

2024

ADMINISTRATION MANUAL

National Housing Trust Fund Program

NEBRASKA

Good Life. Great Opportunity.

DEPT. OF ECONOMIC DEVELOPMENT

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DEFINITIONS & ACRONYMS

The following terms and acronyms are used throughout the Manual.

Adjusted Income – Adjusted income is annual (gross) income reduced by deductions for dependents, elderly households, medical expenses, handicap assistance expenses and childcare (these are the same adjustment factors used by the Section 8 Program). Adjusted income is not used for household eligibility in HTF; it is used only in HTF in a few circumstances, including when a tenant is receiving Federal rental assistance and for URA assistance payments.

Annual Action Plan – The one-year element of the Consolidated Plan. It includes the Grantee's annual application for HTF funds.

Annual Income – Annual income as defined in 24 CFR 5.609, referred to as "Part 5 annual income", also known as the rules for determining income under the Section 8 program. This is the income used to qualify households as eligible for HTF units or assistance.

Consolidated Plan (Con Plan) – The plan prepared every 3 – 5 years in accordance with the requirement set forth in 24 CFR Part 91. It describes community needs, resources, priorities, and proposed activities to be undertaken under certain HUD programs, including CDBG, HOME & HTF. It also includes the Annual Action Plan.c1

Contractors – A contractor is an entity paid with HTF funds in return for a specific service (e.g., counseling or inspections). Contractors retained by the Grantee must be selected through a competitive procurement process.

Extremely Low Income (ELI) – Under the HTF Program, a household having an income equal to or less than 30% of the area median income as established by HUD.

Fair Housing - Refers to a number of laws and regulations that apply to the HTF program and prohibit a wide range of discriminatory practices and require that the HTF program be administered in a manner, which affirmatively furthers fair housing.

Household – One or more persons occupying a housing unit, regardless of familial status.

HTF Account – The term given to the two accounts – one at the Federal level (Treasury) and one at the local level (Local) – that "hold" the Grantee's HTF funds.

HTF-Assisted Units – A term that refers to the units within an HTF project for which rent, occupancy and/or resale restrictions apply. The number of units designated as HTF-assisted affects the maximum HTF subsidies that may be provided to a project.

HTF Rule – The HUD regulations guiding the administration of the HTF Program published at 24 CFR Part 93, as amended.

New Construction – The creation of new dwelling units. Any project which includes the creation of new or additional dwelling units in an existing structure is considered new construction.

Office of Management and Budget (OMB) - This is the oversight agency for all federal grants. OMB establishes uniform guidelines applicable to the management and expenditure of all federal funds, including HTF. OMB requirements historically have been issued in the form of circulars, but most OMB requirements have now been incorporated into 2 CFR Part 200.

Program Income (PI) – Gross income received by the Grantee directly generated from the use of HTF funds or other contributions.

Project – A site or an entire building or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management and financing and are to be assisted with HTF funds, under a commitment by the Recipient, as a single undertaking.



Project completion – means that 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 HUD's integrated disbursement and information system (IDIS).

Recipient– The term used in this Manual to refer to any recipient of HTF funds from DED

Regulations (or Rule) - Refers to the HUD rules governing the use of HTF funds. The HTF regulations can be found at 24 CFR Part §93.

Section 3 - Refers to Section 3 of the Housing and Urban Development Act of 1968, as amended, which requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are Recipients of government assistance for housing and to businesses that provide economic opportunities to low- and very low-income persons. Section 3 Rules are now contained in 24 CFR Part 75.

Uniform Relocation Act (URA) – Federal regulations governing the acquisition of real property and the relocation or displacement of persons from federally assisted projects.

U.S. Department of Housing and Community Development (HUD) – HUD established the regulations and requirements for the HTF program and have oversight responsibilities for the use of funds.

Very Low-Income (VLI) HTF – As defined by the HTF Program, a family whose annual income does not exceed 50% of the area median family income.

Other definitions applicable to HTF can be found in 24 CFR §93.2.



1 INTRODUCTION

The Nebraska Department of Economic Development (“DED”) provides this manual as a resource for project developers, recipients and managers implementing HTF-assisted projects.

The online version of this manual contains the latest information provided by DED to assist HTF Recipients in complying with state and federal requirements. DED will update the manual as necessary due to a variety of reasons, including changes in federal regulations, state requirements, and in the interpretation or clarification of a federal regulation.

Additional reference material and forms are available at DED’s HTF Program web page located at: <https://opportunity.nebraska.gov/programs/housing/htf/>.

2 OVERVIEW

The National Housing Trust Fund (HTF) was established under Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), amending the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) to add section 1337, entitled "Affordable Housing Allocation" and section 1338, entitled "Housing Trust Fund." The purpose of HTF is to provide funding to State governments to increase and preserve the supply of rental housing for extremely low-income families, including homeless families.

The United States Department of Housing and Urban Development (HUD) administers the HTF Program. HUD allocates HTF funds by formula to States. The HUD HTF Program web page is located at: <https://www.hudexchange.info/programs/htf/>. Most HTF Program resources are available at the HUD Exchange page. Key reference documents include:

HTF Interim Rule: <https://www.hudexchange.info/programs/htf/laws-regulations/>

HTF Income and Rent Limits: Limits are updated and published annually.

- Income Limits: <https://www.hudexchange.info/programs/htf/htf-income-limits/>
- Rent limits: <https://www.hudexchange.info/programs/htf/htf-rent-limits/>

Notices: HUD publishes Notices to provide guidance on the implementation of the HTF Program. The Notices identify the applicable statutory and regulatory requirements, but also provide guidance on how Grantees and their partners can implement the activities in full compliance, often providing “safe harbors” or ways to implement activities that are presumptively permissible by HUD.

The HUD Office of Planning and Community Development (CPD) issues notices that pertain to HTF (as well as many other CPD programs.) CPD Notices are labeled “CPD - __ - ___”. The middle two numbers are the year of issuance, and the last two or three numbers are the chronological issuance order. CPD Notices pertaining to HTF can be accessed at: <https://www.hudexchange.info/programs/htf/notices/>.

All users of HTF funds are encouraged to subscribe to the Mailing List to receive emails with notice of updated Program materials at: <https://www.hudexchange.info/maillinglist/>



2.1 The HTF Program in Nebraska

The Nebraska Department of Economic Development (“DED”) administers the program for the State of Nebraska. Entities that receive HTF funds from DED are referred to as “Recipients” in this manual.

Consistent with the HTF Interim Rule, the regulations for the Consolidated Plan are applied to the HTF program. The State of Nebraska Allocation Plan, approved by HUD, describes how HTF funds will be distributed, including how priority housing needs will be addressed, what activities may be undertaken with HTF funding, and how recipients and projects will be selected. The State of Nebraska Allocation Plan can be located at: <https://opportunity.nebraska.gov/programs/plans-reports/>

DED is committed to ensuring public resources are invested in a way that is responsive to the diversity of low-income housing needs and the need for economic development around the state. Therefore, HTF funding will be allocated to eligible rental projects, on a statewide basis, through the established competitive joint NIFA/DED application process currently also used to allocate LIHTC and HOME funds.

DED invests HTF funds in the following housing activities:

- Rental Housing - Affordable rental housing may be acquired and/or rehabilitated, or it may be newly constructed
- Operating Cost Assistance

Administrative guidance and HTF investment descriptions may be located using the following resources in addition to communications by DED’s staff:

- State of Nebraska Consolidated Plan for Housing and Community Development
- Annual Action Plan for the State of Nebraska Consolidated Plan for Housing and Community Development
- HTF Administrative Manual
- HTF Application Guidelines

Please contact DED housing staff for any questions regarding the HTF program or this Manual. A current list of the housing team staff can be found at: <https://opportunity.nebraska.gov/programs/housing/>.

2.2 HTF Program Deadlines

In accordance with federal regulations (§ 93.400(d)(1) and § 93.400(d)(2)), HTF program funds must meet the following guidelines:

Commitment - HTF resources must be committed to eligible projects within 24 months after the date that HUD executes the grant agreement with DED. Priority will be given to projects that can move quickly to meet this deadline.

Expenditure – HTF resources must be expended by DED within 5 years after the date that HUD executes the HTF grant agreement with DED. Projects have a two-year deadline to complete in order to meet this deadline. HUD will recapture any funds that have not been spent.

Occupancy – HTF recipients must ensure that HTF-assisted rental units are occupied by income-eligible households within 18 months of Certificate of Occupancy. If any HTF-assisted units remain vacant at 18 months after Certificate of Occupancy has been issued, the unit has not met the purpose of the HTF Program, and the costs associated with the unit are ineligible.



Federal regulation requires HTF funds to be repaid for any HTF-assisted unit vacant at 18 months.

2.3 HTF Application Process

Funding within the HTF Program is available to local governments, public housing agencies, non-profit organizations, and for-profit developers on a competitive basis. The application guidelines can be located on DED's website when they are available for an open application period. The Application Guidelines describe eligible applicants, eligible activities, and the application process.

It is recommended to contact DED's HTF housing specialist before starting an application. Staff contact information and application guidelines are located at:

<https://opportunity.nebraska.gov/programs/housing/htf>.

Following the application review period, applicants will be notified of DED's decision to award or not award HTF funds. Applicants that are not selected for HTF funding are encouraged to meet with DED staff to work toward a fundable application in the future.

Applicants that are funded will receive a *Notice of Approval* notifying the Recipient of the award amount and activities that the Recipient will undertake. The Recipient must not obligate or incur project costs prior to satisfying special conditions outlined in the contract and prior to receiving a Notice of Release of Funds from DED. Prior to the *Notice of Release of Funds* and after *Notice of Approval*, costs necessary to complete general administrative requirements such as satisfying the Special Conditions contained in the HTF Contract can be obligated and incurred.



3 ELIGIBILITY

This chapter covers the basic program requirements governing HTF-assisted rental housing, such as eligible activities and costs, income and occupancy requirements and rent levels. The HTF Administration Manual contains information on eligible uses and requirements of HTF funds as general guidance. DED further defines eligible uses and requirements for HTF funds administered by DED via the Housing and Community Development Annual Action Plan, HTF Application Guidelines and the HTF Contract. Applicants and Recipients must adhere to the requirements imposed on HTF funds for the program year and specific award.

3.1 Eligible Activities

HTF funds can be used for the acquisition, new construction, or rehabilitation of affordable rental housing.

Eligible Recipients

Eligible recipients for HTF rental housing projects include for-profit developers, non-profit 501(c)(3) or 501(c)(4) housing providers, redevelopment organizations or public housing authorities.

UEI Number; SAM Registration A UEI number, received after registration in the System for Award Management ([SAM.gov](https://sam.gov)) is a requirement of every entity receiving federal funds. Verification of the registration is required prior to commitment, disbursement of HTF funds and throughout the length of the contract.

Eligible Projects

HTF funds must provide permanent rental housing, including single-room occupancy and group homes. HTF funding is available to projects across the State. Rental housing owners and developers are allowed to give preference to a specific population in accordance with 24 CFR Part 93.303(d)(3) only if it is included in the State of Nebraska Consolidated Plan for Housing and Community Development.

An eligible HTF Project consists of one or more buildings on a single site or multiple sites, which is under common ownership, management, and financing, and is part of a single undertaking. The project includes all activities associated with the site or buildings. HTF-assisted projects may be privately or publicly owned and contain any number of units, and any combination of unit sizes and styles. HTF funds may be used to assist mixed-use and mixed-income projects, but HTF funds may only be allocated to HTF-assisted units occupied by extremely low-income households.

Single-Room Occupancy Projects:

For projects with Single Room Occupancy (SRO) units, each SRO unit must contain either food preparation or sanitary facilities (or both). For acquisition or rehabilitation of an existing residential structure, neither food preparation nor sanitary facilities are required in each SRO unit. If individual units do not contain sanitary facilities, they must be provided in the building for tenants to share.

Group Home Projects:

Group homes are typically a shared residence where tenants have a private bedroom but share kitchen, bathroom, and common living space. A group home is a one-unit Project. The HTF subsidy maximum is based on the actual number of bedrooms in the group home, while rent limits are based on the actual number of tenants in the unit (not including a bedroom for live-in caregiver).



Ineligible Projects/Activities

Transitional housing, emergency shelters or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, student housing or dormitories (including farmworker dormitories) are not eligible for HTF funding.

Properties previously financed with HTF funds that are still within the affordability period cannot receive additional HTF funding unless assistance is needed for operating costs as determined necessary by DED.

Projects that have started construction or rehabilitation or have executed contracts for construction work prior to submission of the HTF application for funds are not eligible for HTF funds. Projects must create and/or preserve affordable housing. Requests for funds to buy-down or refinance current debt are not eligible for HTF funding.

For more information regarding ineligible activities and costs, see §93.204.

Forms of Assistance

HTF funding is awarded in the form of a Deferred Payment Loan in an amount appropriate to the financing structure of the proposed Project. Specific terms and restrictions are incorporated on a project-by-project basis. DED reserves the right to adjust the amount of HTF funding awarded to a proposed Project, prior to execution of the HTF Contract. Subsidy Layering Review of the Project requires examination of multiple factors including financial feasibility, demonstrated economic viability, and financing gap analysis. HTF Loans require execution and recordation of a Loan Agreement, Deed of Trust, and Declaration of Covenant Running with Land.

Eligible Project Costs

HTF funds can be used for the following costs:

Development Hard Costs

Actual cost of constructing or rehabilitating housing to meet new construction and rehabilitation standards.

- Acquisition Costs: Costs of acquiring improved or unimproved real property for a specific project and existing structures. Acquisition costs must be supported by an appraisal and the cost must be the same or less than the market value established by an appraisal.
- Site Preparation or Improvements, including demolition: Improvements may include on-site roads and sewer and water lines necessary to the development of the project.

Related Soft Costs

HTF funds may pay for reasonable and necessary costs incurred by Recipients that is associated with the financing and/or development of new construction, rehabilitation, or acquisition of housing.

- Architectural/Engineering Fees: Costs are eligible if they were incurred no longer than 24 months before the HTF funds were committed and are included in the written contract.
- Costs to Process and Settle Financing: Costs such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, private appraisal fees, independent cost estimate fees, and developer's fees.
- Project Audit Costs: Costs for audits and cost certification performed by a certified public accountant as required by DED.



- **Affirmative Marketing and Fair Housing:** Costs to provide affirmative marketing and fair housing information to prospective tenants.
- **Initial Operating Deficit Reserve:** A reserve to meet any shortfall in project income during the project rent-up period (up to 18 months). The reserve may only be used for project operating expenses, scheduled payments to replacement reserves and debt service. Any HTF funds remaining at the end of 18 months may be retained for reserves in the project at DED's discretion.

Operating Cost Assistance

HTF Funds may be used for operating costs for insurance, utilities, real property taxes and maintenance and scheduled payments to a reserve for replacement of major systems. The maximum amount of operating cost assistance to be provided to a project must be based on underwriting and be specified in the written contract.

Operating Cost Assistance Reserves

HTF funds may be used for HTF-assisted units in a project that DED determines in its underwriting that the reserve is necessary to ensure the financial feasibility of the project.

Relocation Assistance Costs

HTF funds may pay for relocation costs (replacement housing, moving expenses and reasonable out-of-pocket expenses related to the relocation) of individuals and families temporarily or permanently displaced by the project. HTF funds may also be used to pay for staff and overhead costs related to providing advisory and relocation assistance services to those displaced.

Construction undertaken before HTF funds are committed to the project

HTF funds cannot be used to reimburse a recipient for costs incurred prior to the execution of the HTF contract. This includes any obligations incurred due to contractual agreements to perform work. A Recipient should not enter into an agreement or contract until the HTF contract has been executed.

Ineligible Project Costs

HTF Funds may not be used for the following:

- Provide assistance to a project previously assisted with HTF funds during the affordability period;
- Pay for the acquisition of property owned by the State, except for properties acquired in anticipation of a HTF project;
- Pay delinquent taxes, fees or charges on properties to be assisted with HTF funds;
- Pay for political activities, advocacy, lobbying, counseling services, travel expenses, and preparing or providing advice on tax returns;
- Pay for administrative, outreach, or other costs to manage and operate the Recipient of HTF funds;

Pay for any cost that is not eligible under [§ 93.201](#) and [§ 93.202](#). Costs that are not permitted to be paid with HTF funds may be covered from other sources but must be determined to be necessary and reasonable project costs in project underwriting.

Project owners are prohibited from charging fees that are not customarily charged in rental housing (ex. laundry room access fees). Project owners may charge reasonable application fees to prospective tenants, parking fees only if such fees are customary for rental housing projects in the neighborhood and fees for transportation or meals if the services are voluntary.



3.2 Project Requirements

Maximum Per-Unit Development Subsidy Limits

The investment of HTF funds is limited by per-unit subsidy limits based upon the number of bedrooms in the units and the geographic location of the project. DED has adopted the Maximum Per-Unit Subsidy Limits established by HUD for the HOME Program. Subsidy limits are updated annually and can be located at: <https://opportunity.nebraska.gov/programs/housing/htf/>

In addition to the maximum subsidy limits, the actual subsidy provided will depend on the following factors:

- The proportion of the total project development cost that is HTF-eligible – *Some planned project costs may not be eligible expenses under the HTF Program (ex. laundry or community room in a separate building).*
- The financial needs of the project – *HTF projects may not receive more subsidy than is required to produce a financially feasible project.*
- The number of HTF-assisted units in the project – *The amount of HTF assistance cannot exceed the maximum subsidy allowed per unit.*

The HTF maximum subsidy limit is the limit on the HTF investment per assisted unit and does not limit necessary and reasonable development costs being paid with other funds.

Designated Unit Allocation for Mixed-Income/Mixed-Use Projects

Some projects may consist of only HTF-assisted units and other projects may have assisted and unassisted units. Unassisted units are units that are assisted with other funds besides HTF. Therefore, it is necessary to distinguish between HTF-assisted units and unassisted units. The distinction between HTF-assisted units and unassisted units allows HTF funds to be used in the development of mixed-income and mixed-use projects. HTF applicants may use the cost allocation tool (located on DED's website) to estimate the number of HTF units for their project. DED will conduct cost allocation as part of project underwriting process to determine the minimum number of designated HTF-assisted units and bedroom size for each HTF funded project.

HTF may only pay actual costs of HTF-assisted housing. If units in a project are comparable in terms of size, features, number or bedrooms and amenities then the actual costs can be determined by pro-rating total development costs (HTF eligible). The HTF funds can pay the pro-rated share of the HTF-assisted units. When units are not comparable, the HTF costs will be allocated on a unit-by-unit basis, charging only actual costs to the HTF program.

Comparability of unit size is defined by the bedroom count and square footage of individual units. Not all units with the same number of bedrooms are comparable in size. If there is a substantial difference in the square footage between two units with the same number of bedrooms, the units are not considered comparable.

HTF rent and income limits only apply to the HTF-assisted units in the project.



Fixed and Floating Units

For projects containing both HTF-assisted units and unassisted units, DED will designate the units as either fixed or floating units. The designation will be outlined in the fully executed HTF Contract and cannot be changed.

Fixed Unit Designation: If the units are not comparable, the units will be designated as fixed. Fixed HTF-assisted units remain the same units throughout the entire affordability period. The unit numbers of the HTF units are identified prior to initial occupancy.

Floating Unit Designation: If the units are comparable, the units may be designated as floating. When HTF-assisted units are floating, the units designated as HTF-assisted may change over time as long as the total number and mix of HTF-assisted units in the project remains constant. HTF-assisted floating units can be replaced over the period of affordability by comparable units as specified in the HTF Contract.

Property Standards

HTF-assisted rental housing must meet all applicable State and local codes and housing quality standards, as applicable. All codes and standards must be met at the time of occupancy, except for occupied properties that are funded for rehabilitation.

DED is required to review and approve construction-related documents prior to construction and to monitor construction progress. DED must review and approve written cost estimates for construction and determine that costs are reasonable.

In addition to the requirements below, other federal requirements may apply, including accessibility standards, lead-based paint standards of 24 CFR part 35 for pre 1978 properties, and broadband infrastructure for new or rehabilitated properties.

All assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

New Construction [§93.301(a)]

Housing that is newly constructed with HTF funds must meet all applicable State and local codes and zoning requirements. In the absence of a State or local building code, new construction projects must meet the International Residential Code or International Building Code of the International Code Council. New construction must also meet the most recent version of the International Energy Conservation Code.

New construction projects must also meet the requirements described below:

Accessibility: HTF assisted housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-361).

Energy Efficiency: Housing must meet the energy efficiency standards established pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act.

Disaster Mitigation: Housing must be constructed to mitigate the impact of potential disasters when relevant, in accordance with State and local codes, ordinances, or other State and local requirements.



Broadband Infrastructure: For a new housing construction project of 4 or more units, construction must include broadband infrastructure as defined in 24 CFR 5.100.

Rehabilitation [§93.301(b)]

Housing that is being purchased or rehabilitated must meet DED's HTF Rehabilitation Standards located at: <https://opportunity.nebraska.gov/programs/housing/htf/>. Occupancy Standards and all applicable local codes and zoning ordinances must be met. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926.

Existing rental housing must have major systems with a remaining useful life at least as long as the period of affordability and/or replacement reserves sufficient to replace systems as needed. The major systems of rental projects of 26 or more units must be determined through a capital needs assessment.

Acquisition of Standard Housing [§93.301(c)]

Existing rental housing acquired with HTF funds must meet any applicable State and local housing quality standards.

- Rental housing that was newly constructed or rehabilitated less than 12 months before the date of commitment of HTF funds, must meet the new construction standards of §93.301(a).
- All other existing rental housing that is acquired with HTF assistance must meet the rehabilitation property standards of §93.301(b).

Manufactured Housing [§93.301(e)]

Newly constructed manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280, which preempt state and local codes covering the same aspects of performance for such housing. HTF projects that install manufactured housing units must comply with applicable state and local laws or codes. In the absence of such laws or codes, the agency must comply with the manufacturer's written instructions for installation of the manufactured housing units. Installation of replacement manufactured homes must meet the foundation requirements of 24 CFR 203.43f(c)(i).

Rehabilitation of existing manufactured housing, the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements. In the absence of local or State codes, the Model Manufactured Home Installation Standards at 24 CFR Part 3285 must be met. Manufactured housing rehabilitation project must meet DED rehabilitation standards.

Ongoing Property Standards

HTF-assisted projects must be maintained in decent, safe, and habitable condition. Owners must maintain properties in accordance with property standards throughout the affordability period. DED conducts periodic property inspections to ensure continued compliance.

Site & Neighborhood Standards

Site and neighborhood standards apply only to new construction rental housing. The requirements of 24 CFR 983.57(e)(2) must be met.



- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.
- The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

In addition, DED will not approve new construction of rental housing proposed in an area of low-income concentration. A DED site review must be requested by the applicant of a proposed HTF project prior to application. Contact the HTF Housing Specialist for assistance with the request.

Visitability

All ground floor units must be visitable to the maximum extent feasible, unless doing so would impose an undue financial burden on the project. A visitable design provides that new single-family homes, duplexes, and triplexes are more accessible and usable to persons with disabilities. Housing units built to visitable standards have features that allow a person using a wheelchair or other mobility device to visit without any special assistance and are more easily modified should a resident need adaptation in the future.

DED uses the Nebraska Assistive Technology Partnership definition of visitability:

The requirements include having at least one no-step/zero grade entrance with a 36" door into the unit's main floor, minimum 32" clear space opening in interior doorways, minimum 36" wide hallways, a first-floor bathroom which allows for wheelchair access (while maintaining privacy), reinforcement in bathroom walls to permit future installation of grab bars, and modification in the locations of light switches, electrical outlets and environmental controls.

Other Federal Requirements

Non-Discrimination and Equal Access Rules

Fair Housing and Equal Opportunity – Must affirmatively further Fair Housing. Particular attention should be paid to signs of discrimination in leasing practices.

Regulatory Citations & References:

- §93.350
- Title VI of Civil Rights Act of 1964 (42 U. S. C. 2000d et. seq.)
- Fair Housing Act (42 U. S. C. 3601-3620)
- Executive Order 11063 (amended by Executive Order 12259)
- Age Discrimination Act of 1975, as amended (42 U. S. C. 6101)
- 24 CFR 5.105(a)

Affirmative Marketing – Must have affirmative marketing requirements and procedures.

Regulatory Citations & References:

Handicapped Accessibility

Regulatory Citations & References:

- Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)



- For multi-family buildings only, 24 CFR 100.205 (implements Fair Housing Act)

Employment and Contracting Rules

Equal Opportunity Employment –Contracts and subcontracts for more than \$10,000 must include language prohibiting discrimination.

Regulatory Citations & References:

- Executive Order 11246 (implemented at 41 CFR Part 60)

Section 3 Economic Opportunity – If the amount of federal assistance exceeds \$200,000 or contract or subcontract exceeds \$100,000.

Regulatory Citations & References:

- Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 75). 24 CFR Part 135 applied to projects committed prior to November 30, 2020.

Section 3 regulations ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

The following thresholds must be met for Section 3 compliance:

- 25% or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; AND
- 5% or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.

HTF recipients must report the following data to DED:

- Total number of labor hours worked.
- Total number of labor hours worked by Section 3 workers.
- Total number of labor hours worked by Targeted Section 3 workers.

If the benchmarks are not met, Recipients must also provide and maintain documentation of efforts taken during the contract period.

The labor hours reported must include the total number of labor hours worked on a Section 3 project by all workers, including labor hours worked by any subrecipients, contractors, and subcontractors that the recipient is required to, or elects to, report.

Recipients must include language applying Section 3 requirements in any contract for a Section 3 project. They must also require contractors, and subcontractors to meet the prioritization requirements listed above.

Refer to DED's Section 3 Resource page for more information: <https://opportunity.nebraska.gov/section-3/>



Minority/Women Employment (MBE/WBE)

Regulatory Citations & References:

- Executive Orders 11625, 12432 and 12138
- 2 CFR 200.321

Recipients must conduct outreach to encourage participation by minority and women owned business enterprises. When advertising for bids, Recipients must include a statement that says, “minority and women owned businesses are encouraged to apply.” Recipients are required to document and submit evidence of outreach efforts regarding MBE/WBE at completion of project.

Conflict of Interest

Regulatory Citations & References:

- 93.353
- 2 CFR 200 §§ .112; .318 and .319

No HTF Recipient (or officer, employee, agent, elected or appointed official, or consultant of recipient or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of a recipient), whether private, for-profit or nonprofit, may occupy an HTF-assisted unit in a project during the affordability period.

In the event a prohibited conflict of interest arises or may potentially arise, the Recipient must inform DED. Upon written request, exceptions may be granted by DED on a case-by-case basis when it is determined that such an exception will serve to further the purposes of the HTF Program and the effective and efficient administration of the Project.

Environmental Review

Regulatory Citations & References:

- 93.301(f)

Flood Insurance – Must obtain flood insurance if located in a FEMA designated 100-year flood plain. Community must be participating in FEMA's flood insurance program.

Regulatory Citations & References:

Section 202 of the Flood Disaster Protection Act of 1973 (42 U. S. C. 4106)

Lead-Based Paint – For pre-1978 units. Applies to HTF and non-HTF-assisted units. Requirements differ depending on whether rehabilitation work is performed. Rehabilitation notices to Recipients. Paint testing of surfaces to be disturbed. Risk assessment, if applicable, based on level of rehabilitation assistance. Appropriate level hazard reduction activity (based on level of rehabilitation assistance). Safe work practices and clearance. Provisions included in all contracts and subcontracts.

Regulatory Citations & References:

- 93.351
- Lead Based Paint Poisoning Prevention Act of 1971 (42 U. S. C. 4821 et. seq.)
- 24 CFR Part 35
- 982.401(j) (except paragraph 982.401(j)(1)(i))

Relocation – Displacement must be minimized; existing tenants must be provided a reasonable opportunity to lease a dwelling unit in the building upon completion of the project. Reimbursement for temporary relocation, including moving costs and increase in monthly rent/utilities, must be provided, as well as advisory services.

Regulatory Citations & References:

93.352



Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U. S. C. 4201-4655)
 49 CFR Part 24
 24 CFR Part 42 (subpart B)

3.3 Period of Affordability

DED requires a 30-year affordability period for rental housing projects assisted with HTF funds. The affordability requirements will be imposed by deed restrictions and land use restrictions. Recipients are required to certify that housing assisted with HTF funding will comply with HTF requirements by signing and recording legal documents with restrictive covenants.

Recipients must enforce rent and occupancy agreements through the following:

- Declaration of Covenants Running with the Land
- Deed Restrictions
- and/or other mechanisms as required by DED and HUD

The mechanisms to secure affordability restrictions must be recorded in accordance with State recordation laws. Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed-in-lieu of foreclosure. If a project is terminated or fails to meet the full affordability requirements, the Recipient is obligated to repay all HTF funds invested in the project to DED. The termination of the affordability restrictions on a project in foreclosure does not terminate the grantee's repayment obligation to HUD.

3.4 Using HTF with Other Funds

This section is provided for HTF projects which also utilize Low Income Housing Tax Credits and/or other public funding to address compliance issues when multiple funding sources are provided. Recipients that do not utilize LIHTC or other public funding do not have to review this section.

Combining Low Income Housing Tax Credits (LIHTC) with HTF

There are essentially four ways HTF funds can be used with low-income housing tax credits:

Market Rate Loan – If the HTF funds are provided at or above the applicable federal rate, these funds are not treated like a federal subsidy. The project qualifies for the 9% credit for eligible improvement costs and is eligible for the 130 percent basis for projects in "qualified census tracts" or "difficult development areas" (QCT/ DDA).

Below Market Rate Loan with 9% Credit – If HTF funds are provided at an interest rate below the applicable federal rate, they may still be counted in the eligible basis and the project may receive a 9% credit if the project meets stricter occupancy requirements. The project may receive the 9% credit if 40% of the residential rental units are occupied by tenants with incomes at or below 50% of the area median income. However, such projects are not eligible for the 130 percent basis for projects in "qualified census tracts" or "difficult development areas".

Below Market Rate Loan with 4% Credit – Some projects qualify only for a 4% credit regardless of the way HTF funds are invested in the project. For example, a project with other Federal or tax-exempt mortgage revenue bond funds included in the basis is only



eligible for a 4% credit under any circumstance, so HTF funds can be lent at any below market interest rate terms without consequence to the credit.

Grant – HTF funds may be provided in the form of a grant, but they may not be counted in the eligible basis for the project, and therefore do not contribute to the credits for which the project is eligible. Therefore, a loan instrument is generally preferable to a grant. (Note that deferred payment loans are generally permissible provided the debt service accrues and there is a reasonable expectation that the loan can be repaid no later than when the loan matures.) In some cases, however, a grant of a small amount of HTF funds may be preferable to a below market interest rate loan, particularly if the project is eligible for the 130% QCT/ DDA basis. Some experts have estimated that it could be more cost effective to provide an HTF investment of up to 20% of basis as a grant rather than a loan in such circumstances.

Projects using HTF funds with Low Income Housing Tax Credits have to consider a number of items in blending the two sets of program rules. The following chart provides an overview of tax credit rules and the requirements for combining the two programs.



Summary of Requirements when Combining HTF with Tax Credits

	Tax Credit Program Rules	Combining Tax Credits with HTF
Occupancy Requirements	LIHTC units must be reserved for households with incomes at or below either 50 percent or 60% of area median incomes, depending on the election of the Recipient.	The most restrictive income targeting requirements apply to the project. HTF-assisted units must be reserved for households with incomes at or below 30 percent of the area median income, while remaining LIHTC units can be at the 50% or 60% AMI limits.
Rent Requirements	Rents for qualified units must not exceed the rent limit set for the LIHTC program. These limits are set by bedroom size and are based on the qualifying incomes of an imputed household size. They are provided by the Nebraska Investment Financing Authority (NIFA).	For units to qualify as both tax credit and HTF-assisted units, rents cannot exceed either program limit. HTF-assisted units are subject to HTF rent limits, which are lower than LIHTC rent limits.
Establishing Tenant Eligibility	<p><i>Documentation</i> --Tenants must provide documentation of income from a third-party source. All sources of income are verified.</p> <p><i>Definitions</i> --The tax credit program defines income using the Section 8 definition of annual (gross) income.</p> <p><i>Asset Income</i> --Assets \$5000 or less: tenants certify asset amount and income. Use actual income. Assets above \$5000: verify amount and income. Use larger of actual income from assets or imputed asset income.</p>	<p><i>Documentation</i> --Initial tenant eligibility documentation for both programs is the same.</p> <p><i>Definitions</i> --DED also requires the use of the Section 8 definition of income for HTF.</p> <p><i>Asset Income</i> --Follow more stringent HTF rules and verify all asset income.</p>
Reexaminations of Income	Reexaminations are performed annually following the same procedures as at initial certification; however, a Recipient may request a waiver from NIFA for reexamination requirements if all units in the project are tax credit units.	Tax credit/HTF projects may request waivers from NIFA in order to perform reexaminations similar to HTF. Otherwise, the project must follow the more stringent tax credit requirements.
Over-Income Tenants	Rent for over-income tenants remains restricted. A Recipient <i>may</i> increase an over-income tenants rent, but <i>only after</i> the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the Recipient to be eligible for the credit. "Over-income" is defined as above 140 percent of the project income limit.	HTF rents remains restricted until replaced.
Monitoring	Projects are monitored annually throughout the affordability period. Statement of compliance is submitted annually with documentation of occupancy. On-site inspections are conducted by NIFA.	DED and NIFA will each monitor according to their program requirements. Projects are monitored throughout the affordability period. On-site inspections are conducted by DED.



Occupancy Requirements

Tax credit projects must set aside at least 20 percent of their units for tenants with incomes at or below 50 percent of the area median (20/ 40 set-aside) or 40 percent of their units for tenants with incomes at or below 60 percent of the area median income (40/ 60 set-aside). When combining HTF and tax credits, occupancy requirements depend on the type of credit taken and the type of HTF funding provided:

In order to take the 9 percent credit in conjunction with HTF funds, joint HTF/LIHTC projects must meet a higher occupancy standard than either the tax credit program or the HTF program alone requires; 40 percent of the units must be occupied by tenants with incomes at or below 50 percent of area median. (However, such projects are not eligible for the 130 percent increase in basis for projects in "qualified census tracts" or "difficult development areas."

To receive the 130 percent increase, the project must either take the four percent credit, or use the HTF funds at or above the applicable federal rate.)

In all other cases, projects must ensure that they meet both sets of program rules. For example, a project receiving a market rate loan can comply with both sets of rules by establishing a 20 percent set-aside for households with incomes at or below 50 percent of the area median income (as long as all remaining HTF-assisted units are leased to tenants with incomes at or below 80 percent of the area median income).

Of course, projects may choose and may be required to exceed these standards. Recipients/developers of tax credit projects will generally try to maximize their credits by creating higher set-asides for qualified occupants.

Rents

When combining the two types of funding, two sets of rent rules apply.

Qualified tax credit units must not exceed tax credit rent limits, while HTF-assisted units must meet HTF rent requirements. If a unit is being counted under both programs, the stricter rent limit applies. HTF rent units are subject to the HTF rent.

When tenants receive additional subsidy through rental assistance programs such as Section 8, additional requirements apply.

HTF allows the rent to be raised to the rental assistance program rent only if the tenant pays no more than 30 percent of adjusted income, the subsidy is project-based (not tenant-based), and the tenant's income is less than 50 percent of the area median income.

Tax credit rules state that if the rental assistance program rent limit exceeds the tax credit rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30 percent of their adjusted monthly income for housing costs. In a joint tax credit/ HTF-assisted unit, the stricter HTF requirements would apply.

Establishing Tenant Eligibility

Both the HTF and LIHTC programs require project Recipients to certify tenants' incomes, to ensure that they are income-eligible and that the project is in compliance with initial occupancy requirements.



To demonstrate eligibility under both programs, property managers must have tenants certify their income, and obtain supporting documentation. This documentation must be kept in project unit files for review by the monitoring agencies.

Under tax credit rules the Section 8 definition of annual (gross) income is used. **DED requires the use of the Section 8 definition of annual (gross) income for HTF projects.**

A difference between HTF and tax credit rules is that HTF requires verification of all asset income, whereas the tax credit rules require verification of asset income if the household's assets are greater than \$5,000. For total assets of less than \$5,000, the tax credit program allows tenants to provide a signed statement of asset income.

A tenant in a unit subsidized by both sources of funds would have to comply with the stricter HTF requirements.

Reexaminations of Tenant Eligibility

The tax credit program does not allow alternative methods of tenant recertification allowed under the HTF program. For projects with both HTF funds and tax credits, Owners may seek a project waiver from the state allocating agency to allow certification documentation similar to HTF. Alternatively, the project must comply with the tax credit rules (and thus, automatically comply with the HTF requirements).

Over-Income Tenants

The HTF and tax credit programs have similar approaches to the rent for over-income tenants. Tenants are not displaced and continue to be subject to the applicable rent limit until replaced.

The definition of an over-income tenant differs under the two programs. Tax credit rules define "over-income" as having income above 140 percent of the project income limit. Under HTF, the tenants are considered over-income if their income rises above the 30 percent of area median income limit.

Further, under HTF, the rent remains restricted. An Owner may increase an over-income tenant's rent, but only in a floating unit and **after** the unit is replaced with another unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the Recipient to be eligible for the credit.

Monitoring

Both programs require annual monitoring to ensure compliance with program rules over the length of a pre-established affordability period. The Department and the Nebraska Investment Finance Authority will each monitor according to their program requirements.

Using HTF and Other Local, State and Federal Subsidy Programs

HTF funds may be used with other subsidy programs, including but not limited to, Lincoln and Omaha Community Development Block Grant programs, USDA- Rural Development 515 and 538 programs, HUD 202 and 811 programs, Nebraska Energy Office interest buy-down programs, and Rehabilitation Tax Credits for historic buildings.

There are no circumstances where the HTF program specifically identifies one of these programs and defers requirements to other funding source requirements. Therefore, where both funding sources provide restrictions, the most restrictive requirement applies.



4 PROJECT UNDERWRITING

Applications are reviewed for completeness and eligibility first and then underwritten using the guidelines described below. The majority of HTF funded rental projects are joint investments with the Nebraska Investment Finance Authority (NIFA) through the Collaborative Resource Allocation for Nebraska (CRANE) or Low-Income Housing Tax Credits (LIHTC) program. These guidelines have been integrated with NIFA's underwriting standards.

DED is required to have underwriting and subsidy layering guidelines in order to determine the appropriate amount of HTF investment for HTF activities.

- Written underwriting and subsidy layering guidelines for all HTF activities are required by DED in order to determine the appropriate HTF investment, including market need/demand, developer experience and capacity, cost/fee/profit reasonableness and source commitments (93.300(b));
- Cost allocation is required in multi-unit projects to determine the maximum HTF investment or required number HTF assisted units (93.201(c)); and
- The maximum per-unit HTF subsidy limits are set by the Grantee (93.300(a)).

DED is required to individually evaluate each proposed project in accordance with guidelines that it has adopted prior to commitment of HTF funds in accordance with 24 CFR 93.300(b); and is required to:

- To not invest any more funds (alone or in combination with other governmental assistance) than is necessary to provide quality affordable housing that is financially viable for a reasonable period – at a minimum, the period of affordability in § 93.302(d); and
- To not provide a profit or return on the Recipient's or developer's investment that exceeds the PJ's established standards for the size, type and complexity of the project.

The HTF Interim Rule requires that DED has written policies and procedures that include:

- An examination of the sources and uses of funds for the proposed project and a determination that all project costs are reasonable;
- Assessment of current market demand in the neighborhood where the project will be located;
- Assessment of the experience and financial capacity of the developer and/or Recipient; and
- An assessment of the firm written financial commitments for the project.

4.1 HTF Rental Project Underwriting Guidelines

DED will underwrite each project applying for HTF funds using the following guidelines:

- Eligible project – *HTF permits the acquisition, new construction and/or rehabilitation of rental housing with HTF funds. HTF funds may not be used to construct or rehabilitate federal low rent public housing, temporary or emergency shelters, student housing/dormitories, facilities, non-low-income housing or non-housing uses.*
- Eligible costs – *HTF funds may be used for hard costs and soft costs related to the HTF-assisted units as provided in 93.201. Costs must be reviewed and determined to be reasonable in consideration of current market prices and recent projects.*



- Property standards – *Project must include scope of work that meets standards for new construction (93.301(a)) or rehabilitation (93.301(b)), as applicable. Capital needs assessments are required for rehabilitation.*
- Maximum HTF investment – *DED has adopted the HOME Program maximum subsidy limits updated annually by HUD.*
- Cost allocation – *HTF funds may be used in mixed-use and mixed-income housing as long as HTF funds are used only for the HTF-assisted units as determined through underwriting and cost allocation. HTF units may be designated as fixed or floating if determined comparable through cost allocation.*
- Subsidy layering – *HTF investments must be determined in consideration of all public subsidies to the project.*
- Forms of assistance – *HTF funds may be provided in a variety of forms, including amortizing, deferred and forgivable loans (93.200(b).) The HTF investment must be secured by deed restrictions or covenants running with the land for a minimum affordability period of at least 30 years (93.302(d)).*
- Occupancy and Rents – *All HTF-assisted units must be occupied by tenants at least below 30% of AMI, with rents not exceeding HTF rent limits.*

The use of HTF triggers several other federal requirements that may affect project costs and must be considered in underwriting, including fair housing/accessibility, affirmative marketing (5 or more HTF-assisted units), URA, Section 3, and MWBE, and Environmental standards in 93.301(f).

Underwriting Assessment

The underwriting assessment will include:

- **Sources and Uses**
 - Sources are sufficient to cover uses (development costs);
 - All sources are firmly committed in writing and must state the following:
 - Term of the permanent loan, interest rate, amortization period, fees, anticipated security interest in the property and lien position.
 - The uses (development costs) are complete and sufficient to complete the project, and all project costs are reasonable; and
 - The uses of HTF funds are eligible costs.
- **Market** – Current market demand in the neighborhood will be examined and determined to be adequate to absorb the units within program deadlines and sustained for the period of affordability, using:
 - A project market study where required by another funding source;
 - Market demand information provided by the applicant reporting the rents, occupancy and waiting lists of comparable projects in the area; and/or
 - Market data collected by DED for other recent projects in the area.
- **Developer** – The experience and financial capacity of the developer and/or Recipient will be reviewed, including:
 - Review of organizational and team skills and performance relevant to the proposed project, including:
 - Firm and staff resumes and organizational history;



- Development team member/professional experience and prior collaboration as a team;
 - Prior performance of developer/Recipient on DED or other affordable housing projects; and
 - Professional management of the project.
- Review of most recent audited annual financial statements (if unavailable, then the most recent tax returns) of the developer/Recipient to determine:
 - Identification of the source of any developer/Recipient equity committed to the project;
 - Positive net assets of the entity;
 - Adequate liquidity to cover project cash flow needs during project development;
 - No contingent liabilities that might threaten the ability of the developer and/or Recipient to complete the project and manage it throughout the affordability period.
- **Operating Analysis** – Review of proposed operating budgets for:
 - Rents that are in compliance and competitive in the market;
 - A vacancy factor of at least 7% for rental projects, unless the market study indicates another, more conservative, vacancy factor is needed;
 - A maximum 2% inflation factor for all sources of income;
 - Operating expenses that are complete, reasonable and adequate to sustain project operations. All operating expenses will be underwritten with an inflation factor of at least 3%;
 - Reasonable contributions to operating reserves;
 - Net operating income sufficient to amortize all mandatory debt with sufficient debt coverage to meet lender requirements;
 - Net positive cash flow during the period of affordability (including any deficit reserves if funded.)
 - All projects must maintain a Debt Coverage Ratio (DCR) of at least 1.15 for the affordability period.
 - Unless otherwise approved by DED, the operating budget of new construction must include a minimum deposit of \$350 per unit per year to the Replacement Reserve. The Replacement Reserve must be funded and maintained for the full Affordability Period and reflected in the operating expenses for the full projection of expenses, as applicable. Replacement Reserve deposits must be inflated at 3% annually. In the case of rehabilitation, the capital needs assessment obtained from a qualified third-party professional acceptable to DED will be used to establish the minimum annual Replacement Reserve deposits, which shall be inflated at 3% annually;
 - Projects must include a capitalized operating reserve equal to eight (8) months of underwritten operating expenses and amortizing debt service (if any). If drawn, the operating reserve must be replenished prior to distributions of surplus cash flow. The operating reserve is intended to protect against unplanned operating deficits. If DED's underwriting projections anticipate deficits within the applicable Affordability Period, an operating deficit reserve must be capitalized as well;
- **Limitations** – Review of the proposed development cost schedule:
 - Developer Fees (including overhead, profit and consultant fees) shall not exceed 15% of Site Work, Construction and Soft Costs on the development cost schedule.

The underwriting analysis will conclude with a determination of the amount of HTF subsidy that is necessary and sufficient to ensure project completion and sustainability for at least the period of affordability. The amount should be no more than is necessary to fill the gap determined by underwriting, taking into account both the cost allocation and subsidy layering analysis.



HTF Supplement to NIFA Underwriting Guidelines

When HTF is requested in addition to LIHTC, HTF requirements apply to the HTF-assisted units in addition to the standards/requirements of the NIFA Tax Credit program.

Requirement	NIFA (LIHTC with HTF)	Additional HTF Requirement (if blank, NIFA standard is sufficient)
Operating Revenue & Expenses		
Occupancy		All HTF units occupied by ELI (30% AMI)
Fixed or floating		HTF units must be designated as fixed or floating
Rents		HTF units: rent + utility allowance must be within HTF rent limit
Utility allowance		Check utility allowances for HTF compliance
Vacancy Rate	7%	7%
Operating expenses		Operating expenses are reasonable
Replacement Reserve (PUPA)	\$350	\$350
Operating Reserve	8 months	8 months
Revenue Escalator (max)	2%	2%
Expense Escalator (min)	3%	3%
Debt Service Coverage Ratio (min)	1.15	1.15
Financial viability	30 years HTF Proforma	Verify 30-year viability (positive cumulative cash flow)
Reasonable return		Cash flow is not excessive given Recipient investment
Market		
Market Study	Per IRC Section 42, within 1 year	Market study supports absorption of units within 18 months of completion
Property Standards		
Plans	Architect certified meeting codes (DED rehab standards if rehab); energy star appliances	Architect certified meeting codes (DED rehab standards if rehab); energy star appliances
Capital Needs Assessment (if rehab)	Within 1 year	Scope of work & reserves are sufficient for POA
Site control	Site control required; zoning letter required; site visit if HTF	Site visit by DED
Development Costs		
Appraisal	If acquisition of existing building, within 1 year	
Development costs		Development costs are reasonable & necessary
Eligible costs		Cost to be paid with HTF are eligible under 93.201; costs associated with non-low-income units, non-residential space (including free-standing buildings or facilities that are not residential) are



Requirement	NIFA (LIHTC with HTF)	Additional HTF Requirement (if blank, NIFA standard is sufficient)
		costs that are not eligible; development costs incurred more than 24 months prior to commitment not eligible;
Developer Fee is reasonable		Developer fee is reasonable & not excessive
Financing		
Sources adequate		Sources are adequate to cover costs
Subsidy layering		Sources are adequate, not excessive considering all public funds
Construction financing	Firm commitment	Firm commitment required before HTF funds committed
Permanent financing	Commitment or letter of interest	Firm commitment required before HTF funds committed
LIHTC investor interest/commitment	Firm commitment or investor letter of interest	Firm commitment required before HTF funds committed
Other public subsidies	Firm commitment, applied for, or discussed	Firm commitment required before HTF funds committed
HTF Funds		
HTF funds requested	Does not exceed 25% of TDC; evaluated cost/un & cost/residential sf; cost allocation	Cost allocation: requested HTF funds are within program limits (Maximum Subsidy & Eligible Costs); assisted units are sufficient given HTF funds requested
Other HTF Compliance		
Environmental review	ERR & level of review determination	DED to complete environmental review
Conflict of interest		No development team member has a conflict of interest
Relocation	Relocation assistance plan if applicable	
Fair housing/Section 504	Certify compliance	
Affirmative marketing	Affirmative marketing plan required	5 or more HTF assisted units
SAM compliance		No exclusions
Lead-based Paint		If pre-1978, complies with 24 CFR Part 35 requirements
Developer Experience/Capacity		
Developer financial management	Certifications	
Manager experience	Management Qualifications list of HTF projects	
Developer experience		



4.2 HTF Cost Allocation

Cost allocation is required in any HTF project where fewer than 100% of units are HTF-assisted (mixed-income project) or less than 100% of the space is residential (mixed-use project).

Cost allocation is not required for single unit properties or in exclusively residential multi-unit projects that are 100% HTF-assisted. HTF funds may only be used on actual costs, up to the maximum per-unit subsidy limit. DED may designate more units as HTF-assisted than the number required based on the actual costs. The cost allocation process consists of determining the comparability of units; selecting a method of cost allocation; specifying the number of types of HTF units and calculating the cost of HTF units; and determining the maximum HTF investment for a project.

Cost allocation is conducted as part of project underwriting process to calculate the maximum amount of HTF funding, and the minimum number of HTF-assisted units required before an HTF commitment can be determined.

For HTF projects, DED will utilize the HOME cost allocation guidance and methodology in CPD-16-15 and the HOME Cost Allocation Tool located at: <https://www.hudexchange.info/resource/5190/home-cost-allocation-tool/>.

4.3 HTF Subsidy Layering

Subsidy layering applies to HTF if there is any other public source of funding in the project. In such projects, the underwriter must determine that the total amount of government assistance is reasonable and necessary and should require the applicant to certify that all governmental assistance provided or to be provided to a project has been disclosed.

If no such governmental assistance is to be provided at the time of the application or in the future, applicants must certify to that fact. An applicant must also certify that DED will be notified promptly should other governmental assistance be sought in the future. If changes occur, DED must review and determine the continued need for the HTF funds.

If other public funding is included, the final underwriting documentation by DED should include a statement that the underwriting has been conducted in compliance with subsidy layering guidelines; otherwise, the documentation should indicate that subsidy layering has not been triggered.



5 PROJECT CONTRACT & ADMINISTRATION

The requirements in this manual provide Recipients with standards for administering the HTF Program in a consistent manner. DED fully expects Recipients of HTF funds to comply with all administrative requirements. Recipients must become educated on all administrative components, elements, and requirements for HTF. A project management plan should include a list of responsibilities for each project team member, a timeline of implementation steps, and a detailed outline of a filing system.

5.1 Contract Execution

Notice of Approval

A letter announcing the award is sent to each successful HTF program applicant. The letter specifies the amount of the award and the activity funded. The amount of the award may be less than the requested amount. An approved applicant is required to designate an employee to have principal day-to-day responsibility for the administration of the HTF grant.

The award letter cautions applicant's not to incur costs other than planning costs prior to commitment. Only costs associated with planning, design and financing can be incurred prior to receiving a *Notice of Release of Funds* from DED. Contracts for general administration services must be executed after the *Notice of Approval* date. All expenses incurred prior to the *Notice of Approval* cannot be reimbursed by HTF funds.

Contract Terms & Special Conditions

Recipients will meet with DED for a project review meeting after receiving the Notice of Approval in preparation for executing the contract. Once ready to execute a contract, DED will electronically transmit the contract to the Recipient's authorized representative for signature. The Recipient should review the terms and conditions of the contract with their attorney. The contract must be signed by the Recipient within 30 days. A copy of the fully executed contract will be available electronically once all signatures have been obtained.

The Authorized Official of a non-profit, public housing agency or owner/developer are the only individuals recognized by DED as authorized to sign and execute HTF Contracts. This also applies to any contract extensions and amendments involving changes in terms, conditions, and amounts.

The executed contract between the recipient and DED is the legal document that governs the administration of the grant and will identify the following:

- The total amount of HTF funds to be provided;
- Time of performance;
- The scope of work, including the number and bedroom size of assisted units;
- The initial rent structure;
- The project budget for the use of HTF funds and any other funds involved in the project;
- Special conditions for release of funds;
- The general terms and conditions associated with the grant, including the affordability period.

Recipients are responsible for adhering to all the terms of the contract. A substantial number of regulations, acts and statutes apply to the grant. Regulatory contract requirements are outlined at 24 CFR 93.404. DED will hold the Recipient responsible for any conditions of the contract not fulfilled and seek repayment if necessary.



The contract between DED and the Recipient provides for termination for cause and or for convenience. In the event DED suffers a loss of funding or termination of the federal grant that permits it to fund in full or in part an HTF grant, the contract will terminate in full or in part.

Recipients of HTF funds are advised to carefully review their HTF Contract before implementing the funded project. **Project costs cannot be obligated or incurred prior to DED issuing a written *Notice of Release of Funds to the Recipient*.**

Special Conditions for Release of Funds

The contract contains a section entitled Special Conditions for Release of Funds which must be satisfied within 120 days. DED reserves the right to cancel the contract if the special conditions are not met within the specified time frame. HTF funding will not be released to the Recipient until all Special Conditions items have been met. Project costs cannot be obligated or incurred prior to DED issuing a written *Notice of Release of Funds* to the HTF Recipient

These Special Conditions must be satisfactorily completed by the identified date, or DED reserves the right to cancel the contract if these special conditions are not met within the specified time frame.

Special Conditions that must be addressed before Release of Funds is issued:

- [HTF Grantee Information](#)
- [HTF Authorization to Request Funds](#)
- [Environmental Review](#) – Documentation is required by DED evidencing the HTF Recipient's completion of environmental provisions as required by 24 C.F.R.93.301(f).
- [Procurement Standards](#) – Documentation is required evidencing adoption of appropriate procurement standards applicable to the Recipient.
- [Rental Project Pro Forma](#) – Recipient must submit a rental project pro forma for the project. The Pro Forma must include unit information, a development cost schedule, annual operating expense information, sources and uses/equity gap information.
- [Limited English Proficiency](#) - Recipient must submit documentation evidencing completion of its responsibilities to ensuring meaningful access to the Project activities and services for persons with Limited English Proficiency (“LEP”) as required by Title VI of the Civil Rights Act of 1964; Executive Order 13166; and HUD's final “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons”, which was published in the Federal Register on January 22, 2007 and which became effective on March 7, 2007 (“HUD LEP Guidance”).
- [Fair Housing](#) –HTF Recipient must provide a description of at least one new action it will take to affirmatively further fair housing. This documentation must be on official letterhead. The new fair housing action(s) must be performed during the course of the current HTF Project in order to fulfill the requirements. The recipient must maintain and provide documentation of the Fair Housing Activity undertaken, recording number of people affected or served and the outcome, if any, of the action, at project completion.
- [Documentation from the Nebraska Department of Environment and Energy \(New Construction only\)](#) - Recipient must submit documentation from the Nebraska Energy Department of Environment and Energy that shows the plans and specifications for the Project are in compliance with the most recent version of the International Energy Conservation Code.
- [Other Special Conditions](#), as applicable
 - Project Completion Schedule
 - Project Budget documenting all necessary financing has been secured
 - Proposed Cash Flow Distribution Plan



- Proposed Agreement for Governing Reserves
- Tenant Selection Process
- Sample Lease Agreement with VAWA provisions
- Rehabilitation Procedures (if applicable)

The above list represents a list of typical standard special conditions; however, all HTF Contracts are tailored to a specific project with unique standard conditions. The Special Conditions for Release of Funds in the HTF Contract must be satisfied before the *Notice of Release of Funds* will be issued for that project. Forms and templates to assist in completing special condition requirements may be available on DED's website.

Release of Funds

Upon receiving the "*Notice of Release of Funds*" letter, the Recipient may obligate non-administrative costs and draw down funds for eligible costs incurred. Release of Funds will not be approved if there are any unresolved audit findings relating to a past award and remains unresolved beyond the normal period or is deemed to be extreme misconduct. Refer to Financial Management Chapter for information regarding requesting HTF funds.

Requesting HTF Funds

The Recipient must submit a payment request via DED's grant management system, AmpliFund, and provide source documentation along with request. HTF funds will be disbursed electronically to the Recipient's bank account. The Recipient has 15 working days to spend HTF funds following receipt. More information on requesting funds is available in [Chapter 11– Financial Management](#).

Conflict of Interest

No Recipient, developer, or sponsor of a project assisted with HTF funds (or officer, employee, agent, elected or appointed official, or consultant of the Recipient, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the Recipient, developer, or sponsor) whether private, for-profit or nonprofit when acting as an Recipient, developer, or sponsor) may occupy an HTF-assisted affordable housing unit in a project during the required period of affordability specified in §93.302(d).

This provision does not apply to an individual who receives HTF funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the Recipient or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Exceptions to this conflict-of-interest provision (governing Recipients, developer and sponsors of HTF-assisted housing) may be granted upon written request by DED on a case-by-case basis when it is determined that the exception will serve to further the purpose of the HTF program. DED will determine to grant the exception based on the following factors as set forth in the regulations:

- Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of assisted housing, and the exception will permit him or her to receive generally the same interests or benefits as are being made available or provided to the group.
- Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question.
- Whether the tenant protection requirements of CFR §93.303 (prohibited lease terms, termination of tenancy and tenant selection) are being observed.
- Whether the affirmative marketing requirements are being observed and followed.



- Any other factor relevant to DED's determination, including the timing of the requested exception.

5.2 Contract Administration

Contract Amendments/Extensions

Recipients must request approval from DED for any of the following changes:

- Changes to the budget (Budget Category Amendment via AmpliFund)
- Extensions of the contract end date (Award Duration Amendment via AmpliFund)
- Decreases in proposed accomplishments (submit request to HTF Housing Specialist)
- Amendments to housing program guidelines, tenant selection process and/or lease agreements (submit request to HTF Housing Specialist)

DED will review amendment requests considering the following factors:

- How the amendment will affect the application in the selection process;
- Recipient's performance and capacity; and/or
- Committed HTF funds federal expenditure deadlines.

An on-site project visit may be required before a determination by DED can be made.

Contract Amendment requests are submitted via AmpliFund as noted above. Documentation is required to accompany submission of request for amendment. Instructions can be located at opportunity.nebraska.gov/housing under Grant Management Resources.

Recordkeeping & Reporting

General records must be kept for five years after project completion.

Tenant income and rent and inspection information must be kept for the most recent five years, until five years after the affordability period ends.

DED requires HTF Recipients to submit reports at various stages during the course of a project. Refer to [Chapter 0](#) for more details regarding reports and due dates. Note that not all the reports are applicable to every project.

5.3 Monitoring & Enforcement

All HTF projects are monitored for compliance with HTF rules.

The time of performance for developing an HTF project, as stated in the contract, is two years. However, all HTF awards must comply with the requirements of 24 CFR Part 93 throughout the 30-year period of affordability. It is not until full compliance is met by the Recipient at the end of the affordability period that the contract is fulfilled. Failure to fulfill the contract through the end of the required affordability period subjects the Recipient to actions by DED, including possible repayment of the HTF funds.

See [Chapter 0](#) for more detailed information regarding monitoring.

Appeal of Department Decisions

An appeal is a written request directed to DED by an applicant or Recipient for reconsideration of a decision made by DED staff. The following procedures will be followed:



An applicant or Recipient appealing a decision of DED must submit a written appeal requesting a reversal of the decision based upon facts of the situation. This appeal must come to DED from the Chief Elected Official of the local government or the Authorized Official of an agency, or owner/developer.

The HTF Program Manager will consider the issues and respond within 30 days to the applicant or Recipient. If dissatisfied with the HTF Program Manager's decision, the applicant or Recipient may appeal to the Department Director. The Department Director may, at the request of the parties, schedule a hearing or simply render a written decision. If a hearing is held, all interested parties will participate. The purpose of this informal hearing will be to determine the facts of the situation, the appropriateness of the decision, and the justification and appropriateness of the appeal. The Director will make a written decision within 30 days of the hearing and all parties will be notified. The Director's decision is the final administrative action that will be taken by DED.

Complaints

Individuals or authorized representatives of individuals who believe they have been the subject of discrimination based on race, color, national origin, religion, sex, disability, and familial status (i.e., presence of children in the household) may file a complaint with DED or the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development located in Kansas City.

Complaints Against the Recipient's Administration

DED will accept complaints against HTF Recipient administration of the program. Only written complaints against the HTF Recipient's administration of the program will be received and acted upon by the DED.

DED will implement the following procedures for disposition of complaints against local administration:

- DED will forward a copy of the written complaint to the HTF Recipient.
- The Housing Director will request that the HTF Recipient respond to the complaint and inform DED within 30 days of the action to be undertaken to resolve the complaint.
- If the response by the HTF Recipient is determined to be satisfactory, in consultation with the Complaint Review Committee, the HTF Recipient will be notified along with the party lodging the complaint.
- If the response is determined to be inadequate, the HTF Recipient will be put on official notice by DED that the response was inadequate and will be granted 15 days to reconsider and respond to the party lodging the official complaint. The HTF Recipient will submit to DED the actions occurring to resolve the complaint.
- The Complaint Review Committee will review the HTF Recipient's actions to resolve the complaint. If the actions are deemed satisfactory, the HTF Recipient will be notified along with the party lodging the complaint.
- If the Complaint Review Committee does not consider the HTF Recipient's actions satisfactory in resolving the complaint, the Department will impose administrative sanctions upon the HTF Recipient. The sanctions will not be lifted until DED is satisfied with the HTF Recipient's actions.
- The Department's Director, or his or her designee, may be consulted to arbitrate all complaints. If, after consulting with the Director or the designee, the HTF Recipient and/or the party lodging the complaint are not satisfied with the decision, they may appeal to HUD officials.

Complaints Against the State's Administration

DED will receive written complaints against state administration of the program.

The following procedures will be implemented by DED in response to complaints against the administration of the HTF Program:



- When a complaint is received by a DED official it will be forwarded to the HTF Program Manager.
- Within 30 days of receiving the complaint, the Housing Director, in consultation with the appropriate parties, will respond to the complaint in writing.
- If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the Department Director.

5.3 Contract Closeout

Project closeout is the process by which DED determines that Recipients have completed the project according to the HTF Contract. This means that the acquisition and construction/rehabilitation have been completed, funds have been drawn and expended, occupancy in compliance with the rules has been achieved, and all required reports and documentation has been submitted.

See [Section 14](#) for more detailed information.



6 UNIFORM ADMINISTRATIVE REQUIREMENTS

The Uniform Administrative requirements at 2 CFR Part 200 apply to the State as the Grantee, but do not apply to HTF Recipients, unless extended to developers by the policies of the State. HTF developers as Recipients must adhere to the requirements as indicated in their contract. The following uniform federal requirements apply to HTF Recipients and projects.

6.1 Civil Rights and Equal Opportunity Provisions

[Title VI of the Civil Rights Act of 1964](#) – Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance. (Regulations implementing the provisions for HUD programs may be found in 24 CFR Part 1).

[Section 109 of the Housing and Community Development Act of 1974](#) – Provides that no person shall be excluded from participation in (including employment), defined program benefits of, or subject to discrimination on the basis of race, color, national origin, religion, or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

[Age Discrimination Act of 1975](#) – Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. (Regulations in 24 CFR Part 146).

[Section 504 of the Rehabilitation Act of 1973](#) - Prohibits discrimination in federally assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive federal funds. Under Section 504, HTF Recipients are defined more broadly than under the HTF program.

- For any HTF Recipient principally involved in housing or social services, all of the activities of the agency --not just those directly receiving federal assistance --are covered under Section 504.
- Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of an HTF Recipient.
- The ultimate beneficiary of the federal assistance is not subject to Section 504 requirements.
- Under Section 504, HTF Recipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

The specific requirements under Section 504 are summarized below.

[Removal of Physical Barriers](#)

- For new construction of multi-family projects, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.



- The Section 504 definition of substantial rehabilitation multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent or more of the replacement cost. In such developments, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (but not less than one unit) must be accessible to individuals with sensory impairments.
- When rehabilitation less extensive than substantial rehabilitation is undertaken, alterations must, to the maximum extent feasible, make the unit accessible to and usable by individuals with handicaps, until 5 percent of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible.
- Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice.
- Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the Recipient/ manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

Provide Program Accessibility

- Individuals with handicaps must be able to find out about, apply for and participate in federally assisted programs or activities.
- Special communication systems may be needed for outreach and ongoing communication (e. g., Telecommunications Devices for the Deaf (TDD), materials on tape or in Braille, accessible locations for activities and meetings).
- Policies and procedures must be non-discriminatory (e. g., housing providers may not ask people with handicaps questions not asked of all applicants, screen individuals with handicaps differently or assess an individual's ability to live independently).

Make Employment Accessible

- Employers must not discriminate.
- Employers must remove physical and administrative barriers to employment.
- Employers must make reasonable accommodations for individuals with known handicaps (e. g., job restructuring, providing readers or sign interpreters, making facilities accessible).

Architectural Barriers Act of 1968 – Standards for the design, construction, and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to, and the use of such structures can be met by following the Uniform Federal Accessibility Standards outlined in Appendix A of 24 CFR Part 40.

Americans with Disability Act – Compliance with all provisions of the Americans with



Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices; and in assuring access by persons with disabilities to facilities and services provided by the HTF Recipient to the general public. The Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

[Executive Order 11246](#) – Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000. Implementing regulations may be found at 41 CFR Part 60. The HTF Recipient, and subcontractors, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The HTF Recipient, and subcontractors, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. The HTF Recipient must post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

[Executive Orders 11625, 12432, and 12138 \(Minority owned business enterprise and women owned business enterprise\)](#) – These orders require HTF Recipients of federal funds to provide maximum opportunities to disadvantaged minority owned business enterprises and to women owned business enterprises to participate in the performance of contracts financed in whole or part with HTF funds.

6.2 Fair Housing Standards

[Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988](#) – This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The Recipient must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII. Fair Housing Act implementing regulations may be found in 24 CFR Part 100-115.

[Executive Order 11063, As amended by Executive Order 12259](#) - This order directs the Recipient to take all action necessary and appropriate to prevent discrimination because of race, color, religion, sex, or national origin; in the sale, leasing, rental, and other disposition of residential property and related facilities (including land to be developed for residential use); or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions from the federal government. Equal Opportunity in Housing regulations may be found in 24 CFR Part 146.

[Affirmatively Furthering Fair Housing](#) –Recipients must certify that they will take



affirmative action to further fair housing (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of new action be undertaken by the Recipient, not just passive compliance with existing laws and ordinances. Fair housing is generally thought of as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, creed, sex, or national origin. Recipients, as a Special Conditions requirement, must inform DED of actions they will undertake to further fair housing. Some suggested actions are:

- Adopt a fair housing ordinance with means of enforcement.
- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies or practices.
- Support and participate in educational programs coordinated with local realtors, home builders, and mortgage lenders designed to provide information on fair housing rights.
- Provide housing referral and counseling services, which assist minorities, women, and the handicapped seeking housing within the HTF Recipient's jurisdiction. Encourage local employers to cooperate in efforts to find housing for their employees and to promote equal housing choices within the community.
- Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups in undertaking fair housing informational or technical assistance seminars in your community or region.
- Use the Equal Housing Opportunity logo on official letterhead and prominently display posters, logo and informational material on fair housing and periodically print a notice in local newspaper that the Recipient is an active supporter of fair housing laws
- Host a Fair Housing Month (April) event.



7 ACQUISITION & RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to HTF. Section 104(d) of the Housing and Community Development Act of 1974 does not apply – that is, the 104(d) assistance standards and One-For-One Replacement do not apply.

7.1 Statutory & Regulatory Requirements

HTF-funded projects are subject to relocation requirements contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, and its implementing regulations at 49 CFR Part 24.

Statutes:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et. seq.)
- 42 USC Sec. 3537c, Prohibition of Lump Sum Payments
- Relocation Assistance Act (LB 254, March 27, 1989) RRS of Nebraska

Regulations:

- 49 CFR Part 24, Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs, as amended.
- 24 CFR Part 42, Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD-Assisted Programs
- 24 CFR §93.352, Displacement, relocation, and acquisition

Further, projects are subject to the Nebraska Relocation Assistance Act.

This Chapter provides an overview of acquisition and relocation requirements but is not a complete discussion of requirements and compliance. Recipients should refer to HUD Handbook 1378 Tenant Assistance, Relocation and Real Property Acquisition when acquiring and/or rehabilitating occupied properties. Handbook 1378 is available at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780.

Additional HUD online resources at: <https://www.hudexchange.info/programs/relocation/>.

Overview of Requirements

Whenever federal funds are used in a project involving the acquisition, rehabilitation or demolition of real property, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) generally applies. Some of the key URA responsibilities include:

- For Real Property Acquisition (Involuntary Acquisition – under threat or use of eminent domain):
 - Appraise property before negotiations
 - Invite the property Recipient to accompany the appraiser during the property inspection
 - Provide the Recipient with a written offer of just compensation and a summary of what is being acquired
 - Pay for property before possession
 - Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses
 - Note that agency responsibilities for voluntary acquisitions differ. Refer to 49 CFR 24.101(b) and HUD Handbook 1378 Chapter 5 for additional information.



- For Residential Displacements:
 - Provide relocation advisory services to displaced tenants and Recipient occupants;
 - Provide a minimum 90 days written notice to vacate prior to requiring possession;
 - Reimburse for moving expenses; and
 - Provide payments for the added cost of renting or purchasing comparable replacement housing.
- For Nonresidential Displacements (Businesses, Farms, and Nonprofit Organizations):
 - Provide relocation advisory services.
 - Provide a minimum 90 days written notice to vacate prior to requiring possession.
 - Reimburse for moving and reestablishment expenses.

Minimizing Displacement Policy

In 93.352, HUD requires program administrators to take all reasonable steps to minimize displacement as a result of a HUD-assisted program. This includes:

- Considering whether or not displacement will occur as part of funding decisions and project feasibility determinations;
- Assuring, whenever possible, that residential occupants of buildings to be rehabilitated are offered an opportunity to return;
- Planning rehabilitation projects to include "staging" where this would minimize displacement; and
- Following notification and advisory services procedures carefully to assure that families do not leave because they are not informed about plans for the project or their rights. This can be a costly mistake.

As part of its consolidated plan under 24 CFR Part 91, the State must adopt and make public its Residential Anti-displacement and Relocation Assistance Plan to implement Uniform Relocation Act and Section 104(4) requirements, following the guidance in CPD Notice 94-16.

Acquisition

The applicability of URA to acquisitions that are funded with HTF depend upon whether the acquisition is considered voluntary or involuntary. The URA requirements for voluntary and involuntary acquisitions differ significantly. While there are protections for property Recipients in both circumstances, only involuntary acquisitions trigger the full acquisition requirements of the URA [29 CFR 24, Subpart B]. Under the URA, an acquisition is considered to be involuntary when the HTF Recipient acquires property under the threat or use of eminent domain.

For guidance on acquisitions, refer to Handbook 1378 Chapter 5.

Involuntary Acquisitions

URA covers acquisition for involuntary purchases. Recent Congressional appropriations have restricted the use of eminent domain for acquisition, so Recipients should consult with the Department prior to commencing actions on an acquisition where eminent domain is possible or expected.

If involuntary, the Recipient must complete all of the following steps:

- Notify the Department of the involuntary acquisition
- Provide Relocation Order/Determination of Necessity of Taking
- Provide required Acquisition and Relocation notices and brochures



- Obtain appraisal(s)
- Obtain an Appraisal Review
- Develop Relocation Plan and submit to the Department for review and approval
- Determine Just Compensation and Offering Price
- Initiate and proceed with negotiations
- Make a Written Jurisdictional Offer (if negotiations fail) and execute an Administrative Settlement (if necessary).

For appraisal standards, see Handbook 1378, Paragraphs 5-2 to 5-4.

Two notification requirements apply: Notice of Interest and Notice of Just Compensation.

Note that conflict of interest provisions applies when the Recipient is an employee or officer of the Grantee or the HTF Recipient. See Handbook 1378 Paragraph 5-9.

Voluntary Acquisitions

Voluntary sales are those that are negotiated between the seller and purchaser without the threat of eminent domain or condemnation (i.e., the purchaser does not have the power of eminent domain or has agreed in writing not to do so. Also, purchases from government agencies are considered voluntary if the purchaser does not have the power of condemnation.

The sale price may be negotiated, but the property Recipient must be informed of certain facts about the acquisition including the fair market value of the real property and the inapplicability of relocation benefits and assistance.

Except for notification provisions, voluntary purchases are not regulated by URA. However, tenants are still eligible for relocation benefits in a voluntary acquisition.

When a voluntary acquisition occurs, the Recipient must complete the following steps:

- Notify the Department of the voluntary acquisition
- Determine Fair Market Value
- Provide Notice/Letter of Intent to Purchase
- Provide Acquisition and Relocation Rights brochures, as applicable
- Initiate and proceed with negotiations
- Execute Purchase Agreement
- Maintain all documents in the project file.

Under the URA, relocation assistance may not be waived, although if eminent domain will not be used, a voluntary acquisition can include a determination that the Recipient would not qualify for relocation benefits. However, a Recipient cannot waive the rights of tenants on the property in either a voluntary or involuntary acquisition. Tenants are always eligible for relocation benefits in a voluntary acquisition scenario.

Who Is Displaced & Not Displaced

Displacement occurs when a "person" (defined to include a family, individual, business farm or nonprofit organization) or their property is displaced as a DIRECT RESULT OF federally assisted acquisition, demolition or rehabilitation.

A person is displaced if they move because the person is required to move by the Recipient, developer or agency, or not offered a decent, safe, sanitary and affordable unit in the project; or



treated "unreasonably" as part of a permanent or temporary move. A person may also be considered a displaced person if the necessary notices are not given or provided in a timely manner and the person moves for any reason.

Also, persons who moved because they are not offered an affordable unit can be considered "economically displaced" and may receive relocation assistance or tenant-based rental assistance to prevent displacement.

Who Is Not Displaced? Persons not displaced include those who:

- Persons temporarily relocated from their dwellings for less than 12 months during rehabilitation or demolition;
- Illegal aliens, as the URA prohibits providing relocation assistance to persons not lawfully present in the U.S.;
- Were evicted for cause, BUT not if the eviction is taken to evade paying relocation assistance;
- Have no legal right to occupy the property (e.g., squatters), but a formal lease is not required to have a legal right;
- Occupied the property for the purpose of obtaining relocation benefits;
- Before leasing and occupying the property, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided;
- Retain the right of use and occupancy of the property after acquisition (life estates); or
- After being fully informed of their rights, waive them.

The Recipient decides (and HUD agrees in writing) who were not displaced as a direct result of the project. When in doubt, ask the HUD Field Office for a determination.

Nonresidential Relocation

In addition to relocation advisory services, nonresidential displaced persons may be eligible for other relocation assistance including relocation payments for moving expenses and reestablishment. Eligible moving costs for displaced businesses, nonprofit organizations or farms are at 49 CFR 24.301(g). Reestablishment expenses are available to a "small business", nonprofit organization or farm (49 CFR 24.304). Some costs for moving and reestablishing a business, nonprofit organization or farm are not eligible, and are listed at 49 CFR 24.301(h).

What types of moving options are available to nonresidential displaced persons? The URA provides the following moving options:

- Payment for the actual, reasonable moving costs and related expenses, and
- Payment for actual, reasonable reestablishment expenses, or
- A fixed payment "in lieu of" moving and reestablishment costs.

Nonresidential relocation can also be extremely complex and expensive. Agencies should be cautious when conducting nonresidential displacements under the URA. It is recommended for agencies to seek guidance and assistance from knowledgeable persons with this expertise early in the process.

7.2 Relocation Assistance

Displaced persons are provided the following assistance:



- Notices
- Advisory services
- Replacement housing assistance
- Moving and related expenses

Persons who will remain after the HTF-funded activity must be provided:

- Notices
- Advisory services
- Tenant-based rental assistance if needed to keep the unit affordable
- Temporary relocation assistance, if applicable

Timing for Eligibility

The Initiation of Negotiations (ION) (49 CFR 24.2(a)(15)) generally is the milestone for determining a person's eligibility for relocation assistance, including moving costs and a replacement housing payment. For HTF, the ION date is defined to be the date of execution of the written agreement covering the acquisition, demolition or rehabilitation. (§93.352(c)(3))

However, §93.352(c)(2) indicates that displaced persons are covered if they move:

- After notice by the Recipient to move permanently from the property, if the move occurs on or after the date of the submission of an application to DED if the applicant has site control or approval by DED if the applicant does not have site control at the time of the application, or
- earlier if DED or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and before the tenant is provided written notice offering the opportunity to lease and occupy a dwelling under reasonable terms, is required to relocate temporarily and does not return, is required to move to another dwelling unit but is not offered reimbursement or other conditions of the move are not reasonable.

Information

Recipients need to provide adequate information and disclosure to all occupants that may be affected by the HTF-funded activity. Generally, the HTF Recipient may meet most of the general information requirements required by the URA by providing the affected person(s) with a copy of the appropriate HUD information brochure along with the required Notice as described below and in Paragraph 2-3 of Handbook 1378.

Printed copies of the HUD information brochures in English and Spanish are available from HUD's Regional Relocation Specialists and local field offices, and from HUD's Direct Distribution Center at 1-800-767-7468. Copies can also be downloaded or printed from HUD's website at:

www.HUD.GOV/Relocation.

- 1) When a Public Agency Acquires Your Property (HUD-1041-CPD) and its Spanish version, Cuando Una Agencia Pública Adquiere su Propiedad (HUD-1041-CPD-1)
- 2) Relocation Assistance to Tenants Displaced from Their Homes (HUD-1042-CPD) and its Spanish version, Asistencia Para La Reubicación a Inquilinos Desplazados de Sus Hogares (HUD-1042-CPD-1)
- 3) Relocation Assistance to Displaced Homeowner Occupants (HUD-1044-CPD) and its Spanish version, Asistencia Para la Reubicación a Propietarios Residentes de Vivienda Desplazados (HUD-1044-CPD-1)



- 4) Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms (HUD-1043-CPD) and its Spanish version, Asistencia Para la Reubicación a Negocios, Organizaciones sin Fines de Lucro y Granjas Desplazados (HUD-1043-CPD-1)
- 5) Relocation Assistance to Persons Displaced from their Homes (Section 104(d)) (HUD-1365-CPD) and its Spanish version, Asistencia Para la Reubicación a Personas Desplazadas de sus Viviendas (Sección 104(d)) (HUD-1365-CPD-1). This brochure is only used where both the URA and section 104(d) are applicable to the project (see Paragraph 1-2 B.).

Relocation Notices

Who Needs a Notice?

Virtually EVERYONE needs a notice of some kind. All occupants are entitled to timely notice explaining whether or not they will be displaced.

- Occupants to be displaced must be informed of their eligibility for relocation assistance and the nature of the assistance.
- Occupants not to be displaced must be informed of the terms and conditions under which they may occupy the property upon completion of the project.

Different notices serve different purposes and must be tailored both to the specific project circumstances, and the individual circumstances of the residents. Failure to provide correct and timely notices can be one of the most expensive mistakes that a relocation specialist can make.

What Notices Are Required?

The primary notices required under the URA include:

- **General Information Notice (GIN):** Informs affected persons of the project and that they may be displaced by the project. It emphasizes that the household should not move at this time.
- **Notice of Relocation Eligibility (NOE):** Informs persons that they will be displaced by the project and establishes their eligibility for relocation assistance and payments.
- **Notice of Nondisplacement:** If a person does not qualify as a displaced person (see Paragraph 1-4 J.), HUD policy requires that such persons be provided with a Notice of Nondisplacement to advise them of the determination and their right to appeal. If continued occupancy is possible upon completion of the project,
- **90 Day Notice:** Informs displaced persons of the earliest date by which they will be required to move. For residential displaced persons, this notice may not be issued unless a comparable replacement dwelling is available, and the displaced person is informed of its location and has sufficient time to lease or purchase the property.
- **Notice of Intent to Acquire:** Before a binding sales contract is executed, Recipients who are voluntarily selling a property must receive notice indicating that the property is being purchased with federal assistance, the property will not be taken by eminent domain; and the estimated fair market value of the property. This notice is required even if the property was already listed for sale. If the notice is not given, the Recipient may be vulnerable to a claim that the acquisition was "involuntary" and therefore covered by relocation requirements.
- **Notice to Recipient:** As soon as an HTF Recipient has identified properties that it might be interested in acquiring for a HUD-funded project, it needs to notify the Recipient(s) in writing of its interest in acquiring the property and the basic protections applicable under the URA.
- **Move-in Notice:** Informs households moving into potential projects after the application that they may be displaced and that they will not be entitled to assistance. (Recipients can also elect not to give this notice; move ins are then eligible for assistance if displaced.)



HUD has specific requirements relating to the three URA notices and also requires additional notices to be issued when conducting acquisition and relocation activities for HUD-funded programs and projects. Agencies should also refer to HUD Handbook 1378 Chapter 2 for more information on this topic.

Additional notices may be appropriate under certain circumstances:

- Temporary Relocation Notice: Informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.
- Notices for Involuntary Acquisitions and Displaced Businesses
- Notice to Sellers. Before a binding sales contract is executed, Recipients who are voluntarily selling a property must receive notice that indicates:
 - o The property is being purchased with federal assistance;
 - o The property will not be taken by eminent domain; and
 - o The estimated fair market value of the property.

This notice is required even if the property was already listed for sale. If the notice is not given, the Recipient may be vulnerable to a claim that the acquisition was "involuntary" and therefore covered by relocation requirements.

When and How are Notices Served?

Notices may be issued by either the HTF Recipient or the Recipient. However, the HTF Recipient is ultimately responsible and must assure that timely and correct notices are given. HUD recommends that HTF Recipients issue the notices.

Notices must be personally served or sent by certified or registered first-class mail, return receipt requested.

Notices should be issued as soon as feasible. Although HUD Handbook 1378 defines the point of "initiation of negotiations" for HUD programs, the date of "application" is less clear. To avoid relocation problems HTF Recipients should establish policies defining when an application is received.

Relocation Advisory Services

Relocation advisory services are required under 49 CFR 24.205. Once the URA has been triggered, agencies must provide relocation advisory services to all eligible residential and nonresidential displaced persons. In addition to being required by law, relocation advisory services are the single most important part of a successful relocation program. Relocation advisory services are required to be provided to all eligible displaced persons including nonresidential displaced persons.

As part of relocation advisory services, the agency should:

- Determine the needs and preferences of displaced persons
- Explain available relocation assistance
- Explain a person's right to appeal if they are not satisfied with agency decisions
- Offer and provide transportation to locate replacement housing
- Offer other assistance and referrals (e.g., social services, financial referrals, housing inspection, etc.)
- Provide current and ongoing listings of comparable dwellings for residential displacements (to the extent possible, about replacement housing opportunities that may promote fair housing and moves to neighborhoods outside areas of racial
- Concentration) and replacement sites for businesses



- Supply information on other federal and state programs offering assistance and how to apply for them
- Provide counseling and other assistance to minimize hardship in adjusting to relocation
- Provide other required and appropriate assistance

Moving and Related Out-of-Pocket Expenses

In addition to advisory services and possible replacement housing payments, Recipients are expected to provide for moving-related expenses and out-of-pocket costs for either temporary or permanent moves.

The displaced person has the option of payment for actual reasonable moving and related expenses, or a moving expense and dislocation allowance based on a Department of Transportation (DOT) schedule that is published periodically.

See Handbook 1378 Paragraph 3-2 for additional guidance (Chapter 4 for non-household moving.)

Replacement Housing Payments

Replacement Housing Assistance is available to all legal occupants who will be displaced by the HTF-funded project. Assistance may be provided in the form of either rental assistance or purchase assistance. Rental Assistance may be in the form of a Replacement Housing Payment (discussed below) or, for eligible households, tenant-based rental assistance under Section 8.

Under 42 USC Sec 3537c, lump sum payments are prohibited, except where necessary to cover moving expenses or to make a down payment on the purchase of a replacement dwelling. Cash rental assistance must be provided in installments, unless being used for purchase of a replacement home.

For further guidance on the calculation of relocation assistance payments, see Handbook 1378 Chapter 3, including:

- Payment for moving-relative expenses – Paragraph 3-2
- Replacement housing payments for tenants – Paragraphs 3-5 (90-day occupants) and 3- (non-90-day occupants)

Relocation payments for businesses, farms and nonprofit organizations are contained in Handbook 1378 Chapter 4.

URA Replacement Housing Payment

Under the URA the amount of the Replacement Housing Payment a displaced tenant receives varies depending upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the agreement. (See the chart on the following page for the two formulas.)

The URA Replacement Housing Payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a \$7,200 limitation on payments, it also requires that persons receive the calculated payment. Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed \$7,200.

The payment to which the family is entitled is calculated using the lower of the cost of the family's actual new unit (including estimated utilities) or a comparable replacement dwelling.



ASSISTANCE FOR TENANTS IN OCCUPANCY MORE THAN 90 DAYS	ASSISTANCE FOR TENANTS IN OCCUPANCY LESS THAN 90 DAYS
<p>Replacement Housing Payment makes up (for a 42 month period) the difference between:</p> <p>the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and</p> <p>the lesser of:</p> <p>> of the tenant's average monthly gross income, or</p> <p>> the monthly rent and estimated average utility costs of the displacement dwelling</p> <p>> the welfare rent (in as-paid welfare localities only)</p>	<p>Replacement Housing Payment makes up (for a 42 month period) the difference between:</p> <p>+ the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and</p> <p>* 30% of the tenant's average monthly gross income</p>

EXAMPLE: URA Replacement Housing Payment - Tenant
(Tenant in occupancy more than 90 days)

1. Rent and utilities at actual replacement dwelling	\$600
2. Rent and utilities at comparable replacement dwelling	\$500
3. Lesser of 1 & 2	\$500
4. Rent and utilities at the displacement dwelling	\$400
5. 30% of gross monthly income	\$300
6. Lesser of 4 & 5	\$300
7. Replacement Housing Payment (3 minus 6 times 42 months)	\$500 - \$300 = \$200 x 42 =\$8,400

Comparable Replacement Dwelling Unit

Comparable replacement units are used both for finding suitable housing for the relocatee to move to and also as a standard for determining the replacement housing payment. Comparable units are defined as follows:

- If the person did not receive a government rental housing subsidy before displacement, the comparable replacement dwelling must be an unsubsidized unit available on the private market, unless the person is willing to accept a unit with either project-based or tenant-based assistance (if available).
- A comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.
- The comparable unit must be within the financial means of the displaced person (49 CFR



- 24.2(a)(6)(viii)).
- The comparable unit must be a decent, safe, and sanitary dwelling (DS&S) (49 CFR 24.2(a)(8)).

Housing of Last Resort

The URA requires that comparable decent, safe, and sanitary replacement housing within a person's financial means be made available before that person may be displaced. When such housing cannot be provided by using replacement housing payments, the URA provides for "housing of last resort." Housing of last resort may involve the use of replacement housing payments that exceed the URA maximum amounts. Housing of last resort may also involve the use of other methods of providing comparable decent, safe, and sanitary housing within a person's financial means.

Agencies have broad flexibility in the use of housing of last resort. It is intended to enable agencies to respond to difficult or special displacements, but it should not be used as a substitute for lack of time or lack of relocation advisory services.

Optional Relocation Assistance

HTF funds may be used to provide relocation assistance to persons displaced by a project HTF may also be used to provide relocation assistance to persons covered by the regulations beyond that required.

If the additional assistance is not required by state or local law, the Recipient must adopt a written policy describing the optional relocation assistance and provide for equal relocation assistance within each class of displaced persons. The Department must approve all optional assistance.

Temporary Relocation Assistance

Residents who will remain in the project after rehabilitation may be required to move temporarily during rehabilitation. Assuming they are eligible, tenants may be allowed to remain in a project after rehabilitation, but not necessarily in the same unit.

Temporary relocation generally means that a person is displaced for less than a year while rehabilitation occurs but will return to the site or unit when work is completed. Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. Any residential tenant who has been temporarily relocated for more than one year must be offered all permanent relocation assistance which may not be reduced by the amount of any temporary relocation assistance previously provided.

If a temporary dwelling is used for relocation, the unit must be suitable and decent, safe and sanitary -- but not necessarily comparable. All other conditions of the move must be "reasonable".

In addition to the Notice of Nondisplacement, the resident must, as a minimum, receive:

- Reasonable advance written notice of the date and approximate duration of the planned temporary move.
- Information about the terms and conditions under which the tenant will be returning to the unit when the project is completed.
- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move including any increase in monthly rent/utility costs. (No claim form has been developed by HUD, but adequate documentation for reimbursements should be retained in Grantee files.)



Under §93.352(b), HTF funds may be used to pay for reasonable out-of-pocket costs for the move and any increases in housing costs in the temporary dwelling.

The rent plus utilities of the permanent new unit within the project must not exceed the greater of the tenant's old rent plus utilities or a specified portion of income depending upon the HUD-assisted program (usually TTP or 30% of gross income).

See Handbook 1378 Paragraph 2-7 for additional guidance on temporary relocation.

Temporary Relocation for LBP Hazard Control

If a pre-1978 structure not otherwise exempt is to be rehabilitated, it is subject to 24 CFR Part 35 governing lead-based paint. §35.1345 requires occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, unless:

- Treatment will not disturb lead-based paint, dust-lead hazards or soil lead hazards;
- Only the exterior of the dwelling unit is treated, and openings in or near the worksite are sealed during hazard control work and cleaned afterward;
- Treatment of the interior will be completed within one period of 8-daytime hours and the worksite is contained; or
- Treatment of the interior will be completed within 5 calendar days, the worksite is contained, the worksite is cleaned at the end of work on each day, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

7.3 Relocation Plan

Section 205 of the URA requires that, "Programs or projects undertaken by a federal agency or with federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion."

Chapter 2 of Handbook 1378 outlines a planning process that includes consultation with occupants, coordination with other agencies, and the determination of needs and budget. The Department requires a Relocation Plan to be prepared to ensure compliance and to be able to certify compliance to HUD, as required by regulations.

This plan must be completed prior to final approval and commitment of funds, as it will directly affect the eligibility of the project and the budget needed to provide for relocation. Plans will be reviewed to determine if they adequately address:

- **Notice requirements** – whether issuance of the GIN (and Move-In Notices for interim tenants, as appropriate) has occurred or is planned, and whether procedures have been identified to ensure that all subsequent required Notices are issued as required by Handbook 1378 Paragraph 2-3
- **Advisory services** – whether the process has been identified to contact occupants, survey income and preferences, provide guidance, and ensure fair housing standards are met
- **Moving and related expenses** – whether required assistance has been estimated and budgeted
- **Replacement housing assistance** – whether temporary and permanent housing assistance costs have been reasonably estimated and budgeted



7.4 Relocation Process

Identify Displacees and Issue a General Information Notice (GIN)

Maintain documentation that relocations are being carried out in conformance with the regulations.

Procedures

As early as feasible in the acquisition/relocation process, the Recipient should identify individuals or businesses to be relocated. A person scheduled to be displaced is to be furnished with a written general description of the relocation program. The notice must at least inform the individual of the potential of displacement and describe the eligibility and payment procedures. It also must specify that the individual cannot be required to move without a 90-day's advance written notice. Other items should also be included.

The Recipient must maintain a separate case file on each displaced family or business for three years after project completion or after receipt of final relocation payment, whichever is later. All documents pertaining to displacement must be retained in the case files. The Relocation File Checklist (Attachment 1) identifies all documents to be maintained.

Common Deficiencies

- Incomplete records.
- Failure to maintain for three years.

Supporting Materials

- Relocation File Checklist
- Check with DED for additional information for business relocation.

Provide Notice of Relocation Eligibility and Informational Brochure

The Recipient must deliver or send a Notice of Relocation Eligibility to all Recipient-occupants or tenants in occupancy promptly after the Initiation of Negotiations, defined as the date that the Recipient makes an offer to purchase. This notice establishes eligibility for relocation payments and assistance.

The notice must:

1. Identify the project and inform the person of his eligibility for relocation payments and other assistance and the effective date of that eligibility.
2. Generally, describe the relocation payment(s) for which he/she may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
3. Inform him/her that he/she will be given other help (e.g., housing referrals) to facilitate the move.
4. State a specific date as the earliest date the occupant may be required to move or indicate a 30-day advance notice of the date to vacate.

Displacement Not a Notice to Vacate

In the Notice of Relocation Eligibility, it is important for the HTF Recipient to emphasize that the notice is not a notice to vacate. The notice should indicate that no one will be forced to move until and unless they have been referred to at least one decent, safe and sanitary comparable house and that the occupants will have a minimum of 90 days' notice to vacate after comparable housing has been located and referred. The notice should also contain a grievance procedure which outlines the appeals process



including the grounds for filing an appeal, to whom appeals should be filed in the city, appropriate time limits and the right of appeal to the Department.

This notice and all other notices to displacees must be written in plain, understandable language. They may be either hand delivered or sent by certified mail. Notices must also contain the name and phone number of a person who may be contacted for answers to questions or other needed assistance.

Keep in mind that mailed notices are appropriate for Recipients to be able to read and understand. If there is any reason to believe the person is functionally illiterate or senile, hand delivery is far more preferable. If a displacee does not speak or read English, notices must be available in appropriate translations. Copies of all notices and evidence of their delivery should be retained in the relocation case files.

Common Deficiencies

- Inadequate Notice of Relocation Eligibility.
- Grievance procedure not provided to displacees.
- Translations not provided when appropriate.

Supporting Materials

- Sample Notice of Displacement—Tenants.
- Sample Grievance Procedure.

Contact Displacees to Provide Information and Determine Needs

Determine the housing or business replacement and social services needs of relocatees.

Procedures for Surveys

As soon as the initial notice is delivered or sent out, the Recipient must interview each displacee to determine her/his need for assistance. A sample interview format is provided to show the type of information that is required. This survey format generally forms the basis of the Site Occupant Record.

The Site Occupant Record includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); veterans status of family members; description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The people conducting these surveys and having personal contact with the individuals to be relocated should be very patient, capable of understanding the distress of the relocatees and of dealing with them in a non-threatening, helpful manner.

Some displacees may be elderly with a huge emotional investment in their present home. In the HTF Recipient's view, it may be a substandard dwelling unit; to the Recipient, it is a home which contains a lifetime's memories and mementos. Many will not want to relocate. The counseling and assistance required to serve these people adequately is substantial.

Depending upon the size and experience of the relocation staff, it may be appropriate to provide some counseling and assistance themselves while other social service needs will be best met through referral to public or private agencies. A single family may require a number of social service contacts. Physical and psychological problems may range from alcoholism to nervous breakdown, from unemployment to child abuse.



For this reason, the assigned staff must be aware of the kinds of services available. Staff should also develop the ability to distinguish serious problems which require outside professional assistance. Kinds of services and counseling commonly provided during the relocation process include the following:

Counseling Relocation Services

- Mortgage counseling and Fair Housing Laws.
- Help in completing or understanding forms or documents such as a purchase contract.
- Housekeeping and home maintenance practices.
- Budgeting and money management guidance.
- Recommendations concerning packing and moving.
- Family and personal counseling.
- Assistance in obtaining medical care.
- Help in obtaining clothing, food, furniture or appliances.
- Advice concerning social security, food stamps, welfare or veterans' benefits.
- Transportation assistance.
- Assistance with childcare or school adjustment.
- Employment counseling and job training.
- Senior citizen assistance.
- Family planning.
- Legal aid.
- Financial assistance.

In many cases, especially with regard to the elderly, it may be useful to ask if there are any relatives living in the surrounding area. If permission to contact these relatives can be obtained, these contacts can assist in developing appropriate relocation plans for the person. Some relatives will contribute money to the purchase of a dwelling; others will have special skills (e.g., lawyer, realtor) which can facilitate rehousing transactions. Sometimes, relatives can also encourage cooperation in the disclosure of information necessary to complete claim forms.

At the same time the interviewer is conducting the family survey, he/she should review the relocation process with the relocatees and insure they understand the process.

Special attention must be given to:

1. The assistance to be provided by the HTF Recipient.
2. The benefits available.
3. The fact that replacement housing payments cannot be made unless the household relocates into a standard unit.
4. The importance of keeping in touch with the HTF Recipient.
5. The need to notify the HTF Recipient before they move.

Common Deficiencies

- Family surveys not conducted.



- Counseling services not provided.
- Translations/bilingual assistance not provided when appropriate.

Identify Replacement Housing, Social Services Resources and Make Referrals

Inventory resources that are available and assist relocatees in finding suitable replacement housing and assist self relocatees.

Procedures

The primary purpose of the family survey is to provide the data needed to determine replacement housing needs. All replacement housing must be decent, safe and sanitary. The regulations define this to mean that the replacement unit must meet local housing or occupancy codes. The only times that local housing or occupancy codes do not define decent, safe and sanitary are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define decent, safe and sanitary. The unit should also be free of lead-based paint hazards and of architectural barriers, if serving a handicapped person.

Comparable Replacement

In addition to being decent, safe and sanitary, the replacement unit must also be “functionally similar” to the acquired unit with respect to the number of rooms and living space unless additional or larger rooms are needed to meet safe, sanitary and decent criteria (i.e., one person per room; age/sex of children sharing bedrooms and the like). This means that a family of six living in a two-bedroom unit may require a four-bedroom replacement unit to meet local codes or Section 8 standards, if applicable.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms than the displacement dwelling. Such may be the case when a replacement dwelling is “adequate to accommodate” the displaced person and is found to be functionally similar to a larger but very rundown substandard displacement dwelling. They may choose a smaller unit, but the HTF Recipient must provide reasonable choices of comparable replacement units.

Further, the referral units must be within the financial means of the displaced persons. This is determined by the “make whole” financial means test, as follows:

90-day Homeowner. The test is met if a person receives the price differential, increased mortgage interest cost and all reasonable incidental expenses, not to exceed \$31,000.

90-Day Tenant and 90-179 Day Homeowner. The test is met if a person receives assistance equal to 42 times the increase in rent and utility costs that he or she is required to pay because of the displacement. For 104(d) the tenant receives up to 60 times the increase.

Last Resort Replacement

If the Recipient finds it cannot identify comparable affordable replacement housing using these standards, and that the inability to relocate site occupants will jeopardize the project, it must use other means of assisting displacees under the “Last Resort Replacement Housing” provisions of the regulations.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the handicapped in a replacement dwelling.

Inventory Housing



Having identified the replacement housing needs, the Recipient must begin taking an inventory of available housing resources. In doing this, the Recipient must be aware of affirmative action criteria that must be met when relocating low-income and minority persons.

The regulations require that the Recipient make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available.

This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of your community, low-income or minority relocatees must be given replacement housing choices in those areas before the HTF Recipient can give such relocatees a go-day notice to vacate. Furthermore, the regulations require that the HTF Recipient make available to low-income and minority families special counseling and related services, e.g., transportation and escort services.

In inventorying available resources, the HTF Recipient will be contacting landlords, realtors, and movers. It will read classified ads and tour neighborhoods looking for “For Rent” and “For Sale” signs. Eligible displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular).

The process of finding suitable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to housing resources, accompany displacees to inspect possible dwellings and the like. Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided. All units must be inspected and certified as being decent, safe and sanitary before being placed on a referral list.

Relocatees Risk Compensation

Some relocatees will not wait for the Recipient to locate suitable units. They will search for their own units and relocate themselves. Occupants who relocate themselves risk not receiving the compensation to which they are entitled.

This can happen because:

1. The occupants do not know they are entitled to it and fail to apply.
2. The Recipient is unable to trace them to their new quarters.
3. The new quarters are substandard (in which case the relocatees still receive moving expenses). Self-relocatees who do not inform the Recipient of their plans forego a pre-move inspection of their new quarters.

An inspection after the move is made usually proves to be ineffective with regard to procuring needed repairs.

Replacement Units Meet Standards

If an individual locates or moves into a replacement unit that is not standard, the Recipient must make every effort to upgrade the unit to decent, safe and sanitary standards in order to entitle the relocatee to benefits. This can include making a rehabilitation grant or loan, emergency repairs and the like with HTF funds or securing comparable assistance from other sources.

In the event remedial action to bring the unit to code is not available, the Recipient must inform such relocatees that if they remain in or move to a substandard unit, they will be eligible only for moving expenses and not for replacement housing payments.



The Recipient must also inform them that if they move into standard housing within a year from the date, they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment.

Common Deficiencies

- Failure to provide assistance in locating suitable housing.
- Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration.
- Failure to provide counseling and assistance to relocatees moving into substandard units.

Supporting Materials

- Sample Letter to Relocatee in Substandard Unit.

Secure Replacement Housing for Displacees

Complete displacement and the move into replacement housing.

Procedures

Once the Recipient has made a reasonable choice of suitable replacement housing opportunities available to the relocatee, the Recipient may issue the 90-Day Notice to Vacate. This notice should not be issued before reasonable replacement housing has been made available.

The notice shall either state the earliest date by which the property must be vacated, or state that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 90 days after the Recipient has made a comparable replacement unit available.

Prior to and following the 90-day notice, the Recipient continues to work with the relocatees – inspecting units, certifying they meet decent, safe and sanitary standards; assisting or preparing mortgage applications, sales agreements, or leases as appropriate; assisting or preparing claim forms; processing and verifying claims; documenting claims and making payments.

Common Deficiencies

- Timing and language of 90-Day Notice incorrect

Supporting Materials

- Sample 90 Day Notice/30 Day Notice

Determine Moving and Related Expenses

Displacees are eligible for two types of relocation payments as detailed below.

Moving Costs (Residential)

All displaced persons as defined by the regulations, are eligible for moving costs. The displaced person can choose to receive either actual moving and related expenses, supported by bills and other documentation, of costs for:

- Transportation up to 50 miles of displacee, family and personal property.
- Packing and unpacking personal property.



- Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property.
- Storage.
- Insurance in connection with move and storage.
- Other costs related to move if approved by Recipient as reasonable.

OR

- A fixed moving expense and dislocation allowance based on the rooms of furniture, where occupant provides furniture; or where occupant does not provide furniture.

Moving Costs (Non-Residential)

- Transportation up to 50 miles for personal property.
- Packing and unpacking the personal property.
- Disconnecting, dismantling, removing, reassembly and installing relocated and substitute machinery, equipment and other personal property, including connection to utilities available nearby.
- Storage (not to exceed 12 months) if necessary.
- Insurance in connection with moving and storage.
- License, permit, or certification required by the displacee for re-establishment at the replacement location.
- Professional service charges necessary to planning the move, the moving, and the reinstalling of the personal property.
- Re-lettering signs and replacement stationery if made obsolete by the move.
- Actual direct loss of tangible property.
- Substitute personal property which is used as part of a business, farm operation or nonprofit organization provided that the original property is not moved and that any proceeds from the sale or trade-in of the replaced item is subtracted from the cost of the substitute item.
- Searching for a replacement location (amount not to exceed \$1,000).
- Other moving-related expenses if approved by the Recipient as reasonable.
- "No documented self-moves" based on the lowest of two acceptable bids or estimates obtained by the Recipient.

OR

- A fixed moving expense allowance computed on the average net earnings for the two-taxable years prior to the date of displacement. The amount is to be not less than \$1,000 nor more than \$40,000 for a business or farm operation. The payment is to be \$2,500 for a nonprofit organization. To qualify for a fixed payment in lieu of actual moving cost it must be determined that a business or a nonprofit organization cannot be relocated without a substantial loss of existing patronage or net income, and it is not a part of a commercial enterprise having other establishments engaged in the same or similar activity.



Non-residential moving costs are calculated using the form Claim for Actual Moving Costs and Related Expenses or Claim for Fixed Payment in Lieu of Actual Moving and Related Expenses can be found here: <https://www.hud.gov/sites/documents/40056.PDF>.

Re-Establishment Expenses (Non-Residential)

In addition to moving costs, a business may be eligible to receive a payment, not to exceed \$25,000, for expenses actually incurred in relocation and reestablishing at a replacement site. These expenses must be reasonable and necessary and include:

- Improvements made to the new site as required by law.
- Modifications to the new site to accommodate the business.
- Costs for construction of new exterior signage.
- Costs of utilities from right-of-way.
- Redecoration/replacement of worn services.
- Licenses, fees and permits when not included in moving expenses.
- Estimated increased operation costs for two years.
- Advertisement of new site.
- Professional services and feasibility studies relating to the new site.

Replacement Housing Payments

These payments are available to Recipient-occupants and tenants who meet the following criteria:

Recipient-Occupants who have:

- Owned and occupied the acquired dwellings for at least 180 days prior to initiation of negotiations.
- Purchased and occupied decent safe and sanitary comparable units within one year of completing acquisition or date of move from property.
- Filed a claim within 18 months of the time the move is completed.

Tenants and 90-day Recipients who have:

- Occupied the acquired units 90 days prior to initiation of negotiations.
- Relocated into decent, safe and sanitary comparable units.
- Filed a claim within 18 months of the time move is completed.

The relocation benefit is based on the difference between what units comparable to the acquired unit are being sold or rented for, and not on the cost of the unit into which the displacee wants to move.

It should be clearly understood by everyone involved in the acquisition/relocation process that the benefits under the URA are “rights” to which the displacee is entitled and that the Recipient’s job is to ensure that all displacees receive the maximum amount of benefit to which they are entitled. There are no income or need criteria for benefits. Certain benefits may be prorated for unrelated individuals living together.

In addition to financial assistance, displacees are also entitled to receive housing referrals, counseling and referrals to social service agencies.



Common Deficiencies

- Unfamiliarity with the relocation process and the benefits and assistance required for displacees under the URA.

Process Claims and Make Payments

Assist or prepare claim forms: process and verify claims; document claims and make payments.

Procedures

Relocation claims may be filed up to 18 months following the completion of a move. This means that claims can be filed months, after the conclusion of the grant. Therefore, if there are unsettled relocation cases at the time of close out of the grant, the Recipient should show maximum payments for each potential claimant as unpaid costs on the closeout documents otherwise, DED may cancel the funds remaining in the grant and the Recipient would be financially liable for relocation costs. This also highlights the need to try and expedite relocation.

Relocation Claim Forms

- Claim for Moving Costs and Related Expenses-Families and Individuals; and
- Claim for Replacement Housing Payment for 90-day Homeowner; or
- Claim for Rental Assistance Payment; or
- Claim for Down payment Assistance.

Payment Responsibility

The Recipient is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within 30 days following submission of sufficient documentation to support the claim.

The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the Recipient must document that the payment was used for the purpose intended. The Recipient should have the Recipient sign a letter acknowledging receipt of relocation payments and services.

Down Payment

Payments for down payment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to Recipients or renters need not be applied to housing costs. The rental assistance payment may be made in a lump sum or in installments. The Recipient has no right to question the uses to which that payment is put; it need not be accounted for beyond receipt by the claimant.

Denied Claim for Payment

If a person makes a claim for payment and must be denied because the unit is substandard, the Recipient must inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to decent, safe and sanitary standards, and the on-going opportunity to qualify for assistance by moving to a standard unit, providing the move is completed within 12 months of the date of removal from the acquired dwelling or receipt of final payment (if Recipient-occupant), whichever is later; and that the claim is submitted within 18 months of the completion of the move.

Documentation of Non-Payment

In any instance in which payments are not made, the Recipient must be able to fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible.



The regulations mandate that any claim for payment be submitted to the locality within a period of 18 months after displacement. The Recipient should strictly adhere to this limitation and fully document its initial notification of this requirement and all subsequent reminders.

Waiver of Relocation

In a voluntary acquisition, Recipient-occupants may be required to waive their relocation benefit rights as a condition of sale. The Recipient should have them sign a form indicating they understand what their relocation rights and benefits are and indicating that they are voluntarily waiving these rights. A waiver of relocation benefits does not apply for tenants.

If relocation has not been completed within 6 months of the date of issuance of the Notice of Relocation Eligibility, the Recipient must provide in its files a written explanation of delay and plan for timely completion.

Common Deficiencies

- Failure to document claim.
- Inaccurate computation of relocation payments.
- Rental assistance payment not made in a lump sum.

Supporting Materials

Sample Letter of Acknowledgement of Services Rendered and Payments Received.



8 ENVIRONMENTAL PROVISIONS

This Chapter is being provided as guidance on the environmental review requirements pertaining to HTF funds. HTF funds are not subject to the same environmental review requirements as HOME, CDBG and other federal funds. Refer to the following resources for more detailed information regarding the HTF environmental provisions requirements:

- HTF Environmental Provisions web page at: <https://www.hudexchange.info/programs/environmental-review/htf/>
- HTF environmental provisions Notice CPD-16-14 at: <https://www.hudexchange.info/resource/5121/notice-cpd-16-14-requirements-for-housing-trust-fund-environmental-provisions/>

8.1 Introduction

HUD has no discretion over the State's selection or rejection of individual projects. HUD's Office of General Counsel (OGC) determined that individual project selection is not a federal action to which the National Environmental Policy Act of 1969 (NEPA) environmental assessment requirements, or consultation requirements under other Federal authorities such as the National Historic Preservation Act or the Endangered Species Act, would apply. Unlike some other HUD statutes, the HTF statute does not include a provision for Environmental Review.

However, consistent with the principles of NEPA, HUD developed HTF Environmental Provisions under the HTF Property Standards at 24 CFR § 93.301(f) for new construction and rehabilitation. The state is responsible for ensuring that projects funded by HTF meet the property standards at the time of project completion.

The HTF Environmental Provisions at 93.301(f) is similar to HUD's Environmental Regulations at 24 CFR Parts 50 and 58. HTF projects are subject to the same environmental concerns that other HUD-assisted projects are subject to under Part 58 environmental review requirements, but the outcome could be different.

The main difference is that the HTF Environmental Provisions are outcome-based and exclude consultation procedures that would be applicable if HTF project selection was a federal action. The HTF environmental provisions have some requirements that cannot be addressed through mitigation or remediation and effectively preclude assisting a project that has certain environmental conditions.

HTF housing projects must meet the applicable Property Standards, including the HTF Environmental Provisions, at 24 CFR § 93.301(e)(1) or (2) **at the time of project completion** [§93.407(a)(2)(iv)]. Project completion as defined at §93.2 requires, among other things, that the project complies with the requirements of Part 93 (including the property standards under §93.301).

However, it should be determined if a project will meet the HTF Environmental Provisions **prior to construction**. If a project cannot meet the HTF Environmental Provisions, the project cannot be funded by HTF. For example, if a project will impact a wetland, it cannot be funded by HTF.

Combining with Other HUD Funding Sources

Other HUD funding sources include, but are not limited to, HOME Investment Partnerships (HOME), CDBG and other HUD funds that are subject to environmental review under 24 CFR Part 50 or Part 58. When combining HTF with these funding sources, a Part 58 environmental review must be done, and the



review must also meet the HTF Environmental Provisions. The reviews, if done by different entities, should be coordinated. Depending on the classification of the project, the Responsible Entity under Part 58 may have to publish for public comment and Request for Release of Funds.

8.2 Environmental Provisions Process

If a project is awarded HTF funds, an environmental review is necessary and should be determined that the project will meet HTF environmental provisions prior to construction.

HUD has developed HTF Environmental Provisions under the HTF Property Standards at 24 CFR Part 93.301(f)(1) and (2). HTF Projects are subject to the similar environmental regulations that HOME-assisted projects are subject to.

HTF recipients should follow the *Determining Compliance for HTF Projects* format located at <https://opportunity.nebraska.gov/programs/housing/htf/> when completing the environmental review. Recipients are required to submit environmental review documentation to DED for review during Special Conditions of the contract. Recipients will not receive Release of Funds status if projects cannot reach environmental clearance. Certain requirements of the initial environmental review will require further documentation at the time of close out of the project before the final 20% of HTF funds can be drawn. If there are environmental impacts, then mitigation measures must be completed. If the impacts are severe, the project may not qualify for HTF funds. DED will maintain documentation demonstrating that the project meets HTF Environmental Provisions at project completion.

Environmental Provisions Requirements, Resources and Documentation

For purposes of applying the environmental provisions to HTF, projects are classified as follows:

New construction: Projects that involve new construction or reconstruction of housing, new construction of manufactured housing, or acquisition of existing housing that has been newly constructed or rehabilitated less than 12 months before the commitment of HTF funds.

Rehabilitation: Projects that involve rehabilitation of existing housing, rehabilitation of manufactured housing, or acquisition of existing housing that has not been newly constructed or rehabilitated less than 12 months before the commitment of HTF funds.

Since most environmental provisions are the same for new construction and rehabilitation, the provisions have been incorporated into a single set of requirements below. Requirements that apply only to rehabilitation are identified in *italic font*, and New Construction only requirements are in **bold font**. Sections with differences between new construction and rehabilitation provisions are *Farmland, Explosives and Hazards, and Noise*.

Historic Preservation

Project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places, unless the project activities are certified to meet the Secretary of the Interior's Standards for Rehabilitation.

If archaeological resources or human remains are discovered on the project site during construction, the grantee must consult with affected tribes and/or descendant communities and comply with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013), State law and/or local ordinance (e.g., State unmarked burial law).

Resources:



- Check to see if the property is listed or eligible for listing in the National Register of Historic Places or located within a historic district: <https://www.nps.gov/nr/research/>
- Secretary of the Interior's Standards for Rehabilitation -including the Standards related to new construction: <https://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm>

Documentation:

- Document if the project is not listed or eligible to be listed on the National Register of Historic Places.
- If the project is listed or eligible to be listed on the National Register of Historic Places, provide documentation on how the work meets the Secretary of Interior's Standards for Rehabilitation (photos, architectural plans, and certification by a qualified professional).
- If archaeological resources or human remains are discovered on the project site during construction, document all consultation correspondence with affected tribes and/or descendant communities and how the project complies with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013), State law and/or local ordinance (e.g., State unmarked burial law).

Farmland

Project activities must not result in the conversion of unique, prime, or statewide or locally significant agricultural properties to urban uses.

Resources:

- USDA Web Soil Survey - <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- Tiger Web - <https://tigerweb.geo.census.gov/tigerweb/>

Documentation:

- If the project is not solely rehabilitation, provide a map from the Web Soil Survey showing that the project site is not a unique, prime or statewide or locally significant agricultural property. Or provide a Tiger Web map showing the project is in an urban area.
- *If the project activities consist solely of rehabilitation, then the project will not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses. Document a summary of rehabilitation activities that are part of the project.*

Airport Zones

Projects are not permitted within the Runway Protection Zones (RPZ) of civilian airports, or the clear zones or Accident Potential Zones (APZ) of military airfields.

Resources:

- NEPAassist: <https://www.epa.gov/nepa/nepassist> (Airport polygons under Transportation)

Documentation:

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

Coastal Barrier Resource System

Not applicable to Nebraska.

Documentation:



Provide a statement that the state contains no Coastal Barrier Resources System units.

Coastal Zone Management

Not applicable to Nebraska.

Resources:

- <https://www.hudexchange.info/environmental-review/coastal-zone-management/>

Documentation:

- Document that the project is not located in a Coastal Zone.

Floodplains

Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

Construction and other activities in the 100-year floodplain are to be avoided when practicable. If there are no practicable alternatives to new construction or substantial improvement in the 100-year floodplain, the structure must be elevated at least the base flood elevation (BFE) or floodproofed to one foot above the BFE. Elevated and floodproofed buildings must adhere to National Flood Insurance Program standards. The primary sources of floodplain data are Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps or studies, the latest of these sources shall be used.

No HTF assistance may be approved with respect to:

- (1) Any action, other than a functionally dependent use, located in a floodway; or
- (2) Any new construction critical action located in a 100- or 500-year floodplain

Resources:

- FEMA Flood Map Service Center - <https://msc.fema.gov/portal/home>

Documentation:

- FEMA FIRM or other latest-available FEMA data showing the project location is not within a floodplain.
- If the project site is within the 100-year floodplain, document whether there is a practicable alternative. If so, select a site outside the floodplain. If there is no practicable alternative, provide the FIRM or later FEMA data and document that the structure has been elevated to at least the base flood elevation (BFE) or floodproofed to one foot above the BFE, that elevated and flood-proofed buildings adhere to National Flood Insurance Program standards, and that the project is not a Critical Action.
- If the project site is within a Floodway, provide the FIRM or latest-available FEMA data and document that the structure is a functionally dependent use.
- If the project site is within the 500-year floodplain provide the FIRM or later FEMA data and document that the structure is not a Critical Action.

Wetlands

No draining, dredging, channelizing, filling, diking, impounding, or related grading activities are to be performed in wetlands. No activities, structures, or facilities funded under this program are to adversely impact a wetland.

A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic



life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities, such as the construction of structural flood protection methods or solid fill roadbeds, or mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U. S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.).

Resources:

- FWS National Wetlands Inventory - <http://www.fws.gov/wetlands/Data/Mapper.html>

Documentation:

- A map showing the project is not located in jurisdictional or non-jurisdictional wetland.

Explosives and Hazards

New construction projects and rehabilitation projects that increase the number of dwelling units must be in compliance with the standards for acceptable separation distance, as set forth at 24 CFR part 51, subpart C. *If the project is rehabilitation and will not increase residential densities, then the project is in compliance with 24 CFR part 51, subpart C.*

Resources:

- HUD's Environmental Review Page – Explosives and Flammable Facilities - <https://www.hudexchange.info/programs/environmental-review/explosive-and-flammable-facilities/>
- Acceptable Separation Distance (ASD) Electronic Assessment Tool - <https://www.hudexchange.info/environmental-review/asd-calculator/>
- HUD's Acceptable Separation Distance Guidebook - <https://www.hudexchange.info/resource/2762/acceptable-separation-distance-guidebook/>

Documentation:

- If the project is new construction or is rehabilitation that will increase residential densities, document that the project meets the standards for acceptable separation distance. Provide a map that shows the distance from the perimeter of the project site to any above ground storage tanks located within one mile. Provide the ASD calculation.
- *If the project is rehabilitation and will not increase residential densities, then the project is in compliance with 24 CFR part 51, subpart C; document that the rehabilitation will not increase the number of dwelling units in the building.*

Contamination

All properties assisted with HTF funds must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property.

All proposed multifamily (more than four housing units) HTF projects require a Phase I Environmental Site Assessment (ESA–ASTM). If the Phase I ESA identifies recognized environmental conditions (RECs), a Phase II (ESA–ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard.

Single family housing does not require a Phase I ESA. However, development of more than four single family structures in the same location, such as subdivision development, should be evaluated as multifamily. Single family projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS



site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the EPA or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property. In addition to the government records search, the screening process for single family does include a site visit. When the screening process raises concerns related to site contamination, it may be appropriate to contract with an environmental professional for preparation of a Phase I, testing and sampling, or other investigation.

HTF projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the U.S. Environmental Protection Agency (EPA) or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property.

Resources:

- HUD's Environmental Review Page – Site Contamination - <https://www.hudexchange.info/environmental-review/site-contamination/>
- Note: The CERCLIS Public Access Database has been retired. The EPA is transitioning to the Superfund Enterprise Management System, or SEMS. SEMS includes the same data fields and content as CERCLIS - <https://enviro.epa.gov/envirofacts/sems/search>

Documentation:

- Document that the project is free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property.
- Document that the project is not located within 0.25 miles of a Superfund or CERCLIS site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the EPA or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property.
- Multi-family properties (4 or more units) – provide a Phase I ESA–ASTM, and if required, a Phase II ESA–ASTM. If the Phase II indicates the presence of hazardous substances or petroleum products above applicable local, state, tribal or federal (LSTF) screening levels, document the remediation process coordination with the relevant LSTF oversight agency and a determination that no further action is required.
- Single family properties – Document the screening process and site visit conclusions

Noise

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

For **new construction** projects, external noise levels should meet the following:

- Project sites exposed to less than or equal to 65dB of environmental noise are acceptable.
- Sites between 65 dB and less than 75 dB are acceptable with mitigation (e.g., noise walls, careful site planning) that result in an interior standard of 45 dB.
- Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (e.g., picnic areas, tot lots, balconies, or patios) and require sound attenuation in the building shell to achieve the 45 dB interior standard.

Resources:

- HUD's Environmental Review Page – Noise Abatement and Control –
- <https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control/>



- Day/Night Noise Level Electronic Assessment Tool - <https://www.hudexchange.info/programs/environmental-review/daynight-noise-level-electronic-assessment-tool/>

Documentation:

- **Rehabilitation projects:**
 - Document that interior noise levels will be no more than 45 dB.
- **New construction projects,**
 - Document the external noise level:
 - If the exterior noise level is between 65 dB and less than 75 dB, document the mitigation measures taken to meet the interior noise level standard of no more than 45 dB.
 - If there are exterior noise levels of 75 dB or greater, document the mitigation measures taken to meet the interior noise level standard of no more than 45 dB. Also document that there are no outside noise sensitive uses involved in the project.

Endangered Species

Avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) or would result in the destruction or adversely modify the designated critical habitat of such species.

Resources:

- HUD's Environmental Review Page –Endangered Species - <https://www.hudexchange.info/environmental-review/endangered-species/>
- FWS –IPAC Information for Planning and Conservation - <https://ecos.fws.gov/ipac/>
- NMFS -Endangered and Threatened Marine Species under NMFS' Jurisdiction - <http://www.nmfs.noaa.gov/pr/species/esa/listed.htm>

Documentation:

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

Wild and Scenic Rivers

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

Resources:

- HUD's Environmental Review Page –Wild and Scenic Rivers-Guidance <https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/>

Documentation:

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



Safe Drinking Water

Projects with a potable water system must use only lead-free pipes, solder, and flux.

Resources:

- EPA's Drinking Water Requirements for States and Public Water Systems - <https://www.epa.gov/dwreginfo>

Documentation:

- Document that the project only uses lead-free pipes, solder, and flux. This may include architectural plans, building specifications, and certification by qualified professional. This will also need to be certified at project completion.

Sole-Source Aquifers

There are no sole source aquifers located in Nebraska.

Resources:

- HUD's Environmental Review Page –Sole Source Aquifers-Guidance <https://www.hudexchange.info/environmental-review/sole-source-aquifers/>

Documentation:

- Document that the project site is not located on a sole source aquifer.



9 CONSTRUCTION/REHABILITATION

This Chapter applies only to projects and structures that were originally placed in service prior to January 1, 1978.

9.1 Contracting & Labor Standards

Davis-Bacon and the related acts do not apply to contracting and labor in HTF. The two standards that apply are:

Section 3 of the Housing and Urban Development Act of 1968 - Requires that, to the greatest extent feasible, opportunities for training and employment arising from HTF will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with HTF will be awarded to business concerns that are located in or owned by persons residing in the program service area. 24 CFR Part 75 is the regulation that pertains to projects for which HTF commitments are made beginning November 30, 2020. Prior projects should comply with 24 CFR Part 135.

Debarred, Suspended, or Ineligible Contractors – Under 24 CFR Part 24, HTF funds may not be used, directly or indirectly, to employ, award contracts to otherwise engage the service of, or fund, any contractor or subcontractor during any period of debarment, suspension, or placement on ineligible status.

9.2 Property Standards

Rental properties must meet certain written standards. The HTF Interim Rule specifies requirements for projects involving each of the following:

- New construction [§93.301(a)]
- Rehabilitation [§93.301(b)]
- Acquisition of standard housing [§93.301(c)]
- Manufactured housing [§93.301(e)]

All codes and standards must be met at the time of occupancy, except for occupied properties that are funded for rehabilitation.

All HTF-assisted housing must meet all applicable State and local codes and housing quality standards, as applicable.

New Construction. Housing that is being constructed after the submittal of the project's application to DED must meet all applicable local codes and zoning ordinances. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926. New construction must also meet the 2009 International Energy Conservation Code.

New construction of rental housing must also meet site and neighborhood standards at 24 CFR 893.6(b) as summarized in [Section 3](#).



Acquisition and Rehabilitation. Housing that is being purchased or rehabilitated must meet DED's Occupancy Standards and all applicable local codes and zoning ordinances. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926.

Existing rental housing must have major systems with a remaining useful life at least as long as the period of affordability and/or replacement reserves sufficient to replace systems as needed. The major systems of rental projects of 26 or more units must be determined through a capital needs assessment.

DED's Rehabilitation Standards can be found under Guidelines section located at: <https://opportunity.nebraska.gov/programs/housing/htf/>

Acquisition Only. Existing rental housing acquired with HTF funds must meet any applicable State and local housing quality standards.

- Rental housing that was newly constructed or rehabilitated less than 12 months before the date of commitment of HTF funds, must meet the new construction standards of §93.301(a).
- All other existing rental housing that is acquired with HTF assistance must meet the rehabilitation property standards of §93.301(b).

Manufactured Housing. Newly constructed manufactured housing for rental must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280, which preempt state and local codes covering the same aspects of performance for such housing. Recipients providing HTF assistance to install manufactured housing units must comply with applicable state and local laws or codes. In the absence of such laws or codes, the agency must comply with the manufacturer's written instructions for installation of the manufactured housing units. Installation of replacement manufactured homes must meet the foundation requirements of 24 CFR 203.43f(c)(i).

Manufactured housing that is rehabilitated with HTF funds must meet DED's written rehabilitation standards in addition to the foundation and anchoring requirements of 24 CFR Part 3285.

Other federal requirements may apply, including accessibility standards, lead-based paint standards of 24 CFR part 35 for pre 1978 properties, and broadband infrastructure for new or rehabilitated properties.

All assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

Recipients must maintain properties in accordance with property standards throughout the affordability period. DED conducts periodic property inspections to ensure continued compliance.



9.3 Accessibility Standards

Three different sets of nondiscrimination requirements apply to the HTF Program: Section 504 of the Federal Rehabilitation Act of 1973; the Fair Housing Act of 1988; and the Americans with Disabilities Act (ADA).

Section 504 of the Rehabilitation Act of 1973 - Prohibits discrimination in federally assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive federal funds.

- For any HTF Recipient principally involved in housing or social services, all of the activities of the agency --not just those directly receiving federal assistance --are covered under Section 504.
- Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of an HTF Recipient.
- The ultimate beneficiary of the federal assistance is not subject to Section 504 requirements.
- Under Section 504, HTF Recipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

The specific requirements under Section 504 are summarized below”

Removal of Physical Barriers

- For new construction of multi-family projects, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
- The Section 504 definition of substantial rehabilitation multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent or more of the replacement cost. In such developments, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (but not less than one unit) must be accessible to individuals with sensory impairments.
- When rehabilitation less extensive than substantial rehabilitation is undertaken, alterations must, to the maximum extent feasible, make the unit accessible to and usable by individuals with handicaps, until 5 percent of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible.
- Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice.
- Recipients and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the Recipient/ manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.



- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

Provide Program Accessibility

- Individuals with handicaps must be able to find out about, apply for and participate in federally assisted programs or activities.
- Special communication systems may be needed for outreach and ongoing communication (e. g., Telecommunications Devices for the Deaf (TDD), materials on tape or in Braille, accessible locations for activities and meetings).
- Policies and procedures must be non-discriminatory (e. g., housing providers may not ask people with handicaps questions not asked of all applicants, screen individuals with handicaps differently or assess an individual's ability to live independently).

Make Employment Accessible

- Employers must not discriminate.
- Employers must remove physical and administrative barriers to employment.
- Employers must make reasonable accommodations for individuals with known handicaps (e. g., job restructuring, providing readers or sign interpreters, making facilities accessible).

Architectural Barriers Act of 1968 – Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to and the use of such structures can be met by following the Uniform Federal Accessibility Standards outlined in Appendix A of 24 CFR Part 40.

Americans with Disability Act – Compliance with all provisions of the Americans with Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices; and in assuring access by persons with disabilities to facilities and services provided by the HTF Recipient to the general public. The Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense.

Both new construction and substantial rehabilitation of multi-family housing assisted with HTF funds are subject to and must meet the standards of Section 504. Section 504 standards apply to all units in a Project and not just the HTF-assisted units.

Substantial Rehabilitation Project: defined as a Project with 15 or more units where the rehabilitation cost will equal at least 75 percent of the replacement cost of newly constructed multi-family units. Applicants of such rehabilitation Projects must meet the following Section 504 criteria:

- Five percent of the units in the Project (not just HTF-assisted units) must be accessible to individuals with mobility impairments, and an additional two percent must be accessible to individuals with sight and hearing impairments.



- Distribute the accessible units evenly throughout the Project buildings
- Distribute the accessible units evenly by bedroom size throughout the Project.17
- When designing a larger bedroom accessible unit.as in a townhouse with inaccessible living areas on the second floor, Section 504 recommends the unit be a single floor design.
- When designing an accessible bathroom, consider a roll-in shower in lieu of a shower/tub not easily accessed by some physically disabled persons.

When smaller Projects are rehabilitated or when rehabilitation costs are less than 75 percent of the replacement cost then: every alteration to a unit must make the unit accessible to the maximum extent feasible until 5 percent of the units in the Project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the Project accessible to the maximum extent feasible. Consult the Fair Housing Amendments for guidelines about rehabilitation of one- to four-unit rental properties.

Section 504 accessibility standards are further described in the Uniform Federal Accessibility Standards. HTF applicants should provide this information to their architects early in the process to ensure the Project meets the accessibility criteria as defined in Section 504. Section 504 requires that new construction Projects have 5 percent of the units in the Project be accessible to individuals with mobility impairments and an additional 2 percent of the units be accessible to individuals with hearing or visual impairments. Section 504 also requires accessible units to be distributed throughout the Project and must be available in a sufficient range of sizes and amenities so as not to limit choices.

New construction of multi-family housing Projects is also subject to the accessibility requirements in the Fair Housing Act of 1988. The Americans with Disabilities Act (ADA) has a broader application than the Fair Housing Act or Section 504, in that it addresses employment practices, public services, transportation, and public accommodations. Although the ADA does not specifically address residential housing, since housing is covered by Section 504 and the Fair Housing Act of 1988, HTF Recipients should be aware of the ADA's scope and requirements. HTF Recipients will need to have the Project architect verify that the plans/specifications meet the Section 504, ADA and Fair Housing standards. Architects must verify at the completion of the Project that the constructed/rehabilitated units have met these standards.

9.4 Lead-Based Paint Federal Requirements

The Residential Lead-Based Paint Hazard Reduction Act of 1992 mandated a range of protections from lead-based paint hazards for persons occupying housing built prior to 1978.

Real Estate Notification and Disclosure Rule - In 1996, HUD and EPA jointly issued regulations requiring disclosure regarding known lead-based paint and hazards in all rental and sale transactions.

HUD Lead Safe Housing Rule – In 1998, HUD issued rules (24 CFR Part 35) to ensure that exposure to lead hazards is reduced in any residential property to be assisted with federal funds, whether rehabilitated, purchased or assisted.

EPA Renovation, Repair and Painting Rule – in 2010, EPA issued rules (40 CFR Part 745) requiring the use of lead-safe practices and other actions by contractors performing renovation, repair and painting projects that disturb lead-based paint in homes built before 1978, regardless of the source of funding.

HUD Lead Safe Housing Rule



All units in a project assisted with HTF funds must comply with the implementing regulations at 24 CFR Part 35. This regulation has been in effect since September 15, 2000.

The lead-based paint regulation at 24 CFR Part 35 consolidates all lead-based paint requirements for HUD-assisted housing. The regulation is divided into subparts. Subparts that apply to the HTF program include:

Subpart A: Disclosure.

Subpart B: General Requirements and Definitions.

Subpart J: Rehabilitation.

Subpart K: Acquisition, Leasing, Support Services, and Operations.

Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction.

Failure to comply with the lead-based paint requirements will be subject to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject to other penalties available under state or local law. Notifying Recipients, purchasers, or occupants of possible lead-based paint hazards **does not** relieve HTF Recipients of the responsibilities under the new regulation.

HTF Recipients must comply with other regulations – Federal, State, tribal, and local – that apply to lead-based paint hazard evaluation and reduction. All lead-based paint activities must be performed in accordance with other applicable Federal laws and authorities. For example, the National Environmental Policy Act of 1969 (42 U. S. C. 4321 et seq.), OSHA worker safety regulations (29 CFR 1910.1200 and 29 CFR 1926.62), and other environmental laws and authorities cover activities related to lead-based paint evaluation and hazard reduction.

EPA Renovation Repair & Painting Rule

While the HUD rule must be followed for HTF rehabilitation, the EPA Renovation, Repair and Painting Rule (40 CFR Part 745) requires contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes built before 1978 to be licensed, use certified renovators and follow lead-safe work practices, regardless of the source of funding. Consequently, DED should ensure that entities performing rehabilitation are licensed renovation firms consistent with the EPA rule, and that Renovators are on site to oversee hazard controls. However, all other standards pertaining to lead hazard evaluation, control, and clearance must follow the Part 35 requirements.

Universal Disclosure Requirements

All residential buildings originally placed in service prior to January 1, 1978, are subject to the standard federal disclosure requirements, which requires every tenant and prospective tenant to be given the following:

The HUD & EPA-approved information pamphlet Protect Your Family from Lead in Your Home, on identifying and controlling lead-based paint hazards. <https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>

Disclosure of any known information concerning lead-based paint or lead-based paint hazards pertaining to the building, including common areas and other units when such information was obtained as a result of a building-wide evaluation, inserted in or attached to the lease and acknowledged by the tenant or prospective tenant. <https://www.epa.gov/lead/lessors-disclosure-information-lead-based-paint-and-or-lead-based-paint-hazards> (Spanish: <https://www.epa.gov/lead/declaracion-de-informacion-sobre-pintura-base-de-plomo-yo-peligros-de-la-pintura-base-de-plomo>.)



This disclosure is required of the Recipient of a pre-1978 property:

- When a prospective purchaser is purchasing the property;
- When a prospective tenant is applying for rental of target housing, before the execution of the lease; and,
- When the lease terms change (e.g., rent increase, lease renewal) and the Recipient or Recipient's agent has gained any new knowledge about lead-based paint or lead-based paint hazards since the previous disclosure (if there previously was not a problem and nothing was disclosed). If the first notice identified an issue (that has not been corrected) the notice with the renewal lease (or rent increase) should signify as such.

The Recipient must complete and sign the notice and provide it to the purchaser or tenant before they become obligated under the sales agreement or lease. The purchaser/tenant must read and sign the notice and return it.

If renovation occurs, additional disclosure requirements apply. See [Section 0](#)

Part 35 Exemptions

While the HUD Rule applies to housing built and placed in service prior to January 1, 1978, when lead paint was banned for residential use, some housing is considered exempt from the Part 35 requirements (see 24 CFR 35.115), including:

- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there;
- Zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks;
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector;
- Property where all lead-based paint has been removed;
- Unoccupied housing that will remain vacant until it is demolished;
- Non-residential property; or
- Any rehabilitation or housing improvement that does not disturb a painted surface.

Acquisition Requirements

The lead-based paint requirements for acquisition are found in 24 CFR Part 35, Subpart K. These regulations are intended to provide assurances that the LBP paint in homes or rental properties not intending to be rehabilitated are "lead safe" when it is occupied by the assisted household. **This section does not apply if rehabilitation will occur. See the next section.**

The following steps are required to identify deteriorated paint in homes:

Visual Assessment: An inspection of all interior painted surfaces, including common areas such as hallways, laundry rooms or garages, and exterior surfaces of the building in which the dwelling unit is located must be conducted to identify deteriorated paint. Notification is only required if LBP hazards are identified.

Paint Stabilization: All deteriorated paint surfaces must be stabilized before the home is purchased and occupied. If paint testing of a deteriorated surface reveals no LBP, then paint stabilization is not required on that surface.



Safe Work Practices: The Recipient/contractor must use safe work practices when conducting paint stabilization. Safe work practices include safe work methods, occupant protection, worksite preparation, and cleanup.

Clearance: After the completion of work, the home must pass clearance. Clearance must happen before occupancy if the home is vacant or immediately after receipt of Federal assistance for a home currently occupied.

If the property is going to be purchased and rehabilitated, the requirements in the next section apply instead of these.

Rehabilitation Requirements

HTF rehabilitation must comply with lead-based paint requirements. 24 CFR 93.301(b)(1)(iii) requires the participating jurisdiction's (PJ's) standards to meet the lead-based paint requirements at 24 CFR part 35, generally known as the HUD Lead Safe Housing Rule. HTF rehabilitation must adhere to the requirements of 35.900-.930.

While NDED must ensure that all applicable Part 35 requirements are met, including Notices, the key requirements pertaining to rehabilitation standards are:

- Evaluation,
- Notices,
- Occupant protections,
- Lead hazard control protocols, and
- Clearance.

For all residential properties receiving **\$5,000 or less** in Federal housing rehabilitation assistance, Recipients must complete the following activities:

1. Perform lead-based paint testing of any surface to be disturbed by rehabilitation or presume the surface to contain LBP.
2. If lead testing indicates the presence of lead-based paint hazards it is presumed, implement safe work practices during rehabilitation work in accordance with 24 CFR 35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and repair any paint that is disturbed and all lead-based paint hazards.
3. Clean and clear the work site – that is, the area in which the hazard was identified – following HUD protocols at 24 CFR 35.1340.

For all residential properties receiving Federal housing rehabilitation assistance of **more than \$5,000 up to and including \$25,000**, Recipients must complete the following activities:

1. Perform a lead-based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24CFR35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
2. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
3. If lead testing indicates the presence of lead-based paint hazards, implement safe work practices during rehabilitation work in accordance with 24 CFR 35.1350 and EPA Renovator,



Repair and Painting rules at 40 CFR Part 745 and repair any paint that is disturbed and all lead-based paint hazards using interim controls.

4. After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24 CFR 35.1340.

For residential property receiving **more than \$25,000** per unit in Federal rehabilitation assistance, Recipients must complete the following:

1. Conduct lead-based paint testing on the entire dwelling unit including surfaces to be disturbed, deteriorated surfaces and friction and impact surfaces and all surfaces expected to be disturbed or replaced during rehabilitation activities.
2. Perform a lead-based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24 CFR 35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
3. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
4. If lead testing indicates the presence of lead-based paint hazards, implement safe work practices during rehabilitation work in accordance with 24 CFR 35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and abate any paint that is disturbed and all lead-based paint hazards.
5. After completion of any rehabilitation disturbing or abating painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24CFR35.1340.

Federal Rehabilitation Assistance (FRA)

The type of evaluation and the method of hazard control are both determined by the Federal Rehabilitation Assistance (FRA) amount. Calculation of the FRA requires two calculations, with the lower of the two calculations determining FRA. The two calculations are:

- The Total Federal Assistance per assisted unit; and
- The Rehabilitation Cost per assisted unit.

Federal Assistance – This consists of HUD and RD funds that are considered housing assistance, including:

- HUD grant programs, including CDBG, HOME, HOPE
- HUD Special Needs programs such as HOPWA, ESG, Supportive Housing, Shelter Plus Care and other McKinney programs
- HUD Section 8 and other HUD rental assistance programs
- Dept. of Agriculture's Rural Development (RD) funds

The following are examples that are not considered Federal assistance for the purpose of this calculation:

- Proceeds from the sale of Low-Income Housing Tax Credits



- Proceeds from FHA mortgage insurance, including rehab funds such as 203(k)
- Dept of Energy's Weatherization Program (separate guidance has been issued)
- Fannie Mae and Freddie Mac programs
- Federal Home Loan Bank programs

Contact NDED to clarify the applicability of other Federal funds before proceeding with rehabilitation plans.

Rehabilitation Cost – Rehabilitation hard costs are actual costs, regardless of source of funds, associated with physical renovation of a unit, not including lead hazard evaluation and reduction costs.

The following are not considered rehabilitation hard costs for purpose of this calculation:

- Soft costs, including financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting, appraisals, architectural and engineering fees
- Administrative costs
- Relocation costs
- Environmental review costs
- Acquisition costs
- Lead hazard evaluation and reduction costs, such as:
 - Evaluation costs (risk assessments, visual assessments or inspections)
 - Worksite preparation
 - Occupant protection, including relocation, storage or protection of belongings
 - Interim controls, standard treatments, or abatement activities that are being done only for purposes of lead hazard control and would not be done in the normal course of the rehabilitation except for the LBP requirements
 - Waste handling attributable to lead-based paint hazard reduction.
 - Specialized cleaning designed to remove LBP dust
 - Clearance activities, including visual assessments, dust wipes, and reports

The **lower of these two calculations becomes the FRA**, which is used to determine the type of evaluation and the method of hazard control.

The LBP hazard reduction costs may be excluded from this calculation of rehabilitation hard costs (the second of the two required calculations) but are not excluded from the calculation of Federal assistance (the first of the two calculations) if they are paid with Federal funds.

Evaluation

The first step is to determine whether LBP or LBP hazards are present. There are a variety of "evaluation" methods that are used. It depends on the type and classification of the activity.

- For rehab activities where the Federal Rehabilitation Assistance amount is **less than or equal to \$5,000 per unit**, the requirement is to **either test for or presume LBP on any surface to be disturbed** by the rehabilitation. If testing, the painted surface must be inspected by either an XRF analyzer or lab-tested paint chips. If DED wants to presume the presence of lead on all painted surfaces to be disturbed, OCR approval must be obtained.



- For rehab activities where the Federal Rehabilitation Assistance amount (defined later) is **more than \$5,000 per unit, a risk assessment** must be conducted by an EPA-certified risk assessor. Risk assessments including testing of certain surfaces for lead, dust wipes (sent to the lab) to identify the presence of lead dust, and soil samples in key areas of the lot.

The amount of Federal Rehabilitation Assistance is the lesser of two calculations:

1. The average Federal housing assistance per assisted dwelling unit; and
2. The average hard costs of rehabilitation per unit, excluding the costs associated with lead-based paint hazard evaluation and hazard reduction activities.

Detailed instructions and a worksheet for calculating the Federal Rehabilitation Assistance are provided in this toolkit.

Notices & Disclosure

24 CFR 35, Subpart A requires disclosure of the presence of LBP and hazards. An HTF Recipient that is undertaking housing rehabilitation activities is required to ensure that additional lead hazard information pamphlets and notices are provided to the Recipients and occupants, including:

- EPA Renovate Right pamphlet – provided by the Renovator, available at: <https://www.epa.gov/lead/renovate-right-important-lead-hazard-information-families-child-care-providers-and-schools>
- Notice of evaluation or presumption – disclosure of the results of evaluations (e.g., testing or risk assessment) of the presence of LBP or hazards (see 35.125(a)); and
- Notice of hazard reduction activities – disclosure of the work and clearance results (see 35.125(b))

Rehabilitation standards should specify the required disclosures.

Occupant Protections

Part 35 (35.1345(a)) requires that federally funded rehabilitation must use safe work practices so that occupants and workers can be protected from lead hazards. Occupant protections should be part of the rehabilitation standards.

When work is being conducted under this rule, the occupant and the environment must be protected from lead-contaminated or lead-containing materials during hazard reduction activities. Occupants must be protected by ensuring that occupants are not permitted to enter the worksite during hazard reduction until the hazard reduction work is cleared; occupants' belongings are relocated or sealed; and occupants are temporarily relocated (unless 35.1340(a) is met).

At no time should the occupant(s) be present in work areas or designated adjacent areas while lead hazard control activities are taking place in any dwelling unit interior, common area, or exterior. As such, occupants may need to be relocated during the time that lead-based paint hazard control work is occurring and may not reoccupy a work area or adjacent area until post-lead hazard reduction clearance standards have been achieved and verified with laboratory results.

35.1345(a) allows for exceptions to relocation if:

- The work will not disturb lead-based paint, or create dust-lead or soil-lead hazard; or



- The work is on exterior only and openings are sealed to prevent dust from entering the home, the work area is cleaned after the work is completed, and the residents have an alternative lead-free entry; or
- The interior work will be completed in one period of less than 8-daytime hours.

HUD guidance also acknowledges that relocation of elderly occupant(s) is not required if complete disclosure of the nature of the work is provided, and informed consent is obtained prior to rehabilitation.

Hazard Controls

For rehabilitation, the work required depends upon the level of Federal Rehabilitation Assistance:

- FRA up to \$5,000 per unit: Work which disturbs painted surfaces known or presumed to contain lead-based paint is done using standard treatments under lead safe work practices (unless it is a very small “de minimis” scale project) to ensure that no lead dust hazards remain in the work area.
- FRA greater than \$5,000 and up to \$25,000 per unit: Address all identified hazards using interim controls following the standards of 35.1330.
- FRA greater than \$25,000 per unit: Abate all the interior hazards per 35.1325 (exterior hazards may still be addressed using interim control methods.)

The worksite for lead hazard reduction activities must be prepared to prevent the release of leaded dust and debris. Workers use containment and practices to minimize the spread of leaded dust and debris. Warning signs are required at each worksite. See 35.1345(b).

Safe work practices as defined in 35.1350 are required and prohibited methods on surfaces known or suspected to contain LBP may not be used. The worksite must be cleaned by proper methods. Safe work practices are not required if painted areas affected fall within the HUD de minimis levels – see 35.1350(d).

Clearance

Clearance examinations are required upon completion of any hazard control work and prior to re-occupancy. Clearances must be done by certified professionals and adhere to the standards of 35.1340.

9.5 Inspections

The HTF Interim Rule requires Grantees to conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents. DED will schedule such inspections with the Recipient.

9.6 Ongoing Maintenance in Rental Properties

Ongoing maintenance of assisted rental units is required during the period of affordability under 35.1355, unless the property has been documented to lead paint inspection to be lead-based paint free or lead-based paint removed.

Required procedures include:



Visual assessment. A visual assessment for deteriorated paint, bare soil, and the failure of any hazard reduction measures must be performed:

- Whenever the Recipient receives a resident complaint;
- Whenever the dwelling turns over or becomes vacant;
- Whenever significant damage occurs (i.e., flooding, vandalism, fire, etc.); and
- At least once every year as part of regular unit inspections.

The visual assessment must be conducted by staff or a contractor that has completed the visual assessment training course at: <https://apps.hud.gov/offices/lead/training/visualassessment/h00101.htm>

Certifications of completion must be kept on file for each staff member conducting visual assessments and be available for review.

Deteriorated paint. All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with Sec. 35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.

Safe work practices, in accordance with sec. 35.1350, shall be used when performing any maintenance or renovation work that disturbs paint that may be lead-based paint.

Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with Sec. 35.1340.

Each dwelling unit shall be provided with written notice asking occupants to report deteriorated paint and, if applicable, failure of encapsulation or enclosure, along with the name, address and telephone number of the person whom occupants should contact.



10 RENTAL OCCUPANCY

This Chapter covers the initial and ongoing occupancy of HTF rental projects, including the initial marketing and rent-up through the ongoing compliance requirements during the period of affordability.

Recipients and property managers are encouraged to download and follow the HUD Guide: [Compliance in HOME Rental Projects: A Guide for Property Owners](#). While some of the requirements for HOME are different (income levels and dual rent structure of the HOME Program), many sections of the guide are useful to Recipients and managers that are not familiar with HUD requirements.

10.1 Marketing & Tenant Selection

Affirmative Marketing Requirements

Recipients must adopt affirmative marketing procedures and requirements for projects containing five or more HTF-assisted units. Affirmative marketing consists of actions to provide information and attract eligible persons to the available housing from all racial, ethnic and gender groups in the area. Affirmative marketing differs from general marketing activities because it specifically targets potential tenants who are least likely to apply for the housing. DED requires each Recipient to develop and submit a project-specific affirmative marketing plan since the HTF program serves many local markets throughout the State and affirmative marketing requirements will vary according to the local market being served.

HTF-assisted projects serving special needs populations must meet all HTF Program requirements regarding affirmatively marketing the units. The units must be marketed to all persons within the special needs group. The units may not be filled exclusively through referrals from a single social service agency. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area.

HTF-assisted Projects designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities (such as developmentally disabled, chronically mentally ill, or persons with only physical disabilities). Resident services may be specific to subclasses of disabilities, but the housing may not. HTF-assisted housing for disabled persons must be open to persons with any type of disability.

Required elements of the Plan include:

- Identification of those persons across the protected classes that are expected to be “least likely to apply” for the housing;
- Description of how the Recipient generally will inform potential participants about fair housing and the project’s affirmative marketing policy;
- Specific procedures or activities that will be used to inform and solicit applications “who are not likely to apply” without special outreach;
- A description of how efforts will be assessed and what corrective actions will be taken where requirements are not met, and maintenance of records that document an assessment of the effectiveness of the marketing effort; and
- Delineation of the records that will be maintained to document the affirmative efforts.

Tenant Selection Procedures

HTF rental projects must establish a written tenant selection policy consistent with requirements at 24 CFR 93.303. The plan must specify objective selection criteria related solely to program qualifications and the tenant’s ability to pay the rent and abide by the terms of the lease (e.g., household income, housing



history, credit history, criminal record). Recipients and property managers must apply criteria consistently to all applicants in accordance with fair housing laws and must expressly prohibit bias such as discrimination and favoritism.

Tenant selection procedures must adopt criteria that:

- Limit the HTF-assisted housing units 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 it is permitted in the HTF contract with DED (and only if the limitation or preference is described in the Consolidated Plan);
- Not exclude an applicant with a voucher under the Section 8; Housing Choice Voucher Program;
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications; as feasible;
- Give prompt written notification to any rejected applicant describing the grounds for any rejection, provide a process for appealing such decisions, and maintain records of the rejection;
- Clearly articulate all requirements of occupancy and any locally established preferences or priorities;
- Identify applicants who meet the selection criteria on a lottery or "first come, first served" basis (or other basis approved by DED) in accordance with preference policies;
- Provide for reasonable accommodations for persons with disabilities to ensure they have equal access; and
- Comply with VAWA requirements.

The Tenant Selection Plan must contain all the required elements listed above and DED must approve the procedures prior to implementation of any marketing or tenant selection.

Existing tenants of units who will remain in the unit after HTF assistance are subject to other eligibility requirements of HTF-assisted tenants, but not to the selection policies and procedures outlined in the plan.

Preferences

The Tenant Selection Plan must state whether or not there are any preferences in the admission of tenants, citing supporting documentation to ensure nondiscrimination in the selection of tenants. Tenant selection policies and criteria must be based on local housing needs and priorities that are consistent with the State's consolidated plan and all preferences must be administered in a nondiscriminatory manner across all protected classes within the preference.

Income: To the extent that DED has specified or approved units for particular income groups (i.e., 30% AMI), the Recipient may limit occupancy to those units to persons with incomes at or below the approved limits.

Local residency: Local residency preferences or requiring the household to currently be a resident of the local jurisdiction is permitted for some types of projects. The Recipient or management agent should check with the Department for information regarding local residency requirements.

Special populations: Recipients must treat all income-eligible persons equally in administering their projects. However, the HTF statute and regulations permit Grantees to target their units in order to address the housing needs of specific populations, such as large families or persons with disabilities, as long as the preference is articulated in the State's Consolidated Plan and pre-approved by DED.



Priorities or preferences for certain types or categories of households are only permissible to the extent that:

- The priority or preference does not violate nondiscrimination and fair housing requirements;
- The priority household type has been identified in the State's Consolidated Plan as having a disproportionate need;
- The priority household type has been identified in the application and approved by DED; and
- The priority or preference is fully disclosed in all program documents, advertisements and presentations.

24 CFR 93.303(d)(3)(i) and (ii) provide that any limitation or preference for HTF-assisted housing must not violate nondiscrimination requirements listed in 24 CFR 93.350, and clarify that a limitation or preference does not violate nondiscrimination requirements if:

- The housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., Housing Opportunity for Person With Aids program) and the preference is tailored to serve that segment of the population; OR
- Preferences may be given to disabled families/individuals who need services offered at a project if the disability significantly interferes with their ability to obtain and maintain housing; they are not able to obtain and maintain housing without appropriate supportive services; and the services cannot be provided in a non-segregated setting.

Elderly housing: HTF projects that are exclusively for elderly persons must comply with the Federal Fair Housing Act guidelines for elderly housing, which prohibits adults-only housing unless the housing falls within stated exceptions for housing for older persons, including:

- Housing intended for and solely occupied by residents who are 62 or older;
- Housing intended and operated for persons 55 or older, where at least 80% of the total housing units are occupied by at least one resident who is 55 or older; or
- Housing financed, constructed, and operated under the Rural Housing Services Section 515 program for the elderly (i.e., where each resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the Rural Housing Services program).

DED pre-approval of any preferences is required, and approved preferences must be included in the Tenant Selection Plan and all marketing materials. If such a preference is approved, the Recipient may advertise the project as offering services for a particular type of disability, but the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

Application Intake & Waiting Lists

Applications must be taken in a manner that ensures fair access, including reasonable time periods and methods of submission. Assistance must be offered to any household requesting assistance in completing an application.

The method for establishing the queue and waiting lists must be approved by DED and clearly stated in application materials. While priority or preference households may be placed on a separate waiting list, and processed according to the state priority, applications must be accepted from any household. Waiting lists must be maintained and available for inspection by DED.



Income eligibility need not be verified to place an applicant in the queue or on a waiting list. Placement on the list can be based upon the applicant's representation of income, with disclosure that income will be verified prior to the offering of a rental unit.

10.2 Initial Occupancy

DED requires tenants of HTF-assisted units to **have incomes at or below 30% of the area median income**. The number of HTF-assisted units by unit type or size will be designated in the written contract and must be maintained throughout the period of affordability. Recipients are required to designate the HTF-assisted units at time of initial unit occupancy to ensure that units will be held to meet the unit mix requirements.

Initial eligibility certification procedures should include the following:

- Prospective tenant households complete a rental application. The head of household and every adult member of the household (i.e., any person aged 18 and over) must disclose all income sources and assets held by the tenant or prospective resident.
- Each adult household member must sign a "Consent to Release Information" form.
- Verifications must be obtained by the Recipient/management for every income and asset item that the applicant identifies.
- The Recipient/management must determine household income in accordance with the guidelines outlined in this manual and HUD 4350.3.
- Once all the income and asset verifications have been obtained, management must prepare a Tenant Income Certification form for each household.
- In addition to being income-qualified, a tenant/household must meet all applicable household composition and demographic requirements (such as student eligibility, age restrictions for elderly projects, etc.) to reside in an HTF-assisted unit.
- A lease agreement must be executed.
- The Recipient/management agent must maintain a tenant/unit file containing all information received and used for determination of eligibility.

10.3 Tenant Income Eligibility Requirements

A household must be certified as income-eligible to reside in an HTF-assisted unit. Household income must be within the applicable HTF income limits using the method described below. Documentation of household income and composition is mandatory.

Income Limits

The maximum amount of annual gross income that a household may earn to qualify for an HTF-assisted unit is referred to as the HTF Income Limit. HUD establishes HTF Income Limits for different localities and adjusts them for household size. These limits establish the maximum annual dollar amount that a household can earn to qualify to reside in an HTF-assisted unit.

Income limits are published annually by HUD. Recipients may only use the income limits as published on the HUD Exchange for their HTF-assisted units. HTF income limits can be found at: <https://www.hudexchange.info/programs/hft/hft-income-limits/>.

Income Definition

DED requires recipients to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the Section 8 method) to determine applicant income eligibility. Eligibility is based on *anticipated* income during the next 12 months.



The Part 5 definition of annual income “inclusions” – types of income to be counted and “exclusions” – types of income that are not considered comes directly from §5.609. Detailed explanation of the Annual (Gross) Income definition can also be found in:

“Technical Guide for Determining Income and Allowances for the HTF Program”, see pages 11-31.
<https://www.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf>

HUD Handbook 4350.3 Chapter 5. *Note that 4350.5 is safe harbor guidance on income but doesn't overrule the HTF rule where different.*

<https://www.hud.gov/sites/documents/43503C5HSGH.PDF>

CPD Income Calculator - <https://www.hudexchange.info/incomecalculator/>

Income from Assets

The Part 5 definition used for HTF requires the inclusion of income from assets expected to be received in the 12-month period.

- If the total cash value of assets is **less than \$5,000**, then the actual income the family receives from the assets is the amount that is included in annual income.
- If the total cash value of assets is **more than \$5,000**, then the Recipient must:
 - Compute the Actual income from the assets,
 - Multiply the total cash value of the assets by passbook rate (use .06%) to “impute” income; and
 - Use WHICHEVER IS HIGHER as income from assets.

Income Verification

A household must be certified as income eligible to reside in an HTF-assisted unit. The household income must be within program limits set by HUD. Documentation of household income and composition is necessary. Recipients and/or property managers must examine and maintain at least two months of source documentation evidencing annual income.

Recipients may use the following forms of verification when determining income eligibility:

Third Party Verification is the preferred method of verification in most instances, because a review of documents often does not provide needed information. (For example, an employed applicant's pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips, bonuses, and anticipated raises.) Under third party verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Written requests and responses are preferred. However, to clarify or complete missing information on a written response, conversations with a third party are acceptable if documented through a memorandum to the file that documents the contact person, information conveyed and date of call.

To conduct third party verifications, a Recipient must obtain a written release from the household that authorizes the third party to release required information. Some third-party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the Recipient should attempt to find suitable source documentation without the third-party verification – for example, bank statements.



Review of Documents provided by the applicant (wage statements, interest statements, unemployment statements and tax returns) may be used as an alternative to the third-party verification method. Source documents are reviewed to determine annual (gross) income.

Timing of Income Determinations

Income determinations must be completed before a tenant occupies an HTF-assisted unit. If the income determination was completed more than six months before the tenant occupies an HTF-assisted unit, the determination will need to be redone.

10.4 Other Occupancy Requirements/Restrictions

Prohibition Against Refusal to Lease to Tenant-Based Assistance Households

Recipients may not refuse to lease HTF-assisted units to a certificate or voucher holder under the Section 8 Program, or to a holder of a comparable document evidencing participation in a HOME tenant-based rental assistance (TBRA) program, because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME TBRA document.

VAWA Occupancy Protections

The Violence Against Women Reauthorization Act of 2013 (VAWA) added certain protections to persons/households that are victims of domestic violence, dating violence, sexual assault, or stalking.

HUD issued 24 CFR 5.2001 - .2011 on 11/11/16, which added 93.356 (and 93.303 – lease addendum) to the HTF rule. The VAWA requirements apply to HTF rental units where the HTF commitment was made after Dec. 15, 2016.

The rule prohibits termination/eviction based on the victim status of the tenant or incident(s) of violence against the tenant or an affiliated individual. It also provides certain options for a tenant that is a victim – a tenant may:

- Terminate the lease (at the tenant's option), and the Recipient must waive any early termination fees;
- Request to stay, with the offending household member removed, and the lease bifurcated to preserve occupancy rights for the remaining household members;
- May request a transfer – either internally within the development or externally outside the development.

DED is required to have an emergency transfer plan to assist with external transfers.

Disclosure must be provided to an applicant for an HTF unit when admitted or rejected, and to a tenant with an eviction notice, or notice of eviction or termination. *HUD-5380* or the equivalent may be used.

Confidentiality must be protected. Information may be accessed only by employees/contractors with explicit authorization and may not be maintained in any shared database or disclosed with permission, required for hearing, or required by law. However, DED must maintain records and is required to report to HUD on transfers requested and outcomes.



Documentation of abuse/victim status is not required, but the Recipient or DED may require the HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation, a professional statement, a court police record or other documentation.

Model documents and forms are provided by HUD at:
https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a

HUD also requires a VAWA lease addendum as discussed in [Section 10.6](#).

10.5 Rent Requirements

HTF Rent Limits

Every HTF-assisted unit is subject to rent limits designed to help make rents affordable to extremely low-income households. The HTF rent limits can be accessed at:

<https://www.hudexchange.info/programs/hft/hft-rent-limits/>.

HTF Units and Project-Based Rental Subsidy

An exception to the HTF rent limits occur when a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program. Tenant-based rental subsidy programs do not supersede HTF rent requirements.

HTF Rents and Utility Allowances

HUD's calculation of HTF rent limits assumes the Recipient pays the utilities. If the tenant pays utilities, the maximum allowable rent that could be collected by the Recipient would be the applicable HTF rent limit minus the utility allowance.

DED approves utility allowances on a project-by-project basis based upon actual utilities, the HUD Utility Schedule Model or another acceptable utility allowance schedule such as the LIHTC program schedule. Recipients/managers should work with DED to determine the actual utilities.

Example: [These calculations are for example only and do not reflect actual rent or utility limits.] *An HTF-assisted rental project in Logan County has HTF one- and two-bedroom units. The tenants pay all utilities, and the project does not have any project-based rental subsidy. The Department has approved a monthly utility allowance of \$70 for the one-bedroom units and \$90 for the two-bedroom units. The following chart shows how the maximum total rent, from the tenant or from any assistance program, that can be received by a project Recipient is calculated for each unit.*

1 Bedroom HTF Unit		2 Bedroom HTF Unit	
\$426	HTF Rent Limit	\$516	HTF Rent Limit
-\$70	Utility Allowance	-\$90	Utility Allowance
\$356	Maximum Rent Recipient May Collect	\$426	Maximum Rent Recipient May Collect

SRO Rents

The HTF rent limits start with 0-bedroom (efficiency) units. A unit that is not fully self-contained (does not contain both food preparation and sanitary facilities), is considered a Single Room Occupancy (SRO). When an HTF unit is classified as an SRO, the rent limit is 75% of the 0 Bedroom Rent.



Tenant Fees

The HTF regulation prohibits the charging of fees to tenants that are not customarily charged in rental housing and not uniformly applied to all tenants. It is not permissible to charge an eligible tenant a fee for the work involved in completing the additional forms or documentation required for HTF eligibility, such as the Tenant Income Certification. Residents also cannot be charged for administrative costs associated with the HTF program, such as for construction management or for inspections for compliance with property standards.

Fees and surcharges for optional services or facilities, such as washer/dryer fees and parking fees may be allowable. The tenant must be allowed to opt out of the additional fee, or the fees will be considered as part of the overall rent for purposes of meeting HTF income limits. Service fees for services such as bus transportation or meals that are voluntary and fees are charged only for services provided are acceptable.

Mandatory Supportive Services

HTF Projects are prohibited from imposing lease terms that make acceptance of supportive services mandatory, except that a tenant in transitional housing may be required to accept supportive services. This is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability and HUD's implementing regulations at 24 CFR part 8. While a tenant can be required to obtain services needed to live in the property and comply with the lease provisions, the provision of supportive services related to a disability can never be mandatory.

Annual Approval of Rents

Recipients are required to obtain DED's approval for any changes in rents and utility allowances for each HTF-assisted rental project.

- HUD publishes maximum monthly rents for HTF-assisted rental projects annually. Based on changes in area income levels and market conditions, HTF rents, as calculated by HUD and approved by DED, may increase.
- HTF rents may also decrease. While project rent levels are not required to decrease below the HTF rent limits in effect at the time of project commitment, decreasing HTF rents may reflect a change in market conditions that may force Recipients to reduce rents in order to maintain tenants.
- With HUD's approval, DED may permit adjustments to the rent structure if the financial feasibility of the project is threatened. This is important to lenders providing financing to HTF-assisted projects.
- Tenants must be given reasonable written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements. For example, rents may not increase until the tenant's lease expires.

10.6 Lease Requirements

Recipients must execute lease agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions. The lease between the Recipient and the tenant in an HTF-assisted property must be for **at least one year** unless by mutual agreement between the tenant and the Recipient a shorter period is specified.



Prohibited Lease Provisions

The lease between the Recipient and a tenant in an HTF-assisted property **cannot** contain any of the following provisions either explicitly stated or implied:

- Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Recipient in a lawsuit brought in connection with the lease.
- Treatment of property - Agreement by the tenant that the Recipient may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
- Excusing Recipient from responsibility -Agreement by the tenant not to hold the Recipient or the Recipient's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Waiver of notice - Agreement of the tenant that the Recipient may institute a lawsuit without notice to the tenant.
- Waiver of legal proceedings -Agreement by the tenant that the Recipient may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- Waiver of a jury trial - Agreement by the tenant to waive any right to a trial by jury.
- Waiver of right to appeal court decision -Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
- Tenant chargeable with cost of legal actions regardless of outcome -Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the Recipient against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- Mandatory supportive services – Agreement by the tenant to accept support services that are offered

Termination of Tenancy

Recipients 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, for violation of applicable federal, state or local law or other good cause defined in the lease. In order to terminate or refuse to renew tenancy, the Recipient must serve written notice upon the tenant specifying the grounds for the action and provide a specific period for vacating that is consistent with State or local law.

Lead-Based Paint Disclosure

If the property was originally constructed prior to January 1, 1978, the Recipient must provide the disclosures as required by 24 CFR Part 35 upon tenant move-in and for existing residents:

Disclosure is required when a prospective tenant is applying for a rental, before the execution of the lease; and when the lease terms change (e.g., rent increase, lease renewal) and the Recipient or Recipient's agent has gained any new knowledge about lead-based paint or lead-based paint hazards since the previous disclosure (if there previously was not a problem or a previously unknown problem was not disclosed).

Every tenant and prospective tenant must receive the following two pamphlets:

The HUD and EPA-approved information pamphlet *Protect Your Family from Lead in Your Home* (<https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>); and



The EPA Disclosure Statement for Lease Transactions, Lessor's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
https://www.epa.gov/sites/production/files/documents/lesr_eng.pdf

The Recipient/Manager must complete and sign the notice and provide it to the tenants before they become obligated under the lease. Tenants must read and sign the notice and return it. The original signed disclosure must be retained in the property files for at least three years after the tenant's occupancy is completed.

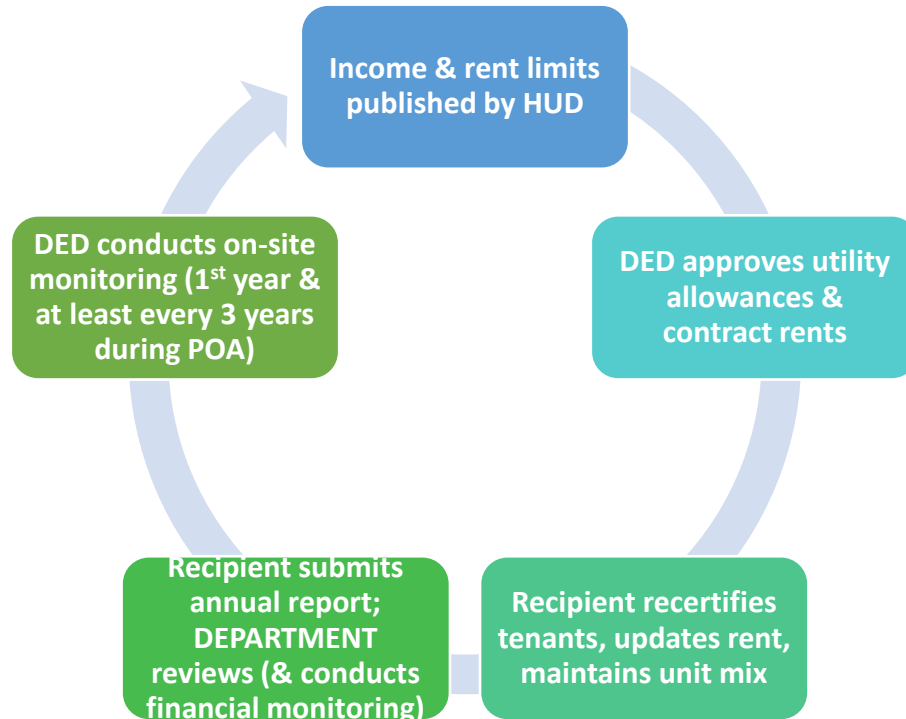
If renovation occurs, the Recipient must provide the *EPA Renovate Right: Important Lead Hazard Information for Families, Childcare Providers, and Schools* pamphlet to all occupants.
<https://www.epa.gov/lead/renovate-right-important-lead-hazard-information-families-child-care-providers-and-schools>

VAWA Lease Addendum

VAWA protections must be disclosed in the lease terms or a lease addendum, which addresses the prohibited bases for termination/eviction, the tenant's option to end lease without penalty if emergency transfer conditions are met, and VAWA limits on construing lease terms. Contact DED's HTF Specialist for the VAWA lease addendum.

10.7 Ongoing Compliance

During the affordability period, rental projects are subject to income and rent limits, annual income recertification and ongoing property standards. Recipients must report on occupancy annually. DED is required conduct onsite monitoring at least every three years during the remainder of the affordability period after the initial monitoring inspection. The ongoing compliance cycle includes the following reoccurring activities:



Annual Update of HTF Rent Limits & Approval of Project Rents

HUD issues updated rent limits each year after appropriation by the Congress. The limits are effective 30 days after publication on the HUD Exchange at: <https://www.hudexchange.info/programs/htf/htf-rent-limits/>.

DED will inform Recipients of updated HUD-published limits. Recipients of HTF-assisted projects must have their rents and utility allowances pre-approved by DED before implementing any changes. Rents can only be changed when permitted by the terms of the lease and with a minimum written notice.

Recertification of Income

The HTF Program imposes occupancy restrictions over the length of the affordability period. Recipients must establish systems to recertify tenant income on an annual basis. Typically, each tenant's income will be examined on the anniversary of the original income certification or at lease renewal. However, the Recipient may adopt an annual schedule and perform all verifications at the same time.

When DED performs on-site inspections of the project, it will verify that tenant income recertification documentation is in the tenant files.

Methods of Recertification

The HTF Interim Rule allows two additional methods of income recertification, in addition to the method of collecting source documentation.

- Obtain a written statement from the family indicating family size and annual income. This must include a certification from the family that information is complete and accurate and must indicate that source documents will be provided upon request.
- Obtain a written statement from the administrator of another government program under which the family receives benefits, and that examines the annual (gross) income (not adjusted gross income) of the family each year. The statement must also indicate the family size or provide the current income limit for the program and a statement that the family's income does not exceed that limit.

Recipients are still required to collect full source documentation every sixth year of the affordability period.

Over-Income Tenants

Upon recertification, a tenant is considered over-income if the tenant is occupying an HTF-assisted unit and is determined to have a household income over the current HTF income limit for its household size.

When a tenant is over-income, the unit that the tenant occupies is considered temporarily out of compliance. Temporary noncompliance due to an increase in an existing tenant's income is noted as an observation or concern rather than a finding, as long as the Recipient takes specific actions as described below to correct the unit mix in the property as soon as possible.

Floating Units:

The next vacant, comparable, non-assisted unit must be designated as an HTF-assisted unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The Recipient/Property Management may not replace the unit with one that is lesser, unless doing so restores the original unit mix required by the contract. The next available comparable unit receives the new designation and must be rented to a tenant at or below the applicable income limit and at the applicable rent. Over-income tenants in a floating unit shall have their rent raised to 30% of their adjusted household income or area market rent (whichever is lower) at lease renewal.



Fixed Units:

The property is temporarily out of compliance until the unit with the over-income tenant is vacated and can be rented to another ELI tenant household. The Recipient/manager must raise the over-income household's rent to 30% of their adjusted household income and in accordance with the terms of the lease.

Please note that HUD has not yet issued guidance about what specific actions will be required in regard to adjustments in the rent level for tenants who are over-income at recertification. Once guidance is issued, DED will require that HTF-assisted projects comply.

Restoring the Unit Mix

HTF properties must maintain the required number of HTF units throughout the affordability period as identified in the HTF written contract:

- The total number of HTF assisted units required;
- The "unit mix" by unit type or size (e.g., 1BR, 2BR, 3BR); and
- Fixed or floating unit designation

The unit mix can be altered by vacated units and/or tenants' over-income on recertification. The Recipients/Property Manager should regularly check the unit with when a unit becomes vacant or a change in tenant income occurs to determine what size and type of unit is needed to return the project to the required unit mix.

Vacant Units

When an HTF-assisted unit is vacated, the Recipient can rent the vacated unit to an HTF income-eligible applicant or in a project with floating units, the recipient may select one of the following replacement strategies:

Designate and hold another vacant unit of the required size as the replacement HTF unit; or
Designate a current tenant in an unrestricted unit who is income-qualified for the now available HTF slot.

When a fixed or floating HTF-assisted unit is vacated and the property complies with the unit mix requirements of the project, the Recipient generally can rent the HTF unit that is vacated to a new qualified tenant at the approved rent.

Over-Income Units

When a tenant is over-income, the unit that the tenant occupies is considered temporarily out of compliance with HTF's unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is noted as an observation or concern rather than a finding, as long as the Recipient takes specific actions as described below to correct the unit mix in the property as soon as possible as noted below.

- **Over Income Tenants in a Property with Floating Units** - The next vacant, comparable, non-assisted unit must be designated as an HTF-assisted unit. A comparable unit is one that is equal or greater in terms of size, number of bedrooms, and amenities. The Recipient/manager may not replace the unit with one that is lesser, unless doing so restores the original unit mix required by the contract. The next available comparable unit receives the new designation and must be rented to a tenant at or below the applicable income limit and at the applicable rent.



- **Over-Income Tenants in a Property with Fixed HTF units** – The property is temporarily out of compliance until the unit with the over-income tenant is vacated and can be rented to another ELI tenant household. The Recipient/manager must raise the over-income household's rent to 30% of their adjusted household income and in accordance with the terms of the lease.

Termination of Tenancy

A Recipient may not terminate the tenancy or refuse to renew the lease of a tenant, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing.

Failure to follow any required transitional housing supportive services plan is grounds for termination.

VAWA prohibits termination of the lease of the victim or threatened victim based on incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking, and allows for bifurcation of the lease to allow eviction or removal of the offending person while preserving the occupancy of the victim and other household members.

HUD requires that a written notice be provided to a tenant prior to a termination of tenancy consistent with state and local law (see 24 CFR 923(c).)

10.8 Ongoing Property Standards

Recipients must maintain housing as decent, safe, and sanitary housing in good repair throughout the affordability period. The property standards in 93.301(e) apply. This includes all applicable state and local housing codes or ordinances, and health and safety issues that DED will inspect for during onsite monitoring. In addition, for pre-1978 properties that are not certified as lead-based free or removed, the ongoing maintenance standards of 35.1355 apply.

10.9 Recordkeeping

As for all program activities, documentation is required for rental projects to show that all program regulations have been met. Due to the long-term monitoring required for rental projects, record-keeping responsibilities are more extensive. This section briefly describes the record-keeping responsibilities associated with rental housing for the Recipient, both project and tenant records.

- Project records should include documentation to back-up rent and utility allowance calculations. If the project's HTF-assisted units are "floating," the Recipient should also keep records to show how HTF occupancy targets were met (for example, rental logs to show that as units were vacated or tenants became over-income, HTF-assisted units were properly replaced).
- Tenant files should include the documentation necessary to demonstrate that each HTF-assisted unit is properly occupied by an income-eligible tenant. Such documentation includes: the tenant's application, initial income verification documents (at least two months' worth of source documentation), subsequent income recertification documents and the tenant's lease.

Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period.



10.10 Monitoring

DED monitors rental projects for compliance using submitted reports and on-site reviews. Recipients must maintain records to document compliance of all requirements demonstrating the following:

- The project is marketed to qualified applicants;
- Tenants are screened for eligibility;
- Rent and occupancy targets are observed; and
- Adequate property maintenance is conducted.

To verify compliance with property standards and the information submitted by Recipients regarding tenants' incomes, rents and other HTF rental requirements during the period of affordability, DED will perform on-site monitoring reviews. The monitoring requirements are covered in [Chapter 0](#).

Annual Rental Housing Compliance Report

Recipients are required to report on rents and occupancy of assisted units annually in accordance with §93.404(c)(2)(ix). The report must contain information regarding household size, household income, date of certification, contract rent, utility allowance, approved rent, and unit classification.

Each year during the affordability period, Recipients are required to submit the Rental Housing Project Compliance Report by January 31st of each year for the subsequent year. Recipients must certify the information to be correct and must further certify that the units meet HTF property standards.

DED will review the report to determine if the project remains in compliance with:

- The total number of HTF-assisted units;
- The rents for each assisted unit for compliance with the approved rent schedule and HTF rent limits in effect at the time of lease execution/renewal;
- The income for each assisted unit is in compliance with the HTF income limits at the date of income certification.

DED will notify the Recipient as needed to identify errors and correct non-compliance.

Onsite Monitoring

The HTF Interim Rule requires every rental property to have onsite monitoring during the first year of occupancy and at least every three years during the affordability period, or more frequently as determined through risk analysis. DED will use the *Initial Rental Monitoring Checklists* and *Ongoing Rental Monitoring Checklists* for reviews.

Inspections

The HTF regulations at § 93.301(e)(1) require DED to establish ongoing property standards for rental housing, including manufactured housing, that apply throughout the affordability period. Ongoing property standards must ensure that Recipients maintain the housing as decent, safe, and sanitary housing in good repair and must be in sufficient detail to establish the basis for a uniform inspection of projects.

For ongoing property inspections, DED will rely on:

- Any applicable state or local codes or standards that apply; or
- A UPCS inspection.



Inspections are required of the site, building exterior, building systems, and common areas) for each building that contains HTF-assisted units. Inspections will occur based on a sample of the total number of HTF-assisted units in comparison to the size of the overall project.

- For projects with 1-4 HTF-assisted units; 100% of the HTF-assisted units will be inspected.
- For projects with 5-10 HTF-assisted units; at least 4 HTF-assisted units will be inspected.
- For projects with 11 or more HTF-assisted units; at least 40% of the HTF-assisted units will be inspected.

File Reviews

File reviews will be conducted to ensure that all occupancy requirements are met, including:

Tenant Selection – review of tenant selection files and waiting lists to determine that appropriate tenant selection policies were followed.

Affirmative Marketing – If required (Projects with 5 or more HTF-assisted units), a review of the project's affirmative marketing plan and documentation of affirmative marketing efforts.

Income Occupancy & Unit Mix – Files will be reviewed to determine that the indicated HTF units have eligible occupants or remain available for occupancy by the appropriate income level.

Verification of Income – Files will be reviewed to determine that the appropriate verification of income was completed at the time of the initial rent up and source documentation exists.

Rents - Leases will be reviewed to determine that the approved rent (or lower) was charged.

Lease/Lease Addendum - Leases will be examined to verify that it is the approved form and meets HTF requirements.

Progress toward Occupancy Deadline - Status of occupancy will be reviewed to determine compliance with the HTF requirement for initial occupancy of all HTF-assisted units within 18 months of project completion.

Financial Review

DED must examine the financial condition of assisted rental projects with 10 or more HTF-assisted units at least annually throughout the affordability period to determine continued financial viability of the rental housing in accordance with 93.404(c). To meet this requirement, DED will request financial records from recipient as outlined below.

- The annual proposed budget & rent roll submitted for rent approval; and
- Year-end annual project audit of income and expense statements and year-end balances of all property accounts, including operating reserve, replacement reserve, and any other reserve accounts that were required.

If the financial review reveals concerns regarding the ongoing viability of the project or Recipient, DED will take actions and work with the Recipient to correct.

Conditions that trigger further monitoring by DED may include:

- **Delays in the audit report** – Sometimes the delay may be the result of the auditor and staff not agreeing on certain items, and accounting staff may delay response rather than be embarrassed by the results. If the audit falls behind schedule, investigate for what is causing the delay.
- **Significant discrepancies found in internal financial statements** – If the auditor finds substantial discrepancies in the internal statements and records, you need to know exactly what and why.
- **Auditor can't give unqualified opinion** – As noted, an unqualified opinion means the statements reflect the true financial conditions of the organization and the organization accounting complies with GAAP. The inability to give an unqualified opinion can be serious, but it may also just reflect



that the organization has decided not to comply with GAAP principles for some legitimate reason. Be sure to investigate exactly why the unqualified opinion cannot be given.

- **Management letter concerns about procedures & internal controls** – The management letter is written too broad to comment on any procedures or internal control issues that the auditor believes it must bring to the attention of the board based on the audit review. Each issue should be addressed, or a deliberate decision made by the board not to address it. For example, there may be limitations to on the ability to achieve full internal controls in an organization with limited staffing.
- **Compliance letter finds compliance issues** – Where an A-133 audit is required, a compliance review is also conducted, and any compliance issues identified in the compliance letter or attachment must be addressed.



11 FINANCIAL MANAGEMENT

11.1 Federal Financial Management System Requirements

The financial management system required for the State's use and accounting for HTF funds is governed by 2 CFR 200. While Recipients are not subject to 2 CFR Part 200, program accounting must meet these standards, and Recipient accounting systems must be able to provide the information and documentation described in this Chapter.

The financial management system requirements previously identified in 24 CFR Part 85.20 and 84.21 have been superseded by 2 CFR Part 200.300 - 200.309. The key Part 200 financial management requirements are:

- 1) **Financial reporting.** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- 2) **Accounting records.** Grantees must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- 3) **Internal control.** Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- 4) **Budget control.** Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- 5) **Allowable cost.** Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
- 6) **Source documentation.** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
- 7) **Cash management.** Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Grantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the Grantee must



make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns to assure that they conform substantially to the same standards of timing and amount as apply to advances to the HTF Recipients.

While these requirements apply to the State as the HTF Grantee, and do not directly apply to HTF Recipients, these requirements do pass through to Recipient/developers in the manner described in this chapter.

Overview of Recipient Financial Management Requirements

The HTF Recipient must gain understanding of all the requirements that they are agreeing to comply with. The following is meant as a summary of some of the requirements and not a complete coverage of the responsibilities of HTF Recipients.

- **Financial management:** Recipient is responsible for the efficient and effective administration of the HTF Funds provided to Recipient under this contract. Recipient agrees to administer the HTF Funds in a manner consistent with this contract, HUD's administrative requirements for the HTF Program, and with the provisions of DED's HTF Program Administration Manual, and with all federal (and state) laws, regulations, and executive orders applicable to the HTF-assisted project.
- **Accounts:** The HTF Funds will be accounted for separately upon the books and records of the Recipient, in such manner as to allow funds tracing and a current status review of the HTF Funds at all times. A separate bank account for the HTF Funds is not required.
- **Records:** The Recipient will keep all records concerning the HTF Funds in a manner which is consistent with generally accepted accounting principles. Payments from such HTF Funds will be obligations incurred in the performance of this contract; and will be supported by contracts, invoices, brochures, and other data, as appropriate, evidencing the necessity for such expenditures.
- **Audits:** The HTF Rule requires a cost certification on completion of the project, and annual project audits during the period of affordability.
- **Insurance:** Recipient agrees to, at a minimum, provide insurance coverage for real property acquired or improved with HTF Funds that is equivalent to the insurance Recipient provides for Recipient's other property (or ensure that such insurance coverage is provided by the Recipient of the real property).
- **Closeout:** The closeout of a Project does not affect the right of DED or duly authorized officials of the state and federal government to disallow costs and recover funds from the Recipient on the basis of a later audit or other review. In other words, the obligation of the Recipient to return any funds due as a result of an audit is not affected by closeout of this Project.

Actions to Prepare for Financial Management

Recipients should take the following steps to prepare a financial management system for implementation of an HTF grant:

- Appoint person to be responsible for Financial Management.
- Establish accounting records.
- Set up bank accounts and establish receipting procedures.
- Establish payment schedules and approval procedures.



DED may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

11.2 DED's Requirements

DED identifies three basic functions that must be served by the financial management system:

- The financial management system must have an identified procedure for recording all financial transactions.
- All expenditures should be related to activities proposed in the application approved by DED.
- All expenditures of HTF funds should be in accordance with applicable laws, rules, and regulations.

Accounting Records

Recipients should determine the accounting records that will assist in providing accurate and complete financial information. The HTF accounting records may be fully integrated into the Recipient's existing accounting system or may be partially integrated into the existing system with subsidiary ledgers developed as needed to provide the required grant accounting.

At a minimum, the grant accounting system must:

- Clearly identify all receipt and expenditure transactions of the grant.
- Provide for budgetary control by tracking expenditures and accrued obligations by approved HTF activities.
- Accounting methods should be in accordance with Generally Accepted Accounting Principles.

DED staff or the Recipient's auditors should be able to readily trace HTF transactions through the accounting system. Also, all amounts shown on HTF reports should reconcile to the Recipient's accounting records.

Recipients must be able to report HTF expenditures by approved activity and budgeted line item. Budget balances must be maintained for each approved activity that account for HTF expenses accrued or obligations incurred (e.g., contracted amounts) which have not yet been paid.

Source Documents

Source documents provide information to be transferred to the accounting records. A source document may be a check, invoice, purchase order, time sheet, or contract. All source documents that pertain to the HTF project should be identified through a code or by using the HTF grant number, activity number and budget line-item code. This will assure that the charges against the project are properly recorded in the HTF accounting records.

Purchase orders should be used when requesting supplies and materials for the project. The purchase order is prepared in the same manner as all other purchase orders for the Recipient and should include a reference to HTF.

Contracts should be kept in a separate file. The signed contract represents an obligation of HTF funds. When payments are made on the contract, these should be recorded in the contract file on a contract control card. If there are several contracts, a contract register should be used as a management tool.

An invoice or statement for services rendered is typically submitted by a contract seeking payment. The accuracy of the invoice should be verified against purchase orders or contracts.



Time sheets are another important source document. If staff time is charged to the project, time sheets must support the number of hours worked.

Cancelled checks, bank deposit slips, receipts, and other miscellaneous documents represent important source documents which are used in accounting for program expenditures or program income.

Receipt Procedures

In addition to HTF payments from DED, cash receipts may also include program income and project funds received from other outside sources.

The Recipient must be certain that project receipts are adequately safeguarded. This includes providing for proper bonding in accordance with state law of those individuals that handle program funds, if required.

All HTF project receipts should be promptly deposited to the proper bank account and recorded as a receipt in the accounting system. HTF funds are to be drawn down only as required to pay immediate obligations or preferably to reimburse the HTF Recipient for payments already made for HTF-eligible expenses.

DED will consider the Recipient in violation of the requirement to minimize the elapse of time between receipt and expenditure of HTF funds, if more than fifteen working days elapses between receipt and expenditure.

Electronic Funds Transfer

All payments of HTF funds to Recipients are by Electronic Funds Transfer (EFT) to a designated local bank account. These payments are made through the Nebraska Information System (NIS); the state accounting system-for all federal and state grant payments to local governments and other organizations.

This electronic address and corresponding bank account will be used for HTF payments with no additional action required by the Recipient except to transfer HTF funds when received to a non-interest-bearing account in accordance with HTF program requirements.

If a non-profit HTF Recipient needs to establish a bank account for receipt of state funds, the HTF Recipient should complete and submit the *State Treasurer ACH Enrollment Form*.

This form may be downloaded from the State Treasurer website at http://das.nebraska.gov/accounting/forms/ACH_W9_Fillable.pdf and uploaded to AmpliFund under the Custom Form tab. DED will review the completed form and forward to State Accounting for action and State Treasurer for information. The State Treasurer is the designated “automated clearinghouse” or ACH for the State of Nebraska.

It is not required that the ACH enrollment form be submitted to receive HTF funds, unless the HTF Recipient has not ever established an account with the State Treasurer. If no action is taken by the HTF Recipient, the electronic address previously established will apply for the receipt of HTF funds.

If an HTF-designated account (or Department-designated account) has been previously established through submission and processing of an ACH enrollment form, it is not necessary to submit this form for each new HTF grant; however, it is necessary to submit this form as a change action whenever a bank account in which HTF funds are currently being deposited has been changed (financial institution or account number).



If a non-profit HTF Recipient wishes to direct HTF funds to a designated account, a completed State Treasurer ACH Enrollment Form must be sent to DED. The form must be checked NEW (no bank account designated for HTF, or Department funds currently exists) or CHANGE (making change to financial institution or account number).

In the VENDOR INFORMATION section, "Name" refers to the local government or non-profit organization, i.e., City of Seward, Village of Otoe, Gage County, Wayne Housing Development Corporation, etc. "Address" is the Mailing Address (normally a PO Box Number). "Federal Tax ID #" is the local governments or non-profits federal identification number.

In the area below "FAX #" enter: DED PAYMENTS ONLY (if this account may be used for CDBG, HOME/NAHTF grant payments, or other DED payments of any type) or HTF PAYMENTS ONLY (if to be used for HTF grant payments only). DED will not forward an ACH Enrollment Form to State Accounting for a specific HTF grant, as these accounts tend to be transitory, subject to closure when account activity ceases, and frequently create confusion when multiple accounts are established.

The local bank completes the FINANCIAL INSTITUTION INFORMATION section. The service agreement portion of the form should be completed by both parties as to notification procedures on receipt of funds via EFT. Make sure both parties sign the form and that all other entries are completed and accurate. Mail the completed form to:

Nebraska Department of Economic Development
HTF Financial Administrator
245 Fallbrook Blvd, Ste. 002
Lincoln, NE 68521

It may be up to 4 weeks or longer before the locally designated HTF or Department account has been assigned an electronic address by state government or an account number for an existing electronic address has been revised. HTF Recipients should confirm with DED that action has been completed before submitting an applicable request for HTF funds.

Bank Accounts

Recipients are not required to maintain separate bank accounts for the deposit of HTF funds. However, Recipients must be able to reconcile HTF balances in the depository account.

Since interest may not be earned on the deposit of HTF funds, Recipients must draw down HTF funds on a reimbursement basis. Under this system, the Recipient pays all project costs (both the HTF share and the local share) and reimburses the account for the HTF share. In this way there are never unexpended HTF funds on deposit that would accrue interest earnings.

Bank accounts must be secured by F.D.I.C. insurance or bank pledged collateral for the full amount of HTF funds held in the account. Reconciliation of bank statements should be performed promptly.

Program income may and should be deposited in interest bearing accounts. For more information, see [Chapter 11.6](#).

Payment Procedures

A Recipient must establish a system to review and approve all billings presented for payment under the grant. All invoices should be reviewed to determine that the costs are accurate, reasonable and allowable under HTF regulations. The governing body of the Recipient should review and approve all payments.



The Recipient should determine when HTF disbursements will be made--weekly, bi-weekly, monthly, quarterly. Identifying a cut-off time when all invoices and vouchers must be submitted will assist in the planning for the request for funds. This timeline should be communicated to contractors and vendors.

DED's payment process is not designed to be used as the initial payment for an activity, such as a loan closing, contractor payment, or administration payment. If Recipients choose to use HTF funds in that manner, they do so at their own risk. There is no guaranteed HTF payment process timeline. It is considered a good idea to have access to other funds to make payment of HTF-eligible costs and use HTF funds to reimburse.

Contractors' invoices should be paid after verification has been made of work completed. A list of disbursements to be made should be prepared and the total federal cash requirements submitted to DED on the appropriate forms.

All payments for expenditures must be supported by source documentation and kept on file. Source documentation must be included with payment requests submitted for HTF funds before DED will issue payment of HTF funds for rental projects.

Other Funds

Other funds committed to the project as a part of the approved HTF Contract should be accounted for in project financial records. The receipt and expenditure of the other funds should be carefully documented. If other funds are derived from a source outside the local government or non-profit, project records should identify the source and amount.

Note that HTF does not require proportional drawdowns (showing other funds in the same proportion as in the budget in the HTF Contract), however, other funds must be shown on Request for HTF Funds forms, Activity Completion Reports and the Final Financial Report for the project. Recipients failing to meet the match required in the HTF Contract budget by the end of the project are subject to penalties that include repayment of HTF funds to DED.

11.3 Requesting HTF Funds

Recipients must submit payment requests for HTF funds using DED's Grant Management Portal, AmpliFund. A *Request for HTF Funds* form, located on DED's website, is required to be uploaded with payment requests submitted via AmpliFund. Payment request instructions can be located at: <https://opportunity.nebraska.gov/amplifund/>. Please note, that Recipients must have received a Notice of Release of Funds from DED and incurred HTF-eligible costs prior to requesting HTF funds. **DED's policy is that Recipients may only request HTF funds as a reimbursement and only as funds are needed for HTF eligible costs.**

Drawdown Requests

Please take special note of the following concerning the request, receipt and expenditure of HTF funds:

- A request for funds may not be submitted until the HTF Recipient has received a *Notice of Release of Funds*.
- Request only the amount of funds needed to pay immediate obligations.
- Funds may be requested at any time and in any frequency; however, the minimum request is \$1500 except for the final request.
- Program income must be disbursed prior to requesting additional funds.
- Federal funds on hand must be disbursed prior to requesting additional funds.



- Recipients may not earn interest on the deposit of federal funds pending disbursement.
- If excessive amounts of cash (over \$5,000) are on hand for an extended period of time (over fifteen working days), the Recipient must return the excess to DED.
- The request for payment must be in accordance with the approved budget for the grant contained in the Sources & Uses of Funds section of the HTF Contract.
- The request for funds should show the status of all approved activities even if no funds are requested for one or more activities in a specific request.
- Amounts must be requested in whole dollar amounts only.
- For rental projects, source documentation (i.e., invoices, etc.) must accompany the request for funds.

The signatures on the *Request for Funds* form must be original, in **blue ink** and correspond to those signatures on the current *Authorization to Request HTF Funds* form DED has on file. Recipients must upload a new *Authorization to Request HTF Funds* form to AmpliFund whenever the individuals authorized to sign *Requests for HTF Funds* change.

Payment Request Documentation

Recipients requesting HTF funds are required to submit source documentation demonstrating eligible expenses incurred with drawdown requests. If the source documentation provided is not sufficient, processing of the payment request will be delayed until the requested source documentation is received and accepted. Recipients will be contacted regarding any follow up questions or for additional information is needed to process payment requests.

All payments to Recipients are by Electronic Funds Transfer (EFT) to a designated local bank account. These payments are made through the Nebraska Information System (NIS) based on the “electronic address” established by the Nebraska State Treasurer.

11.4 Project Cost Certification

At project completion, the Recipient must submit to DED a project cost certification performed by a certified public accountant in accordance with 24 CFR 93.404(c)(2)(iii).

11.5 Contract Records

Recipients will enter into contracts that will require record keeping and reporting consistent with the HTF financial management requirements.

A proper system of management should include:

- A contract file for each signed contract.
- Enter the contract in contracts register.
- Establish a control card for each contract that tracks invoices and payments.

The file for each contract must contain the following:

- A signed contract and amendments.
- A schedule of payments supported by copies of time sheets; copies of checks or transfer notifications; copies of approved authorization/payment forms; and copies of invoices.



- All related correspondence.
- Property records (where appropriate).
- Any notice of cancellation, termination or suspension of the contract.
- Final inspection reports.

A contracts register should be used to record all contracts signed. This register will be the summary record for all contracts. The register also indicates which contracts require compliance with other federal requirements.

In conjunction with the contract register a contract card should be established for each contract. This card is used to record all payments on the contract and the percent of the work that has been completed.

11.6 Repayment Funds

Repayment funds are HTF funds recovered by DED when HTF-assisted housing does not meet the affordability requirements for the full affordability period. All repayment funds must be returned to DED, and in turn deposited into the local or Treasury account as instructed by HUD.



12 REPORTING

DED requires Recipients to submit reports at various stages throughout the course of a project and continuing through the duration of the affordability period. Recipients should use the most current form for a particular report they are submitting. Current forms are available on DED's website under Forms & Templates: <https://opportunity.nebraska.gov/programs/housing/htf/>.

HTF Semi-Annual Performance Report

Recipients are required to submit this report twice a year throughout the contract period. Recipients must report on all contracts executed during the reporting period for contractors and subcontractors.

Reporting Period Due Dates

January 1 – June 30 due by **July 31**

July 1 – December 31 due by **January 31**

Project Cost Certification

At project completion, the Recipient must submit to DED a project cost certification performed by a certified public accountant in accordance with 24 CFR 93.404(c)(2)(iii).

Rental Housing Activity Completion Report

Recipients must submit this report to DED within 90 days of the final disbursement of HTF funds.

Annual Rental Housing Project Compliance Report

Recipients must submit this report for each rental project to DED by January 31st each year throughout the affordability period. This report documents household size, income, rent, certification date, utility allowance and unit classification for the HTF-assisted units. Owners are also required to certify that the rental housing project is suitable for occupancy, meets local and state health and safety codes and meets ongoing property standards at § 93.301 and ongoing requirements at § 93.302.

Annual Audit

Annually during the period of affordability, the Recipient must submit an audit by an independent certified public accountant to DED in accordance with 24 CFR 93.406(b).



13 MONITORING

13.1 Overview

Under HTF Program regulations, every entity that receives HTF funding is subject to monitoring. DED must monitor the structures acquired or built with HTF funds, the beneficiaries of program expenditures, and the documents and records that support compliance with program requirements.

HTF rules stipulate that Recipients must be reviewed at least annually during the implementation of completion of the project.

There are ongoing monitoring requirements for rental projects after completion and during the period of affordability:

- Recipients are required to submit an *Annual Rental Compliance Report* and *Annual Unit Certification*;
- DED is required to go onsite during the 1st year of occupancy and at least every 3 years of the affordability period to inspect units and review project files; and
- For projects with 10 or more assisted HTF units, DED must conduct financial review annually to ensure ongoing viability.

Monitoring Goals & Objectives

DED's monitoring procedures are designed to ensure the success of HTF-funded activities designed to increase the availability of decent and safe housing affordable to extremely low-income households in Nebraska.

Objectives

- Track and evaluate program/project performance
- Ensure timely completion
- Document compliance with program rules
- Prevent fraud and abuse
- Identify technical assistance needs
- Identify innovative program designs and approaches

13.2 Risk-Based Monitoring

DED is required to have a risk-based monitoring plan that ensures that the monitoring meets the regulatory minimums but takes into account risk factors to determine the frequency and method of monitoring, including the mix of desk/remote monitoring and on-site monitoring. A risk-based approach not only ensures compliance with HTF requirements, but also helps to ensure sustainability of the housing through the affordability period.

The following risk factors will be used in assessing risks associated with each project or program:

- Program/project complexity
 - Program funding – current total funding level & relative to prior awards
 - Other funding sources required to implement the activity
 - Audits & prior management findings (financial management, controls)



- Organizational capacity
 - Staff prior experience with activity
 - Recent staff turnover or vacancies
 - Use of consultants/subcontractors with prior program experience
- Prior/recent performance
 - Prior contract completion on schedule & budget
 - Prior contract monitoring findings & resolution of findings
 - Application/administrative plan deficiencies/concerns
 - Participation in training, briefings, other program start-up activities

DED will use project characteristics and risk factors to classify project risk and to utilize monitoring methods based on the level of risk:

- **Low risk** = desk/remote only, except as required onsite by regulation
- **Moderate risk** = enhanced desk/remote with required onsite
- **High risk** = onsite monitoring that may be more frequent than prescribed by regulation

13.3 Monitoring Activities & Schedule

DED will schedule monitoring activities to meet the following regulatory requirements:

- Annual review of each HTF Recipient (§93.404(a))
- Annual approval of rents & utility allowances (§93.302(c)(2))
- Annual Rental Housing Compliance Report review (§93.404(c)(2)(ix))
- Rental onsite monitoring ((§93.404(d)(1)(ii))
- Financial review for rental projects with 10 or more HTF-assisted units (§93.404(e))

13.4 Monitoring Resources/Checklists

DED uses the checklists detailed in this section to monitor rental housing projects.

Initial Monitoring Visit

NDED will perform an onsite inspection of each HTF-assisted rental project at the time of project completion to determine that the housing meets the property standards of 93.301. This initial monitoring inspection will occur once construction has been completed and prior to grant closeout. Refer to the *Initial Rental Housing Monitoring Inspection Checklist* for items that are reviewed and inspected.

ACTIVITY	FREQUENCY	AREAS OF REVIEW
Rental Project – First Visit	At least one on-site visit during the 1 st year of occupancy	Fair Housing, Affirmative Marketing, Environmental Provisions, Lead-based Paint, Relocation, Property Standards, Financial Management, Eligible Costs, Contractor Selection, Construction Management, On-site Inspection, Rent Requirements, Occupancy Requirements, Tenant Eligibility and Leases



Ongoing Monitoring Visits

Throughout the affordability period, the Recipient must ensure HTF-assisted rental housing units comply with all applicable local and state housing code requirements or standards as well as the Uniform Physical Condition Standards (UPCS). UPCS's are national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. On-site inspections will be conducted to determine compliance with property standards and to verify compliance with other applicable HTF regulations such as tenant income certifications and rental charges. On-site inspections will occur within 12 months of project completion and at a minimum of every three years thereafter during the affordability period. Refer to the *Ongoing Rental Housing Monitoring Inspection Checklist* for items that are reviewed and inspected.

If deficiencies are observed for any inspected items, a follow-up inspection must occur within 12 months to verify that all observed deficiencies have been corrected. A non-hazardous deficiency may be verified by third party documentation rather than reinspection. For rental housing projects that have been found to have health and safety violations, NDED will monitor more frequently. Life-threatening health and safety deficiencies must be corrected immediately.

ACTIVITY	FREQUENCY	AREAS OF REVIEW
Rental – Ongoing	Throughout the project's affordability period, on-site reviews are completed the 1 st year of occupancy and every 3 years	Property Standards, Fair Housing Design Standards, On-site Unit Inspection, Rent Requirements, Occupancy Requirements, Tenant Eligibility and Leases

13.5 Monitoring Protocols

In-Office Review

DED's housing staff members are always looking for red flags throughout the project from time of award to closeout and throughout the affordability period. Additional on-site visits will be conducted if deemed necessary by DED.

Rental projects are required to submit a *Rental Housing Project Compliance Report* by January 31st of each year during the affordability period documenting rents charged and household income of HTF-assisted units.

On-Site Monitoring Visits

DED will contact Recipients to schedule an on-site monitoring visit at least two weeks prior to visit. DED will follow up with a *Monitoring Notification* letter confirming the date and time of the on-site monitoring visit including a list of the records that will be reviewed. DED will review files, inspect the property and units, complete checklist, and prepare a *Monitoring Report*. A *Monitoring Report* will be submitted to the Recipient within 60 days of visit. Recipient must submit any follow-up documentation needed to address any issues contained in the report to DED for review. Recipients will need to work with DED until monitoring has been cleared.



Recipient Files and Retention

DED expects Recipients to have all documents needed for review to be available at the site of the visit. All grant records must be maintained and under the control of the HTF Recipient. General records must be kept for five years after project completion by Recipient. Tenant files (income, rent, inspections, etc.) must be kept by Recipients for the most recent five years until five years after the affordability period ends.

Monitoring Report & Follow-up

A *Monitoring Report* is issued to the Recipient following a review, and contains the following as applicable:

- Compliance areas reviewed, files reviewed, who conducted the review and the date it occurred;
- A brief description of the specific statute, regulation or requirement examined;
- The conclusion (i.e., Satisfactory Performance, Concern, Finding) and basis for the conclusion reached.
 - A **Satisfactory Performance** determination is a conclusion that the Recipient is meeting its statutory and regulatory responsibilities.
 - A **Concern** raises an issue that does not involve a statute, regulation or requirement, but may involve a management suggestion or program improvement.
 - A **Finding** is a clear, specific, and identifiable violation of a statute, regulation or requirement about which there is no question. The action normally requested is for the Recipient to explain, within a 30-day period, what steps it will take to remedy and/or prevent a recurrence of the violation.



14 CLOSEOUT

14.1 Contract Closeout

Project closeout is the process by which DED determines that the Recipient has completed the project according to the HTF Contract. This means that the acquisition and construction/rehabilitation has been completed, funds have been drawn and expended, occupancy in compliance with the rules has been achieved, and all required reports and documentation has been submitted.

Once the project has been completed and receives a *Certificate of Occupancy*, the Recipient can begin the process of “closing out” the HTF Project. The [final 20% of the HTF funding](#) can be requested by Recipients once all close-out documentation has submitted and approved by DED.

Close-out documentation includes, but is not limited to, the following:

- Certificate of Occupancy
- Cost Certification and audit requirements are met
- Independent Appraisal
- A *Verification of Construction Form* that verifies the newly constructed housing units meet the plans and specifications required by the Nebraska Energy Office and comply with the most recent version of the International Energy Conservation Code (Template located at <https://opportunity.nebraska.gov/programs/housing/htf/> under Reporting Forms and Templates)
- Verification of Compliance for any conditions resulting from the Environmental Review that are specific to the Project (radon testing, safe drinking water, etc.)
- Verification of Broadband Infrastructure installation (applicable to buildings with 4 or more units)
- Documentation that fair housing activity was implemented
- Other documentation as may be required by DED:
 - Certificate of Substantial Completion
 - Satisfaction of Payment or Release of Lien signed by General Contractor
 - Rental Activity Completion Report – due within 90 days of final draw
 - Utility Allowance Schedule
 - Updated Grantee Information/Property Management Information
 - As Built Certification signed by the project architect that project was built to comply with Section 504 Standards
 - Lead Paint Notification Forms signed by every tenant (if rehab for project built in 1978 or before)

Project closeout will occur after DED has completed the initial compliance review of the project and monitoring clearance is achieved with regard to project implementation and initial occupancy.

The above items are required to be satisfactorily completed before DED will issue a *Certificate of Completion*. The *Certificate of Completion* letter will specify any follow-up actions required by state or federal regulations.



Project closeout does not end an HTF Recipient's obligations to fulfill ongoing obligations during the affordability period and post-closeout reports and record keeping requirements. DED will continue to monitor the Recipient's performance throughout the affordability period. Recipients are required to submit annual rental housing project compliance reports, submit proposed rent adjustments for approval by DED, program income reports (if applicable), submit an annual audit and projects with 10 or more assisted units must submit financial records for review annually.

Certificate of Completion

The *Certificate of Completion* Letter will specify any follow-up actions required by state or federal regulations; however, this letter constitutes a certificate of satisfactory completion of project requirements. DED will continue to monitor rental housing projects throughout the affordability period. Recipients are required to submit annual rental housing compliance reports, annual unit certification and financial reports throughout the affordability period.

14.2 Audit Requirements

Recipients must submit an audit by an independent certified public accountant to DED in accordance with 24 CFR 93.406(b). Audits must be received by DED the earlier of 30 days after the entity receives the auditor's report or nine months after the end of the audit period. If an audit is not received by the appropriate date, DED will consider sanctions.

14.3 File Retention

Recipients must create and maintain all records of project activities funded with HTF funds, including but not limited to financial records, supporting documents and other such records as required by law or other authority. Generally, records shall be maintained as listed below:

- Files related to the implementation and completion of the project must be maintained for five years after completion of the project;
- Legal documents that impose the affordability period requirements must be maintained for five years after the affordability period; and
- Rental project occupancy records must be maintained for the most recent five years of occupancy.

Recipients must provide DED and HUD access to all project records upon request.

