

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, overtime 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 an NHTF-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.