

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



# National Housing Trust Fund

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## Interim Rule Summary 24 CFR parts 91 and 93

**Office of Affordable Housing Programs**  
**6/19/2015**

This document is a summary of the program requirements for the National Housing Trust Fund (HTF) and is provided as a resource. It does not contain a complete list of all the requirements applicable to the HTF. A full copy of the HTF Interim Rule can be accessed on the HTF website at, <https://www.hudexchange.info/htf>.

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## EXECUTIVE SUMMARY

### Purpose:

The National Housing Trust Fund (HTF) is a new affordable housing production program that will complement existing Federal, State, and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-income (ELI) and very low-income households (VLI), including homeless families.

### Statutory Background:

The HTF was established under Title I of the Housing and Economic Recovery Act 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."

### Publication of Program Rules:

HUD published the proposed HTF formula Rule ([FR-5246-P-01](#)) on December 4, 2009 and the proposed program Rule ([FR-5246-P-02](#)) on October 29, 2010. On January 30, 2015, HUD published an interim program Rule ([FR-5246-I-03](#)). The interim rule provides the guidelines for States to implement the HTF.

### Grantees:

HTF is a formula grant program, which is to be administered by States. This includes the 50 States, Washington DC, the Commonwealth of Puerto Rico, and each of the insular areas. A State may choose to administer its own program or choose a qualified State-designated entity to administer the HTF funds on its behalf. A list of HTF grantees can be found on the [HTF website](#).

### Program Requirements:

The HTF funds will be distributed by formula. Grantees are required to use at least 80 percent of each annual grant for rental housing; up to 10 percent for homeownership housing; and up to 10 percent for the grantee's reasonable administrative and planning costs. HTF funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities. All HTF-assisted rental housing must meet a minimum affordability period of 30 years. All HTF-assisted homeownership housing must meet the minimum affordability period of 10, 20 or 30 years based on the amount of HTF investment in the unit.

### Eligible activities and expenses include:

- Real property acquisition;
- Site improvements and development hard costs;
- Related soft costs;
- Demolition;
- Financing costs;
- Relocation assistance;
- Operating cost assistance for rental housing ( $\leq$  30 percent of grant); and
- Reasonable administrative and planning costs.

### More Information:

HUD is developing guidance and training to assist grantees and program partners in designing and implementing their programs. For more information on HTF, visit <https://www.hudexchange.info/htf>.

## 24 CFR PART 93 SUBPART A- GENERAL

### Overview- § 93.1

Each year, HUD will allocate the amount made available for the HTF based on the formula established in the interim rule. The amount available for allocation is the amount set aside by Fannie Mae and Freddie Mac for the HTF during their fiscal year (January 1- December 31). Deposits to the HTF are due within 60 days of the end of their fiscal year. HUD will publish a notice in the Federal Register announcing HTF allocations for the 50 States, the District of Columbia (DC), the Commonwealth of Puerto Rico (Puerto Rico), and each of the insular areas.

## SUBPART B- FORMULA ALLOCATION

### Formula Allocation and Factors- §§ 93.50-93.51

The amount to be allocated by formula to each State and DC is determined using the most recent U.S. Census Bureau data available for the same year for these geographic areas. Allocation amounts to the 50 States, DC, and Puerto Rico will be calculated using the sum of four need factors (weighted by priority) multiplied by the cost of producing housing in the State relative to the national average. The four need factors are:

- The ratio of the shortage of standard rental units both affordable and available to extremely low-income (ELI) renter households in the State to the aggregate shortage of standard rental units both affordable and available to ELI renter households in all the States (weight 0.5);
- The ratio of the shortage of standard rental housing both affordable and available to very low-income (VLI) renter households in the State to the aggregate shortage of standard rental units both affordable and available to VLI renter households in all the States (weight 0.125);
- The ratio of ELI renter households in the State living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs to the aggregate of number of ELI households with these characteristics in all States (weight 0.25); and
- The ratio of VLI renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of VLI renter households with this characteristic in all States (weight 0.125).

Because the data described above is not available for insular areas, their allocations will be determined by multiplying the funds available times the ratio of renter households in each insular area to the total number of renter households in the 50 States, DC, Puerto Rico and the insular areas.

### Minimum Allocations- § 93.52

The statute requires that each State and DC receive a minimum allocation of \$3 million. Provided that the amount available for allocation is sufficient, each State and DC will receive the minimum grant. If funds are available after each State and DC receives its minimum allocation, Puerto Rico and each insular area will receive an allocation. If HTF funds are insufficient to provide the minimum grant to each State and DC, HUD will publish a notice in the federal register for public comment, describing an alternative method for allocating grants.

## Reallocations by Formula- § 93.54

Any amounts that become available for reallocation (i.e., grant reductions, recaptured funds, etc.) shall be added to amounts for formula allocation in the succeeding fiscal year. Any reallocation of funds must be made only among all participating States, except those States from which the funds were recaptured or reduced.

## SUPPORT C- PARTICIPATION AND SUBMISSION REQUIREMENTS

### Participation and Submission Requirements- §§ 93.100- 93.101

Only States or State-designated entities may be the HTF grantee. This includes the 50 States, Washington DC, the Commonwealth of Puerto Rico, and each of the insular areas.

A State must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding no later than 30 days after HUD's publication of the formula allocation amounts.

In order to receive its grant, a State must include the HTF allocation plan in its submission of the consolidated plan in accordance with [24 CFR Part 91](#). The HTF grantee may directly fund projects or may choose to fund projects through one or more subgrantees.

Only units of general local government and State agencies may be HTF subgrantees. A subgrantee that is a unit of general local government must have a consolidated plan and include an HTF allocation plan in its consolidated plan. The HTF allocation plan for a State agency subgrantee must be included in the State's HTF allocation plan. States and subgrantees must solicit public comment on the proposed HTF allocation plan. Projects must be selected in accordance with the State's or subgrantee's HTF allocation plan, as applicable. The grantee must ensure that their subgrantees comply with all HTF requirements and other applicable laws, and carry out the State's responsibilities.

## 24 CFR PART 91- CONSOLIDATED SUBMISSIONS FOR CPD PROGRAMS

### Consolidated Program Year- § 91.10

All of the Community Planning and Development programs, including the HTF, shall be administered by the State or subgrantee on a single consolidated program year which is established by the jurisdiction.

### Strategic Plans- § 91.215 (b)(2) and § 91.315 (b)(2)

Under the affordable housing section of the strategic plan, the State and subgrantee (s) shall identify specific objectives that describe proposed accomplishments they hope to achieve. They must also specify the number of ELI and VLI households to whom rental housing and homeownership assistance will be provided as defined in 24 CFR 93.302 and 24 CFR 93.304 over a specific time period.

### Action Plans- § 91.220 and 91.320

Each State and subgrantee must submit an HTF allocation plan as part of its annual action plan submission. The plan must describe how the State or subgrantee will distribute its HTF funds, including

how it will use the funds to address its priority housing needs, what activities may be undertaken with those funds, and how recipients and projects will be selected to receive those funds. A subgrantee's HTF allocation plan must be consistent with the State's HTF requirements and HTF allocation plan.

### **Subgrantee's HTF Allocation Plan- § 91.220(l)(5)**

If a jurisdiction is selected by the State to be a subgrantee, its HTF allocation plan must be consistent with the State's HTF requirements and include the following:

- The plan must identify priority factors for funding that shall include the following: geographic distribution (where HTF funding will be directed in the ensuing program year), the applicant's capacity, the extent to which rents are affordable to ELI households, the duration of affordability periods in rental projects, location of existing affordable housing, and other merits of the applications in meeting the jurisdiction's priority housing needs (such as housing accessible to transit or employment centers, sustainable or green building features, and housing that serves special needs populations);
- A description of eligible activities and eligibility requirements for recipients;
- A certification by each recipient that HTF-assisted housing will comply with HTF requirements;
- Performance goals that are consistent with the subgrantee's and State's proposed accomplishments;
- Rehabilitation standards that HTF-assisted project must meet as required by 24 CFR 93.301(b);
- Resale and Recapture guidelines, if HTF funds will be used for first-time homebuyers. These resale or recapture guidelines must be submitted and approved by HUD separate from the consolidated plan or action plan;
- The HTF affordable homeownership limits it will use when assisting first-time homebuyers. If the subgrantee does not use HUD-issued limits, the limits must be determined in accordance with 24 CFR 93.305 and approved by the State;
- Any preferences or limitations to a particular segment of the ELI or VLI population must be described in the action plan and are subject to 24 CFR 93.350 and 24 CFR 93.303; and
- Requirements and conditions under which existing project debt may be refinanced.

### **State's HTF Allocation Plan- § 91.320(k)(5)**

The State's HTF allocation plan must describe the distribution of the HTF funds, and establish the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. In addition, the plan must establish the maximum per-unit development subsidy limit for housing assisted with HTF funds. States are required to determine subsidy limits for all areas of the State; subgrantees must use the State-determined limits. If the HTF funds will be used for first-time homebuyers, it must identify the applicable resale and recapture provisions.

The plan must also reflect the State's decision to distribute HTF funds through grants to subgrantees and/or directly to applications submitted by eligible recipients. If the State selects applications submitted by eligible recipients, the plan must include the following:

- Provide priority for funding based on: geographic diversity (as defined by the State in the consolidated plan), the applicant's capacity, the extent to which the project has Federal, State, or local project-based rental assistance so that rents are affordable to ELI families, the duration

of affordability periods in rental projects, and other merits of the applications in meeting the State's priority housing needs (such as housing accessible to transit or employment centers, sustainable or green building features, and housing that serves special needs populations), and applicant's non-federal leveraging resources;

- A description of eligible activities and eligibility requirements for recipients;
- A certification by each recipient that HTF-assisted housing will comply with HTF requirements;
- Performance goals and benchmarks that are consistent with State's proposed accomplishments;
- Rehabilitation standards that HTF-assisted project must meet as required by 24 CFR 93.301(b)(1);
- Resale and Recapture guidelines, if HTF funds will be used for first-time homebuyers. These resale or recapture guidelines must be submitted and approved by HUD separate from the consolidated plan or action plan;
- The HTF affordable homeownership limits that it will use when assisting first-time homebuyers – if the State does not use HUD-issued limits, the limits must be determined in accordance with 24 CFR 93.305;
- Any preferences or limitations to a particular segment of the ELI or VLI population must be described in the action plan and are subject to 24 CFR 93.350 and 24 CFR 93.303(d)(3); and
- Requirements and conditions under which existing project debt may be refinanced.

### **Performance Reports- § 91.520**

The State and subgrantee must submit annual reports that describe the HTF program's accomplishments and the extent to which they complied with their approved HTF allocation plan and the requirements of 24 CFR part 93.

## **24 CFR PART 93 SUBPART D- PROGRAM REQUIREMENTS**

### **Site and Neighborhood Standards- § 93.150**

HTF grantees must administer its HTF program in a manner that provides housing that is suitable to facilitate and further full compliance with applicable provisions of the Civil Rights Act of 1964, the Fair Housing Act and HUD regulations. The site and neighborhoods standards at § 93.150 apply to new construction of rental projects receiving HTF funds.

### **Income Determinations- § 93.151**

To ensure that the income targeting requirements are met, grantees must verify that each family occupying an HTF-assisted unit is income-eligible by determining the family's annual income. When determining eligibility, the grantee may use either of the two allowable income definitions, annual income as defined at [24 CFR 5.609](#)<sup>1</sup> or adjusted gross income as defined in [IRS Form 1040](#)<sup>2</sup>. Only one definition can be applied to each HTF-assisted program or project. The methods for determining and

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<sup>1</sup> For the complete definition of annual income under 24 CFR 5.609, visit [http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5#se24.1.5\\_1609](http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5#se24.1.5_1609)

<sup>2</sup> For the complete definition of adjusted gross income on the IRS form 1040, visit <http://www.irs.gov/Credits-&-Deductions/Individuals/Earned-Income-Tax-Credit/Helpful-Definitions-and-Acronyms>

calculating annual income for tenants and homebuyers are also addressed in the full text of the interim rule.

## **SUBPART E- ELIGIBLE AND PROHIBITED ACTIVITIES**

### **Eligible Activities- § 93.200**

HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers. Eligible activities include acquisition (including assistance to homebuyers, including manufactured housing), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities. HTF housing must be permanent housing.

Grantees must use at least 80 percent of its annual grant for rental housing and up to 10 percent for homeownership housing. Eligible activities include the following:

- Real property acquisition;
- Site improvements;
- Conversion;
- Demolition;
- Financing costs;
- Relocation costs;
- Operating costs and operating cost reserves ( $\leq$  30 percent of each grant); and
- Reasonable administrative and planning cost.

\*No more than one third of each annual allocation may be provided as operating cost assistance to rental housing being acquired, rehabilitated or newly constructed with HTF funds.

### **Forms of Assistance to Project- § 93.200(b)**

- Equity investments;
- Interest-bearing loans or advances;
- Non-interest bearing loans or advances;
- Interest subsidies;
- Deferred payment loans;
- Grants; or
- Other forms of assistance approved by HUD.

### **Cost Allocation for Multi-Unit Projects- § 93.200(c)**

For multi-unit projects, only the actual HTF-eligible development costs may be charged to the HTF program. Calculations for eligible development costs will depend on whether units are comparable or non-comparable in terms of size, features and number of bedrooms. This section of the rule describes how to calculate costs. After project completion, the number of designated HTF-assisted units may be reduced only in accordance with the exception authority provided under this section.

## Terminated Projects- § 93.200(d)

An HTF-assisted project that is terminated before completion or does not meet the requirements for affordable housing constitutes an ineligible activity. The grantee must repay any HTF funds invested in an ineligible activity or project to its HTF account from which the funds were drawn.

## Eligible Project Costs- § 93.201

HTF may be used to pay the following eligible costs:

- Development hard costs;
- Refinancing costs;
- Acquisition costs;
- Related soft costs;
- Operating cost assistance and operating cost assistance reserves ( $\leq$  30 percent of annual grant);
- Relocation costs; and
- Costs related to payment of loans.

## Operating Cost Assistance and Reserves- § 93.201(e)

HTF funds may be used to pay for operating cost assistance and operating cost assistance reserves for rental housing that is acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. The grantee has the flexibility to provide up to one third of each annual grant for operating cost assistance and operating cost assistance reserves. The following conditions apply:

- Eligible costs include insurance, utilities, real property taxes and maintenance and scheduled payments to a reserve for replacement of major systems;
- Eligible costs must be calculated using the method described in this section;
- Operating cost assistance can ONLY be provided if the HTF-assisted units do not have project-based assistance;
- Operating costs assistance must be based on the underwriting of the project and must be specified in the written agreement between grantee and recipient;
- For reserves funded with non-appropriated HTF funds (i.e., the allocations from Fannie Mae and Freddie Mac):
  - The assistance must be calculated using HUD methodology.
  - The reserve may be funded for the amount estimated to be necessary for the entire period of affordability at the time of executing written agreement.
- For reserves funded with appropriated HTF funds:
  - The assistance must be calculated using HUD methodology.
  - For each grant, assistance is limited to the amount necessary for a period of up to five years.
- Funding for operating cost assistance may be provided in addition to funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months).

## Administrative and Planning Costs- § 93.202

The grantee may use up to 10 percent of the HTF grant and program income received (combined sum total) to pay for reasonable administrative and planning costs of the HTF program.

## HTF Funds and Public Housing- § 93.203

HTF funds may be used for rehabilitation or construction of public housing units that are part of the Choice Neighborhoods<sup>3</sup> program or that will receive Low Income Housing Tax Credits (LIHTCs). In these projects, new construction of public housing units developed with HTF funds is limited to replacement of units that were removed as part of a Choice Program grant, or as part of a mixed-financed development authorized by section 35 of the Housing Act of 1937. Any HTF unit that is developed as public housing must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. HTF-assisted public housing units that receive Public Housing Operating or Capital Funds may not receive HTF operating cost assistance or operating cost assistance reserves.

HTF funds can also be used in Rental Assistance Demonstration (RAD<sup>4</sup>) projects involving rehabilitation of existing public units that will be converted under RAD, or for new construction of units in a RAD project.

## Prohibited Activities and Fees- § 93.204

HTF funds may not be used to:

- Provide assistance to a project previously assisted with HTF funds during the affordability period, except when providing assistance to a homebuyer to acquire housing previously assisted with HTF funds, or for renewal of operating cost assistance or an operating cost reserve;
  - Additional HTF funds may be committed to a project up to one year after project completion but the total assistance is subject to the State's maximum per-unit development subsidy limit.
- Pay for the acquisition of property owned by the grantee;
- Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds;
- Pay for political activities, advocacy, lobbying, counseling services (except for housing counseling), travel expenses (other than those eligible under § 93.202(b)), or preparing or providing advice on tax returns;
- Pay for administrative, outreach, or other costs to manage and operate the grantee's HTF funds; or
- Pay for any cost that is not eligible under § 93.201 and § 93.202.

### Fees § 93.204(b)

Grantees may not charge (and must prohibit subgrantees and recipients from charging) servicing, origination, or other fees to cover the cost of administering the HTF program. Grantees may charge owners of rental projects reasonable annual fees for monitoring compliance during the affordability

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<sup>3</sup> For more information on Choice Neighborhoods, visit [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/cn](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn)

<sup>4</sup> For more information on RAD, visit <http://portal.hud.gov/hudportal/HUD?src=/RAD>

period. Grantees may also charge nominal application fees (although these fees are not an eligible HTF cost) to eligible recipients, to discourage frivolous applications. All such fees are applicable credits under [2 CFR Part 200, subpart E](#).

Project owners are prohibited from charging fees that are not customary in rental housing (e.g., laundry room access fees). In addition, project owners may charge reasonable application fees to prospective tenants or fees for services such as transportation or meals, as long as the services are voluntary and the fees are charged for services provided. Parking fees are permitted only if they are customary for rental housing projects in the neighborhood.

## SUBPART F- INCOME TARGETING

### Income Targeting- § 93.250

The HTF sets income targeting requirements based on the annual amount of HTF funds available.

- In any fiscal year in which the total HTF funds available are less than \$1 billion, the grantee must target 100 percent of its HTF funds for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater;
- When the total HTF funds available are equal to or exceed \$1 billion, the grantee must use at least 75 percent of its HTF funds for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater; and
- Any grant funds not used to serve ELI families must be used for the benefit of VLI families.

## SUBPART G- PROJECT REQUIREMENTS

### Maximum Per-Unit Subsidy Amount- § 93.300(a)

The grantee must establish limits on the maximum amount of HTF funds that may be invested per unit for development of non-luxury housing, with adjustments for the number of bedrooms and the geographic location of the project. These limits must be reasonable. The grantee must include these limits in its annual action plan and update the limits annually.

### Underwriting and Subsidy Layering- § 93.300(b)

Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines it has adopted for determining a reasonable level of profit or return on a recipient's investment in a project. It must also ensure the following:

- Grantee may invest only what is necessary to provide quality affordable housing that is financially viable for, at a minimum, the affordability period required by the regulations;
- Grantee examines the sources and uses of funds (including any operating cost assistance and reserves or project-based rental assistance) for the project and determine that these costs are reasonable and will not provide a profit or return on the recipient's investment that exceeds the grantee's standards; and
- Grantee conducts an assessment of the current market conditions, experience and capacity of recipient, and firm written financial commitments for the project.

Note: A market analysis is not required for HTF-funded downpayment assistance.

## PROPERTY STANDARDS

### Property Standards-§ 93.301

Projects are eligible to receive HTF funds only if the housing will meet the applicable property standards upon completion.

### New Construction Projects- § 93.301(a)

All HTF-assisted new construction projects must meet all applicable State and local codes, ordinances, and zoning requirements. In the absence of those codes, the housing must meet the International Residential Code or International Building Code (as applicable). All new construction projects must also meet the following requirements:

- The accessibility requirements of [24 CFR part 8](#); 28 CFR parts [35](#) and [36](#); and [24 CFR 100.205](#) as applicable;
- The energy efficiency standards established pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act;
- Where relevant, the housing must be constructed to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD;
- The grantee must review and approve written cost estimates and ensure that construction contracts describe the work to be undertaken in sufficient detail; and
- The grantee must conduct progress and final inspections to ensure that work is done in accordance to applicable codes and construction contracts.

### Rehabilitation Projects- § 93.301(b)

Grantees must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities. The standards must describe the methods and materials and the applicable codes that the housing must meet at project completion. The rehabilitation standards must address each of the following:

- If the housing is occupied, it must be free of all life-threatening deficiencies;
- For rental housing, the grantee must estimate the remaining useful life of major systems;
- For multi-family projects with 26 units or more, the grantee must determine the useful life of major system through a capital needs assessment and require a replacement reserve when the useful life of systems is less than the affordability period.
- For homeownership housing, the grantee must ensure that each of the major systems has a remaining useful life for a minimum of five years or repair or replace the system;
- The housing must meet the lead-based paint requirements at [24 CFR part 35](#);
- The housing meet the accessibility requirements of [24 CFR part 8](#); 28 CFR parts [35](#) and [36](#); and [24 CFR 100.205](#) as applicable; and 24 CFR 100.205 as applicable; and other improvements that are not required by the regulations or statute that permit use by a person with disability;
- Where relevant, the housing must be rehabilitated to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD;

- All housing must meet State and local codes, ordinances, and requirements or, in the absence of those codes, the International Existing Building Code of the International Code Council;
- All housing must be decent, safe, sanitary and in good repair as described at [24 CFR 5.703](#). HUD will establish the minimum deficiencies that must be corrected under the grantee's rehabilitation standards based on inspectable items and inspectable areas from the HUD prescribed physical inspection procedures (Uniform Physical Condition Standards) pursuant to [24 CFR 5.705](#);
- The grantee must review and approve written cost estimates and ensure that construction contracts and work will meet the rehabilitation standards; and
- The grantee must conduct initial, progress and final inspections to ensure work is done in accordance to work write-ups.

### **Acquisition of Standard Rental Housing- § 93.301(c)(1) and (2)**

If the housing acquired was newly constructed or rehabilitated less than 12 months before the commitment of HTF assistance, then it must meet the property standards at § 93.301(a) for new construction or § 93.301(b) for rehabilitation projects, as applicable. All other existing housing that is older than 12 months before the commitment of HFT assistance must meet the property standards at § 93.301(b) for rehabilitation projects.

### **Acquisition of Existing Homeownership Housing- § 93.301(c)(3)**

All existing homeownership housing acquired with HTF funds must be decent, safe, sanitary, and in good repair. In addition, the housing must meet all applicable State and local standards and code requirements and be free of deficiencies identified by HUD based on inspectable items and inspected areas from HUD's inspection procedures (Uniform Physical Condition Standards) pursuant to [24 CFR 5.705](#). If the housing does not meet these standards, then it must be rehabilitated and must meet § 93.301(c)(3) or it cannot be assisted with HTF funds.

### **Manufactured Housing- § 93.301(d)**

All new manufactured housing (including housing that replaces an existing substandard unit) must meet the following requirements:

- Meet the Manufactured Home Construction and Safety Standards at [24 CFR part 3280](#) and comply with applicable State and local laws or codes, or the manufacturer's written instructions for installation of manufactured housing units in the absence of such laws or codes;
- Must be on a permanent foundation;
- Be connected to permanent utility hook-ups; and
- Be located on land owned by the HTF-assisted owner or on land with a lease equal to the applicable affordability period.

All existing manufactured housing must meet the following requirements:

- The foundation and anchoring of all rehabilitated manufactured housing must meet all applicable State and local codes, ordinances, and requirements or in the absence of those codes, the Model Manufactured Home Installation Standards at [24 CFR part 3285](#); and
- Manufactured housing that is rehabilitated must meet the standards at § 93.301(b).

### **Ongoing Property Condition Standards- § 93.301(e)**

For all rental housing, the grantee must establish property standards to ensure property owners maintain units as decent, safe, and sanitary, and in good repair that apply throughout the affordability period. The ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (UPCS). In addition, the ongoing property standards must address health and safety, lead based-paint, frequency of inspection, corrective or remedial actions, and inspection procedures during the affordability period as specified in the regulation.

### **Environmental Review- § 93.301(f)**

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.

Note: HTF is not subject to [24 CFR part 58](#) but in the administration of HTF, HUD is required to comply with the National Environmental Protection Act. Therefore, the interim rule establishes environmental review standards for HTF, which are included in the property standards section. These standards are substantively the same or very similar to the requirements of [24 CFR part 58](#). HUD expects to issue guidance on the implementation of these standards.

## **QUALIFICATION AS AFFORDABLE HOUSING: RENTAL HOUSING**

### **Eligible Tenants and Rents- § 93.302(a) and (b)**

HTF-assisted units must be occupied by income-eligible households. HTF rents include utilities and are set at 30 percent of the income of a household at either 30 percent or 50 percent of area median income, adjusted for the number of bedrooms in the unit. If the unit receives Federal or State project-based rental subsidy, the maximum rent is the rent allowable under that rental subsidy program as long as the tenant pays no more than 30 percent of tenant's adjusted income.

### **Initial Rents and Utility Allowances- § 93.302(c)**

The grantee must establish maximum monthly allowances for utilities and services and annually review and approve rents proposed by HTF-assisted project owners. If the tenant is paying the utilities, the grantee must ensure that the rents do not exceed the maximum rent minus the monthly utility allowance.

### **Periods of Affordability- § 93.302(d)**

HTF-assisted units must meet the affordability requirements for a period of not less than 30 years, which begins at project completion. The grantee may impose longer periods of affordability. The affordability requirements must be imposed and recorded in accordance with State recordation laws. The grantee may use preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions may be terminated upon foreclosure or transfer in

lieu of foreclosure; in those situations the grantee is obligated to repay all HTF funds invested in the project.

### **Tenant Income and Over-income Tenant- § 93.302(e) and (f)**

Project owners must determine tenant eligibility by calculating the household's annual income using one the two definitions of income, [24 CFR part 5.609](#) or the [IRS Form 1040](#). Income determinations are conducted at initial occupancy and the project owner must re-examine each tenant's annual income each year during the period of affordability. A project owners who re-examines a tenant's annual income through self-certification statements must examine the source documentation of the income of each tenant every 6<sup>th</sup> year of the affordability period. For HTF units that also receive project-based rental assistance, annual income must be reexamined based on the rules applicable to the project-based assistance.

HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the income of existing tenants. When that occurs, grantees must make every effort to bring the units back into compliance as soon as is feasible.

### **Fixed and Floating HTF Units- § 93.302(g)**

In a project containing both HTF-assisted and other units, the grantee must designate fixed or floating HTF units at the time of project commitment in the written agreement and the actual HTF units must be identified not later than the time of project completion. Fixed units remain the same throughout the affordability period and floating units are changed to maintain compliance with the requirements of this section during the affordability period.

### **Tenant Protections and Selection- § 93.303**

There must be a written lease between the tenant and owner of HTF-assisted rental housing for a period of not less than 1 year, unless a shorter period is mutually agreed upon.

### **Prohibited Lease Terms- § 93.303(b)**

The lease may not contain any of the following provisions:

- Agreement to be sued;
- Treatment of property;
- Excusing owner from responsibility;
- Waiver of notice to be sued;
- Waiver of legal proceedings;
- Waiver of a jury trial;
- Waiver of right to appeal court decision;
- Tenant chargeable with cost of legal actions regardless of outcome; and
- Mandatory supportive services.

### **Termination of Tenancy- § 93.303(c)**

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of HTF-assisted rental housing, except for serious or repeated violation of the terms and conditions of the lease or for violation

of applicable Federal, State or local law, or for other good cause. To terminate or refuse to renew tenancy, the owner must provide written notice to the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with State or local law.

### **Tenant Selection- § 93.303(d)**

An owner of HTF-assisted rental housing must comply with the affirmative marketing requirements established by the grantee pursuant to § 93.350, and adopt and follow written tenant selection policies and criteria that:

- Limit the housing to income-eligible families;
- Are reasonably related to the applicant's ability to perform the obligations of the lease;
- Limit eligibility or give preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if described in the grantee's consolidated plan) and preference is established in accordance with the requirements further detailed in this section;
- Do not exclude applicants with vouchers under the Section 8 Tenant-based Assistance: Housing Choice Voucher program or HOME Tenant-based Rental Assistance;
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications, insofar as is practicable; and
- Give prompt written notification to any rejected applicant describing the grounds for any rejection.

## **QUALIFICATION AS AFFORDABLE HOUSING: HOMEOWNERSHIP**

### **Homeownership Activities- § 93.304**

The grantee is permitted to use no more than 10 percent of its annual HTF grant to fund housing that is for purchase by first-time homebuyers and must meet the following requirements:

- Housing must be single family housing as defined at § 93.2;
- Housing must be modest as defined at § 93.305;
- Homebuyer must be income-eligible at the time the contract is signed;
- Housing must be the principal residence of the family throughout the affordability period;
- Family is required to complete a program on financial education and homeownership counseling from a HUD-approved counseling agency;
- Housing must meet the affordability requirements in accordance with the grantee's resale or recapture requirements (provisions must be HUD approved);
- Single family properties with more than one unit must comply with the special consideration requirements for these types of projects, as applicable;
- Housing under a lease-purchase program must comply with lease-purchase deadlines or be converted to rental housing and operated as such;
- Housing not under contract within 9 months of the date of completion of construction or rehabilitation must be converted to rental and operated as such;
- Grantees may use preemptive rights to preserve previously HTF-assisted housing but must ensure that housing is in good repair and sold to a new income-eligible first-time homebuyer and that the total amount of HTF assistance (original and additional HTF funds) does not exceed

the per-unit subsidy limits. Additional HTF funds may not be used if the mortgage in default was funded with HTF funds;

- Homebuyer assistance may be provided through lending institutions, but the grantee must verify that the family is income-eligible, qualifies as a first-time homebuyer and the unit is inspected for compliance with applicable property standards;
- Grantee must determine that first mortgage financing fees are reasonable and prohibit lenders from charging fees (e.g. origination fees) to obtain the HTF assistance; and
- Grantee must have written policies for underwriting standards, anti-predatory lending and the refinancing of loans.

### **Modest Housing- § 93.305**

Housing that is HTF-assisted must meet the definition of modest housing as follows:

- The purchase price of single family housing does not exceed 95 percent of median purchase price for the area for newly constructed or standard housing; and
- The grantee may use the HTF affordable homeownership limits published by HUD, or may calculate its own limits using the HUD-prescribed methodology and include the limits annually in its action plan for HUD review.

### **Resale Requirements- § 93.305(b)(1)**

The grantee must establish the resale or recapture requirements that HTF-assisted housing must meet and include them in its annual action plan.

If resale provisions are imposed on HTF-assisted housing, the property must meet the affordability requirements for not less than 30 years. If the housing is sold, transferred, or is no longer the principal residence of original buyer during the period of affordability, the following applies:

- Subsequent purchaser must be income-eligible, qualify as a first-time homebuyer, and use the property as their principal residence;
- The price at resale must provide original HTF-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of income-eligible homebuyers;
- The grantee must define fair return on investment and affordability to a reasonable range of very low income homebuyers and address how it will make the housing affordable to subsequent eligible buyers;
- Affordability restrictions must be imposed and recorded;
- The affordability restrictions may terminate upon foreclosure, transfer in lieu of foreclosure; and
- The grantee may use preemptive rights to purchase the housing before foreclosure to preserve affordability.

## Recapture Requirements- § 93.305(b)(2)

If recapture provisions are imposed on HTF-assisted housing, the affordability periods are based on the amount of HTF assistance provided to the homebuyer per unit as follows:

- Under \$30,000 : 10 years
- \$30,000-\$50,000 : 20 years
- Over \$50,000: 30 years

The use of recapture provisions ensure that grantees recoup all or a portion of the HTF assistance to the homebuyer if the housing ceases to be its principal residence during the period of affordability. The grantee may use one of the HUD approved recapture provisions listed below or establish its own, with HUD approval. The grantee can only recapture the direct HTF assistance to a homebuyer. Subsequent homebuyers may assume the HTF assistance for the remainder of the period of affordability if they do not receive additional HTF assistance and are income-eligible. Regardless of the provision used, the amount recaptured cannot exceed the net proceeds when recapture is triggered by a voluntary or involuntary sale. The HUD approved recapture provisions are as follows:

- Recapture the entire amount of assistance;
- Reduce the recapture amount on a prorated basis during the affordability period;
- Share in the net proceeds in proportion to an established formula; or
- Recapture proceeds remaining after HTF-assisted owner has recovered their investment, if any.

## SUBPART H- OTHER FEDERAL REQUIREMENTS

### Other Federal Requirements and Nondiscrimination; Affirmative Marketing - § 93.350

The federal requirements in [24 CFR part 5, Subpart A](#), are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.

Each grantee must adopt and follow affirmative marketing procedures and requirements as described in this section for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. The grantee must take steps to ensure 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.

### Lead-Based Paint- § 93.351

Housing assisted with HTF funds is required to be lead safe and subject to the Lead Safe Housing Regulations at [24 CFR part 35](#), subparts A, B, J, K, and R.

### Displacement, Relocation, and Acquisition- § 93.352

The grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations, and farms) as a result of a project assisted with HTF funds. To the extent feasible, displaced 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. This section contains the full content of relocation requirements that apply to HTF-assisted housing.

### **Conflict of Interest- § 93.353**

In the procurement of property and services by grantees and subgrantees, the conflict of interest provisions in [2 CFR 200.318](#) apply. In all cases not governed by 2 CFR 200.318, the provisions described in this section apply.

### **Funding Accountability and Transparency Act- § 93.354**

The HTF grant to the grantee and all assistance provided to subgrantees and recipients shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

### **Eminent Domain- § 93.355**

HTF funds cannot be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, public use shall not be construed to include economic development that primarily benefits any private entity.

## **SUBPART I- PROGRAM ADMINISTRATION**

### **Housing Trust Fund Accounts and Grant Agreements- §§ 93.400- 93.401**

- HUD will establish an HTF US Treasury account for each grantee which will include the annual grant and funds reallocated to the State by formula;
- Grantees may use either a separate HTF local account or a subsidiary account within its general fund as the HTF local account;
- HUD will reduce or recapture funds in the HTF Treasury account that are not committed within 24 months after the date of HUD's execution of the HTF grant agreement;
- HUD will reduce or recapture funds in the HTF Treasury account that are not expended within 5 years after the date of HUD's execution of the HTF grant agreement; and
- Allocated formula funds will be made available pursuant to an HTF grant agreement (§ 93.401);

### **Program Disbursement and Information System- § 93.402**

- HTF funds will be managed through a computerized disbursement and information system (IDIS), which allocates, reallocates, collects and reports information on the use of HTF funds in the HTF Treasury account;
- Grantees must report on the receipt and use of all program income in IDIS;
- The grantee must develop and maintain a system to ensure that each recipient and subgrantee uses HTF funds in accordance with the requirements described in this section; and
- Grantees must set-up and complete projects in IDIS according to specified deadlines (§ 93.402(b) and (d)).

### **Program Income and Repayments- § 93.403**

- Program income must be treated as HTF funds and must be used in accordance with the requirements described in this section;
- HTF funds must be repaid if project is terminated before completion or becomes ineligible during the period of affordability (§ 93.403(b)); and
- HUD will instruct the grantee to make repayments either its Treasury account or its local account.

### **Grantee Responsibilities- § 93.404(a)**

The grantee is responsible for managing the day-to-day operations of its HTF program and ensuring that HTF funds are used in accordance with all program requirements. The use of subgrantees or contractors does not relieve the grantee of this responsibility. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities to ensure that requirements of this part are met.

### **Written Agreements- § 93.404(b) and (c)**

Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity to ensure compliance with HTF requirements. The contents of the agreement may vary depending upon the role of the entity with respect to program functions and types of projects undertaken. The written agreement must contain the basic requirements by role and the minimum provisions that will be required. This section describes the minimum provisions outlined for each of the following entities: subgrantee, eligible recipient, and first-time homebuyer.

### **Onsite Inspections- § 93.404(d)**

The grantee must perform onsite inspections of each HTF-assisted project at project completion. For rental housing, the property must be inspected during the period of affordability to determine that the housing complies with the applicable property standards. The rule specifies the following inspection requirements for rental housing:

- The onsite inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability;
- If there are observed deficiencies for any inspectable items, a follow-up onsite inspection must occur within 12 months or other reasonable timeframe established by grantee;
- Life-threatening health and safety deficiencies must be corrected immediately;
- On an annual basis, the property owner must certify to the grantee that each building is suitable for occupancy;
- Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project; and
- The grantee must verify the information submitted by project owners.

### **Financial Oversight- § 93.404(e)**

The grantee must examine regularly, at least annually, the financial condition of HTF-assisted rental housing with 10 or more HTF-assisted units to determine the continued financial viability of the housing and take actions to correct problems.

### **Applicability of Uniform Administrative Requirements, Cost Principles, and Audits- § 93.405**

The requirements of [2 CFR part 200](#) apply to HTF grantees and subgrantees with a few exceptions listed in this section. When there is a conflict between the definitions in 2 CFR part 200 and 24 CFR part 93, the definitions in part 93 govern.

### **Audits- § 93.406**

Audits of the grantee and sub-grantees must be conducted in accordance with 2 CFR part 200 subpart F. The grantee's use of HTF funds must be audited not less than annually to ensure compliance with this part. HTF recipients must provide a cost certification and annual audit to the grantee for each project assisted with HTF funds.

### **Recordkeeping- § 93.407**

Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this subpart. At a minimum, the following records are required:

- Program records;
- Project records;
- Financial records;
- Program administration records; and
- Records concerning other federal requirements.

All records pertaining to each fiscal year's allocation of HTF funds must be retained in a secure location for the most recent five-year period, except as provided in this section.

### **Performance Reports- § 93.408**

Each grantee must develop and maintain a system to track the use of its HTF funds, and submit annual performance and management reports on its HTF program in accordance with 24 CFR 91.520. HUD will make the performance and management reports publicly available.

## **SUBPART J- PERFORMANCE REVIEWS AND SANCTIONS**

### **Accountability of Recipients- § 93.450**

The grantee shall review each recipient to determine compliance with the requirements of this subpart and the terms of the written agreement in accordance with the grantee's policies, procedures, and systems established.

### **Misuse of Funds- § 93.450(a)**

Reimbursement is required if any recipient of HTF assistance is determined to have misused HTF funds. The grantee must require that, within 12 months after the determination of misuse, the recipient reimburse the grantee for such misused amounts and return any amounts that remain unused or uncommitted for use.

### **Reduction for Failure to Obtain Return of Misused Funds- § 93.450(b)**

HUD will reduce a HTF grantee's grant in any year the grantee fails to obtain reimbursement or return of the full amount required to be reimbursed or returned to the grantee.

### **Performance Reviews- § 93.451**

HUD will review the performance of each grantee in carrying out its responsibilities, at least annually. HUD will rely primarily on information obtained from the grantee's records and reports, findings from onsite monitoring, audit reports, and information generated from IDIS.

### **Corrective and Remedial Actions- § 93.452**

If the grantee fails to demonstrate compliance in administering its HTF program, HUD will take corrective and remedial actions described in § 93.452 to prevent continuation of noncompliance, and to mitigate, to the extent possible, its adverse effect or consequences, and prevent its recurrence.

### **Notice and Opportunity for Hearing; Sanctions- § 93.453**

If HUD finds, after reasonable notice and opportunity for hearing, that a grantee has substantially failed to comply with any provision of this subpart, HUD shall reduce the funds in the grantee's HTF account in order to repay to HUD the amount of the HTF grant which was not used in accordance with the applicable requirements. In addition, HUD may prevent withdrawals from the grantee's HTF account, restrict the grantee's activities, remove the State from participation in allocations or reallocations of funds, or terminate any HTF assistance to the grantee.

When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the grantee. Proceedings will be conducted in accordance with [24 CFR part 26](#).