agent of the owner of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
 3. Recipients shall avoid conflicts of interest associated with their NHTF funded project. THDA will not request exceptions to the conflict of interest provisions from HUD. In the event a conflict of interest is discovered, Recipients shall repay that portion of the NHTF grant related to the conflict of interest or may have all or some portion of the NHTF grant rescinded, all as determined by THDA in its sole discretion.
- D. **APPEARANCE OF A CONFLICT OF INTEREST** – Grantees must also make every effort to avoid the appearance of favoritism in the eligibility determination process. In those cases where the applicant is otherwise eligible, but there exists the appearance of a conflict of interest or the appearance of favoritism, the Grantee must complete a formal request (Determination of a Conflict of Interest) and submit written documentation to THDA that the following procedures have been observed:

1. The Grantee must publish an announcement in the local newspaper concerning the potential for a conflict of interest and request citizen comments.
 2. The Grantee's attorney must render an opinion as to whether or not a conflict of interest exists and that no state or local laws will be violated should the applicant receive NHTF assistance.
 3. The Grantee's elected body must pass a resolution approving the applicant.
- E. **OWNERS AND DEVELOPERS** – No owner, developer or sponsor of a project assisted with NHTF funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer or sponsor or immediate family member of an officer, employee, agent elected or appointed official or consultant of the owner, developer or sponsor (whether private, public housing authority, for profit or non-profit developers may occupy a n N H T F -assisted affordable housing unit in a project during the required period of affordability as specified in § 93.302(e) or § 93.304. This provision does not apply to an employee or agent of the owner or developer of a rental housing project who occupies an NHTF assisted unit as the project manager or maintenance worker.
- F. **ROUTINE REQUESTS FOR EXEMPTION** – THDA will no longer routinely consider requesting exceptions to the conflict of interest provisions from HUD.
- G. **PROCUREMENT** – It is important to keep the solicitation of bids for goods and services as well as professional services contracts open and competitive. All organizations must follow their internal procurement policies AND meet all THDA and federal requirements. At a minimum, all grantees must comply with 24 CFR 200.318.
1. Grantees should obtain 3 to 5 bids using formal advertising or requests for proposals for the procurement of professional services such as grant administration and construction.
 2. There must be an established selection procedure and a written rationale for selecting the successful bid or proposal
 3. Additional guidance is provided in this manual in Chapter 2, Financial Management.

12. AFFIRMATIVE MARKETING

- A. Prior to beginning an NHTF project or program, grantees must adopt affirmative marketing procedures and requirements for all NHTF rental projects with five or more units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. These must be approved by THDA prior to any NHTF funds being committed to a project.
1. Requirements and procedures must include:
 - a. Methods for informing the public, owners and potential tenants about fair housing laws and the local program's policies; A description of what owners and/or the program administrator will do to affirmatively market housing assisted with

NHTF funds;

- b. A description of what owners and/or the program administrator will do to inform persons not likely to apply for housing without special outreach;
- c. Maintenance of records to document actions taken to affirmatively market NHTF-assisted units and to assess marketing effectiveness; and
- d. Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met.

13. DRUG-FREE WORKPLACE

A. The State must require its Grantees to adopt a drug-free workplace policy that certifies that the Grantee will or will continue to provide a drug-free workplace by:

- 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the action that will be taken against employees for violation of such prohibition.
- 2. Establishing an on-going drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Grantee's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- 3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 13.1(a);
- 4. Notifying the employee in the statement required by paragraph 13.1(a), that, as a condition of employment under the grant, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- 5. Notifying THDA in writing, within ten (10) calendar days after receiving notice under paragraph 13.1(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the

convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notices shall include the identification number(s) of each affected grant.

6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph 13.1(d)(2), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law-enforcement, or other appropriate agency.
 - c. Making a good faith effort to continue to maintain a drug-free workplace through implementation paragraphs 13.1(a) through (f).

14. MONITORING

A. RESPONSIBILITIES OF THDA – THDA is responsible for managing the day-to-day operations of the NHTF program, for monitoring the performance of all entities receiving NHTF funds to assure compliance, and for taking appropriate action when performance problems arise. The State has divided its monitoring activities into two programs.

1. The first program is the ongoing monitoring and program evaluation prior to the completion or close out of the project.
2. The second program, referred to as long term compliance, will monitor federal or state affordability compliance issues after the project is closed out and will continue until the affordability/compliance period expires.

B. MONITORING AND PROGRAM EVALUATION PRIOR TO CLOSE OUT OF DEVELOPMENT PROJECTS – Program monitoring is an ongoing activity and can be carried out in a variety of formal and informal ways and methods.

1. These include;
 - a. On-site Administrative reviews, as well as on-site reviews of individual NHTF projects;
 - b. Desk reviews of performance reports; financial audits; other verbal and written exchanges with the Grantee; conversations with the Grantee, clients, and fellow funders of the Grantee; etc.
 - c. On-site field visits will be conducted at least once during the construction period, preferably when the total NHTF grant funds are from 50% to 60% drawn down. Certain considerations (such as Grantee performance, reporting and audit deficiencies, personnel turnovers, etc.) may require more frequent

monitoring.

2. A written notice at least 7 days in advance of the scheduled visit will be given.
3. The scope of the on-site review should be as comprehensive as possible taking into consideration all applicable contractual, program, and state and federal requirements. An exit conference will be held to review the findings. A monitoring letter will be mailed, preferably no later than 30 days from the date of the visit.
4. If concerns or findings are identified, the Grantee will be asked to take steps to resolve these and respond by letter within 30 days. If the monitoring findings have not been cleared, a reminder notice will be sent. If the findings are still not cleared, future payments may be withheld, eligibility to apply for future grants may be denied, or repayment of the grant may be required.

C. LONG TERM COMPLIANCE DURING AFFORDABILITY PERIOD – After the project completes the construction phase and a certificate of occupancy has been issued it will be subject to long-term compliance monitoring by the Community Programs Division during and throughout the remainder of the affordability period.

1. NHTF-assisted rental units are rent and income limited for the thirty (30) year Period of Affordability.
2. Grantees/Owners of rental property shall maintain occupancy of NHTF assisted units by Extremely Low Income Persons for the Period of Affordability.
3. During the Period of Affordability, the Recipient shall:
 - a. Certify annually the income of tenants.
 - b. Adhere to the NHTF rent and income guidelines.
 - c. Comply with all applicable adopted housing codes and the Uniform Physical Condition Standards (UPCS).
 - d. Report to THDA in a form and with substance as required by THDA.
4. Prior to drawing down NHTF funds, Owners of projects with NHTF assisted units shall sign a grant note, deed of trust and restrictive covenant to enforce the NHTF Affordability Period.
5. Once NHTF funds are awarded to a Recipient, THDA will monitor compliance by reviewing certain records related to the NHTF-assisted project. THDA will monitor compliance by conducting desk and/or on-site reviews of the project.
6. THDA will conduct an on-site inspection at project completion in order to confirm that the project meets the Rehabilitation Standards listed in the NHTF Allocation Plan and THDA's Minimum Design Standards for New Construction or THDA's Minimum Design Standards for Rehabilitation, as applicable.
7. At a minimum THDA will conduct desk compliance reviews annually.

8. THDA will conduct on-site property inspections during the Period of Affordability in order to determine compliance with income and rent requirements, tenant selection, affirmative marketing requirements, and property and design standards and to verify any information submitted by the Recipient to THDA.
 - a. THDA will perform onsite inspection of all NHTF assisted projects no less than every three (3) years during the Period of Affordability.
 - b. For NHTF assisted projects of four (4) NHTF assisted residential units or less, THDA will perform an on-site inspection of one hundred percent (100%) of the units no less than every three (3) years during the Period of Affordability.
 - c. For NHTF assisted projects consisting of five (5) or more units, THDA will inspect a minimum of 20% of the NHTF assisted units no less than every three (3) years during the Period of Affordability.
 - d. The on-site inspection may include a review of records for all or a sample of the income and rent restricted units including, but not limited to, tenant files, rent rolls, approved and declined tenant applications, documentation supporting tenant income and employment verification, marketing materials and advertisements, and documentation of requests for reasonable accommodations.
 - e. The on-site review may also include a review of any local health, safety, or building code violation reports or notices and an inspection of the property to determine if the buildings are suitable for occupancy, taking into account local health, safety, and building codes, applicable THDA Design Standards, and UPCS standards as prescribed by HUD.
 - f. Any reports made by state or local government units of violations, with documentation of correction, will be reviewed.
9. Each year during the Period of Affordability, the Recipient shall submit to THDA, within one hundred twenty (120) days after the end of the project's fiscal year, each of the following:
 - a. Audited financial statements for the Owner.
 - b. Audited financial statements for the project.
 - c. Bank statements for operating reserve and replacement reserve accounts as of the end of the project fiscal year.
 - d. Proof of sufficient property and liability insurance coverage with THDA listed as mortgagee.
 - e. Documentation to show the current utility allowance is being used (i.e. a copy of the utility allowance table).
 - f. For projects that received points at initial NHTF application for pledging to provide permanent supportive services to special needs populations, an affidavit

attesting to the supportive services provided to the project's population during the fiscal year must be provided by the provider(s) of such services.

- g. Compliance monitoring fees from previous years re-inspections if applicable.
- h. Such other information as may be requested in writing by THDA in its sole discretion.

D. **NON-COMPLIANCE** – After a compliance review has been conducted, either through an on-site review or a review of paperwork, the Grantee/Owner will be notified of any issues of non-compliance. Areas not in compliance will be identified with a date by which corrections should be made. Sanctions for non-compliance are as follows:

- 1. Denial of subsequent NHTF grant applications until non-compliance is corrected, subject to approval by THDA's Grants Committee.
- 2. Repayment of all or a portion of NHTF funds when serious non-compliance has persisted.

E. **MONITORING FEES** – THDA charges a monitoring fee for all NHTF assisted units. NHTF Recipients shall pay the entire fee covering the 30-year Period of Affordability as indicated in the current published Schedule of Monitoring Fees; but no less than \$600 per NHTF assisted unit.

- 1. The monitoring fee must be paid prior to the Recipient making the request for Developer Fees to be drawn from the NHTF grant.
- 2. Additional fees may be charged when follow-up is required due to non-compliance findings. Failure to pay these fees will be considered an administrative noncompliance issue.
 - a. The fee will be the current approved fee as published in the NHTF manual and the most current program description at the time the fee is incurred but no less than:
 - i. Re-inspection of a file or re-inspection of a 1-4 unit property: Two Hundred Dollars (\$200) per unit inspected
 - ii. Re-inspection of an NHTF project with five (5) or more units:
 - a) Two hundred dollars (\$200) per unit inspected;
 - b) Standard mileage rate in effect under the current State of Tennessee travel regulations at the time of the re-inspection from Nashville to the property and back to Nashville;
 - c) Applicable state allowed per-diem for one staff person;
 - d) Lodging expenses as allowed under then current State of Tennessee travel regulations;
 - e) Any other expenses incurred by THDA relating to the project re-inspection.

- iii. Fees for re-inspections will be due to THDA prior to issuance of re-inspection results or release of any additional NHTF-funded operating subsidy.
- 3. Failure to promptly pay monitoring or re-inspection fees will be recorded as a finding and may result in a determination of non-compliance and trigger repayment of ALL NHTF funds.

15. AUDITS

- A. **LOCAL GOVERNMENT AND NON-PROFIT AUDITS** – Audits must be conducted in accordance with 2 CFR Part 200 subpart F. The use of NHTF grant funds by the grantee must be audited not less than annually to ensure compliance with this part. Any financial statement submitted by the grantee to HUD must be reviewed by an independent certified public accountant, in accordance with Statements on Standards for Accounting and Review Services, which is issued by the American Institute of Certified Public Accountants.

16. DEFINITIONS

- A. **ADJUSTED INCOME** – Adjusted income is annual income (gross income) reduced by deductions for dependents, elderly or disabled households, medical expenses, and child care. In the NHTF program, adjusted income is only used to calculate a household’s eligibility for and the amount of assistance to be provided under the Uniform Relocation Act or Section 104(d); or the rent to be paid by a tenant whose income has increased above the NHTF low income limit. *Adjusted income tenant eligibility for rental housing programs.*
- B. **ANNUAL INCOME (GROSS INCOME)** – Annual income means all amounts, monetary or not which go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; are anticipated to be received from a source outside the family during the 12- month period following admission or annual reexamination date; and which are not specifically excluded under the Section 8 definition of annual income (24 CFR 5.609). Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
- C. **COMMITMENT** – The grantee has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible recipient for a project that meets the definition of “commit to a specific local project” of paragraph (2) of this definition.
 - 1. “Commit to a specific local project” means:
 - a. If the project consists of rehabilitation or new construction (with or without acquisition), the grantee and recipient have executed a written legally binding agreement under which NHTF assistance will be provided to the recipient for an identifiable project for which construction can reasonably be expected to start within 12 months of the agreement date. The written agreement for rehabilitation or new construction of rental housing may also provide operating cost assistance

and/or operating cost assistance reserves.

- b. If the project consists of acquisition of standard housing and the grantee is providing HTF funds to a recipient to acquire rental housing, or to a first-time homebuyer family to acquire single family housing for homeownership, the grantee and recipient or the family have executed a written agreement under which NHTF assistance will be provided for the purchase of the rental housing or single family housing and the property title will be transferred to the recipient or family within 6 months of the agreement date. The written agreement for acquisition of rental housing may also provide operating cost assistance and/or operating cost assistance reserves.
- c. If the project is for renewal of operating cost assistance or operating cost assistance reserves, the grantee and the recipient must have executed a legally binding written agreement under which NHTF funds will be provided to the recipient for operating cost assistance or operating cost assistance reserves for the identified NHTF project.

D. ETHNIC CATEGORIES – Ethnic categories are defined as:

- 1. ***Hispanic or Latino.*** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, “Spanish origin” can be used in addition to “Hispanic or Latino”.
- 2. ***Not Hispanic or Latino.*** A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

E. EXTREMELY LOW INCOME FAMILIES – Families whose annual incomes do not exceed 30 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. An individual does not qualify as an extremely low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

F. RECIPIENT – An organization, agency, or other entity (including a public housing agency, or a for-profit entity or a nonprofit entity) that receives NHTF assistance from THDA as an owner or developer to carry out an NHTF assisted project.

- 1. A grantee must:
 - a. Make acceptable assurances to THDA that it will comply with the requirements of the NHTF program during the entire period that begins upon selection of the recipient to receive NHTF funds, and ending upon the conclusion of all NHTF-funded activities;
 - b. Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;
 - c. Demonstrate its 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; and

- d. Have demonstrated experience and capacity to conduct an eligible NHTF activity as evidenced by its ability to:
 - i. Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development
- G. **HUD** – The Department of Housing and Urban Development. Income-eligible means a family, homeowner, or household (as appropriate given the context of the specific regulatory provision) that is very low-income, extremely low income, or both, depending on the income-targeting requirements set forth in § 93.250.
- H. **HOUSEHOLD** – Household means one or more persons occupying a housing unit.
- I. **HOUSING** – Household means one or more persons occupying a housing unit. Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, single-room occupancy housing, and group homes. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).
- J. **NEW CONSTRUCTION** – For the purposes of the NHTF program, new construction is (a) any project which includes the creation of additional dwelling units outside the existing walls of a structure and (b) the construction of a new residential unit(s). Any project with commitment of NHTF funds made within one year of the date of the initial certificate of occupancy is also considered new construction.
- K. **NEIGHBORHOOD** – A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government. Poverty line is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902).
- L. **NHTF ASSISTED UNITS** – A term that refers to units within an NHTF project where NHTF funds are used and rent, income and occupancy, restrictions apply.
- M. **NHTF FUNDS** – Funds made available under the NHTF program.
- N. **OPERATING EXPENSES** – Reasonable and necessary costs for the operation of the project. Such costs include salaries, wages and other employee compensation and benefits; employee education, training and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials and supplies.
- O. **PERSON WITH DISABILITIES** – A household composed of one or more persons, at least one of whom is an adult, who has a disability. A person is considered to have a disability if the person has a physical, mental, or emotional impairment that: is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions.
 - 1. A person will also be considered to have a disability if he or she has a developmental

disability, which is a severe, chronic disability that: is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the person attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more areas of major life activity -- self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency;

- P. **PROJECT** – A site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with NHTF funds as a single undertaking under this part. The project includes all the activities associated with the site and building.
- Q. **PROJECT COMPLETION** – A project is considered complete when all necessary title transfer requirements and construction work have been performed, the project complies with the requirements of this part (including the property standards under § 93.301 of this part), the final drawdown has been disbursed for the project, and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 93.402(d) of this part, project completion occurs upon completion of construction before occupancy.
- R. **RACIAL CATEGORIES** – Race categories are defined as:
1. ***American Indian or Alaska Native.*** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachments.
 2. ***Asian.*** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
 3. ***Black or African American.*** A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” can be used in addition to “Black or African American.”
 4. ***Native Hawaiian or Other Pacific Islander.*** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
 5. ***White.*** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- S. **UNIFORM PHYSICAL CONDITION STANDARDS (UPCS)** – The UPCS are uniform national standards established by HUD pursuant to 24 CFR 5.703 for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, dwelling units, and common areas. Once HUD develops inspections standards for UPCS this will be required in lieu of Section 8 Housing Quality Standards (HQS).
- T. **VERY LOW INCOME FAMILIES** – Families whose annual incomes do not exceed 50 percent of the median family income for the area as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of median income for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs, or fair market rents, or

unusually high or low family incomes. An individual does not qualify as a very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

- U. **SINGLE FAMILY HOUSING** – A one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.
- V. **SINGLE PARENT** – means an individual who: (1) is unmarried or legally separated from a spouse; and (2) has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

CHAPTER TWO

FINANCIAL MANAGEMENT

1. AGREEMENT

- A. The written agreement between your organization and THDA will be a very important document throughout the life of the project. The written agreement must be executed before any funds can be disbursed or expended. **FUNDS COMMITTED OR EXPENDED BEFORE THE WRITTEN AGREEMENT IS SIGNED WILL NOT BE REIMBURSED FROM NHTF FUNDS.** The written agreement will ensure compliance with the regulations of the NHTF program.

2. ELIGIBLE COSTS

- A. **DEVELOPMENT HARD COSTS** – The actual cost of constructing or rehabilitating housing. These costs include the following:
1. For new construction projects, costs to meet the new construction standards as codified in § 93.301 and all THDA Design Standards;
 2. For rehabilitation, costs to meet the property standards for rehabilitation projects as codified in § 93.301(b) and all THDA Design Standards;
 3. For both new construction and rehabilitation projects, costs:
 - a. To demolish existing structures;
 - b. To make utility connections including off-site connections from the property line to the adjacent street; and
 - c. To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include onsite roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.
 - d. For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.
 - e. Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of paragraphs (a)(3)(ii) and (iii) of this section are also eligible in connection with the acquisition of standard housing.
- B. **ACQUISITION COSTS** – Costs of acquiring improved or unimproved property.

C. PROJECT "SOFT" COSTS – Other reasonable and necessary costs incurred by the owner and associated with the financing or development (or both) of new construction, rehabilitation or acquisition of housing assisted with NHTF funds. Eligible project "soft costs" include:

1. Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 24 months before the date that NHTF funds are committed to the project and the grantee expressly permits NHTF funds to be used to pay the costs in the written agreement committing the funds.
2. Costs to process and settle the financing for a project, such as lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorney fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.
3. Costs of a project audit, including certification of costs performed by a certified public accountant, that the grantee may require with respect to the development of the project.
4. Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 93.350.
5. For new construction or rehabilitation projects, the cost of funding an initial operating deficit reserve, (if applicable per the application), which is a reserve to meet any shortfall in project income during the period of rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any NHTF funds placed in an operating deficit reserve that remain unexpended at the end of the 18 months must be returned to the State's NHTF Trust Account.
6. Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation, loan processing, and inspections. For multi-unit projects, such costs must be allocated among NHTF-assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, these costs cannot be charged to or paid by the assisted families.
7. For new construction, reconstruction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.
8. Costs for paint testing, risk assessments, and clearance testing will be paid as soft costs. There is an acceptable range for costs involving these activities. Please contact your specialist for cost approval prior to contracting for these services.
9. Expenses incurred conducting lead activities, interim controls, standard treatments, and abatement.

D. OPERATING COST ASSISTANCE AND OPERATING COST ASSISTANCE RESERVES – For NHTF-assisted units for which project based assistance is not available, when necessary and subject to the limitations in § 93.200(a), NHTF funds may be used to pay for operating cost assistance and operating cost assistance reserves, as follows:

1. Only projects that identified and operating cost assistance or operating cost assistance

reserve contribution in their original application may request operating cost assistance or operating cost assistance reserve funding.

2. Operating costs are costs for insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems (provided that the payments must be based on the useful life of each major system and expected replacement cost) of an NHTF-assisted unit. The eligible amount of NHTF funds per unit for operating cost assistance is determined based on the deficit remaining after the monthly rent payment for the NHTF-assisted unit is applied to the NHTF-assisted unit's share of monthly operating costs. The maximum amount of the operating cost assistance to be provided to an NHTF assisted rental project must be based on the underwriting of the project and must be specified in a written agreement between the grantee and the recipient. The written agreement may commit, from a fiscal year NHTF grant, funds for operating cost assistance for a multiyear period provided that the grantee is able meet its expenditure deadline in § 93.400(d). The grantee may renew operating cost assistance with future fiscal year NHTF grants during the affordability period and the amount must be based on the need for the operating cost assistance at the time the assistance is renewed.
3. An operating cost assistance reserve may be funded by the grantee for NHTF-assisted units in a project where the grantee determines in its underwriting of the project the reserve is necessary to ensure the project's financial feasibility. If the operating cost assistance reserve is funded with appropriated NHTF funds, the allowable amount of the reserve shall not exceed the amount determined by the grantee to be necessary to provide operating cost assistance for NHTF-assisted units, for a period not to exceed 5 years, based on an analysis of potential deficits remaining after the expected rent payments for the NHTF-assisted unit are applied to the NHTF-assisted unit's expected share of operating costs. The grantee may renew operating cost assistance reserves with future fiscal year NHTF grants during the affordability period and the amount must be based on the need for the operating cost assistance reserve at the time the assistance for the reserve is renewed. If the operating cost assistance reserve is funded with non-appropriated NHTF funds, the reserve may be funded for the period of affordability.

E. RELOCATION COSTS

1. The costs of relocation payments and other relocation assistance to persons permanently or temporarily displaced by the project. Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.
2. Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

F. COSTS RELATING TO PAYMENT OF LOANS – If the NHTF funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

1. The loan was used for eligible costs specified in this section, and
2. The NHTF assistance is part of the original financing for the project and the project meets the requirements of this part.

G. CONSTRUCTION UNDERTAKEN BEFORE THE NHTF FUNDS ARE COMMITTED TO THE PROJECT

1. NHTF funds cannot be used for development hard costs, as provided in paragraph (a) of this section, or for acquisition, undertaken before the NHTF funds are committed to the project. However, the written agreement committing the NHTF funds to the project may authorize NHTF funds to be used for architectural and engineering costs and other related professional services, as provided in paragraph (d)(1) of this section.

H. ADMINISTRATIVE AND PLANNING COSTS – (92.770 – 92.779) Reasonable and necessary costs for the administration of the NHTF program such as salaries and wages; other employee compensation and benefits; and employee education, training and travel. The cost of completing an environmental review is included under administrative cost. Administrative costs do not include eligible project-related costs that are incurred by and charged to project owners.

3. ESTABLISHING PROCEDURES FOR FINANCIAL MANAGEMENT
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- A. REQUIREMENTS** – Applicability of uniform administrative requirements, cost principles, and audits (§ 93.405) - CFR part 200 applies to the grantees receiving NHTF funds, except for the following provisions: §§ 200.307, 200.311, 300.328(b), 200.329, and 200.333. If there is a conflict between the definitions in 2 CFR part 200 and 24 CFR part 93, the definitions in part 93 govern.
- B. GRANTEE RESPONSIBILITY** – The grantee is responsible for managing the day-to-day operations of its NHTF program, ensuring that NHTF funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems or concerns arise. The use of development partners, contractors or third party administrators does not relieve the grantee of this responsibility. The performance and compliance of the grantee will be reviewed at least annually. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects to ensure that the requirements of this part are met.
- C. AUDITS** – Audits of the grantee will be conducted in accordance with 2 CFR part 200, subpart F.
1. Any financial statement submitted by the grantee to THDA must be reviewed by an independent certified public accountant, in accordance with Statements on Standards for Accounting and Review Services, which is issued by the American Institute of Certified Public Accountants.
 2. The written agreement providing NHTF assistance to the grantee specifies that the grantee will submit to THDA a cost certification performed by a certified public accountant for each project assisted with NHTF funds.

3. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with NHTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

D. **RECORDKEEPING** – Each grantee must establish and maintain sufficient records to enable THDA to determine whether the grantee has met the requirements of this part. At a minimum, the following records are needed:

1. Program Records:

- a. The forms of NHTF assistance used in the program.
- b. The subsidy layering guidelines adopted in accordance with § 93.300.
- c. Records documenting compliance with the 24-month commitment deadline of § 93.400(d)(1).
- d. Records documenting compliance with the 10 percent limitation on administrative and planning costs in accordance with § 93.202.

2. Project Records:

- a. A full description of each project assisted with NHTF funds, including the location (address of each unit), form of NHTF assistance, and the units assisted with NHTF funds.
- b. The source and application of funds for each project, including supporting documentation, in accordance with 2 CFR 200.333 through 200.337, and records to document the eligibility and allowability of the project costs, including the documentation of the actual NHTF-eligible development costs of each NHTF-assisted unit (through allocation of costs, if permissible under §93.200(c)) where NHTF funds are used to assist less than all of the units in a multi-unit project.
- c. Records demonstrating that each rental housing project meets the maximum per-unit subsidy amount established pursuant to § 93.300(a), and the subsidy layering and underwriting evaluation in accordance with § 93.300.
- d. Records (e.g., inspection reports) demonstrating that each project meets the property standards of § 93.301 of this part at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards, and financial reviews and actions pursuant to § 93.404(a).
- e. Records demonstrating that each family is income-eligible.
- f. Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 93.302 for the required period. Records must be kept for each family assisted.

- g. Records demonstrating that each lease for an assisted rental housing unit complies with the tenant and participant protections of § 93.303.
 - i. Records must be kept for each family assisted.
- h. Records demonstrating that a site and neighborhood standards review was conducted for each project that included new construction of rental housing assisted under this part, to determine that the site meets the requirements of § 93.150.
- i. Records (written agreements) demonstrating compliance with the written agreements requirements in § 93.404.

3. Financial records:

- a. Records identifying the source and application of funds for each fiscal year, including the annual grant and any reallocation (identified by federal fiscal year).
- b. Records concerning the project development account and management account, including deposits, disbursements, balances, supporting documentation, and any other information required by the program disbursement and information system established by HUD or the program rules and policies established by THDA.
- c. Records identifying the source and application of program income.
- d. Records demonstrating adequate budget control, in accordance with 2 CFR part 200, including evidence of periodic account reconciliations.

4. Program administration records:

- a. Written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.
- b. Records demonstrating compliance with the applicable uniform administrative requirements required by § 93.405.
- c. Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

5. Records concerning other Federal requirements:

- a. Equal opportunity and fair housing records, as required under 24 CFR part 121.
- b. Data on the extent to which each racial and ethnic group and single headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with NHTF funds.
- c. Documentation of actions undertaken to meet the requirements of 24 CFR part 135, which implements section 3 of the Housing and Urban Development Act of

1968, as amended (12 U.S.C. 1701u).

- d. Records demonstrating compliance with the affirmative marketing procedures and requirements of § 93.350.
- e. Records demonstrating compliance with the lead-based paint requirements of 24 part 35, subparts A, B, J, K, M, and R.
- f. Records demonstrating compliance with requirements of § 93.352 regarding displacement, relocation, and real property acquisition.
- g. Records supporting exceptions to the conflict-of-interest prohibition pursuant to § 93.353.
- h. Debarment and suspension certifications required by 24 CFR 5.105(c) and 2 CFR part 2424.
- i. Records demonstrating compliance with § 93.354.
- j. Records demonstrating compliance with 2 CFR 200.321 regarding the grantee's activities related to minority business enterprise (MBE) and women's business enterprise (WBE).

E. RECORD RETENTION – All records pertaining to each fiscal year of NHTF funds must be retained in a secure location for the most recent 5-year period, except as provided below:

- 1. For rental housing projects, records may be retained for 5 years after the project completion date, except that records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent 5-year period, until 5 years after the affordability period terminates.
- 2. Written agreements must be retained for 5 years after the agreement terminates.
- 3. Records covering displacements and acquisitions must be retained for 5 years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled, in accordance with § 93.352.
- 4. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the required period, whichever is later.

F. ACCESS TO RECORDS

- 1. The grantee must provide THDA reasonable access to records, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.
- 2. HUD and the Comptroller General of the United States, and any of their representatives, have the right of access to any pertinent books, documents, papers, or other records of the grantee to make audits, examinations, excerpts, and transcripts.

4. PREPARATION OF AUTOMATIC DEPOSITS FORM AND AUTHORIZED SIGNATURES FORM

- A. **AUTHORIZATION AGREEMENT FOR AUTOMATIC DEPOSITS** – The Authorization Agreement for Automatic Deposits (ACH) tells the State to which financial institution the transfer of NHTF funds should be sent. The ACH forms must be submitted directly to the State of Tennessee Finance and Administration Department. The address for return of the ACH form is included in the instructions for the document.
- B. **SIGNATURE AUTHORIZATION FORM** – The Signature Authorization Form (FM-2) designates who is permitted to sign the community's "Request for Payment". It requires at least two signatures. These forms must be completed carefully with no erasures or corrections. Blank forms will be sent to you with your contract.
- C. **REVISIONS** – If these forms need to be changed (e.g., using a different financial institution or staff members change) simply provide the State with copies of revised forms with original signatures.
- D. **RESUBMISSION** – Grantees with previous NHTF contracts must submit these forms again with each new contract.

5. PROGRAM DISBURSEMENT AND INFORMATION SYSTEM

- A. **IDIS SYSTEM** – The NHTF Investment Trust Fund account established in the U.S. Treasury is managed through a computerized disbursement and information system established by HUD. The computerized system manages, disburses, collects and reports information on the use of NHTF funds. (For purposes of reporting in the Integrated Disbursement and Information System (IDIS), a NHTF project is an activity.
- B. **PROJECT SET UP** – After THDA executes its NHTF Agreement with HUD, complies with the established requirements for release of funds, and submits the appropriate banking and security documents – to the appropriate agency, it may set-up (identify) specific investments in the disbursement and information system. Investments that require the set-up of projects are acquisition, new construction, or rehabilitation of housing. The State is required to enter complete project set-up information at the time of project set-up.
 - 1. Project Set-up Report Form is completed by the Grantees and submitted to THDA.
 - 2. A project, which has been committed in the system for 18 months without an initial disbursement of funds, will also be automatically cancelled.
- C. **DISBURSEMENT OF NHTF FUNDS** – After complete project set-up information is entered into the disbursement and information system, NHTF funds for the project may be drawn down from the U. S. Treasury account by THDA by electronic funds transfer.
 - 1. THDA will request NHTF funds from the U.S. Treasury at the same time it requests funds from the State NHTF account for transfer to the grantees.
 - 2. NHTF funds drawn from Tennessee's U. S. Treasury NHTF account must be expended

for eligible costs within 15 days. Any funds drawn and not expended for eligible costs within 15 days of disbursement must be returned to HUD for deposit in THDA's U. S. Treasury NHTF account.

3. To draw down funds, a grantee must submit a Request for Payment Form with appropriate documentation.
- D. **PAYMENT CERTIFICATION** – As post-documentation of each drawdown of funds from the U.S. Treasury account, THDA or the state recipients with direct access to the disbursement and information system must keep in their project files a payment certification for each drawdown in the form of a NHTF Voucher Request.
- E. **PROJECT COMPLETION REPORTS** – A Project Completion Report must be submitted to HUD within 120 days of the final drawdown request for the project. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further project set-ups for the State or entitlement grantee. Project set-ups will remain suspended until a satisfactory Project Completion Report is received and entered into the system.
- F. **PROJECT REVISIONS** – Additional NHTF funds may be committed to a project up to one year after project completion, but the amount of NHTF funds in the project may not exceed the maximum per-unit subsidy amount set by HUD.

6. REQUESTS FOR PAYMENT

- A. **REQUEST FOR PAYMENT FORM** – NHTF funds are requested by using the Request for Payment Form. This form must be completely and accurately filled in or it cannot be processed. If you have questions, please contact your Housing Program Specialist.
- B. **SIGNATURES AND DOCUMENTATION** – The Request for Payment Form must be signed by two people authorized to do so and accompanied by adequate documentation of the expenditures for it to be processed. Submit the original to THDA and retain a copy for your files.
 1. For project set-up of rehabilitation projects, please include the following documentation; the Project Set-up Report Form identifying total projected NHTF costs; the construction contract signed by the contractor and developer; and the Status of Compliance with Lead-Based Paint Regulations, LBP Form and LBP inspection or risk assessment (if applicable).
 - a. Interim draws are allowed at 25%, 50% and 75% of the contract amount when the corresponding percentage of the project is completed;
 - b. If making an interim draw, please include the following documentation;
 - i. Copy of the construction contract between the grantee and the general contractor (needed for 1st draw request only) and;
 - ii. The Request for Payment Form and;
 - iii. All supporting documentation for the project expenses being paid with

this draw including;

- a. invoices supporting hard and soft costs; change orders (if applicable) and;
- b. Mechanics Lien Waivers for all subcontractor expenses representing final payment and;
- iv. General Contractor's Sworn Construction Statement of percentage of completion and;
- v. AIA inspection report signed by a licensed architect in support of the draw request indicating that all work and materials to be paid for with this disbursement have been furnished in accordance with the plans and specifications and;
- vi. 50% Draw must also have a completed and approved THDA Progress Review and passed rough in code inspection reports for all electrical, mechanical and plumbing work.
- c. If making a final draw, please include the following documentation;
 - i. The Certification of Completion and Final Inspection and;
 - ii. General Contractor's Sworn Construction Statement of completion;
 - iii. Invoices supporting hard and soft costs and change orders (if applicable) and;
 - iv. If lead hazards were identified a lead clearance report and;
 - v. Certificate of Occupancy or equivalent and;
 - vi. Passed THDA final progress report.

C. TIMEFRAME FOR PAYMENTS – If the request is in order and can be approved, allow thirty working days after THDA receives the request for F&A to process your direct deposit. If the request is not in order, you will be contacted to correct the deficiencies.

D. PAYMENT LIMITATIONS – Drawdowns should only be made in amounts necessary to meet current disbursement needs. Current disbursement needs are those funds that will be expended for eligible costs within fifteen days of THDA drawing the NHTF funds from the U.S. Treasury. Any funds that are drawn down and not expended for eligible costs within the 15 days must be returned to the Treasury and any interest earned after 15 days must also be remitted to the Treasury.

7. NHTF PROGRAM INCOME

A. **DEFINITION OF PROGRAM INCOME** – Program income means gross income received by Grantees which is directly generated from the use of NHTF funds (including NHTF program income) and matching contributions. When program income is generated by housing that is only partially assisted with NHTF funds or matching funds, the income shall be prorated to reflect the percentage of NHTF funds or match used. Program income includes, but is not limited to:

1. Repayments. Any NHTF funds invested in housing that does not meet the affordability requirements for the period specified in § 93.302 or § 93.304, as applicable, must be repaid by the grantee in accordance with paragraph (b)(3) of this section.
2. Any NHTF funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the grantee, in accordance with paragraph (b)(3) of this section.
3. Repayments will be made directly to THDA.

CHAPTER THREE PROCUREMENT

1. PURPOSE

- A. This chapter provides an overview of the Federal and State procurement requirements. It covers the basics of the federal law codified at 2 CFR, Part 200, THDA and THDA procurement policies and rules, and outlines the allowable types and methods of procurement.

2. OVERVIEW OF PROCUREMENT REQUIREMENTS AND PROVISIONS

- A. When an NHTF Program grant recipient elects to hire a contractor or procure items, materials, or services, they must follow their documented procurement policy as well as Federal and (THDA) procurement policy and laws. HUD standards for procurement can be found in 2 CFR Part 200.318-320. THDA has adopted its own procurement policy and procedures which can be accessed online.
 - 1. <https://s3.amazonaws.com/thda.org/Documents/About-THDA/Purchasing-Policy.pdf>
 - 2. Organizational policies that are stricter than those outlined in Part 200 or THDA's Procurement policy are permissible.
- B. **General Procurement Standards** – Good procurement standards and practices are required and necessary for a successful program. This will include good planning.
 - 1. The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
 - 2. Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 - 3. Identify and clearly specify standards for the goods or services the Recipient wants to obtain;
 - 4. Seek competitive offers to obtain the best possible quality at the best possible price;
 - 5. Use a written agreement that clearly states the responsibilities of each party;
 - 6. Keep good records; and
 - 7. Have a quality assurance system that helps ensure that the grantee gets what it pays for.
 - 8. Where possible use Integrity Agreements. To foster greater economy and efficiency and to promote cost-effective use of shared services, the Grantee is encouraged to enter into state and local intergovernmental agreements or *inter-entity agreements* where

appropriate for procurement or use of common or shared goods and services. This is designed to encourage shared services and goods, e.g., strategic sourcing. (See [2 CFR § 200.318\(e\)](#).)

9. The Grantee is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property when this is feasible and when it reduces project costs. (See [2 CFR § 200.318\(f\)](#)).
10. The Grantee is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
11. The Grantee must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [2 CFR § 200.213 - Suspension and debarment](#).
12. The Grantee must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
13. The Grantee alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

3. PROCURMENT METHODS

There are 5 (five) options. (See [2 CFR § 200.320](#)) This section is generally based on Circular A-102. One of the options- *micro-purchases*- is NEW.

- A. **MICRO PURCHASE PROCUREMENT** – Micro-purchases are used for acquisition of supplies or services if the aggregate amount does not exceed the “micro-purchase threshold” (currently \$3,000), as set by the Federal Acquisition Regulation at [48 CFR Subpart 2.1 Definitions](#) (See [2 CFR § 200.67](#)).
1. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
2. To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers.

3. The micro-purchase threshold is adjusted for inflation on a periodic basis.
- B. SMALL DOLLAR PROCUREMENT** – Informal methods that are sound and appropriate are allowed for the procurement of supplies and other property whose total cost is not more than the Micro Purchasing limit (\$3,000 in most cases) and contracts (other than construction) not exceeding the Simplified Acquisition Threshold (currently \$150,000) Informal procurement methods would also apply to professional service contracts of \$10,000 or less.
1. **SMALL DOLLAR PURCHASES OF EQUIPMENT, SUPPLIES AND NON-PROFESSIONAL SERVICES** – Price or rate quotations must be obtained from a minimum of 3 qualified sources.
 - a. These quotations may be obtained in writing, over the internet or by telephone as long as the Grantee keeps a written record of the price quotations in the grant file. The contract should be awarded to the source with the lowest price quotation.
 2. **PROFESSIONAL SERVICE CONTRACTS (LESS THAN \$10,000)** – Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least 3 firms that offer the type of service the grantee wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required if the professional service contract amount is less than \$10,000. The contract must be awarded solely on the basis of qualifications and cost.
- C. PROCUREMENT THAT REQUIRES FORMAL BIDDING** – Procurement of equipment, non-professional services and construction contracts whose total cost is more than the Micro Purchase limit (\$3,000 in most cases) must formally advertised for sealed bids or competitive proposals and a public bid opening in a newspaper of general circulation.
1. **ADVERTISEMENT REQUIREMENTS** – The invitation to bid must be published in a newspaper of general circulation at least **14 days** prior to the public bid opening. To avoid delays, a Grantee may wish to publish the invitation for bids in the newspaper of the closest major city (Knoxville, Nashville, Memphis or Chattanooga) to gain wider circulation and thereby increase chances of receiving at least 3 bids. The cost of publication is an administrative expense.
 2. **BID SOLICITATION** – Bid Solicitation must be a free, open competitive process. Every effort must be made to solicit minority and female businesses. The Grantee should not structure its procedures in order to keep business "in town". Absolute fairness must prevail in every aspect of the program, and any questions concerning conflict, or apparent conflict of interest should be discussed with THDA.
 3. **BID SELECTION** – **A minimum of three (3) bids must be received.** Bids will be opened on the date and time previously established. A bid tabulation form will be prepared. The owner will select the lowest qualified bid. **THDA requires that the project be re-bid if there are not at least three (3) valid bids in response to the invitation for bids.**
 - a. If the project is re-bid and 3 bids still are not obtained, contact THDA for an exception to the 3 bid requirement. THDA may consider your project as a sole source procurement and/or allow you to award the contract with less

than 3 bidders. **Written permission must be obtained from THDA before you may award a contract with less than three bids.**

- b. Should the Grantee/owner decide to select a bid other than the lowest qualified bid, the Grantee/owner should state the reasons/justification in writing. If the owner's justification is not acceptable, the owner will be required to finance any rehabilitation amount that exceeds the lowest qualified bid through his/her personal resources.
 - c. The Grantee will reject a bid in instances where the bid exceeds the cost estimate by a percentage determined by the Grantee in its policies and procedures, unless a review of the cost estimate demonstrates an error. If a low bid is under the cost estimate, a meeting will be arranged with the contractor to assure that his cost is within reason and will allow him to satisfactorily complete the job. The homeowner will be advised if no acceptable bids are received on their house and the project will be re-bid.
4. **REBID OR CHANGES IN SCOPE** – If all bids exceed the amount of the construction budget, Grantees *may not* negotiate solely with the low bidder. The project can be re-bid or changed in scope. If the scope of the project is changed, then each bidder must be given the opportunity to bid again. Bidders must be informed that they have the right to change their original unit prices as long as they conform to the revised bid specifications. Grantees must maintain documentation to demonstrate that this process was followed.
- a. **DEDUCTIBLE AND ADDITIVE ALTERNATES** – Bid specifications for construction projects may contain deductible alternates. By definition, a *deductible alternate* is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. The deductible alternates must not change the scope of the project. Bid specifications for construction projects may also contain additive alternates.
 - b. **DISQUALIFIED CONTRACTORS** – The Grantee must disqualify a contractor from bidding on projects when the contractor is listed on HUD's Limited Denial of Participation and Voluntary Abstention List (the "Debarred List").
 - c. A Grantee may also disqualify a contractor from bidding on projects when:
 - i. There is documented proof that the contractor has not paid material suppliers; or
 - ii. The contractor has not completed projects within the allotted time frame; or
 - iii. There exist complaints by property owners about quality of work and performance.

5. **PROFESSIONAL SERVICE PROCUREMENT (MORE THAN \$10,000)** – Professional service procurement procedures must be followed prior to the performance

of any work by the professional service contractor to be paid with HOME funds. The Grantee may publicly advertise for proposals or solicit requests for proposals from at least 3 firms that offer the type of service the Grantee wishes to procure.

- a. Once the proposals have been received, the preferred method of review is by a committee of at least three people who have technical knowledge of the type of service being considered.
 - b. The review, including the criteria for selection, should be thorough, uniform and well-documented. The reviewers should have no potential conflicts of interest with any of the firms or individuals under review (i.e., family relationships, close friendships, or business dealings).
6. **NONCOMPETITIVE PROPOSALS** – clarified to specify that it can be used only under certain conditions, e.g. when only one or more of the following factors apply. The documentation of this process is important. The factors to be considered include:
- a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency (or pass-through entity) expressly authorizes this method in response to a written request from the non-Federal entity;
 - d. After solicitation of a number of sources, competition is determined inadequate.

4. PROCUREMENT REVIEW

- A. Upon request of THDA, the Grantee must make available: (See [2 CFR § 200.324](#)).
- 1. **Technical Specifications.** The technical specifications on proposed procurements where THDA believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition.
 - 2. **Procurement Documents.** Upon request of THDA, the Grantee must make the procurement documents (e.g., requests for proposals, invitations for bids, or independent cost estimates) available for pre-procurement review when:
 - a. The Grantee procurement procedures or operations fail to comply with the procurement standards in Part 200; or
 - b. The procurement is expected to exceed the Simplified Acquisition Threshold (currently \$150,000); and
 - c. The procurement is to be awarded without competition or only one bid/offer is received in response to a solicitation; or
 - d. The procurement specifies a “brand name” product; or

- e. The proposed contract is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- f. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

CHAPTER FOUR

RELOCATION AND DISPLACEMENT

1. OVERVIEW

- A. **THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (UNIFORM ACT)** – The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), and its implementing regulations, 49 CFR Part 24 requires relocation assistance when a project causes the displacement of an occupant through rehabilitation, demolition, or acquisitions including federal funding.
- B. **Under 24 CFR Parts 91 and 93 as codified in § 93.352; Displacement, relocation, and acquisition** – When relocation is triggered, developers may need to replace any low/moderate income dwelling units that are lost to the conversion or demolition. This chapter covers only residential relocation. If non-residential (commercial/industrial) relocation is involved, contact THDA.

2. PROGRAM DESIGN CONSIDERATIONS FOR NHTF ADMINISTRATORS

- A. **RELOCATION CONSIDERATIONS IN PROJECT SELECTION** – Concerns about relocation may cause an administrator to consider establishing a preference for vacant buildings. However, administrators should also consider:
1. Vacant buildings are often very deteriorated. Rehabilitating an occupied building even with the cost of assisting tenants to remain or relocate, may be less costly than rehabilitating a vacant building.
 2. Occupied buildings may require the displacement of occupants both residential and commercial. Displacement can occur because of eligibility of the existing occupants to remain on the property at the completion due to income and occupancy restrictions. Economic displacement may occur if the cost of occupancy is no longer affordable. An early project planning step would be to determine the existing occupancy of the property and determine if the existing tenants will be able to remain on site once the project is completed or if displacement will be triggered. A fully occupied property may be a good target for modest rehabilitation while not triggering any permanent relocation.
 3. Selecting vacant projects does not relieve all relocation concerns. Vacant buildings in good condition may have been recently occupied. If so, the program administrator must consider whether the owner removed the tenants in order to apply for NHTF assistance for a vacant building. If so, these tenants are displaced persons.
 4. In occupied buildings, program administrators must consider whether occupants will be able to return after rehabilitation and whether Section 8 is available to avoid displacement and whether Section 8 assistance is available to help meet relocation costs.
 5. Grantees need to evaluate the feasibility of each project including the full scale of the rehabilitation along with all costs and administrative requirements related to the potential

displacement. To complete the step grantees will need to gather detailed information about the occupancy of the structure – an existing owner may not have income information for the existing residential tenants. Displacement of commercial tenants can be complicated and expensive.

- B. **MINIMIZING DISPLACEMENT** – Consistent with the NHTF rules and THDA's Non-Displacement Plan, each Grantee must insure that it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with NHTF funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.
- C. **NEED FOR SKILLED RELOCATION STAFF** – Skilled staff can save the local program money and build goodwill with owners and tenants. Failure to understand and follow relocation requirements can result in unnecessary costs for the local program.
- D. **EARLY DISCUSSIONS WITH OWNERS AND PROGRAM STAFF** – It is possible for uninformed owners and staff to take steps that would obligate the local program to provide significant relocation benefits and services. Early briefings for owners and program staff on relocation rules are essential.

3. RELOCATION REFERENCE MATERIAL AND RESOURCES

- A. **HANDBOOK 1378** – [Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition](#) consolidates relocation requirements for NHTF and other HUD programs in one document. It is available from HUD Field Offices or by contacting THDA.
- B. **INFORMATIONAL BOOKLETS** – HUD informational booklets for persons who are displaced or whose property is to be acquired are available from HUD Field Offices or by contacting THDA.
- C. **HUD WEBSITE** – https://www.hud.gov/program_offices/comm_planning/affordablehousing/training/web/relocation/planning

4. UNIFORM RELOCATION ACT REQUIREMENTS

- A. **TRIGGERING URA** – URA requirements are triggered at the time the owner's proposal is submitted and additional requirements are triggered at the time the agreement is signed between the owner and the grantee.
- B. **TREATMENT OF DISPLACED PERSONS** – Treatment of displaced persons depends upon whether the displaced person is a tenant or owner; a business or family; has income above or below the Section 8 Lower Income Limit.
- C. **TEMPORARY RELOCATION OF RESIDENTIAL TENANTS** – Residential tenants who will not be required to move permanently but who must relocate temporarily for the project must be provided reimbursement for all reasonable out-of-pocket expenses incurred in connection with

the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

1. In addition, these tenants must also be provided with:

- a. Appropriate advisory services, including advance written notice of the date and approximate duration of the temporary relocation;
- b. The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period; Tenants with special needs such as mobility or sensory impairments will need to be placed in appropriate temporary relocation units;
- c. The terms and conditions under which the tenant may lease and occupy a unit in the building/complex upon completion of the project.
- d. An offer of permanent relocation assistance if the relocation continues in excess of one year.

D. **DISPLACED PERSON** – A person (family individual, business, non-profit organization or farm, including any corporation, partnership or association) that moves from the real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with NHTF funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

1. After notice by the owner to move permanently from the property, if the move occurs on or after:

- a. The date of the submission of an application to the State or HUD, if the applicant has site control and the application is later approved; or
- b. The date the State approves the applicable site, if the applicant does not have site control at the time of the application; or
- c. Before the date described in paragraph 4.4(1)(a-b) above if the State or HUD determines that the displacement resulted directly from acquisition, rehabilitation or demolition for the project; or
- d. By a tenant-occupant of a dwelling unit, if any one of the following situations occurs:
 - i. The tenant moves after execution of the agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average utility costs that do not exceed the greater of:

1) The tenant's monthly rent before such agreement and estimated

average monthly utility costs; or

- 2) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30% of gross household income, if the tenant is not low-income;
- ii. The tenant is required to relocate temporarily, does not return to the building/complex, and either:
 - 1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation: or
 - 2) Other conditions of relocation are not reasonable: or
 - iii. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

E. NON-DISPLACED PERSON – A person *does not qualify as a displaced person if:*

1. The person has been evicted for cause, based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the State determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date for any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.
2. The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a “displaced person” (or for any assistance under this section) as a result of the project;
3. The person is ineligible under 49 CFR 24.2(g)(2); or
4. HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

F. INITIATION OF NEGOTIATIONS – For purposes of determining the formula for computing replacement housing assistance to be provided under the Uniform Relocation Act to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term initiation of negotiations means the following:

- a. When a Federal or State Agency is acquiring the property, the initiation of negotiations means the initial written offer of compensation to purchase the property from the owner. If the Federal or State Agency issues a notice of intent to acquire the property but the person moves out before the written purchase offer, the initiation of negotiations means the actual move of the person from the property.

2. When the displacement occurs due to rehabilitation, demolition or a private acquisition, the initiation of negotiations means the Notice of Eligibility for Relocation or if there is no notice, the actual move of the person.
3. When the Federal Government, working under the Comprehensive Environmental Response Compensation and Liability Act of 1980, elects to permanently relocate persons to protect public health and welfare, the initiation of negotiations means the formal announcement or advisory.
4. When the Agency acquiring the property is receiving Federal financial assistance for project costs, but not the actual acquisition, the initiation of negotiations means the execution of the written agreement between the Agency and the property owner.

G. ADVISORY SERVICES – Relocation advisory services must be offered and shall include such measures, facilities, and/or services as may be necessary or appropriate to:

1. Determine the need of displaced persons for relocation assistance.
2. Provide current and continuing information on availability, prices, and rentals of comparable replacement properties and housing. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.
3. Assure that, prior to displacement, decent, safe and sanitary comparable replacement dwellings will be available to displaced persons.
 - a. Decent, safe and sanitary are defined as meeting local housing and occupancy codes, or where those do not exist, Section 8 Existing Housing Standards. The unit must also be free of lead-based paint hazards. If the person being displaced is disabled, reasonable accommodations must be made specific to the disability.
 - b. Comparable units refer to size, condition, type of neighborhood, and access to employment, public and commercial facilities.
4. Ensure that the "decent, safe, and sanitary comparable dwelling" is affordable and available to displaced persons.
 - a. The replacement unit actually selected must be standard and it may be a better unit than the displaced unit. So, if the displacee chooses to relocate to a better unit, the Grantee should base the relocation payment on the difference between the most comparable unit and the displaced unit or ability to pay, and not on the cost of the unit that the displacee wants to move in.
 - b. Affordable means that the monthly housing costs shall not exceed 30% of the household's income with the replacement housing payments.
5. Inspect the actual replacement unit selected by the client to ensure it meets "decent, safe, and sanitary" requirements along with any identified special accommodation needs such

as accessibility modifications

6. Supply information concerning Federal and State housing programs and services.
7. Provide counseling to affirmatively further fair housing. The regulations require that the Grantee make available to low income and minority families special counseling and related services, e.g., transportation services. The Grantee may secure these services through fair housing or civil rights groups.
8. Provide other advisory services to displaced persons in order to minimize hardships.

H. **BENEFITS AS RIGHTS UNDER THE UNIFORM ACT** – The Grantee should stress that the benefits under the Uniform Act are "rights" to which the individual is entitled and that the Grantee's job is to ensure that all displacees receive the maximum amount of benefits to which they are entitled.

1. It should also be explicitly stated that there are no income or need criteria for benefits. All persons, regardless of income level, are eligible if they are relocated.
2. Certain benefits may be prorated for unrelated individuals living together.

I. **NOTICE REQUIREMENTS** – All occupants must receive timely notices explaining whether or not they will be displaced. This applies to REHABILITATION AS WELL AS ACQUISITION projects. *Failure to issue appropriate notices in a timely fashion may result in relocation payments made where they would otherwise not have been required.*

1. The **General Information Notice** must be provided as soon as is feasible after application, and must explain that the project has been proposed, and caution the occupant not to move prematurely. Additional information should also be included in this notice.
2. The **Move-in Notice** informs prospective tenants before moving into potential projects that they may be displaced and that they will not be entitled to assistance.
3. A **Notice of Non-displacement** or a **Notice of Eligibility for Relocation Assistance** must be issued at the time the project agreement is executed. For a rehabilitation project, this refers to the execution of the funding agreement between the Grantee and the owner. For acquisition, this is when an agreement is executed between the purchaser and the seller.
4. The **Temporary Relocation Notice** informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.
5. The **Notice of Eligibility** informs households to be displaced of their rights and levels of assistance under the URA.
6. The **90 and 30 Day Notices** inform displaced households of the day by which they must vacate the property. Note that displaced households may not normally be given less than 90 days to vacate their residence. The 90 Day Notice can be incorporated into the Notice of Eligibility. The 30 Day Notice may be used in certain circumstances.

J. STEPS IN PROVIDING RELOCATION ASSISTANCE

1. Design and adopt the relocation assistance program guidelines which address eligibility, payments, counseling services, grievance procedures and operating procedures. They must be written in language that is understandable. If English is not the primary language of the displacee, foreign language translations must be made available.
2. Identify individuals to be relocated as soon as possible and any special considerations to special populations, i.e., minorities, the elderly, large families or persons with disabilities.
3. All notices must:
 - a. Be written in plain understandable language. If individuals do not speak English, the Grantee must make all notices available in appropriate translations;
 - b. Be hard delivered with receipt documented, or sent certified mail, return receipt requested; and
 - c. Contain the name and phone number of a person who may be contacted for answers to questions or other needed help.
4. Interview each recipient to determine his/her need for assistance. A sample interview format is provided to show the type of information that is required. During this interview, review the relocation process with the relocatees and ensure that they understand the process. Special attention should be given to:
 - a. The assistance to be provided;
 - b. The benefits available;
 - c. The fact that replacement housing payments cannot be made unless the household relocates to a standard unit;
 - d. The importance of keeping in touch with the Grantee; and
 - e. The need to notify the Grantee before they move.
5. Prepare the relocation record.
6. Determine replacement housing needs. All comparable units must be decent, safe, and sanitary, as defined above. In addition, they must be affordable.
7. Inventory available housing. The Grantee shall prepare an inventory of available housing which meets the identified needs. Please note that the regulations require that the Grantee make comparable replacement housing available to low income or minority relocatees in areas that do not have concentrations of either low or minority households, if such opportunities are available. This means that if there are vacant, standard affordable units available in middle/upper income areas or predominantly white areas of the city/county, low income or minority relocatees must be given replacement housing choices in those areas before the Grantee can give such relocatees a 90-Day

Notice to Vacate.

8. Send a "Notice of Eligibility" at initiation of negotiations.
9. If the occupant is going to be able to continue to reside in the building or in a nearby building located on the same site, the occupant must be sent a Notice of Non-Displacement.
10. Provide assistance in securing suitable units. The process of finding suitable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to re-housing resources, accompany displacees to inspect possible dwellings, etc.
 - a. Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided.
 - b. All units must be inspected and certified as meeting code before being placed on a referral list.
 - c. The Grantee must offer transportation to displaced persons to inspect the units to which they are referred.
 - d. The Grantee must provide assistance in cases of housing discrimination. While it need not become a prosecutor, the Grantee must press displacee's claims of discrimination.
11. Complete processing claims and make payments.
 - a. If the Grantee has made a reasonable choice of suitable replacement housing opportunities available to the relocated, the Grantee may issue the 90-Day Notice to Vacate. The date on which the property must be vacated cannot be less than 30 days after the Grantee has obtained title to the property or legal right of possession, whichever comes earlier.
 - b. Payments should be issued within 30 days following the submission of sufficient documentation to support the claim.
 - c. Advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the Grantee must document that the payment was used for the purpose intended.
 - d. The Grantee should have the recipient sign a letter acknowledging receipt of relocation payments.
12. If relocation has not been completed within 6 months of the date of issuance of the Notice of Eligibility, the Grantee must document in its files the reason for the delay and a plan for timely completion.
13. If the relocation involves inhabitants of mobile homes, the Grantee should follow the procedures contained in the part of the regulations pertaining to mobile home occupants (49 CFR Part 24 Subpart F).

14. The Agency may not suggest or request a waiver of relocation assistance. If a displaced person has been advised of all relocation payments and assistance to which they are entitled and still refuses to accept some or all of the assistance, the Agency should document the refusal in writing.

K. PAYMENTS

1. **MOVING COSTS** – All displaced persons are eligible for moving costs. The displaced person can choose to receive either:
 - a. A fixed moving expense, based upon number of rooms in the residence. Any person displaced from a dwelling or seasonal residence, is entitled to receive an expense as an alternative to a payment for actual moving and related expenses. This allowance is determined according to the applicable schedule approved by the Federal Highway Administration.
 - b. Actual moving and related expenses, supported by bills and other documentation that cover actual moving costs for: (1) transportation of the displaced person and personal property for a distance up to 50 miles unless it is determined that relocation beyond 50 miles is justified; (2) packing and unpacking personal property; (3) disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property; (4) storage of the personal property for a period not to exceed 12 months unless it is determined a longer period is necessary; (5) insurance in connection with move and storage; and (6) other costs related to the move if approved by the Grantee as reasonable.
2. **REPLACEMENT HOUSING PAYMENTS UNDER THE URA** – These payments are available to owner-occupants and tenants that meet the following conditions:
 - a. A displaced 180-day owner-occupant who relocates to an ownership unit is eligible for a replacement housing payment. The payment represents the combined cost of:
 - i. The cost difference between the acquisition price and the lesser of the actual unit plus purchase price and the decent, safe, and sanitary comparable replacement unit;
 - ii. Increased costs;
 - iii. Eligible incidental settlement (closing) costs; and
 - iv. May not exceed \$22,500.
 - b. A tenant or owner-occupant who has occupied the property for 90 days who relocates into a rental unit is eligible for a replacement housing payment. This payment takes into account several factors, including the household's ability to pay, old rent and utilities, the rent/utilities of a comparable unit, and the rent/utilities of the unit they actually rent. Ability to pay under the URA is 30% of gross monthly income. The replacement housing payment is calculated as the

difference between: the lower of the ability to pay and the old rent/utilities; and the lower of the comparable rent/utilities and the rent/utilities of the new unit they actually select. The payment may not exceed \$5,250.

- c. For households who have been in residence less than 90 days, the replacement housing payment is calculated as the difference between the ability to pay and the lower of the comparable unit rent/utilities and the actually selected unit rent/utilities.
 - i. Both the 90 day and the less than 90 day tenant must receive their replacement housing payment in installments.
- d. A tenant who relocates to an ownership unit is eligible for a down payment assistance payment. The down payment assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses. Down payment assistance for a renter that wishes to become a homeowner is calculated in the same manner as the renter assistance payment except that there is no provision for the new unit actually selected by the household. The down payment assistance must be paid in lump sum.
- e. While not a requirement, the program administrator may work with the local PHA to offer eligible displaced tenants a Section 8 Certificate or Housing Voucher necessary as an alternative to cash rental assistance.
 - i. A displaced person must be informed of his or her option to choose cash or, if offered, Section 8 assistance.
 - ii. Since Section 8 assistance is adjusted periodically for increased market rents and because it is unlikely to cease at the end of 42 months, this will be a more valuable option than cash for a substantial number of lower-income tenants. The program also benefits when Section 8 assistance is used in place of a replacement housing payment.
 - iii. In the unusual case where the displacement dwelling rent/utility cost is less than the TTP, the tenant is eligible for cash to cover the gap. In the case of a Section 8 Voucher, if the rent/utility cost of the replacement dwelling (actual or comparable, whichever is less) exceeds the payment standard, the tenant will qualify for cash to cover the gap.

L. SPECIAL CONSIDERATIONS CONCERNING THE DENIAL OF CLAIMS

- 1. Payments for down payment assistance must be applied to the purchase of a replacement dwelling and related incidental expenses.
- 2. Payments for rental assistance to owners or renters need not necessarily be applied to housing costs. The rental assistance payment must be made in installments. The Grantee has no right to question the use(s) of that payment so long as the household initially occupies a standard unit.
- 3. If a payment must be denied, the Grantee must:

- a. Inform the claimant in writing why the claim is being denied.
 - b. Indicate what assistance is available to bring the current unit up to code (in case of a substandard unit).
 - c. Indicate the ongoing opportunity to qualify for assistance by moving into a standard unit (if the case of moving to a substandard unit is the reason for denying the claim).
 - d. Fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment, if possible.
 - e. Fully document its initial notification and all later reminders of the requirement to submit the claim within 18 months of the move (if this is the reason for denying the claim).
4. The claim may be denied for any of the following reasons:
- a. The unit is substandard.
 - b. The move was not completed within one year of the date of removal from the acquired dwelling or the date of receipt of final payment (if owner-occupant), whichever is later.
 - c. Or the claim was not submitted within 18 months of the move.

5. RENT BURDEN AND ECONOMIC DISPLACEMENT INTRODUCTION

- A. **RENT BURDEN** – If a tenant's rent increases as a result of a federally assisted activity, and the rent is more than the tenant can afford, the tenant is "rent burdened".
- 1. Rent Burden is defined differently under various HUD programs. In general, the factors considered are (1) whether the old rent went up and (2) what percentage of income the new rent and utility costs represent.
 - 2. The NHTF program uses the 30% of gross income threshold for tenants whose incomes are above the Section 8 Lower Income Limit and the Section 8 Total Tenant Payment (TTP) as the threshold for tenants at or below the Section 8 Lower Income Limit.
 - 3. TTP is the greatest of 30% of adjusted income or 10% of gross monthly income.
- B. **ECONOMIC DISPLACEMENT** – Occupants who move because their rent went up and they could not be offered a decent, safe, and sanitary, affordable unit within the project, are "economically" displaced, and are due the same relocation considerations as an occupant who is physically displaced.

6. OPTIONAL RELOCATION ASSISTANCE

- A. **TEMPORARY BUT VOLUNTARY DISPLACEMENT** – NHTF funds may be used to provide relocation assistance to persons who are temporarily but voluntarily displaced. The Uniform Act does not mandate benefits to homeowners who participate in the program on a voluntary basis but may be temporarily relocated due to reconstruction of their home.
1. THDA policy allows the Grantee to cover the cost of the moving expenses and a temporary living arrangement with NHTF funds.
 2. The Grantee must include the provision of equal relocation assistance within each class of displaced persons in their written Policies and Procedures, which are available for public review.
- B. Although temporary relocation assistance may be provided to households who are voluntarily displaced during rehabilitation, the Grantee must determine if the lead-hazard reduction work will require relocation for the safety of the household. If it is determined that temporary relocation for occupant safety is required, the Grantee *must* provide this assistance. The cost of relocation is a project soft cost and subject to the subsidy levels. *See Chapter 8, Section 6 - Occupant Protection.*

7. GRIEVANCE PROCEDURES

- A. **APPEALS PROCESS** – The grievance procedure must outline the appeals process contained in 49 CFR Part 24.10. These requirements include:
1. The grounds for filing an appeal
 2. To whom the appeal should be filed
 3. Appropriate time limits, the displaced persons right of appeal to the State, if the complaint cannot be satisfactorily resolved.

8. RECORD KEEPING REQUIREMENTS

- A. **SEPARATE CASE FILES** – Grantees must maintain a separate case file on each displaced person for at least three years after project completion or after receipt of final relocation payment, whichever is later. Each case file must include the following:
1. Record form with:
 - a. Data identifying the parcel and dwelling;
 - b. Number of individuals and family units;
 - c. Family composition (including age, sex, location of employment, source and amount of income);

- d. Veterans status of family members;
- e. Description of current dwelling (number and types of rooms);
- f. Length of time of occupancy;
- g. Amount of housing payment or rent; and
- h. Replacement housing preferences regarding tenure type, location and willingness to increase monthly payments; and other important characteristics (health/disability programs, special needs such as furniture, public assistance, etc.).

- 2. Copy of a Notice of Eligibility or Non-Displacement
- 3. Documentation of suitable replacement housing offered to displacees
- 4. Copy of the 90-Day Notice
- 5. Record of inspection with specified information
- 6. Copy of the 30-Day Notice
- 7. Copy of each relocation claim form and supporting documentation
- 8. Copy of evidence of verification of the claim
- 9. Copy of a cancelled check or other evidence or receipt of payment
- 10. Evidence of receipt of all notices
- 11. Copies of all correspondence related to the claim
- 12. Copies of any appeals made and outcomes and other pertinent data, such as referral of discrimination complaints, etc.
- 13. A summary of the relocation

B. RELOCATION MANAGEMENT CONTROL REPORT – For relocation projects which cover several cases, it is highly recommended that a Residential Relocation Management Control Report be maintained. See <https://www.hud.gov/sites/documents/1378X21CPDH.PDF>.

CHAPTER FIVE ACQUISITION

1. OVERVIEW

A. **UNIFORM ACT** – The acquisition, rehabilitation or demolition of any real property associated with a NHTF-funded project must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. Sect. 4601 et seq.), hereafter called the "Uniform Act" or "URA", and the HUD implementing regulations (49 CFR Part 24).

1. The Uniform Act applies:
 - a. Regardless of whether the actual acquisition is being paid from local or NHTF dollars;
 - b. To any acquisition which takes place on or after the date of submission of a NHTF application to fund an activity on that property unless the Grantee shows that the acquisition was clearly unrelated to the proposed NHTF funded activity; and
 - c. Any acquisition that took place before the date of submission of the application can be subject to the Uniform Act if that acquisition was intended to support a later NHTF activity.
2. All Grantees must either establish that they own the real property necessary for their project, or they will need to acquire that property by following specific federally mandated procedures. The term "property" when used in this context refers to any kind of permanent interest in real property: fee title, permanent easements, long-term leases (50 year or more), and temporary easements.
3. Before starting acquisition activities, Grantees should review HUD Handbook 1378 to obtain a better idea of the process, individual procedures to be followed, and recordkeeping requirements.
4. Grantees should not assume that acquisition is not required until all city or county records have been searched. The results of this search must be documented in the Real Property Acquisition file.

2. GENERAL ACQUISITION REQUIREMENTS

A. For the purposes of this handbook, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are subject to all of the same rules as other forms of acquisition. However, if a temporary easement exclusively benefits the property owner,

the URA does not apply. Grantees should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

1. Acquisition rules must be followed whenever:
 - a. The grantee undertakes the purchase of property directly;
 - b. The grantee hires an agent, private developer, etc. to act on their behalf; and
- B. HUD Handbook 1378, Chapter 5, recently updated, is a resource available for acquisition information and is available at HUD's web site:

<http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>

The URA regulations can also be downloaded from HUD's website at:

<http://www.hud.gov/offices/cpd/library/relocation/lawsandregs/finalrule/>

- C. The first step grantees should consider before undertaking any acquisition is a title search to determine the legal owner of the property.
- D. Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 7 for detailed guidance.
- E. Acquisitions can be divided into two types of transactions: voluntary and involuntary. It is critical that grantees understand the differences between the two types of sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain.
 1. Regardless of the form of acquisition used, it is strongly recommended that the grantee maintain a log of contacts with the owner in the acquisition file.
- F. The use of Federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if Federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a Federal or Federally-assisted project at any point during the course of a project.

3. VOLUNTARY ACQUISITION

- A. The URA recognizes three general types of purchases as potentially voluntary. Generally they are:
 1. Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the community states in writing it will not to use this power.

Example: The grantee has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing

and – if the offer is not accepted – be prepared to look for another property. The property will not be taken using the condemnation process.

2. Purchases where the agency or person does not have the power of eminent domain.

Example: A developer without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.

3. Purchases of property from government agencies (Federal, state, or local) where the grantee does not have the power of eminent domain over the other entity.

Example: A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.

4. To comply with the URA and carry out cost-effective programs, it is strongly recommended that acquisition under NHTF be limited to arms-length, voluntary transactions.

- B. Voluntary acquisition may be the most expeditious method available to a Grantee when property is needed for a project activity that is not site-specific. Projects that require particular sites by their very nature preclude the use of this method of acquisition.

- C. Voluntary acquisition must meet **ALL** of the following conditions:

1. No specific site needs to be acquired -- the search may be limited to a general geographic area;
2. The property being acquired is not part of a project area where all or substantially all of the property will be acquired; and
3. The Grantee will not acquire (by condemnation) if negotiations fail and informs the owner of this. The seller must be told in writing that the buyer lacks the power of eminent domain or in will not exercise their power of eminent domain to take the property. The Voluntary Acquisition Notice (see AQ-1) must also include an estimate of the property's fair market value in this notice to the seller. This notice will be included as part of the purchase offer and contract of sale which serves as an Addendum to Sales Contract. (See AQ-1A). Tenants must be informed of potential relocation eligibility upon initiation of negotiation.

- D. For a development project that intends to acquire multiple properties by voluntary acquisition, the Grantee should advertise/solicit sites for the particular project, for instance using a real estate agent's multiple listing service to identify sites. A general geographic location (e.g., the north side of town) can be included.

- E. A formal appraisal which is independent and unbiased is required.

- F. Noncompliance with Voluntary Acquisition Requirements. In those cases where a purchase option or contract for an acquisition prior to the issuance of a voluntary acquisition notice informing the seller of their rights as a voluntary acquisition, the grantee must, in writing, provide

the seller the opportunity to withdraw from the existing agreement. After the applicable requirements have been satisfied by the grantee and the seller has been so informed in writing, the seller may elect to void or affirm the original agreement in writing. If the seller voids the original agreement, the grantee can negotiate a new agreement with the seller (AQ-1A) provides a contract addendum to inform the seller of their rights under URA and acknowledge they wish to affirm the original agreement.

4. ACQUISITION FROM ANOTHER PUBLIC AGENCY

- A. Acquisition between governmental/public agencies is exempt from the Uniform Act, if the acquiring agency does not have condemnation authority over the other agency. The Grantee is simply responsible for documenting that it does not have condemnation authority, and it may then negotiate with the agency from which the property, easement or right of way is needed.

5. DONATIONS

- A. Donations are a common way that many Grantees acquire property. To be considered a voluntary sale, the Grantee must:

1. Inform the owner (in writing) of his right to receive just compensation under the Uniform Relocation Act (URA) based on an appraisal of the real property. The owner must waive these rights in a written consent document; and
2. Assure that an appraisal is obtained unless the owner releases them from such obligation (in writing).

B. PROCEDURES FOR ACQUISITION BY DONATION

1. Grantees must send donating owners a statement that the Grantee is required by law to offer just compensation to the owner based on an appraisal of the real property which establishes fair market value.
2. Provision must be made for a response from the property owner. It should be equally easy to respond either positively or negatively. They may also provide the opportunity for the owner to release the Grantee from its responsibility for an appraisal.
3. The property owner then signs the consent agreement.

6. TEMPORARY EASEMENTS

- A. URA regulation require that temporary easements required for a project be protected as an acquisition of property unless the acquisition of the temporary easements is exclusively for the benefit of the property owner. 49 CFR 24.101(c)(2) states that, “the provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.” The acquisition of temporary easements which do not satisfy the exception provided in 49 CFR 24.101(c)(2) above remain subject to the regulatory requirements whether completed

as a voluntary acquisition as outline above or as an involuntary acquisition shown in the following section.

7. INVOLUNTARY ACQUISITION

A. BASIC REQUIREMENTS OF INVOLUNTARY ACQUISITION:

1. Appraise the real property, inviting the owner to accompany the appraiser, except when:
 - a. The owner is donating the property and releases the locality from the obligation to appraise the property.
 - b. The acquisition is simple and to the best knowledge available to the Grantee, the fair market value is less than \$10,000. The basis for this determination must be well documented.
2. Establish just compensation for property in an amount not less than appraised fair market value. For tenant-owned improvements, just compensation shall be the greater of:
 - a. The contributory (enhancement) value of the improvement; or
 - b. Its salvage value.
3. Review the appraisal at the local level to determine the adequacy and soundness of the appraiser's opinion of fair market value.
4. Offer just compensation for property in writing before initiating negotiations. Include summary statement of basis for determination of just compensation.
5. Make reasonable efforts to acquire property expeditiously by negotiation. Do not take any coercive action to induce an agreement on the purchase price.
6. Do not require the transfer of possession of property until compensation is made available to owner.
7. Pay all costs incidental to the acquisition, including recording fees, mortgage prepayment penalties and prepaid property taxes.
8. If occupant is permitted to remain on the property on a short-term basis after acquisition, the rent shall not exceed the fair market rent for such occupancy.
9. If tenants occupy the property, they must be informed of potential relocation eligibility upon initiation of negotiation.

B. PROCEDURES

1. Notify all property owners as soon as possible of the Grantee interest in acquiring the property and the owner's basis rights (See AQ-3 Preliminary Acquisition Notice). A brochure "When a Public Agency Acquires Your Property" (AQ-4) has been published by HUD in Spanish and English editions. Copies of this publication are available from

THDA.

2. Determine if an appraisal is needed. This determination must be based on whether the two exceptions mentioned in A.1 apply. If there is no need for an appraisal, then proceed with step 5.
3. Obtain an unbiased and independent appraisal.
 - a. An independent appraiser must be selected.
 - i. The Grantee shall establish criteria for appraiser qualifications, assuring that they are consistent with the level of difficulty of the appraisal assignment and the Uniform Standards of Appraisal Practice. If the Grantee uses a contract appraiser, he or she must be State licensed or certified in accordance with the title XI of the Financial
 - ii. No appraiser (or review appraiser) shall have any direct or indirect interest in the property to be appraised.
 - iii. No one may act as a negotiator for real property that he has appraised if the value of the property exceeds \$2,000.
 - b. A minimum of one appraisal is required. However, if the project is potentially controversial (e.g., as with an unwilling seller) or where property values are high, it is recommended that two independent appraisals be conducted.
 - c. The Grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during the inspection of the property prior to the appraisal. This notice should be in writing and a copy placed in the property acquisition file. (See AQ-5 Invitation to Accompany an Appraiser).
 - i. Appraisals that are detailed and consistent with established, commonly accepted practices shall be prepared for all acquisitions except for those which, by virtue of their low value and/or simplicity, do not require an in-depth analysis. Nationally recognized appraisal standards shall be used, including the Uniform Appraisal Standards for Federal Land Acquisition to the extent feasible. Minimum requirements for an appraisal as listed at Section 24.103(a)(1)-(6) of the HUD implementing regulations.
4. *Have the appraisal reviewed.*
 - a. This review must be conducted by a qualified review appraiser with no direct or indirect interest in the property who will assure that the appraisal meets applicable requirements and seek corrections or revisions to the appraisal as necessary. The review appraiser cannot be the same person who appraised the property.
 - b. The review appraiser may develop appraisal documentation (in accordance with HUD regulations) to support a recommended value IF he is unable to approve the appraisal submitted as an adequate basis for establishing just compensation,

AND, it is not practical to obtain an additional appraisal.

- c. The review appraiser shall set forth in a signed statement a certification of the recommended value of the property that identifies appraisal reports reviewed and explains the basis for the recommended value. If there are damages or benefits to any remaining property, these shall also be identified.
5. Establish and Offer Just Compensation. This amount cannot be less than the review appraiser's recommended fair market value, and is usually the same. A prompt, written offer to acquire for this amount (AQ-6 Offer to Purchase) must then be sent to the owner. A written "Statement of Basis for Just Compensation" (AQ-7) must accompany this offer.
6. Negotiate with the owner, or his representative.
 - a. Discuss the offer and acquisition policies and procedures including the payment of incidental expenses as provided for in Section 24.106 of the HUD implementing regulations.
 - b. Give the owner an opportunity to evaluate the offer and, if he chooses, to present any material that he feels is relevant and/or make a counter-offer.
 - c. Consider any counter-offer and either accept it, obtain a new appraisal (usually only recommended if significant time has passed since the original appraisal), institute condemnation proceedings, or decide not to acquire the property.
 - d. Maintain full documentation of negotiation proceedings in the project acquisition file.
 - i. **NOTE:** Condemnation can be substantially more expensive than negotiation, particularly if the property owner is an elderly or infirm individual to whom juries tend to be very generous. The Grantee is required to pay the amount established by the court. It is advisable to try to avoid condemnation and secure a successful acquisition by negotiation when at all possible.
7. *Prepare, execute and record the contract of sale.* Before taking possession of the property, the Grantee must pay the agreed-upon purchase price to the owner. (See AQ-8 Offer of Sale of Land).
8. At the conclusion of settlement, the Grantee must provide the owner with a Statement of Settlement Costs (HUD-1) that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the person handling the transaction. A receipt for purchase price must be secured by the Contractor locality. All title/deed transfer documents must also be on file.
9. *If the local entity decides not to acquire* the property, it must notify the owner and all tenants in writing by registered mail, return receipt requested, of its intention not to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice must be sent within 10 days of the Grantee's determination not to acquire. (See AQ-10 Notice of

Intent not to Acquire).

8. ACQUISITION AND LEAD-BASED PAINT REGULATIONS

A. **ACQUISITION WITHOUT REHABILITATION** – Prior to the closing, the following steps must be followed for the acquisition of a vacant unit:

1. A visual inspection must be conducted to identify any deteriorated paint.
2. Deteriorated paint must be tested or presumed to be lead-based paint.
3. Deteriorated paint must be stabilized.
4. The unit must undergo clearance testing after paint stabilization. Clearance must be achieved prior to purchase of the property and occupancy.
 - a. A copy of the clearance form (LBP-6) must accompany the draw request for acquisition funds.

B. **ACQUISITION WITH REHABILITATION** – See *Chapter 9: Lead-Based Paint, Section 3 - Requirements for Rehabilitation Assistance (Subpart J)*.

9. RECORD KEEPING REQUIREMENTS

A. The following documentation must be kept for each property, easement or rights-of-way acquired:

1. Identification of property and property owner(s).
2. Evidence owner was informed on a timely basis about acquisition and his or her rights.
3. Copy of each appraisal report, including the review appraiser's report, and evidence that the owner was invited to accompany each appraiser on appraiser's inspection of property.
4. Copy of written purchase offer and summary statement of the basis for the determination of just compensation and date of delivery to owner.
5. Copy of purchase contract and document(s) conveying property.
6. Copy of settlement statement and evidence that owner received net proceeds due from sale.
7. Copy of any appeal or complaint filed and response.
8. **NOTE:** All notices to the owners and/or tenants should be either sent return receipt requested, or hand delivered and a signed receipt of delivery maintained.

10. REPORTING REQUIREMENTS

- A. The Grantee must complete the Report on Real Property Acquisition Activities (AQ-11). This report should be sent to THDA directly after completion of real property acquisition activities that were paid for with NHTF funds. This must occur prior to start of construction.

CHAPTER SIX

FAIR HOUSING AND EQUAL OPPORTUNITY

1. OVERVIEW

Each Grantee funded under Tennessee Housing Development Agency's (THDA) NHTF Program must comply with both state and federal laws with regard to fair housing and equal opportunity (FHEO). FHEO laws and requirements have been developed to protect individuals and groups against discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability and to provide equal opportunities in housing, employment and contracting assisted with federal funds.

2. FAIR HOUSING AND AFFIRMATIVE MARKETING

- A. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED (42 U.C.A. 2000D)** – States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, national origin, religion, sex, familial status or disability. Its implementing regulations may be found in 24 CFR Part 1.
- B. **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED (42 U.C.A. 2000E)** – Prohibits discrimination in employment against any individual on the basis of race, color, national origin, religion, sex, familial status or disability, and allows victims of intentional discrimination to seek punitive and compensatory damages through jury trials.
- C. **TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, AS AMENDED "THE FAIR HOUSING ACT" (42 U.C.A.. 3601)** – Prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, national origin, religion, sex, familial status or disability. Its implementing regulations may be found in 24 CFR Part 100-115.
 - 1. The Fair Housing Act does not pre-empt local zoning laws. The Act does, however, apply to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. The Fair Housing Act makes the following unlawful:
 - a. To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
 - b. To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

- c. To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

D. **2.4 EQUAL OPPORTUNITY IN HOUSING (EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259)** – Prohibits discrimination in housing or residential property financing related to any federally-assisted activity against individuals on the basis of race, color, national origin, religion, sex, familial status or disability. Implementing regulations may be found in 24 CFR Part 107.

E. **2.5 AGE DISCRIMINATION ACT OF 1975, AS AMENDED (42 U.S.C. 6101-07)** – Prohibits age discrimination in programs receiving federal financial assistance. Its implementing regulations may be found in 24 CFR Part 146.

3. HOUSING FOR PERSONS WITH DISABILITIES

A. **SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED (29 U.C.A. 794)** – States that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving NHTF funds. The implementing regulations may be found in 24 CFR Part 8.

- 1. For new construction of all multi-family units and for rehabilitation projects with 15 or more units for which the rehabilitation cost will equal at least 75% of the replacement cost:
 - a. Five percent of the units in the project must be accessible to individuals with mobility impairments; and
 - b. An additional two percent must be accessible to individuals with sight and hearing impairments.

- 2. Section 504 standards apply to all units in a project and not just the NHTF-assisted units.

B. **FAIR HOUSING ACT**: Multifamily dwellings must meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).

C. **AMERICANS WITH DISABILITIES ACT (42 U.S.C 12131; 47 U.S.C. 155, 201, 218 AND 225)** – Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

4. EMPLOYMENT AND CONTRACTING

- A. **EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED** – Prohibits discrimination against any employee or applicant for employment because of race, color, national origin, religion, sex, familial status or disability. Provisions to effectuate the prohibition must be included in all construction contracts exceeding \$10,000. Implementing regulations may be found at 41 CFR Part 60.

1. The NHTF assistance will likely generate employment through professional service and/or construction contracts. Those responsible for contracting and hiring must be aware of the Equal Opportunity requirements, including:
 - a. Construction contracts must have the proper equal opportunity language and correct goals for minority and female employment. Goals will need to be inserted for contracts other than homeowner rehabilitation. (Refer to EO-7 for Minority goals.)
 - b. Document efforts to solicit minority/female-owned businesses (see also 4.2 below).
 - c. Any subcontractor working with the prime contractor must also provide documentation where they also attempted to use minority/female-owned businesses.

- B. **MINORITY AND WOMEN BUSINESS OPPORTUNITIES (EXECUTIVE ORDERS 11625, 12138, AND 12432)** – To ensure that all federal agencies with substantial procurement or grant making authority adopt minority and woman business development plans (See EO-1). The implementing regulations may be found in 24 CFR Section 511.13(c).

1. Every effort must be made to assure minority/female owned businesses are offered opportunities to bid on service, material and construction contracts. To meet this requirement the following steps should be taken:
 - a. The grantee should notify minority and female owned businesses of contracts and bid deadlines.
 - b. A list of minority and female contractors and businesses can be found at <https://tn.diversitysoftware.com/?TN=tn> The Diversity Business Enterprise Directory and Disadvantaged Business Enterprise Directory are frequently updated and should be checked each time a project is ready to bid.
 - c. Grantees must also notify the Governor's Office of Diversity Business Enterprise when they have projects ready to bid.
 - d. Grantees must maintain documentation to demonstrate their efforts to contact minority and female contractors, both in the county in which the project is located and in the surrounding counties.
 - e. A contract/subcontract activity report (EO-4) must be completed on all contracts awarded.

C. SECTION 3 OF HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED, 12 U.S.C. 1701u. – The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very-low-income persons residing in the project area.

1. Section 3 applies to Grantees that receive \$200,000 or more in NHTF assistance for certain types of projects. The types of projects that are covered by Section 3 are housing construction (including any demolition and/or rehabilitation) or other public improvements such as infrastructure.
2. Further, contractors or subcontractors that receive contracts in excess of \$100,000 for housing construction, demolition, rehabilitation or other public construction are required to comply with the Section 3 regulations in the same manner as the grantee that provided the funding to them. In cases where a grantee receives NHTF funds of over \$200,000 for a project or activity, but no housing or other construction contracts exceeds \$100,000, the Section 3 requirement applies only to the grantee.
3. If the Section 3 threshold is met, the Grantee and, if applicable, its contractors/subcontractors must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by:
 - a. Awarding 10% of the total dollar amount of covered construction contracts to Section 3 businesses; and
 - b. Hiring Section 3 residents for 30% of new employment opportunities.
4. Grantees must document efforts made to comply with Section 3. Files should contain memoranda, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation should show the steps taken to implement the Section 3 requirements, and should cross-reference information in other files, such as procurement and construction contracting. Grantees and contractors may want to utilize HUD's Section 3 Business Registry, which is located at <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>. Finally, grantees are required to report on Section 3 annually. More information on this report is included in Section 7 below.

5. SITE AND NEIGHBORHOOD STANDARDS

- A. SITE AND NEIGHBORHOOD STANDARDS FOR NEW CONSTRUCTION (24 CFR 882.709)** – NHTF requires new construction of rental projects to meet site and neighborhood standards from 24 CFR 983.57(e)(2) and (3), which places limiting conditions on building in certain areas. Specifically, proposed sites for rental new construction units must meet the following site and neighborhood standards:
1. Site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with applicable provisions of Title VI of the Civil Rights Act of 1964. The Fair Housing Act, Executive Order 11063 and implementing HUD regulations including NHTF.
 2. The site must be adequate in size to accommodate the number of units proposed and have

adequate utilities and streets to service the site.

3. The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
4. The site may be located in an area of minority concentration ONLY if:
 - a. Sufficient comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or
 - b. the project is necessary to meet overriding housing needs that cannot be met in that housing market area.

6. GENERAL RESPONSIBILITIES

- A. NHTF-funded grantees and other program partners must adhere to all the laws, executive orders and regulations discussed previously in this chapter as outlined. Additional general responsibilities are outlined below.
- B. **POLICY OF NONDISCRIMINATION** – A written policy of nondiscrimination (EO-6) must be posted conspicuously so all recipients, job applicants, contractors, subcontractors and interested parties may see it.
- C. **FAIR HOUSING & EQUAL OPPORTUNITY BROCHURE** – A copy of the brochure “*Fair Housing and Equal Opportunity for All*” (EO-8) must be distributed to each program applicant. Each grantee will need to maintain records to demonstrate that this requirement has been met.
- D. The Grantee must take actions to ensure that no protected person or group is denied benefits such as employment, training, housing, access to information, or contracts generated by THDA funded projects on the basis of minority status. As the project progresses, the Grantee:
 1. Must exercise non-discrimination in the decision-making process for all elements of the project;
 2. Must take any necessary actions to ensure that members of the protected groups have equal access to any information, related services, and job opportunities associated with THDA-funded projects;
 3. Must make reasonable accommodations (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity participate in the program.
 - a. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government’s land use and zoning scheme, it is not to be deemed a “reasonable” accommodation;
 4. Must monitor the extent to which protected groups are participating and receiving benefits from the project.

5. Must maintain records of all tenants who initially occupy units that have been rehabilitated with NHTF funds, by race, ethnicity, and sex and include this information in the Project Completion Report; and
6. Must ensure that all sub recipients and contractors are taking all required actions.
7. Must ensure compliance with Section 3 requirements by verifying that recipients and contractors are making efforts to utilize low income residents in the Section 3 area for training and employment opportunities.
8. Construction contracts will probably generate the employment of local residents. Those responsible for hiring must be aware of the requirements of Equal Opportunity.
9. Must ensure that every effort is being made to notify minority/female owned businesses as well as document efforts, the following documents have been developed:
 - a. Policy and Procedures for Outreach to Minority and Women Business Enterprises (EO-1); and
 - b. Directory of Minority and Female Business Contractors and Suppliers in Tennessee (EO-2).

7. KEY RECORD KEEPING AND REPORTING REQUIREMENTS

- A. Grantees must maintain careful records of their actions for FHEO monitoring purposes. This documentation must include all items already specific previously in this chapter including: all advertisements for employment and documentation regarding the subsequent applications and individuals hired. Advertisements should contain the required equal opportunity language.
- B. Other records that must be maintained include:
 1. Policy of Non-Discrimination.
 2. Complaints, if any. Notify THDA who will address the Grantee as proper procedures to follow.
 3. City/County/nonprofit hiring policies.
 4. Documentation of Fair Housing activity (e.g., signed copies of Fair Housing and Equal Opportunity for All brochure).
 5. Beneficiary data by race, ethnicity, sex and disability status.
 6. For NHTF-funded homeownership projects, documentation that the units were affirmatively marketed to attract eligible homebuyers without regard to race, color, national origin, sex, religion, familial status or disability.
 - a. Copies of advertisements and announcements in the local media that include the Equal Opportunity logo or slogan;

- b. Copies of brochures, pamphlets or flyers soliciting applications from persons in the housing market who are not likely to apply for housing without special outreach; and
 - c. A list of community organizations, places of worship, employment centers; fair housing groups, human resource agencies and housing counseling agencies contacted for potential applicants.
- 7. **CONTRACTOR/SUBCONTRACTOR ACTIVITY REPORT** – This form (EO-4) is to report on contract and subcontract activity. The report must be maintained by the Grantee and copies sent to THDA by *August 31st of every year*. This report should include only contracts and subcontracts of more than \$10,000 unless contracts/subcontracts of less than \$10,000 represent a significant portion of contracting activity. The report should reflect all executed contracts and subcontracts between October 1st and September 30th of each year. The report also requires information to demonstrate compliance with Section 3.
 - a. Documentation to solicit minority/female businesses participation (copy of letters or bid packages sent, copy of bid advertisement specifically encouraging participation, etc.).
- 8. Documentation of Section 3 activities and beneficiaries including outreach, employment and training records, bid and contract documents, etc.
- 9. **SECTION 3 REPORT (EO-5 and EO-5A) (HUD 60002)** – This form is to report Section 3 activity and efforts for the period of October 1st through September 30th of every year. This form must be maintained by the Grantee and copies sent to THDA by August 31st of every year.

CHAPTER SEVEN ENVIRONMENTAL REVIEW

1. OVERVIEW

- A. All new construction, acquisition or acquisition rehabilitation activities (including manufactured housing) must meet the applicable environmental requirements specified in 24 CFR 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.
- B. It should first be noted that HUD's Office of General Counsel has determined that individual project selection is not a federal action to which the NEPA environmental assessment requirements, or consultation requirements under other Federal authorities such as the National Historic Preservation Act or the Endangered Species Act, would apply. Unlike some other HUD statutes, the NHTF statute does not specifically include a provision for Environmental Review.
- C. HUD and THDA are committed to the principles of NEPA and in ensuring decent, safe, sanitary, and affordable housing for people with extremely low incomes. Consequently, HUD has developed NHTF Environmental Provisions under the NHTF Property Standards.
- D. All new construction, acquisition or acquisition rehabilitation activities (including manufactured housing) must meet the applicable environmental requirements specified in 24 CFR 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.
- E. 24 CFR § 93.301(f)(1) - New Construction Including new construction or acquisition of existing housing that has been newly constructed or rehabilitated fewer than 12 months before the commitment of NHTF funds - 24 CFR § 93.301(f)(1)(3)(i)(A) and (4) 24 CFR § 93.301(f)(2) - Rehabilitation of existing housing that has not been newly constructed or rehabilitated fewer than 12 months before the commitment of NHTF funds - - 24 CFR § 93.301(f)(1)(3)(i)(B) and (4).

2. RESPONSIBILITY FOR THE ENVIRONMENTAL REVIEW

- A. The state as the grantor will be the Responsible Entity (RE) for the environmental review. However, the state will depend on the grantee/developer to gather the necessary information and publish the required notices, when required, with the assistance of the state. Only the state can certify that the environmental review requirements have been met.

3. TIMING

- A. NHTF housing projects must meet the applicable Property Standards, including the NHTF Environmental Provisions at 24 CFR § 93.301(f)(1) or (2) at project completion [§ 93.407(a)(2)(iv)] However, it should be determined prior to construction if a project will meet the NHTF Environmental Provisions.
 - 1. **If a project cannot meet the NHTF Environmental Provisions, the project cannot**

be funded by NHTF.

2. For example, if a project will impact a wetland, it cannot be funded by NHTF.
- B. Before ANY payment is made by THDA a Phase One Environmental conducted on all multi-family (4-units or more) sites must also be submitted to THDA.
- C. Responsible for establishing internal controls to enforce compliance with NEPA and Part 58.

4. ENVIRONMENTAL REVIEW PROVISIONS

A. **NHTF ENVIRONMENTAL PROVISIONS COVER** – Historic Preservation, Farmlands, Airport Zones, Coastal Barrier Resources System, Coastal Zone Management, Floodplains, Wetlands, Explosives and Hazards, Contamination, Noise, Endangered Species, Wild and Scenic Rivers, Safe Drinking Water and Sole Source Aquifers.

1. It should be noted that THDA does not allow construction or acquisition and rehabilitation within a 100 year flood plain under any circumstances. Additionally, THDA requires that any property be specifically and individually cleared by the State of Tennessee's Historic Commission. There are no historic clearances that may be inferred simply by meeting a federal statute.
2. Unlike NEPA, when a project is only using NHTF funds, without any other federal funding sources, there are no levels of review (CEST/EA), no public comment periods, no Request for Release of Funds and Certification and no Authority to Use Grant Funds documents or provisions.

B. **RECORDKEEPING:** The grantee administering NHTF must maintain documentation demonstrating that each project meets the NHTF Environmental Provisions at project completion [§ 93.407(a)(2)(iv)] Suggested formats can be used to document compliance with the NHTF Environmental Provisions.

C. **REQUIRED PROVISIONS:**

1. **Historic Preservation** – (i) NC/R (A) Standards. The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places.
 - a. Qualification Standards; 19 NHTF Only Historic Preservation
 - i. NC/R Resources: Check to see if the property is listed or eligible for listing in the National Register of Historic Places individually or as part of an historic district by contacting the Tennessee State Historic Office.
 - b. Site specific clearance is required by the Tennessee Historic Commission on all properties regardless of age.
 - c. Historic Preservation (i) NC/R (B) Archaeological resources. If under any circumstances archaeological resources or human remains are discovered on the project site during construction, the grantee must consult with affected tribes and/or descendant communities and comply with the Native American Graves

Protection and Repatriation Act (25 U.S.C. 3001–3013), State law and/or local 23 NHTF.

2. **Farmland** - 24 NHTF Only NC/R Project activities must not result in the conversion of unique, prime, or statewide or locally significant agricultural properties to urban uses.

- a. Resources:

USDA Web Soil Survey

<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

TigerWeb Urbanized Areas

<https://tigerweb.geo.census.gov/tigerweb/>

- b. If the project activities consist solely of rehabilitation, then the project will not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses. 25 NHTF Only Farmland.
 - c. For New Construction Documentation: A map from the Web Soil Survey showing that the project site is not a unique, prime or statewide or locally significant agricultural property, or a map showing the project is in an urban area.

3. **Airport Zones** – NC/R Projects are NOT permitted within the Runway Protection Zones (RPZ) of civilian airports, or the clear zones or Accident Potential Zones (APZ) of military airfields.

- a. Resources:

NEPAssist

<https://www.epa.gov/nepa/nepassist>

(Airport polygons under Transportation) 29 NHTF Only Airport Zones

- b. NC/R Documentation: A map showing the site is not within 15,000 feet of a military airport or within 2,500 feet of a civilian airport. If within 15,000 feet of a military airport, a map showing the site is not within a designated APZ or a letter from the airport operator stating so.
 - c. If within 2,500 feet of a civilian airport, a map showing the site is not within a designated RPZ or a letter from the airport operator stating so.

4. **Coastal Barrier Resource System** – NC/R No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service (FWS).

- a. For Tennessee, simply attach a map demonstrating that Tennessee has no coastal boundaries.

5. **Floodplains** – NC/R No activities in the 100-year floodplain are permitted by the Tennessee Housing Development Agency. Please site property on a flood map demonstrating it is not within a 100-year floodplain. Please use FEMA FIRM or other latest-available FEMA data showing the project location is not within a floodplain.

6. **Wetlands** – NC No draining, dredging, channelizing, filling, diking, impounding, or related grading activities are to be performed in wetlands. No activities, structures, or facilities funded under this program are to adversely impact a wetland. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.
 - a. No rehabilitation of existing properties that expand the footprint into a wetland is allowed. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. NHTF Only Wetlands NC/R
 - b. Resources:

FWS National Wetlands Inventory
<http://www.fws.gov/wetlands/Data/Mapper.html>
 - c. Documentation: A map showing the project is not located in a jurisdictional or non-jurisdictional wetland.
7. **Explosives and hazards** – NC Projects must be in compliance with the standards for acceptable separation distance, as set forth at 24 CFR part 51, subpart C.
 - a. Documentation: Document that the project meets the standards for acceptable separation distance.
 - b. If the rehabilitation of the building increases the number of dwelling units, then the project must be in compliance with the standards for acceptable separation distance as set forth at 24 CFR part 51, subpart C.
 - c. Documentation: If the project will not increase residential densities, then the project is in compliance with 24 CFR part 51, subpart C. Document that the rehabilitation will not increase the number of dwelling units in the building. If the project will increase residential densities, document that the project meets the standards for acceptable separation distance.
 - d. Resources:

HUD's Environmental Review Page – Explosives and Flammable Facilities.
<https://www.hudexchange.info/programs/environmentalreview/explosive-and-flammable-facilities/>
8. **Contamination** – NC/R All properties assisted with NHTF funds must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive

substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property:

- a. All proposed multifamily (more than four housing units) NHTF project/project activities require a Phase I Environmental Site Assessment (ESA-ASTM). If the Phase I ESA identifies recognized environmental conditions (RECs), a Phase II (ESA-ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard. Single family housing does not require a Phase I ESA. 54 NC/R NHTF Only Contamination (ix)
- b. NHTF projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from EPA or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended utilization of the property.

Note: The CERCLIS Public Access Database has been retired. The EPA is transitioning to the Superfund Enterprise Management System, or SEMS. SEMS includes the same data fields and content as CERCLIS. 55 NHTF Only Contamination NC/R

- c. Resources:

HUD's Environmental Review Page – Site Contamination
<https://www.hudexchange.info/environmental/review/sitecontamination/>

NEPAssist
<https://www.epa.gov/nepa/nepassist>

9. Noise – NC

- a. Internal noise levels: All activities will be developed to ensure an interior noise level of no more than 45 decibels (dB).
- b. External noise levels:
 - i. Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.
 - ii. Sites between 65 dB and less than 75 dB are acceptable with mitigation (e.g., noise walls, careful site planning) that result in an interior standard of 45 dB. (3) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (e.g., picnic areas, tot lots, balconies, or patios) and require sound attenuation in the building shell to achieve the 45 dB interior standard.
 - iii. 62 NHTF Only Noise
 - (a) NC Documentation: If under 65 dB, document the external noise level. If the exterior noise level is between 65 dB and less

than 75 dB, document the mitigation measures taken to meet the interior noise level standard of no more than 45 dB.

(b) If there are exterior noise levels of 75 dB or greater, document the mitigation measures taken to meet the interior noise level standard of no more than 45 dB.

(c) Also document that there are no outside noise sensitive uses involved in the project. 63 NHTF Only Noise (x) R (A) Internal noise levels.

iv. All activities will be developed to ensure an interior noise level of no more than 45 decibels (dB).

(a) Documentation: Document that interior noise levels will be no more than 45 dB.

v. Resources:

HUD's Environmental Review Page – Noise Abatement and Control

<https://www.hudexchange.info/programs/environmental-review/noiseabatement-and-control/>

DNL Calculator

<https://www.hudexchange.info/stracat/>
<https://www.hudexchange.info/environmentalreview/dnl-calculator/>

STraCAT – Barrier Performance Module

<https://www.hudexchange.info/programs/environmental-review/bpmcalculator/>

10. **Endangered Species** – NC/R The grantee must avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS), or would result in the destruction or adversely modify the designated critical habitat of such species.

a. Endangered Species (xi) NC/R

i. Documentation: Provide documentation that there are no endangered, threatened species, or critical habitat on the project site. If there are endangered, threatened species or critical habitat on the project site, document that the project will not jeopardize an endangered or threatened species, and will not adversely modify critical habitat. This may require informal consultation with FWS and/or NMFS.

11. **Wild and Scenic Rivers** – NC/R The grantee must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Department of Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

i. Resources:

HUD's Environmental Review Page – Wild and Scenic Rivers – Guidance

<https://www.hudexchange.info/environmental-review/wild-and-scenicrivers/>

- ii. Documentation: Document that the project is not located near a Wild and Scenic River. If the project site is located near a Wild and Scenic River, document that the project is consistent with the River's Management Plan.

12. **Safe Drinking Water** – NC/R Projects with a potable water system must use only lead-free pipes, solder, and flux.

i. Resources:

EPA's Drinking Water Requirements for States and Public Water Systems

<https://www.epa.gov/dwreginfo>

- ii. Documentation: Document that the project only uses lead-free pipes, solder, and flux. This may include architectural plans, building specifications, and certification by qualified professional.

13. **Sole Source Aquifer** – NC/R Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, EPA must review the project. EPA review is designed to reduce the risk of ground water contamination that could pose a health hazard to those who use it.

- a. There are no sole source aquifers in the State of Tennessee.

b. Resources:

HUD's Environmental Review Page – Sole Source Aquifers – Guidance

<https://www.hudexchange.info/environmental-review/sole-source-aquifers/>

- c. Documentation: Document that the project site is not located on an SSA. If the project site located on an SSA, provide documentation from EPA that the project will not impact the SSA (including regional MOUs)

CHAPTER EIGHT RENTAL HOUSING

1. DEVELOPING PROGRAM POLICIES AND PROCEDURES
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- A. **INTRODUCTION** – Your organization must formally adopt a set of Policies and Procedures for the operation of the NHTF program. These will serve as the guidelines for the day-to-day operation of the program. If applicants are aware of the goals of the program, its limitations and the way the program will be handled on a day-to-day basis, many potential problems and misunderstandings can be eliminated.
1. The Policies and Procedures must state that projects must be fully occupied by income eligible tenants within six (6) months of issuance of a certificate of occupancy for the completed units. If all units are not fully occupied by income eligible tenants within six (6) months of completion of construction or acquisition and rehabilitation, the grant Recipient must report to THDA on current marketing efforts in a form and with substance as required by THDA.
 2. The Policies and Procedures must also state if a rental project has not achieved initial occupancy within eighteen (18) months of Completion, all NHTF funds invested in the rental project must be repaid to THDA.
 3. THDA provides a "Sample Set of Policies and Procedures". Grantees may wish to use these as a guide, adopt them in whole or in part. Grantees must address in some fashion all of the essential topics, and the policies and procedures must be approved by THDA before adoption by the Grantee's governing board or management.
- B. **PURPOSE** – Describe the goals of the program and what activities will be undertaken to meet those goals.
- C. **AUTHORITY** – Indicate what legal authority - Federal, State and local - your program is operating under.
- D. **PROGRAM RESOURCES** – Specify the funds available for the program, their source, and how long they will be available.
- E. **APPLICABLE LAWS** – The local governing body, contractors, subcontractors, vendors and potential applicants for assistance are required to abide by a number of Federal and State laws. THDA will assist you in ensuring compliance and will monitor your program to make sure that you are in compliance. The Grantee must follow the appropriate laws and document their efforts. Failure to do so can have serious repercussions for the program. The following is a list of the applicable laws:
1. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128 and 24 CFR 92.358)
 2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4201-4655), 49 CFR Part 24, and 24 CFR 92.353)
 3. Debarment and Suspension provisions as required by 24 CFR Part 24 and 24 CFR 92.357.
 4. National Environment Policy Act of 1969 (NEPA), 24 CFR Parts 50 and 58, and 24 CFR 92.352.
 5. Equal Opportunity Provisions and Fair Housing, 24 CFR 92.350.
 6. Affirmative Marketing, 24 CFR 92.351.
 7. Lead-based Paint Poisoning Prevention Act, 24 CFR 92.355.
 8. Conflict of Interest Provisions, 24 CFR 85.36 or 24 CFR 84.424, as applicable, and 24 CFR 92.356.
 9. Intergovernmental Review of Federal Programs, Executive Order 12372 and 24 CFR 92.359.
 10. Drug-Free Workplace, 24 CFR part 24, subpart F.
 11. Standard Equal Opportunity Construction Contract Specifications.
 12. Certification of Non-segregated Facilities for Contracts Over \$10,000.
 13. Title VI of Civil Rights Act of 1964 Provisions.
 14. Section 109 of Housing and Community Development Act of 1974 Provisions.
 15. Section 3 Compliance Provisions.

16. Age Discrimination Act of 1975 Provisions.
 17. Section 504 Affirmative Action for Handicapped Provisions.
 18. And any other Federal requirements as set forth in 24 CFR Parts 91 and 93, NHTF
4. **TENANT SELECTION** – The Policies and Procedures governing the operation of your rental housing program must include written tenant selection policies and criteria that:
 1. Are in compliance with applicable fair housing laws which prohibit discrimination in housing based on race, color, religion, sex, familial status, national origin, age and disability;
 2. Are based on objective criteria related solely to program qualifications and the tenant's ability to pay the rent and abide by the terms of the lease, such as household income, housing history, credit history and/or lack of a felony conviction for manufacture or distribution of methamphetamine or placement on a state or national sexual offender registry.
 3. Apply the selection criteria consistently to all applicants and expressly prohibit bias in the selection process, including prohibiting discrimination and favoritism toward friends or relatives or other situations in which there might be a conflict of interest;
 4. Provide for the selection of tenants from the written waiting list in the chronological order of their application, insofar as practical; and
 5. Give prompt written notification to any rejected applicant of the grounds for any rejection.
 5. **TENANT SELECTION FOR SPECIAL NEEDS** – Grantees cannot discriminate based on the nature of the disability. NHTF-assisted housing for persons with disabilities must be equally available to *all* persons with disabilities. Owners may offer and advertise non-mandatory services that may be appropriate for persons with a particular special need or disability.
 1. There is an exception for housing for persons with a specific type of disability who could not reside in housing that is available to the general public. This exception would apply to persons whose disabilities require them to have on-site supportive services (such as 24-hour supervision), because without the on-site services, these persons would be unable to maintain themselves in housing.

2. GROUP HOMES AND SINGLE ROOM OCCUPANCY UNITS

- A. **GROUP HOME** – Housing that is occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one bedroom units) separate private space for each household. Supportive services may be provided. A group home is generally a large single-family unit, and is considered a one-unit project.
 1. The subsidy level for a group home is based on the number of bedrooms in the unit. Bedrooms occupied by resident supportive service providers are counted as eligible bedrooms for subsidy purposes.
- B. **SINGLE ROOM OCCUPANCY (SRO)** – Housing consisting of clearly identifiable separate dwelling units that is the primary residence of its occupant or occupants.
 1. If the project consists of new construction, conversion of non-residential space, or reconstruction, the unit must contain either food preparation or sanitary facilities (and may contain both).
 2. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by the tenants.
 3. The subsidy level is based on the maximum per units subsidy limit for a zero-bedroom (efficiency) unit. The maximum subsidy is calculated based on the number of NHTF- assisted units in the structure times the allowable per unit subsidy. However, the maximum subsidy may never exceed the actual development cost of the NHTF-assisted unit based on their proportionate share of the total development cost.
 4. The designation as an SRO must be consistent with local zoning and building code classifications.

3. MIXED INCOME DEVELOPMENTS

- A. A Unit used in conjunction with a mixed income development must be used solely for the benefit of the NHTF designated units in the development. All NHTF units in a development must be fixed or floating and designated as NHTF available units in the NHTF file.
- B. The minimum number and configuration of NHTF units designated at any given time must equal the number of NHTF units committed to in the original grant application and Attachment A of the Grant Agreement.

4. INCOME REQUIREMENTS FOR TENANTS

- A. **General** – The NHTF program has income-targeting requirements and all units must be occupied by households whose income is equal to or less than 30 percent of the area median income as determined by HUD. Therefore, the grantee must determine that each family occupying an NHTF assisted unit is income-eligible by determining the family’s annual income.
- B. **Definition of “annual income.”**
 - 1. When determining whether a family is income-eligible, the grantee must use one of the following two definitions of “annual income”:
 - a. “*Annual income*” as defined at 24 CFR 5.609; or
 - b. “*Adjusted gross income*” as defined for purposes of reporting under the Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes.
 - 2. The grantee may use only one definition for each NHTF-assisted program (*e.g.*, down payment assistance program) that it administers and for each rental housing project.
- C. **Determining annual income** – For families who are tenants in NHTF assisted housing, the grantee must initially determine annual income using the method in paragraph (D)(1) of this section. For subsequent income determinations during the period of affordability, the grantee may use any one of the methods described in paragraph (D) of this section, in accordance with § 93.302(e).
- D. **Methods of determining annual income.**
 - 1. Examine at least 2 months of source documents evidencing annual income (*e.g.*, wage statement; interest statement; unemployment compensation statement) for the family.
 - 2. Obtain from the family a written statement of the amount of the family’s annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.
 - 3. Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant’s family size and state the amount of the family’s annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant’s annual income does not exceed this limit.

5. INCOME LEVELS FOR GROUPS HOMES AND SRO UNITS

- A. It is expected that most, if not all tenants of group homes or single room occupancy units would have incomes at or below 60% of area median income.
- B. **GROUP HOMES** – All tenants, except live-in service providers, must have incomes at or below 80% of area median income.
- C. **SINGLE ROOM OCCUPANCY UNITS** – In SRO projects with 3 or more units, 20% of the units must be occupied by tenants with incomes at or below 50% of area median income.

6. RENT LEVELS

- A. The NHTF rent limits are the *maximum* rents that can be charged to an income-eligible tenant residing in a NHTF-assisted unit. Rents are controlled for the length of the applicable affordability period. These rents are determined on an annual basis by HUD. The NHTF rents are based on the current Fair Market Rents (FMRs) and the current Income Limits published by HUD. THDA is now required to annually review and approve rents for each NHTF-assisted rental project to ensure ongoing compliance with the NHTF rent limits and to prohibit undue rent increases.

1. *Please note that NHTF rent limits are not simply the FMRs used to determine rents for Section 8 certificates or vouchers.*
2. *In some instances, the Section 8 rents may be higher than the allowable NHTF rents. However, if NHTF funds have been invested in the unit, the NHTF rents must be used.*
3. *Section 8 rules specifically prohibit an owner from charging a higher rent for a unit that is occupied by a voucher holder than the rent charged for a comparable unit not occupied by a voucher holder.*

B. NHTF RENTS – The NHTF Program has two rent limits: the High NHTF rent limits and the Low NHTF rent limits. The published NHTF rents include all utilities. *The utilities paid by tenants must be subtracted from the rents provided to determine the maximum allowable rents.*

1. **HIGH NHTF RENTS** – The lesser of Fair Market Rents for existing units as determined by HUD or 30% of 65% of median income, adjusted for family size. This rent is used for 80% of the NHTF units (if the 5 unit rule applies).
2. **LOW NHTF RENTS** – This rent is equal to 30% or 50% of median income, adjusted for family size. This rent is used for 20% of the NHTF units (if the 5 unit rule applies).

a. If the project has less than 5 rental units, all of the units may rent at the High NHTF rent.

C. THDA will post the new NHTF rents to its website (www.thda.org) when they are issued by HUD each year.

1. Rents may increase or decrease from year to year. Where rents have increased, an owner may not raise rents in occupied units immediately. Any increase in rent is subject to the existing lease provisions, and the owner must provide the tenants 30 day prior written notice before increasing any rents.
2. Where rents have decreased, an owner is not required to reduce the rents in occupied units immediately. Compliance with the decreased limits may be done at the point in time specified in the lease, or if not specified, customary for periodic (usually annual) adjustments in rent.
3. Regardless of changes in Fair Market Rents and in median income over time, the qualifying rents are not required to be lower than the NHTF rent for the project in effect at the time of project commitment, , i.e., the date the project is entered into the Integrated Disbursement Information System (IDIS).

D. UTILITY ALLOWANCES – Utility Allowances: NHTF statutes and regulations establish rent limits for assisted rental units. These are gross limits that include contract rent plus a utility allowance (UA) for tenant-paid utilities. Owners are required to establish maximum monthly allowances for utilities and services (excluding telephone) and to update the UA annually. NHTF rules require owners to use a project-specific UA. Owners are NOT permitted to use the UA established by the local Public Housing Authority (PHA) for any NHTF-assisted properties.

The following methodologies will meet the regulatory requirements for a project-specific UA:

1. **Average of Actual Consumption.** In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners of Section 8 and other HUD-assisted properties for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for Low-income Housing Tax Credit (LIHTC) projects per IRS regulations at 26 CFR 1.42-10(b)(3). Owners may use the methodology from the notice, including the required baseline utility analysis, the optional factor-based utility analysis, and the utility analysis sample size.
2. **Utility Company Estimate** (26 CFR 1.42-10(b)(4)(B)). Owners may establish a UA based on estimates obtained from a local utility company for each of the utilities used in the project. The estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located.
3. **Energy Consumption Model (ECM)** (26 CFR 1.42-10(b)(4)(E)). Owners may establish a UA based on an energy and water and sewage consumption and analysis model. The model must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location and available historical data. The utility consumption estimates must be calculated by a mechanical engineer properly licensed in the State of Tennessee or a Residential Energy Services Network (RESNET) certified Home Energy Rating System (HERS) rater. The engineer and building owner must not be related within the meaning of IRC section 267(b) or 707(b), to which the engineer and building owner must certify. The owner and engineer must also certify that the model complies with the

minimum requirements described above. Use of the energy consumption model is limited to a building’s consumption data and local rates for the 12-month period ending no earlier than 60 days prior to the effective date of the UA. In the case of new buildings with less than 12 months of consumption data, 12 months of data can be used for units of similar size and construction in the geographic area.

The initial UA approval will occur prior to loan closing. Once the method and allowances have been approved by THDA, the owner must update the allowances annually using the approved method and current rate information. The updated allowances and source documentation must be made available for review during the on-site inspection.

If an owner wishes to change to a different UA methodology, they must request approval from THDA.

- E. **MARKET CONDITIONS** – Each Grantee should be aware of the market conditions of the area in which the project is located. Each project should show market feasibility not based upon the High and Low NHTF rents, but rather upon area housing markets and NHTF occupancy requirements which demand occupancy by low and very low income persons.
- F. Rents shall not exceed the published High and Low NHTF rents, adjusted for utility arrangements and bedroom size. *However, because these rents must also be attractive to lower income tenants, actual rents may be lower than the High and Low NHTF rents.* Programs should be designed so they take into consideration the market feasibility of projects funded.

7.

HOME RENT LIMITS FOR GROUP HOMES AND SRO UNITS

A. **GROUP HOMES** – A group home is housing that is occupied by two or more single persons or families. It consists of common space and/or facilities for group use by the occupants of the units (except in the case of shared one-bedroom units), and separate private space for each individual/family. Group homes often house the elderly or persons with disabilities.

- 1. A NHTF-assisted group home is treated as a *single* NHTF-assisted housing unit with multiple bedrooms. The NHTF rent limits for a group homes is the HUD-published Fair Market Rent (FMR) rent limit for the total number of bedrooms in the group home.
- 2. The bedrooms of live-in supportive service providers or other non-client staff are not included when calculating the total number of bedrooms for the purpose of establishing the rent. For example, if one bedroom in a four-bedroom group home is occupied by a service provider, the maximum rent for the group home is the HUD-published FMR Limit for a three-bedroom unit.
- 3. The HUD-published FMR limit is the *maximum combined* rent that can be charged to all income eligible tenants residing in the group home. Each tenant pays a pro-rata share of the total rent.
- 4. When group home tenants pay directly for utilities, the utility allowance must be subtracted from the HUD-published FMR limit in order to determine the maximum combined rent that can be charged to all tenants.
- 5. **RENT AND ADDITIONAL SERVICES IN GROUP HOMES** – Group homes frequently include food and/or other supportive services to its residents. *Group home rents may not include food costs or the costs of any supportive services.* Costs for such services must be billed as separate charges. For group home units that are developed for persons with disabilities, disability-related services must be *non-mandatory*.
- 6. The lease must also state whether the fee-based services are optional or mandatory and must identify the amount of the additional fees or surcharges separately from the basic HOME rent for each tenant. The State must approve in writing the costs of food and supportive services.
- 7. **SINGLE ROOM OCCUPANCY (SRO) HOUSING** – A single room occupancy (SRO) housing unit consists of a single room dwelling unit that is the primary residence of its occupant(s). It may or may not have food preparation and sanitary facilities.
- 8. The rent limit for an SRO unit is based on either the HUD Fair Market Rent (FMR) or the High and Low NHTF rent limits, depending upon the characteristics of the unit:

IF THE SRO HOUSING HAS....	THEN...
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A unit with <i>neither</i> food preparation nor sanitary facilities, or with one (food preparation or sanitary facilities)	The rent may not exceed 75% of the HUD-published FMR limit for a 0-bedroom (efficiency) unit. This limit is used for High NHTF Rent units and Low NHTF Rent units. Even though the rent limits are the same for High and Low NHTF Rent units, in projects with 5 or more NHTF-assisted units, at least 20% of the units must be occupied by very low income tenants.
A unit with <i>both</i> food preparation and sanitary facilities	The High NHTF Rent cannot exceed the HUD-published High NHTF rent limit or Low NHTF rent limit for a 0-bedroom (efficiency) unit. The Low NHTF Rents for these units cannot exceed either: <ol style="list-style-type: none">1. The HUD-published Low NHTF rent limit for a 0- bedroom unit; or2. 30% of the monthly adjusted family income of the very low income tenant. In projects with 5 or more NHTF-assisted units, at least 20% of the units must be occupied by very low income tenants.
A Low NHTF Rent unit that receives state or Federal <i>project-based</i> rental assistance and is occupied by a very low income tenant	The rent can be the applicable state or Federal project-based rent, as long as it is occupied by a very low income tenant who does not pay more than 30% of the family’s monthly adjusted income for rent.

- 9. Unlike group homes, in SRO housing with 5 or more NHTF-assisted rental units, at least 20% of the units must be set aside as Low NHTF Rent units for occupancy by very low income tenants.
- 10. Utility costs are included in the maximum NHTF SRO rents. If SRO tenants pay directly for utilities, the utility allowance must be subtracted from the HUD-published NHTF rent limit or FMR limit in order to determine the maximum rent that can be charged for the SRO unit.
- 11. SRO unit rents may not include food costs or the costs of any supportive services. Costs for such services must be billed as separate charges. For SRO units that are developed for persons with disabilities, disability-related services must be *non-mandatory*.
- 12. Each SRO tenant’s lease must clearly state whether the fee-based services are optional or required and must also identify the amount of additional fees or surcharges separately from the basic NHTF rent for each tenant. The State must approve in writing the costs of food and supportive services.

8. MARKETING

- A. Owners of NHTF-assisted rental housing must conduct marketing and advertising activities in accordance with applicable fair housing laws, as well as specific NHTF requirements that relate to affirmative marketing. These fair housing and affirmative marketing requirements ensure that owners and managers provide the opportunity to rent NHTF-assisted units to *all* eligible applicants. Owners and managers must also take certain additional steps to make accessible units available to persons with disabilities.
- B. Fair housing laws prohibit discrimination in all housing, housing-related activities and housing programs, regardless of whether or not the housing receives Federal financial assistance. Owners and managers cannot discriminate in the rental of units, in establishing terms and conditions of property rentals, or in advertising the availability of rental housing units.
- C. In addition, Grantees with projects of 5 or more NHTF-assisted units develop affirmative marketing procedures to ensure special outreach and advertising efforts are made to communicate the availability of NHTF-assisted housing to those groups or individuals that might otherwise be unlikely to apply.
- D. **MARKETING ACCESSIBLE UNITS** – Owners of properties with accessible units must develop procedures to ensure that information regarding the availability of those units reaches eligible individuals with disabilities. Reasonable, nondiscriminatory steps must be taken to make sure that available, accessible units are offered first to persons with disabilities who require the unit’s accessible features. Owners or managers must take the following steps when an accessible unit becomes vacant, regardless of the status of the waiting list:
 - 1. First, offer the unit to a current occupant of the project who might require or benefit from the accessibility feature(s) of the unit;

2. Second, offer the unit to an eligible qualified applicant on the waiting list who requires the accessibility feature(s) of the unit; and
3. Last, offer the unit to a non-disabled person on the waiting list. A non-disabled tenant may only rent an accessible unit after the owner has made all reasonable efforts to attract a tenant with a disability according to the above steps.

E. **TN HOUSING SEARCH** – Owners of NHTF-assisted rental property are required to list their properties on TNHousingSearch.org as part of their marketing procedures.

9. TENANT RELATIONS AND LEASE PROTECTIONS (92.253)

- A. The initial written lease between a tenant and an owner of rental housing assisted with NHTF funds must be for at least ONE year. Lease renewals should also be in increments of ONE year, unless by mutual consent, the tenant and the owner agree to a lesser term. The lease term may never be for less than 30 days.
- B. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with NHTF funds except for serious or repeated violation of the terms of the lease; for violation of applicable federal, state or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause.
- C. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing.
- D. Any termination of refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.
- E. An owner of rental housing assisted with NHTF funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet all applicable state and local housing quality standards and code requirements and if there are no such standards, or code requirements, the housing must meet the ongoing property standards as specified by HUD based on the HUD Physical Inspection procedures (Uniform Physical Conditions Standards (UPCS)). Prescribed by HUD pursuant to 24CFR5.705.
- F. Owners may not refuse to lease a NHTF-assisted unit to a family which holds a rental certificate (Rental Certificate Program) or a rental voucher (Rental Voucher Program) or a comparable document under the NHTF program.
- G. **REASONABLE ACCOMODATIONS FOR PERSONS WITH DISABILITIES** – The Fair Housing Act requires that all applicants and tenants of rental housing be given equal treatment and prohibits discrimination against anyone with respect to race, color, religion, sex, disability, familial status, or national origin. However, there are limited circumstances when the Act requires a housing provider to treat persons with disabilities differently, to enable them to have equal access to, or enjoyment of, housing and other housing-related programs. The Fair Housing Act requires owners to provide “reasonable accommodation” to persons with disabilities. This means that an owner may have to modify rules, policies, practices, procedures, and/or services to afford a person with a disability an equal opportunity to use and enjoy the housing.
- H. Owners of NHTF-assisted rental properties should have written procedures in place that address disputes between individual tenants or households and tenant grievances against management.
 1. Generally, it is an acceptable business practice for the Grantee, as owner, property manager to act as first intermediary in a conflict under limited circumstances, such as when one tenant complains about noise from another tenant's unit.
 2. Owners or managers should establish an impartial way to address complaints about property management staff or the way in which the property is being operated which generally requires the involvement of a neutral third party.
- I. **PROHIBITED LEASE TERMS** – Certain Lease Terms are prohibited. These include:
 1. **AGREEMENT TO BE SUED** – Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
 2. **TREATMENT OF PROPERTY** – Agreement by the tenant that the owner may take, hold, or sell

personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with the state law.

3. **EXCUSING THE OWNER FROM RESPONSIBILITY** – Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
 4. **WAIVER OF NOTICE** – Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
 5. **WAIVER OF LEGAL PROCEEDINGS** – Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
 6. **WAIVER OF A JURY TRIAL** – Agreement by the tenant to waive any right to a jury trial.
 7. **WAIVER OF RIGHT TO APPEAL COURT DECISION** – Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a decision in connection with the lease.
 8. **TENANT CHARGEABLE WITH COST OF LEGAL ACTION REGARDLESS OF OUTCOME** – Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
 9. **MANDATORY SUPPORTIVE SERVICES** – Agreement by the tenant to accept supportive services that are offered.
- J. Grantees shall comply with all applicable state statutes, including the Uniform Landlord Tenant Law. The Grantee's attorney, or the area Legal Aid Office, can provide assistance.
- K. Grantees shall also comply with all applicable local ordinances and keep informed about the existence of or changes in such ordinances.
- L. The Grantee must comply with the provisions of the Violence against Women Reauthorization Act of 2013 in accordance with 24 CFR §93.356 and the THDA National HTF Requirements.
- M. **TENANT RELATIONS IN CHDO PROJECTS** – NHTF-assisted rental housing that is owned, sponsored or developed by a CHDO must establish and implement a plan for tenant participation in management decisions *and* establish a fair lease and grievance procedure that is approved by the State.
1. Tenant participation in management decisions can be achieved through a tenant association that acts as a formal body to provide input for project management or through a tenant-elected representative who acts as liaison with management.
 2. Fair Lease and grievance procedures should be objective and clearly state to whom the tenant should direct a complaint; who will investigate and/or respond to the complaint; and by when the tenant should expect to receive a response.

10. RENTAL HOUSING RECORDKEEPING

- A. **PROGRAM RECORDS** – Grantees are responsible for maintaining records that demonstrate that they are operating a rental housing program in compliance with NHTF regulations. At a minimum, the program records must include the following:
1. Policies and Procedures for the operation of the rental program which have been adopted by the Grantee's governing board and which are available to all applicants.
 2. Adequate documentation to demonstrate that the tenant selection process was accomplished as stated in the adopted Policies and Procedures.
 3. A current waiting list which includes the application date, eligibility, and date accepted or rejected for a rental unit.

4. Documentation of the Grantee's efforts to ensure that the composition of the units meets income guidelines.
5. Documentation that all of the units meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code, NHTF-assisted new construction of multi-family rental units of 3 or more apartments must meet the most recently state adopted edition of the International Building Code; new construction or reconstruction of single-family rental units must meet the most recently state adopted edition of the International Residential Code for One- and Two-Family Dwellings; and NHTF-assisted rehabilitation of rental units must meet the most recently state adopted edition of the International Property Maintenance Code. New Construction projects must also meet the 2006 International Energy Conservation Code, published by the International Code Council.
6. Documentation that the Grantee has adopted an Affirmative Marketing Plan and is marketing the rental units according to the plan.
7. Documentation that the rents for all the units are in compliance with NHTF regulations.

B. TENANT RECORDS – In addition to program records which establish a Grantee's compliance with NHTF regulations, there must also be individual tenant records. These files should contain, at a minimum, the following:

1. The tenant's application for a rental unit.
2. Verification of the tenant's income and eligibility within the NHTF income limits.
3. Copies of required notices signed by the tenant, i.e., lead-based paint notices and fair housing.
4. A signed 12-month lease for the unit with the required tenant protections.

C. GRANTEE'S ON-GOING OBLIGATIONS FOR RENTAL PROPERTY – After the project is officially closed out by letter to the Grantee, the Community Programs Division of THDA will be responsible for NHTF Long-Term Compliance monitoring. Each Grantee will be monitored in accordance with HUD guidelines to determine each project's compliance with the NHTF Rules and Regulations. Each Grantee will also be monitored for adherence to its contract with THDA. Each Grantee will receive a letter explaining the details of the long term monitoring process and annual reporting requirements.

1. The rental housing long term monitoring requirements are the responsibility of the Grantee. They are responsible for:
 - a. Annual income certification of tenants;
 - b. Adherence to the NHTF rent and income composition guidelines;
 - c. Compliance with the Standard Housing Codes or the Uniform Physical Conditions Standards;
 - d. Reporting to THDA.

XII. DEFINITIONS

FULL-TIME EMPLOYMENT

A job at which a person regularly spends 31 or more hours per week.

HANDICAPPED OR DISABLED

A person who has been declared disabled for the purposes of Social Security or who has been certified as disabled or handicapped by a qualified public or private agency.

HOMELESS

A family is homeless if they lack a fixed, regular, adequate night-time, and has a primary night-time residence for individuals that is either a supervised public or private shelter; an institution that provides temporary residence for individuals intended to be institutionalized; or a public or private place not designed for or ordinarily used for sleeping.

HOUSEHOLD

All persons who regularly reside together in a single housing unit.

INVOLUNTARILY DISPLACED

An individual or a family is involuntarily displaced if they are displaced from the home they have been occupying

or if they will be displaced within six months from the date of certification because of fires, disasters, government action, or action by a private owner that the tenant could not control or prevent (not to include eviction for cause or a reasonable increase in rent); or actual or threatened physical violence that has occurred recently or is of a continuous nature.

MORE THAN 50% OF INCOME FOR HOUSING

A family paying more than 50% of their gross monthly income for rent and utilities combined. Utilities include electricity, water, heating fuel, and sewer, if available. A family may document actual utility bills or use the lowest applicable utility allowance published by THDA or the local PHA.

OVERCROWDED CONDITIONS

A household is overcrowded if there is an average of three or more persons per bedroom; or if there is no bedroom space for any member(s) of the household.

PART-TIME EMPLOYMENT

A job at which a person regularly works at least 10 but no more than 30 hours per week.

SUBSTANDARD HOUSING

A housing unit is substandard if it does not have operable indoor plumbing; does not have a useable flush toilet, bathtub or shower inside the unit for the exclusive use of the family; does not have electricity, or has inadequate or unsafe electrical service; does not have a safe and adequate source of heat; does not have a kitchen; has been declared unfit for habitation by any agency of government; or is dilapidated to the point that it does not provide decent, safe and sanitary shelter or has one or more critical defects in sufficient number to require considerable repair or rebuilding. Any one of these conditions qualify a unit as substandard.

CHAPTER NINE

LEAD-BASED PAINT

1. OVERVIEW

- A. **Lead Safe Housing Rule (LSHR):** In 1992, Congress enacted into law the Housing and Community Development Act of 1992. Title X of that Act, the Residential Lead-based Paint Hazard Reduction Act of 1992, is comprehensive lead-poisoning legislation. It switches the focus from the presence of lead-based paint to lead-based paint hazards. Title X defines lead-based paint hazards as “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present on accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.” Title X established specific requirements for action in pre-1978 federally owned or associated housing. On September 15, 1999 HUD published final regulations to implement sections 1012 and 1013 of Title X, which set forth specific policies on lead-based paint hazard reduction in federally-assisted and federally-owned housing.
- B. **Renovation, Repair and Paint Rule (RRP):** On April 22, 2008, EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Beginning in April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. The EPA requires anyone performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes must be an EPA-certified renovator and follow lead-safe work practices. There are some differences between the EPA RRP Rule and the HUD Lead Safe Housing Rule (LSHR).
1. A major difference is that the LSHR requires clearance examinations, while RRP does not. All housing receiving federal assistance must still comply with the LSHR requirements that are outlined throughout the rest of the chapter. However, there are training requirements associated with both RRP and LSHR. Simply being trained for the LSHR requirements is not sufficient.
 2. Training requirements for workers and supervisors performing interim controls to meet both RRP and LSHR include:
- C. If the supervisor (in HUD terms) or Certified Renovator (in EPA terms) is certified as a lead-based paint abatement supervisor or has successfully completed an accredited abatement supervision or abatement worker course, that person must complete a 4-hour RRP refresher course.
- D. For workers who are not themselves supervisors / Certified Renovators:
1. If their supervisor on this project is a certified lead-based paint abatement supervisor who has completed a 4-hour RRP refresher course, the workers must obtain on-the-job training in lead-safe work practices from the supervisor.
- E. Otherwise, the workers must successfully complete either a one-day RRP course, or another lead-safe work practices course approved by HUD for this purpose after consultation with the EPA. HUD has approved the one-day RRP course, the previously-published HUD/EPA one-

day Renovation, Remodeling and Repair course, and other one-day courses listed on HUD's website, at www.hud.gov/offices/lead.

- F. This chapter provides you with guidance in order to comply with the HUD LSHR regulations. The Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) regulate LBP activities performed on government owned or assisted properties. The Lead Safe Housing Rule is (LSHR) divided into sections that are called subparts. Subparts "C" through "M" apply to specific programs, such as multi-family mortgage insurance, project-based rental assistance, housing rehabilitation, public housing, tenant-based rental assistance, or acquisition, leasing supportive services or operations. Although all of Title X is applicable to the NHTF program, the most relevant parts of this legislation are Subparts J and K.
1. **SUBPART J** – The intent of Subpart J is to eliminate as far as practicable lead-based paint hazards in residential property that receives federal assistance for rehabilitation under a program administered by HUD.
 2. **SUBPART K** – The intent of Subpart K is to eliminate as far as practicable lead-based paint hazards in a residential property that receives federal assistance under certain HUD programs for acquisition, leasing, support services, or operation.
- G. As a general policy, THDA requires that actual testing be performed on any pre-1978 housing that is eligible for rehabilitation. This testing may be a Lead Hazard Screen, a Risk Assessment, or Paint Inspection, as defined in Section 2 below, performed by a certified Risk Assessor. The goal of this testing is to determine through testing whether or not LBP exists in the house and whether or not a LBP Hazard exists. The results of this testing and the corrective measures shall be incorporated in the rehabilitation work write-up.
- H. **Presumption of Lead.** THDA does not encourage the use of the Presumption of LBP in its programs, and requires that the project administrator contact THDA before starting work under this assumption. A Presumption does not provide real evidence as to whether or not LBP or a LBP Hazard exists. In those cases where THDA may allow a Presumption of Lead-Based Paint, there must be at least a laboratory analysis of dust samples collected by a qualified risk assessor prior to beginning work.

2. DEFINITIONS

- A. **ABATEMENT** – Any set of measures designed to permanently (at least twenty-years) eliminate lead-based paint or lead-based paint hazards.
- B. **CLEARANCE EXAMINATION** – An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.
- C. **INTERIM CONTROLS** – A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paints hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based maintenance activities, and the establishment and operation of management and resident education programs.

- D. **LEAD-BASED PAINT HAZARDS** – Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.
- E. **LEAD-BASED PAINT INSPECTION** – A surface by surface testing of all painted, shellacked, or varnished surfaces to determine the presence or absence of lead.
- F. **PAINT TESTING** – The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.
- G. **RISK ASSESSMENT** – An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.
- H. **LEAD SAFE WORK PRACTICES** – Lead based paint hazard reduction using approved methods of paint stabilization, occupant protection, specialized cleaning.
- I. **STANDARD TREATMENTS** – A series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation. NOTE: These are not allowed in THDA's program as these are used with the presumption of lead approach.

3. REQUIREMENTS FOR REHABILITATION ASSISTANCE (SUBPART J)

Subpart J of Title X deals specifically with rehabilitation. The requirements in regards to lead-based paint are dependent on the cost of the rehabilitation. HUD designates three categories of rehabilitation: property receiving less than or equal to \$5,000; property receiving between \$5,000 and \$25,000; and property receiving more than \$25,000. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributed to lead-based paint hazard reduction are not to be included when determining cost of rehabilitation. *However, these costs, plus the cost of rehabilitation, must not exceed the NHTF subsidy limits.* The following is a breakdown of what is required for each of these three categories in pre-1978 units:

A. PROPERTIES RECEIVING LESS THAN OR EQUAL TO \$5,000 PER UNIT

- 1. Provide the household, when applicable, with a copy of the pamphlet *Protect Your Family From Lead in Your Home* (LBP-1).
- 2. Conduct paint testing of all surfaces in the structure.
- 3. If, with THDA permission, the program administrator opts to Presume the Presence of Lead-Based Paint, there must be a laboratory analysis of dust samples as collected by a qualified risk assessor prior to beginning work.
- 4. Implement lead safe work practices during rehabilitation and repair any disturbed paint. If testing shows the absence of lead-based paint, safe work practices are not required.

5. After completion of rehabilitation, conduct clearance testing of the entire unit and common area. Clearance is not required if testing shows the absence of lead-based paint or if rehabilitation did not disturb painted surfaces greater than De minimis levels set forth by HUD.
 - a. De minimis levels:
 - i. 20 square feet on exterior surfaces
 - ii. 2 square feet in any one interior room or space
 - iii. 10% of the total surface area on an interior or exterior type of component with a small surface area, window sills, baseboards, and trim.
 - b. Provide the household, when applicable, with a copy of the COMPLETE Clearance Report within 15 days of completion of the hazard reduction activity or receipt by the administrator of the clearance report. (Documentation that the tenant, when applicable, has received the complete Clearance Report must be maintained in the project record.)

B. PROPERTIES RECEIVING BETWEEN \$5,001 AND \$25,000 PER UNIT

1. Provide the household, when applicable, with a copy of the pamphlet *Protect Your Family From Lead in Your Home* (LBP-1).
2. Conduct paint testing of all of the surfaces of the structure.
3. Perform a risk assessment in the dwelling unit receiving federal assistance and in associated common areas and exterior painted surfaces before rehabilitation begins.
 - a. A *Lead Hazard Screen* may be conducted first to determine whether a full risk assessment is required.
 - i. The Lead Hazard Screen is a limited risk assessment activity that involves dust and soil sampling and may include paint testing on deteriorated paint surfaces or surfaces to be disturbed during rehabilitation.
 - ii. A full risk assessment must be performed if any part of the Lead Hazard Screen fails.
4. Provide tenant, when applicable, with a copy of the COMPLETE Risk Assessment, Lead Hazard Screen within 15 days of completion of the report or receipt by the administrator. (Documentation that the tenant has received the Risk Assessment or Lead Hazard Screen must be maintained the in the project record.)
5. Perform interim controls of all lead-based paint hazards identified by the paint testing and risk assessment, as well as lead-based paint hazards created as a result of the rehabilitation work. If interim controls are necessary they must be performed by a person trained in accordance with CFR 1926.59 (Hazard Communication) and either be supervised by an individual certified as a lead-based paint abatement supervisor or have

successfully completed one of the following courses: a lead-based paint abatement supervisor or worker course accredited in accordance with 40 CFR 745.225; The Lead-Based Paint Maintenance Program; or The Remodeler's and Renovator's Lead-Based Paint Training Program.

6. After completion of rehabilitation, conduct clearance testing of the entire unit and common areas.
7. Provide the household, when applicable, with a copy of the COMPLETE Clearance Report within 15 days of completion of the hazard reduction activity or receipt by the administrator of the clearance report. (Documentation that the tenant has received the complete Clearance Report must be maintained in the project record.)
8. On-going lead-based paint maintenance is required if rehabilitation included NHTF.

C. PROPERTIES RECEIVING MORE THAN \$25,000 PER UNIT

1. Provide the household, when applicable, with a copy of the pamphlet *Protect Your Family From Lead in Your Home* (LBP-1).
2. Conduct paint testing of all surfaces in the structure.
3. Perform a risk assessment in the dwelling unit receiving federal assistance and in associated common areas and exterior painted surfaces before rehabilitation begins.
 - a. When a risk assessment is required, a Lead Hazard Screen may be conducted first to determine whether a full risk assessment is required.
 - i. The Lead Hazard Screen is a limited risk assessment activity that involves dust and soil sampling and may include paint testing on deteriorated paint surfaces or surfaces to be disturbed during rehabilitation.
 - ii. A full risk assessment must be performed if any part of the Lead Hazard Screen fails.
4. Provide household, when applicable, with a copy of the COMPLETE Risk Assessment or Lead Hazard Screen within 15 days of completion of the report or receipt by the administrator. (Documentation that the tenant has received the Risk Assessment or Lead Hazard Screen must be maintained in the project record.)
5. Abate all lead-based paint hazards identified by the paint testing and risk assessment, as well as lead-based paint hazards created as a result of the rehabilitation work. Perform abatement on all painted surfaces. **All abatement work must be performed by a certified abatement contractor.**

D. After completion of rehabilitation, conduct clearance testing of the entire unit and common areas.

E. Provide the household, when applicable, with a copy of the COMPLETE Clearance Report within 15 days of completion of the hazard reduction activity or receipt by the administrator of

the clearance report. (Documentation that the tenant has received the complete Clearance Report must be maintained in the project record.)

- F. On-going lead-based paint maintenance is required if rehabilitation included NHTF.
 - 1. Documentation must be maintained in the NHTF program files that all reports have been received by the tenant and/or contractor.

4. STEPS TO INCORPORATE LEAD-BASED PAINT PROCEDURES IN HOUSING REHABILITATION

- A. Complete the initial walk through and work-write-up. By doing the initial walk-through and work write-up, it is sometimes possible to determine that a unit needs to be reconstructed prior to expending the funds for a paint inspection/risk assessment that is not needed. Other times it may be necessary to have the paint inspection/risk assessment completed in order to make the determination that reconstruction is the best use of funds.
- B. Determine the estimated cost of repairs and the category into which the project falls.
- C. Provide risk assessor with a copy of the initial work write-up showing which areas are to be disturbed by the rehabilitation. Proceed with appropriate paint testing/risk assessment. If the Risk Assessment and testing has already been completed, the findings should be incorporated into the work wire-up. The paint inspection/risk assessment should address not only the areas to be disturbed, but any lead-based paint hazards and potential hazards that are discovered as part of the paint inspection/risk assessment.
- D. Provide tenant with a copy of the COMPLETE Risk Assessment or Lead Hazard Screen (LBP 2-Tenant Receipt of Lead-Based Paint Risk Assessment) within 15 days of completion of the report or receipt by the administrator. (Documentation that the household, when applicable, has received the Risk Assessment or Lead Hazard Screen must be maintained the in the project record.)
- E. Incorporate measures recommended by the risk assessor into the work write-up including LBP 4-Status of Compliance with Lead-Based Paint Regulations. The work write-up should be broken out with separate line item costs for both the rehabilitation work and the lead hazard reduction work. In most cases, the cost of lead work hazard reduction will be associated with a particular line item of rehabilitation work. In certain situations placing the cost of interim controls under lead hazard reduction may be the best choice, and the rationale for that decision must be well documented. It is important to remember that only the interim controls recommended in the risk assessment may be used for the rehabilitation.
- F. Determine if relocation is necessary.
- G. Put the project out to bid. The bid sheet must differentiate between rehabilitation work and lead work. The costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation. The two totals will then be added together to arrive at a total bid amount.

- H. Relocation of tenant and furnishings, if applicable.
- I. After completing work, clearance must be achieved. Provide the household with a copy of the COMPLETE Clearance Report (LBP 5 – Tenant Receipt of Lead Based Paint Clearance Report) within 15 days of completion of the hazard reduction activity or receipt by the administrator of the clearance report. (Documentation that the tenant has received the complete Clearance Report must be maintained in the project record.)
- J. Move tenant and belongings back into home, if applicable.

5. SAFE WORK PRACTICES

- A. Tenant/occupant and their belongings shall be protected and the worksite prepared in accordance with 24 CFR Part 35.1345 and prohibited methods of paint removal shall not be used.
- B. The worksite shall be prepared to prevent the release of leaded dust and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.
- C. A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or for an exterior hazard reduction activity, where it is easily read from a distance of 20 feet from the edge of the hazard reduction worksite. Each warning sign shall meet the requirements as described in 29 CFR 1926.52(m).
- D. After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum, or other method of equivalent efficacy, and lead-specific detergent or equivalent.

6. INTERIM CONTROLS

- A. Even though Interim controls are a temporary solution to lead-based paint hazards, they significantly reduce the risk of lead poisoning among the housing residents. Interim control methods include:
 - 1. Paint stabilization – Deteriorated paint can be controlled through repairs, safe paint removal, repainting the surface and/or repairing loose and deteriorated substrate materials.
 - 2. Friction and impact surface treatments – Friction and impact surfaces that create lead dust, such as windows, doors, stair treads and floors, can be treated by re-hanging doors and placing rubber stoppers along impact surfaces, and cushioning window tracks with plastic liners to reduce friction.
 - 3. Treatment for chewable surfaces – If a child under six has chewed surfaces known to contain lead, or if these surfaces are presumed to contain lead, these surfaces must

be enclosed or coated so that they are impenetrable.

4. **Dust control** – All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, window sills, and window troughs must be covered with a smooth cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum. Lead-contaminated dust can be controlled by cleaning surfaces that reduce leaded dust. Carpeting must be vacuumed and rugs must be removed and vacuumed on both sides. Vacuuming must be done using HEPA vacuums.
 5. **Soil treatments** – Control lead-contaminated soil by limiting access to it. There are two methods: covering contaminated surfaces with sod, grass, mulch, gravel or other appropriate material; and land use controls such as fences or signs.
- B. All interim control strategies require worksite preparation, cleanup, waste disposal, clearance testing, recordkeeping and monitoring.

7. ABATEMENT STRATEGIES

- A. Abatement strategies include the removal of lead-based paint. There are five basic methods of abatement for components that contain lead-based paint:
1. **Component replacement** – The removal of building components that contain lead-based paint.
 2. **Paint removal** – The separation of paint from the substrate using safe heat, chemical, or abrasive methods. It is the least preferred method and requires the greatest care and most careful clean-up. It is most appropriate for small surfaces.
 3. **Enclosure** – The installation of a barrier (such as paneling) that is mechanically attached to the building component, with all edges and seams sealed to prevent the escape of lead-based dust. It is appropriate for large surfaces such as walls, ceilings, floors and exteriors.
 4. **Encapsulation** – Involves a liquid or adhesive material that covers the component and forms a barrier that makes the lead-based paint surface inaccessible by relying upon adhesion. It is most appropriate for most kinds of smooth surfaces but cannot be used effectively on friction surfaces, surfaces in poor condition, or surfaces that may become wet. It must also be compatible with the existing paint.
 5. **Soil Abatement** – Includes removal of at least the top six inches of soil but may go to two feet in areas with heavy contamination; and paving the contaminated soil with high quality concrete or asphalt.
- B. All abatement strategies require worksite preparation, cleanup, waste disposal, clearance testing, recordkeeping and monitoring.

8. HUD STANDARDS FOR SAFE METHODS AND PROHIBITED METHODS FOR TREATING LEAD-BASED PAINT

A. Examples of safe treatment methods:

1. Wet scraping;
2. Wet sanding;
3. Chemical stripping off site;
4. Replacing painted components;
5. Scraping with an infrared or coil-type heat gun with temperatures below 1,100°F;
6. HEPA vacuum sanding;
7. HEPA vacuum needle gun;
8. Abrasive sanding with a HEPA vacuum; and
9. Covering a defective surface with durable materials such as wallboard or vinyl siding, with the joints sealed and caulked.

B. Examples of prohibited treatment methods:

1. Open flame burning or torching;
2. Machine sanding or grinding without a HEPA local exhaust;
3. Heat guns operating above 1,100°F or charring;
4. Dry scraping or dry sanding except in conjunction with heat guns or within one foot of outlets; and
5. Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance.

9. OCCUPANT PROTECTION

A. This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.

1. Occupants shall not be permitted to enter the worksite during hazard reduction activities, until after hazard reduction work has been completed and clearance, if required, has been achieved.
2. Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:
 - a. Treatment will not disturb lead-based paint, dust-lead hazards, or soil-lead hazards;

- b. Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;
 - c. Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of lead dust and debris into other areas, and treatment does not create other safety, health or environmental hazards; or
 - d. Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of lead dust and debris into other areas, and treatment does not create other safety, health or environmental hazards; and the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.
 - e. All occupants are over the age of 65 (elderly) and are made aware of the hazards involved with remaining in the home during rehabilitation. The residents must sign a waiver (LBP-7 – Elderly Relocation Waiver) acknowledging that they have received information on the hazards and have chosen to remain in their home.
3. The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with all seams and edges taped or otherwise sealed.

10. THE IMPORTANCE OF BREAKING OUT LEAD COST FROM NON-LEAD COSTS IN A WORK WRITE-UP

- A. It is very important to understand that work write-ups and construction budgets need to clearly delineate lead and non-lead costs and they need to do so on a line item basis. It is very easy to accidentally trigger abatement by using abatement methods as interim controls or by putting rehabilitation costs under lead hazard reduction costs in order to stay under the \$25,000 cap.
- B. In order to generate a work write-up for rehabilitation with lead that does not trigger abatement, it is very important to realize that the work write-up and risk assessment go hand in hand. It is easy to trigger abatement by calling for an abatement method in the work write-up, such as paint removal, component replacement, encapsulation or enclosure, to correct a lead hazard and then allocating the cost of that method to lead hazard reduction and not to rehabilitation hard costs. It is also important to remember that *only the interim controls called for in the risk assessment* can be used during rehabilitation.
- C. The following costs and activities are the types of lead costs that can be excluded from the hard cost of rehabilitation:
 - 1. Cost of site preparation;

2. Occupant protection;
 3. Relocation;
 4. Interim controls;
 5. Abatement;
 6. Clearance; and
 7. Waste handling attributable to lead-based paint hazard reduction.
- D. It should be noted that ‘interim controls’ is a very gray area and one area that seems to be very troublesome. *Just because a rehabilitation activity uses an interim control or has lead that requires the use of safe work practices, does not mean that the full cost of that activity can be deducted from the hard cost of rehabilitation.* Sometimes the ‘interim control’ may simply be needed to correct a lead hazard before a particular rehabilitation activity can be done. This type of interim control can be deducted from the rehabilitation hard cost, but not the full cost of the activity. Good documentation is necessary and this is where both intent and the risk assessment play a major role in determining if abatement has been triggered.
- E. In order to prevent the accidental triggering of abatement, one methodology would be to always have a rehabilitation hard cost for each line item in the work write-up that has lead. The cost of the activity if no lead was involved would be the rehabilitation hard cost. The additional cost of the activity, because it does have lead, is the lead reduction cost. (Cost of activity with lead – Cost of activity without lead = Lead hazard reduction cost)
- F. There are two approaches to generating a work write-up and risk assessment for a unit with lead depending on who is doing the inspection and the risk assessment.
1. If the housing inspector and the risk assessor are the not the same:
 - a. The housing inspector needs to do the initial codes inspection and identify the rehabilitation work to be done on the house.
 - b. The Risk Assessor completes his testing of the complete structure and gives the report to the housing inspector.
 - c. The housing inspector then modifies the work write-up so that it clearly breaks out rehabilitation work and required lead work separately by:
 - i. Identifying the housing components that have lead and require safe work practices.
 - ii. Incorporating in the work write-up any interim controls that are required to correct lead based paint hazards that were identified in the risk assessment but may or may not have been addressed as part of the original write-up.
 - iii. Ensuring that where applicable, line items with lead have both a rehabilitation cost and a lead cost.
 2. If the housing inspector and the lead inspector are the same person, the inspector can

conduct both the codes inspection and the risk assessment at the same time and generate the work write-up so that it clearly breaks out rehabilitation work and required lead work separately as in 11.6(1)(c) i-iii above.

3. The risk assessment and the work write-up that clearly breaks out the lead costs and non-lead costs on a line item basis will need to be submitted along with the contract when the set-up information is sent to THDA. The work write-ups will need to identify all line items that have lead and require the use of safe work practices. When interim controls are used, the methods to be used need to be clearly spelled out and the cost properly allocated.

11. GUIDANCE ON RELOCATION

- A. The Lead Safe Housing Rule includes requirements for occupant protection during lead hazard reduction activities. These occupant protection measures often require that a resident leave the unit while work is being performed. Relocation to a temporary unit may be required.
- B. When is relocation required? – Residents must be kept out of the work area during lead hazard reduction work and cannot return to the work area until it has passed clearance. If the residents cannot enter important parts of their home (e.g. bathrooms, kitchens) for more than a day, they need to be relocated temporarily.
 1. When is relocation not required? – The lead safe housing rule lists several situations that do not require relocation. These include:
 - a. The work will not disturb lead-based paint, dust lead hazards, or soil lead hazards.
 - b. Work on the interior of the unit will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health, or environmental hazards.
 - c. Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the worksite are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided.
 - d. Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the containment area is cleared of debris and cleaned; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health, or environmental hazards.
 - e. HUD has advised that the relocation of elderly occupants is not typically required, so long as complete disclosure of the nature of the work is provided and informed consent of the elderly occupant(s) is obtained before commencement of the work. (See LBP-13)
- C. What constitutes an appropriate relocation unit? – The Lead Safe Housing Rule requires that the relocation unit be lead-safe. The Interpretive Guidance provides two ways to demonstrate the lead-safety of a unit:

1. Use post-1978 units.
 2. Perform a clearance examination in the unit to ensure that there is no deteriorated paint or dust hazards.
- D. Does relocation for lead hazard reduction trigger the Uniform Relocation Act (URA)? - The URA is triggered if tenants are not treated reasonably during temporary relocation.
1. For tenants, this means that the agency must pay the out-of-pocket costs incurred by tenants during temporary relocation, such as the rent charged for the temporary unit above their costs for their existing unit, costs to move back and forth from the temporary unit, storage costs for personal belongings, and utility hookups at the temporary unit. In addition reasonable advance notice must be provided to the tenant before the tenant is required to move into or out of the temporary unit. Further, the unit they move into must be suitable for their needs. (For more information on URA, consult HUD Handbook 1378.)
 2. Work in owner-occupied housing does not trigger the URA. However, agencies may choose to define hardship situations for tenants and adopt temporary relocation as part of their written policies and procedures to pay certain costs, such as a per-day maximum for costs actually incurred for housing and meals. Any such policy must be written and must be applied consistently.
- E. What should a relocation policy cover? – Relocation policies serve as a useful guide to staff and program participants and help ensure that all program participants are treated consistently. The policy should cover:
1. When relocation is required under the program and how long temporary relocation will typically last
 2. How much notice will be provided to move and return
 3. What constitutes an appropriate relocation unit
 4. Whose responsibility it is to identify a temporary unit
 5. How much, if any, will be allowed for a meal allowance per person if the temporary unit has no cooking facilities
 6. How payment will be disbursed
 7. What relocation benefits are available to the resident during the relocation period
- F. How can relocation costs be minimized? – Minimize the relocation time. Stage work to minimize the time the residents need to be out of the unit. The worksite must be properly contained and the resident may not enter that area ever during the course of the work. Work areas must pass interim clearance before a resident can reoccupy them. A final clearance is still required at the end of the job, even after interim clearances have been done.
- G. Minimize associated costs. Negotiate favorable rates with motel or apartment owners for temporary relocation units. Obtain competitive bids from moving or storage companies, and

identify a mover and storage company that will provide services at the most favorable rate. However, costs should be based on actual expenses, not a per unit rate.

12. ACQUISITION, LEASING, SUPPORT SERVICES, OR OPERATION

- A. The purpose of subpart K is to establish procedures to eliminate as far as practicable lead-based paint hazards in a pre-1978 residential property that receives federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally owned housing, project-based or tenant-based rental assistance, or assistance to public housing.
- B. Notices and Pamphlets – In cases where evaluation or hazard reduction, including paint stabilization, is undertaken, each grantee shall provide a notice to residents in accordance with 24 CFR Part 35.125. A visual assessment is not considered an evaluation for purposes of this part. The grantee shall provide the lead hazard information pamphlet.
- C. If a dwelling unit receives federal assistance under a program covered by this Subpart, each grantee shall conduct the following activities for the dwelling unit and all common areas servicing the dwelling unit and the exterior surfaces of the building in which the dwelling unit is located:
 - 1. A visual assessment of all painted surfaces in order to identify deteriorated paint;
 - 2. Paint stabilization of each deteriorated paint surface, before occupancy of a vacant dwelling unit or where a unit is occupied, immediately after the receipt of federal assistance; and
 - 3. The grantee shall incorporate ongoing lead-based paint maintenance activities into regular building operations.
 - 4. The grantee shall provide a notice to occupants describing the results of the clearance examination in accordance with 24 CFR Part 35.125.

13. COST

- A. Costs for paint testing, risk assessments, and clearance testing will be paid as soft costs. There is an acceptable range for costs involving these activities, and the range has increased due to recent increases in transportation costs. Please contact your specialist for cost approval prior to contracting for these services
- B. Expenses incurred conducting lead activities such as costs of site preparation, occupant protection, relocation, interim controls, clearance, waste handling attributed to lead-based paint hazard reduction, standard treatments, and abatement will count towards the subsidy limit.

14. CERTIFICATION

A. Lead-based paint Inspectors, Lead-based paint Risk Assessors, Lead-based paint Abatement Workers, and Lead-based paint Abatement Supervisors must be certified by the Tennessee Department of Environment and Conservation (TDEC).

B. A listing of these certified Lead professionals is available from the TDEC office:

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management Fifth Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1535
1-888-891-8332

C. Websites for additional information:

https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines

https://www.hud.gov/program_offices/healthy_homes/enforcement/regulations

<https://www.tn.gov/environment/program-areas/solid-waste/toxic-substances/lead-hazard-program.html>