CHAPTER 5 - RENTAL HOUSING ACTIVITIES

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Overview of Program Requirements

NAHTF funds may be used for the acquisition, new construction or rehabilitation of affordable rental housing. This chapter covers the basic program requirements governing NAHTF-assisted rental housing, such as eligible activities and costs, income and occupancy requirements and rent levels.

WARNING: The NAHTF Administration Manual contains information on eligible uses and requirements of NAHTF funds as general guidance. However, the Department further defines eligible uses and requirements for NAHTF funds administered by the Department via the Housing and Community Development Annual Action Plan, NAHP Application Guidelines and the NAHTF Program Contract. **Applicants and grantees must adhere to the requirements imposed on NAHTF funds for the particular program year and specific award.**

Eligible Activities

NAHTF funds may be used for acquisition, new construction or rehabilitation (including rehabilitation of structures not previously used for housing) of affordable rental housing and necessary infrastructure to make the housing affordable.

Eligible Recipients

The following are eligible recipients of NAHTF if located in Nebraska:

- Community-Based or Neighborhood-Based Organizations
- Governmental Subdivisions (a tribal government, county government, municipality, township or village)
- Local or Regional Housing Authorities, or Agencies
- Community Action Agencies
- Tribally-Affiliated or Reservation-Based Nonprofit Organizations

For-Profit Entity

A for-profit entity may work in conjunction with an eligible NAHTF recipient to undertake a project.

Forms of Assistance

The Department provides assistance to rental projects as grants or loans with specific terms and restrictions incorporated on a project-by-project basis.
NAHTF funds may be used to refinance existing debt if the NAHTF funds are used to rehabilitate the property and refinancing is necessary to permit or continue affordability.

NAHTF-Eligible Rental Housing Costs

Hard Costs

- Acquisition of land (for a specific project) and existing structures
- Site preparation or improvement, including demolition
- Securing buildings
- Construction materials and labor

Soft Costs

- Financing fees
- Credit reports
- Title binders and insurance
- Surety fees
- Recordation fees, transactions taxes
- Legal and accounting fees, including cost certification
- Appraisals
- Architectural/engineering fees, including specifications and job progress inspections

- Environmental reviews
- Builders' or developers' fees
- Affirmative marketing, initial leasing and marketing costs
- Operating deficit reserves (up to 18 months)

Relocation Costs

- Payment for replacement housing, moving costs and out-of-pocket expenses
- Advisory services
- Staff and overhead related to relocation assistance and services

Operating deficit reserve: NAHTF funds to cover the cost of funding an initial operating deficit reserve for new construction and rehabilitation projects.

- This reserve is meant to meet any shortfall in project income during the project rent-up period.
- The reserve cannot exceed 18 months.
- The reserve can be used only for project operating expenses, scheduled payments to replacement reserves and debt service.
- Reserves remaining at the end of 18 months may be retained for reserves in the project at the Department’s discretion.
- The disposition of any remaining funds at the end of the 18-month period must be determined in the agreement between the developer/owner and the Department.

Maximum NAHTF Investment

The investment of NAHTF funds is limited by per-unit subsidy limits based on number of bedrooms and location. The subsidy limits (Maximum per-unit NAHP Subsidy) are kept current for all Nebraska counties on the Department’s website.

Example: A six-unit structure with six two-bedroom units will be rehabilitated with NAHTF funds in Clay County. The maximum per-unit NAHTF subsidy for two-bedroom units in Clay County is $113,488. Thus, the NAHTF subsidy for this project ***cannot exceed*** *$680,928 (6 X $113,488).*

The actual subsidy provided will depend on the following factors.

- The proportion of the total project cost that is NAHTF-eligible --some planned project costs may not be eligible expenses under the NAHTF Program.
- How many of the units in the project are NAHTF-assisted --Projects may have a mix of NAHTF-and non-NAHTF-assisted units.
- The financial needs of the project --NAHTF projects may not receive more subsidy than is required to make them financially feasible. The NAHTF program allows the Department to determine what is required and reasonable.

Example: Three two-bedroom units in a six-unit structure in Clay county will be rehabilitated with HOME funds. The maximum-per-unit NAHTF subsidy for two-bedroom units in Clay County is $113,488. Thus, the NAHTF subsidy for this project ***cannot exceed*** *$340,464 (3 X $113,488). The developer has estimated rehabilitation costs of $75,000 per unit. However, the subsidy needed to make the project financially feasible based on an analysis of the cash flow and development costs is only $210,000, or $70,000 per unit.*

Determining the NAHTF-Assisted Units

What is a NAHTF-assisted unit? This distinction between NAHTF-assisted and unassisted units allows NAHTF funds to be spent on mixed-income projects while still targeting NAHTF dollars only to income-eligible households.

- The NAHTF rent and occupancy rules apply only to NAHTF-assisted units.
- The number of NAHTF-assisted units in a given project must be specified in the NAHTF Contract.
    - NAHTF rules create a floor for the number of NAHTF-assisted units a project must have. This floor is based on the proportional share of total eligible costs to be paid with NAHTF funds.
    - However, the Department may require a higher number of NAHTF-assisted units in a project.
    - Some projects may consist of only NAHTF-assisted units.

Example: The Department is considering a request for NAHTF funds from Excellent Housing Corporation for a 20-unit building. The NAHTF-eligible development costs total $400,000. The applicant has requested $100,000 in NAHTF funds. Since the NAHTF funds represent one-fourth of the total eligible development costs, the Department must require the project to have at least five NAHTF-assisted units, the "floor." The Department may choose to require more than five units to be NAHTF-assisted.

- The Department may choose to specify a minimum number of units that must be designated as NAHTF-assisted, and then develop the needed subsidy amount based on the total NAHTF-eligible costs.

Example: When Can-do CHDO approached the Department for development funds for a 30-unit rehabilitation project, the Department decided to subsidize half of their units. All of the units were comparable in size, features, number of bedrooms and development cost. Consequently, the Department provided half of the $600,000 in NAHTF-eligible development costs (i. e., $300,000) to Can-do and 15 of the 30 units were designated NAHTF-assisted.

Fixed and floating units

For properties with both assisted and non-assisted units, the Department specifies in the NAHTF Contract whether the units are "fixed" or "floating". This designation can not be changed after the initial contract has been executed.

Fixed

When NAHTF-assisted units are "fixed," the specific units that are NAHTF-assisted (and, therefore, subject to NAHTF rent and occupancy requirements) are designated and never change, i.e. 1A, 3B and 4F are fixed NAHTF-assisted units during the affordability period of the project. Designating fixed units allows the project to have a composition of NAHTF-assisted units by unit size (number of bedrooms) that varies from the composition of non-NAHTF-assisted units by unit size (number of bedrooms). In other words, a project with two three-bedroom units and four four-bedroom units could “fix” one three-bedroom unit and one four-bedroom units as NAHTF-assisted.

Floating

When NAHTF-assisted units are "floating," the units that are designated as NAHTF-assisted may change over time as long as the total number of NAHTF-assisted units in the project remains constant. NAHTF-assisted floating units must represent the same percentage of all comparable unit sizes in the project. In other words, a project with two three-bedroom units and four four-bedroom units could “float” one three-bedroom unit and two four-bedroom units (thus “floating” fifty percent of each unit size in the project. “Floating” often results in an increase in total NAHTF-assisted units required in a project.

- The floating designation gives the owner some flexibility in assigning units, and can help avoid stigmatizing the NAHTF-assisted units.
- If the floating designation is used, the owner must ensure that the NAHTF-assisted units remain comparable to the non-assisted units over the affordability period in terms of size, features and number of bedrooms.

Example #1: The Meadow View Ridge Townhouse Estates is a 20-unit project. 10 of the units are 3-bedroom, 5 are 2-bedroom and 5 units are one-bedroom. The project is required to have 5 NAHTF-assisted units. It is determined it would be most beneficial for these units to be the 3 bedroom units due to the NAHTF rent limits. Therefore, these units must be fixed NAHTF-assisted units.

Example #2: The Prairie View Ridge Townhouse Estates is a 20- unit project. 10 of the units are 3-bedroom, 5 are 2-bedroom and 5 units are one-bedroom. The project is required to have 5 NAHTF-assisted units, 25% of the project units. The project owner would like to float units for maximum flexibility. Therefore, three 3-bedroom units, two 2-bedroom units and 2 one-bedroom units are required in order to be at least 25% of each comparable unit designation. This results in a total of 7 NAHTF-assisted units required in the project in order to designate these units as floating.

Allocating Costs to the NAHTF-Assisted Units

Before determining the allowable NAHTF subsidy amount, the Department must establish the total NAHTF-eligible cost for the project.

- For mixed projects with NAHTF-assisted and non-NAHTF-assisted units, the Department must allocate costs across units.
  - If both the assisted and non-assisted units are comparable in size, features and number of bedrooms, the NAHTF-eligible costs can be pro-rated across units. (Since floating units, by definition, must be comparable, costs should always be pro-rated if NAHTF units float).

Example: The Department wants to subsidize development of a 30-unit project with NAHTF funds. Twenty of the units have one bedroom and ten have two bedrooms. All of the units have identical amenities. The Department plans to underwrite fifteen of the units (ten one-bedrooms and five two-bedrooms) and the applicant plans to use the floating unit approach. Since all of the one-bedroom units are comparable to one another the costs associated with the one-bedroom units (and common costs on a pro-rated basis) can be spread across all of the one-bedroom units. The same is true of the two-bedroom units, since they also are comparable to one another.

  - If the assisted and non-assisted units are ***not*** comparable, the actual costs must be determined and allocated unit-by-unit. The specific units identified to "receive" NAHTF funds must be fixed --that is, designated as NAHTF-assisted.

Eligible Property Types

- NAHTF rental projects may be one or more buildings on a single site, or multiple sites that are under common ownership, management and financing.
  - The project must be assisted with NAHTF funds as a single undertaking.
  - The project includes all activities associated with the site or building.
- NAHTF funds may be used to assist mixed-income projects (but, only NAHTF-eligible tenants may occupy NAHTF-assisted units).
- Transitional as well as permanent housing, including group homes and SROs, is allowed. (See Attachment 1 at the end of this chapter for additional details.)
- NAHTF funds may be used for the initial purchase and initial placement costs of Elder Cottage Housing Opportunity (ECHO) units that meet the HOME requirements. ECHO units are small, free-standing, barrier-free, energy-efficient and removable units designed to be installed adjacent to existing single-family dwellings. (See Attachment 2 at the end of this chapter for additional details.)
- There are no preferences for project or unit size or style. The Department does scrutinize projects on affordability, marketability, aesthetics and durability.

Ineligible Property Types

- Properties previously financed with NAHTF or Nebraska HOME funds during the affordability period cannot receive NAHTF as additional assistance unless assistance is provided during the first year after project completion. The exception is that in a lease-purchase program additional NAHP funds can be provided to the renter that is purchasing a unit.

Lease Purchase

NAHTF-assisted rental units may be converted to homeownership units with or without the use of additional NAHTF funds by having the owner sell, donate or otherwise convey the units to existing tenants. The NAHP applicant must design the lease-purchase program prior to application for NAHP funds. The term long-term lease-purchase is used to describe programs in which the units will be leased thirty-six months or longer before the renter may purchase the unit. Long-term lease-purchase programs are classified as rental activities in the NAHP subject to all requirements pertaining to rental projects.

Requirements for converting rental units to homeownership:

- The homebuyer must qualify as income eligible for the rental unit and the homebuyer program at the time the lease-purchase agreement is signed.
- If additional NAHP funds are used to help the tenant become a homeowner, the minimum period of affordability is the affordability period required by the amount of direct homebuyer assistance provided.
- If no additional NAHP funds are used, the homeownership unit is subject to the resale provisions and to a minimum period of affordability period that would apply if the units continued as rental units.

Property Standards

Properties that are rehabilitated with NAHTF funds must meet the following standards:

- The Department's Rehabilitation Standards (Attachment 2 in Chapter 3)
- Handicapped accessibility requirements, where applicable.
- Also, one of the following:
    - Local Code Requirements
    - Uniform Building Code (ICBO)
    - National Building Code (BOCA)
    - Standard Building Code (SBCCI)
    - Council of American Building Officials one-or two-family code (CABO)
    - Minimum Property Standards at 24 CFR 200.925 or 200.926 (FHA)

New construction with the use of HOME funds must meet the following standards:

- **2003 International Energy Conservation Code**
- **Handicapped accessibility requirements, where applicable.**
- **New construction of rental housing must meet site and neighborhood standards at 24 CFR 893.6(b)**
- Also, one of the following:
    - **Local Code Requirements**
    - **Uniform Building Code (ICBO)**
    - **National Building Code (BOCA)**
    - **Standard Building Code (SBCCI)**

- **Council of American Building Officials one-or two-family code (CABO)**
- **Minimum Property Standards (FHA) at 24 CFR 200.925 (for multi-family) or 200.926 (for one- and two-unit dwellings)**

Acquisition of existing housing (no rehab or construction) must meet the following standards:

- **Applicable local housing quality standards and code requirements.**
- **If no local standards/codes apply, Section 8 HQS.**
- **Handicapped accessibility requirements, where applicable.**

Owners must maintain properties in accordance with property standards throughout the affordability period. The Department conducts periodic property inspections to insure continued compliance.

Housing 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 adaptations in the future.

The Department 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.

Long-Term Affordability

NAHTF-assisted rental units carry rent and occupancy restrictions for varying lengths of time, depending upon the average amount of NAHTF funds invested per NAHTF-assisted unit and the type of activity:

ACTIVITY	AVERAGE AMOUNT OF HOME FUNDS PER NAHTF-UNIT	MINIMUM AFFORDABILITY PERIOD
Rehabilitation or Acquisition of Existing Housing	<$15,000 per unit $15,000 - $40,000 per unit >$40,000 per unit	5 years 10 years 15 years
Refinance of Rehabilitation Project	Any $ amount	15 years
New Construction or Acquisition of New Housing	Any $ amount	20 years

NAHTF affordability periods are minimum requirements. The Department may establish longer terms of affordability.

If a shorter affordability period is desirable on a project that does not include refinancing or new construction, the Department and applicant can take steps to minimize the NAHTF per-unit subsidy.

- The NAHTF subsidy could be reduced and replaced with other funds that do not have long-term requirements
- The developer may choose to designate a higher number of NAHTF-assisted units than required by the "floor" in order to reduce the NAHTF investment per unit.

Example: The Department provided $100,000 in NAHTF funds for the $400,000 20-unit Excellent Housing Corporation rehabilitation project and required that five of the 20 units be designated NAHTF-assisted. Under this arrangement, Excellent Housing Corporation would be obligated to keep the development affordable for 10 years ($100,000 ÷ 5 = $20,000 NAHTF funds per unit requiring a 10-year affordability period). If Excellent Housing Corporation designates 10 of the units as NAHTF-assisted; the per-unit NAHTF investment will be reduced to $10,000 per-unit, requiring only a five-year affordability period.

Affordability restrictions remain in force regardless of transfer of ownership. At the Department's discretion, they may be terminated only upon foreclosure or transfer in lieu of foreclosure. The Department can require the repayment of NAHTF funds if the project does not meet rent and occupancy requirements through the affordability period.

Rent and Occupancy Requirements

Grantees must enforce rent and occupancy agreements through one of the following:

- Covenants running with the property
- Deed restrictions
- Other mechanisms approved by the Department and HUD

Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed-in-lieu of foreclosure.

<u>NAHTF rents:</u>

Every NAHTF-assisted unit is subject to rent limits designed to help make rents affordable to low income households.

- The rent limits on NAHTF projects are in most cases the rent limits established for the HOME program. The NAHTF contract clearly specifies the rent limits imposed upon each NAHTF-assisted unit in the project. Generally, rent limits are updated on an annual basis.
- Tenants must be given at least 30 days 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.
- NAHTF rents may decrease. While project rent levels are not required to decrease below the NAHTF rent limits in effect at the time of project commitment, decreasing NAHTF rents may reflect a change in market conditions that may force owners to reduce rents in order to maintain tenants.
- The Department may permit adjustments to the rent structure if the financial feasibility of the project is threatened. This is important to lenders providing financing to NAHTF-assisted projects.

There are three NAHTF rents used in the NAHTF program:

- High NAHTF Rents: The maximum amount an owner can collect per month on a “High” NAHTF-assisted unit is the current High HOME Rent Limit as published by the HOME Program
- Low NAHTF Rents: The maximum amount an owner can collect per month on a “Low” NAHTF-assisted unit is the current Low HOME Rent Limit as published by the HOME Program.
- Other NAHTF Rents: The maximum amount an owner can collect per month on an “Other” NAHTF-assisted unit is established on a per-project basis. For example the Department may restrict “Other” NAHTF-assisted units to the rent limits established for the Low Income Housing Tax Credit Program.

The HOME rent limits are kept current via a link on the Department's website. The limits as displayed look similar to the following:

# of bedrooms

		Efficiency	1	2	3	4	5	6
Logan County	LOW HOME RENT LIMIT	253	326	416	532	634	729	824
	HIGH HOME RENT LIMIT	253	326	416	532	634	729	824
	For Information Only:							
	FAIR MARKET RENT	253	326	416	532	634	729	824
	50 RENT LIMIT	422	452	543	628	700	773	845
	65 RENT LIMIT	530	569	684	782	853	923	993

Note: The Low HOME rent limits and the High HOME rent limits are the limits placed upon Low and High NAHTF-assisted units. The fair market rent, the 50 rent limit and the 65 rent limit are used by HUD to determine the HOME rent limits.

Understanding NAHTF Rent Limits

It is imperative that NAHTF grantees understand HOME rent limits as they apply to their project.

<u>HOME Rents and Utility Allowances</u>

The Department adopts HUD published Low and High HOME rents limits and therefore the Low and High NAHTF rent limits. HUD's calculation of Low and High HOME rents assumes the owner pays the utilities. If the tenant pays utilities, the maximum allowable rent that could be collected by the owner would be the applicable Low or High HOME rent minus a utility allowance. The Department approves utility allowances on a project-by-project basis based upon allowances prepared by local public housing authorities, local utility providers or via other methodologies. Utility adjustments proposed by grantees that differ from the utility allowance prepared by the local public housing authority must be supported by documentation. The HOME rent limits restrict the maximum total rent (minus the utility allowance) that can be received by project owners regardless of the amount of rental assistance provided to a tenant.

Example: A NAHTF-assisted rental project in Logan County has Low NAHTF one and two bedroom units and High NAHTF 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 owner is calculated for each unit:

	1 Bedroom High NAHTF Unit		**2 Bedroom High NAHTF Unit**
$326	High HOME Rent Limit	$416	High HOME Rent Limit
-$70	Utility Allowance	-$90	Utility Allowance
$256	Maximum Rent Owner May Collect	**$326**	Maximum Rent Owner May Collect

	1 Bedroom Low NAHTF Unit		2 Bedroom Low NAHTF Unit
$326	Low HOME Rent Limit	$416	Low HOME Rent Limit
-$70	Utility Allowance	-$90	Utility Allowance
$256	Maximum Rent Owner May Collect	$**326**	Maximum Rent Owner May Collect

<u>Low NAHTF Units and Project-Based Rental Subsidy</u>
The only instance when a Low or High NAHTF-assisted unit is not restricted to HOME rent limits is for a Low NAHTF unit in a project that receives federal or state <u>project-based</u> 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. **Note: this only applies to LOW NAHTF UNITS and the contractual income limits still apply.** However, tenant-based rental subsidy programs <u>do not</u> supersede Low NAHTF rent requirements.

<u>Implementing new NAHTF rent limits</u>
The Department will inform grantees of updated rent limits upon the Department's approval of new HUD-published limits (generally in the spring each year) or other rent limits for "Other" NAHTF-assisted units. However, tenants' rents should not be adjusted until their leases are renewed.

Income Eligibility Requirements for Owners

Owners may not refuse to lease NAHTF-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 tenant-based rental assistance program, because of the status of the prospective tenant as a holder of such certificate, voucher or comparable tenant-based rental assistance program document.

<u>Other NAHTF-assisted units</u>
The Department will establish in the NAHTF contract the income limitations on these units as a percentage of the area median income. The contract will also specify the rent limit restrictions on these units.

<u>High NAHTF-assisted units</u>
The Department, per the NAHTF Contract, will specify either that all initial tenants of High NAHTF-assisted units must have incomes at or below 60% of the area median income <u>**or**</u> have incomes at or below 80% of the area median income. In projects where initial tenants of High NAHTF-assisted units are restricted to 60% of the area median income, the NAHTF Contract may allow subsequent tenants to have incomes at or below 80% of the area median income or require subsequent tenants to also have incomes at or below 60% of the area median income.

The rents collected by the owner on High NAHTF-assisted units are restricted to the High HOME rent limits less tenant paid utilities per an approved utility allowance.

<u>Low NAHTF-assisted units</u>
The Department requires all projects with five or more NAHTF-assisted units to designate at least 20 percent of the NAHTF-assisted units as Low NAHTF units. Tenants must have incomes at or below 50% of the area median income to occupy Low NAHTF-assisted units. The

Department via the NAHTF Contract may require more than 20 percent of the NAHTF-assisted units to be Low NAHTF-assisted units.

The rents collected by the owner on Low NAHTF-assisted units are restricted to the Low HOME rent limits less tenant paid utilities per an approved utility allowance. The only exception is for Low NAHTF units in 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.

Income Eligibility Requirements for Grantees

The Department requires grantees 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. A detailed explanation of the Annual (Gross) Income definition can also be found in the "Technical Guide for Determining Income and Allowances for the HOME Program" on pages 11-31 of the publication.

The NAHTF Program allows grantees to use two forms of verification for the Annual (Gross) Income basis of determining income eligibility. These forms are third party verification and review of source documents.

Third Party Verification

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 grantee 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 grantee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.

Review of Documents

Source documents provided by the applicant may be more appropriate for certain types of income such as persons that are self-employed, and can be used as an alternative to the third party verification method. Source documents, such as wage statements, interest statements, unemployment compensation statements and income tax returns, etc. are reviewed to determine annual (gross) income.

Calculating Annual (Gross) Income
The Part 5 definition of annual income “inclusions” – types of income to be counted and “exclusions” – types of income that are not considered (income of minors, etc.) comes directly from 24 CFR PART 5.609.

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

Remember: Income eligibility is based on anticipated income. When collecting income verification documentation, property owners (or managers) must also consider any likely changes in income. For example, last year's tax return does not establish anticipated income, nor is it adequate source documentation.

Annual Recertification of Income

Because the NAHTF Program imposes occupancy restrictions over the length of the affordability period, owners 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 evaluation or at lease renewal. However, the owner may adopt an annual schedule and perform all verifications at the same time.

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

Methods of recertification
The NAHTF program allows two additional methods of income recertification, in addition to the method of collecting source documentation.

- One option is 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.
- Another option is 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.

Using alternative recertification methods
If the agency chooses to use either of the two alternative methods described above, owners are still required to collect full source documentation every sixth year of the tenants lease period

INCREASES IN TENANT INCOME
A tenant's income is likely to change over time. If these changes occur during the affordability

period, the project owner must take certain steps to maintain compliance with NAHTF rent and occupancy requirements.

- The project must maintain the correct number of Low, High and Other NAHTF rent units.
- Rents must be adjusted for tenants whose incomes rise above 80 percent of the area median income.
- Owners of projects assisted with NAHTF and Low Income Housing Tax Credits must comply with the specific requirements associated with combining these funding sources. (See additional information later in this chapter)

<u>Keeping the correct number of High and Low NAHTF rent units</u>
The owner should take the following steps to maintain the correct numbers of High and Low NAHTF rent units.

If the income of a tenant occupying a Low NAHTF rent unit increases, but ***does not exceed 80 percent*** of area median income, that unit becomes a High NAHTF rent unit. To replace the Low NAHTF rent unit, the owner must rent the next available comparable unit (for "floating" unit projects) or NAHTF-assisted unit (for "fixed" unit projects) to a very-low-income tenant (income at or below 50% of the area median income). Subject to the terms of the lease, the rent of the tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.

If a tenant's income **increases above 80 percent** of the area median income, the unit this tenant occupies is still considered to be a NAHTF unit, but the tenant's rent must be adjusted as described below.

<u>Adjusting Rent for Over-Income (Above 80% of AMI) Tenants in “Floating Units”</u>
Over-income tenants in NAHTF-assisted "floating" units must pay 30 percent of their <u>adjusted</u> income for rent and utilities; however, the rent may not exceed the market rent for comparable, unassisted units in the neighborhood. Rent may only be increased at lease renewal. In projects where the NAHTF units float, the next available unit in the project of comparable size or larger must be rented to a NAHTF-eligible household. The unit occupied by the over-income tenant is no longer considered NAHTF-assisted subject to NAHTF rules after a NAHTF-eligible household rents a comparable unit.

Note: In units that are financed with both NAHTF and Low Income Housing Tax Credits (LIHTCs), the LIHTC rules apply when a tenant’s income exceeds 80% of AMI. Under the LIHTC program, the tenant's rent is not adjusted, and the unit does not need to be replaced by another comparable unit until the tenant's income rises above 140 percent of the LIHTC program eligibility threshold.

<u>Adjusting Rent for Over-Income (Above 80% of AMI) Tenants in “Fixed Units”</u>
Over income tenants in NAHTF-assisted "fixed" units must pay 30 percent of their adjusted income for rent and utilities. Rent may only be increased at lease renewal. There is no rent cap for "fixed" units.

Computing adjusted income for purposes of adjusting rent for over-income tenants is derived by subtracting any of the following deductions (also called allowances) that apply to the household from a household's annual (gross) income:

- $480 for each dependent (includes any of the following family members who are not the head of household or spouse: persons under 18, handicapped/ disabled family members, or full-time students);
- Reasonable child care expenses (for children 12 and under) during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide child care;
- For elderly households (62 and older) only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance;
- Reasonable expenses in excess of three percent of annual income for the apparatus and care of a handicapped or disabled family member that enable that person or another person to work that are anticipated during the period for which annual income is computed;
- $400 for any elderly family (head of household or spouse is 62 or older or handicapped or disabled).

For a detailed discussion of calculating annual and adjusted income under Section 8 rules, see the HOME Model Series "Technical Guide for Determining Income and Allowances for the HOME Program." For up-to-date rules and requirements, consult the regulations at 24 CFR Part 5 (subpart F).

Leases

The lease between the owner and the tenant in a NAHTF-assisted property must be for at least one year, unless another lease length is mutually agreed upon by the tenant and the owner. The lease between the owner and tenant in a NAHTF-assisted property ***can not*** contain any of the following provisions either explicitly stated or implied:

- Agreement to be sued
  Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Treatment of property
  Agreement by the tenant that the owner 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 owner from responsibility
  Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Waiver of notice
  Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.

- Waiver of legal proceedings
  Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- 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 owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Owners may terminate tenancy or refuse to renew a lease only upon 30 days' written notice, and only for: serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state or local law; completion of the tenancy period for transitional housing or for other good cause that is clearly defined in the lease.

An owner of NAHTF-assisted rental housing must adopt written tenant selection policies and criteria that:

- Are consistent with the purpose of providing housing for very low-income and low-income families;
- Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
- Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
- Give prompt written notification to any rejected applicant of the grounds for any rejection.

Monitoring

The Department monitors rental projects for compliance throughout the affordability period including review of the annual Rental Housing Project Compliance report. Grantees must keep superb records to document compliance of all requirements including demonstrating that:

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

Record Keeping

As for all program activities, NAHTF requires documentation for rental projects to show that all program regulations have been met. Because of the long-term monitoring required for rental projects, however, record-keeping responsibilities are more extensive. This section briefly describes the record-keeping responsibilities associated with rental housing for the property owner.

Property owner records

One of the owner's responsibilities is to keep adequate records, to be able to demonstrate compliance with NAHTF requirements. The owner should keep both project and tenant records.

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

General rental housing records must be kept for three years after project completion. Tenant income and rent records must be kept for the most recent three years, until three years after the end of the affordability period.

Reporting

The Department requires that agencies submit a Rental Housing Project Compliance Report annually until the end of the project's affordability period. The form is available on the Department's website.

Program Design

The following design issues must be addressed prior to application.

An acceptable tenant selection process must include:

1) *Clearly defined Application Process* that includes (1) applicant eligibility, including income eligibility, (2) formal notification of selection and non-selection, (3) application acceptance dates, and (4) application review process
2) *Priority Ranking System for selection,* if applicable, must not contain discriminatory criteria such as preference for minorities or large families.
3) *Additional selection criteria,* if applicable, including criminal background check and credit reports. Include an explanation of when these criteria will be reviewed and objective measurements of how the information will be used.
4) *Waiting list management,* including if, how and where a waiting list will be maintained and how applicants on the list be notified of status.
5) *Conflict of Interest Clause*
6) *Grievance Procedures*
7) *Process for Amending the tenant selection process,* including language that amendments must be approved by the NDED Program Representative

An eligible Lease Agreement must contain the following information:

The lease agreement must contain the requirements related to (1) educational services the tenant must participate in and (2) tenant contributions, above and beyond rent, to be used at time of home purchase (if applicable) and how these funds will be managed. The lease agreement cannot contain many prohibited provisions either explicitly stated or implied. Look for a list of prohibited provisions earlier in this chapter.

If the project is a long-term lease/purchase program, homebuyer program guidelines must include the following:

1) *Requirements of the tenant*, including income eligibility requirements, monthly or annual contributions to a home purchase fund, participation in educational programs, required time period of tenancy required before purchase, etc.
2) *Management of the home purchase fund*, if the tenant is making contributions to a fund that will eventually be used to purchase a home, an explanation of who will manage the fund, how it will be managed and how the funds will be distributed if the tenant is not ready, willing or able to purchase an eligible property at the end of the allowable period.
3) *Conflict of Interest Clause*
4) *Grievance Procedures*
5) *Process for Amending Program Guidelines*, including language that amendments must be approved by the NDED Program Representative
6) *Types of assistance provided to purchase a home*, including NAHP funds and other sources such as employer contributions in an employer assisted housing program
7) *Amounts of assistance allowed for purchasing a home*, including NAHP funds and other sources such as employer contributions in an employer assisted housing program
8) *Eligible Properties*, including whether the tenant must by the occupied unit, the geographic boundaries where the properties must be located, etc.
9) *Methods for ensuring the affordability period* and *principle residence requirement* that include (1) project-wide recapture or resale provisions, (2) legal instruments to be used, (3) how rental project affordability period requirements will be maintained if the NAHP-assisted unit is purchased prior to the end of the NAHP affordability period.
10) *Appropriate Lead Based Paint Procedures*, if applicable.
11) *Relocation policy*, if applicable
12) *Rehabilitation process*, if applicable

Using the Low Income Housing Tax Credits with NAHTF Funds

There are essentially two ways NAHTF funds can be used with NIFA tax credits.

Loans

Loan: NAHTF funds may be provided in the form of a loan and can usually be counted in the eligible basis for the project. Contact NIFA for more information.

Grants

NAHTF funds may be provided in the form of a grant, but, they are usually not counted in the eligible basis for the project, and therefore do not contribute to the credits for which the project is eligible. Contact NIFA for more information.

Most Rental Projects are funded with several funding sources, each source having a set of restrictions. The following information is meant to help keep projects in compliance with the Low Income Housing Tax Credit Program, the Nebraska HOME Program and the NAHTF Program when two or more of these sources are combined in one project.

Occupancy Requirements

NIFA Tax Credit Program Rules	**Combining NIFA Tax Credits with HOME**	**Combining NIFA Tax Credits with NAHTF**
At least 20 percent of assisted units must be reserved for households with incomes at or below 50 percent of area median; **Or** 40 percent of the units must be reserved for households with incomes at or below 60 percent of area median income.	If HOME funds are provided at below the market interest rate, at least 40 percent of the units must be reserved for households with incomes at or below 50 percent of the area median income to qualify for the 9 percent credit. Otherwise, on projects with 5 or more HOME-assisted units at least 20 percent of the units must serve households with incomes at or below 50 percent of area median income (to meet HOME requirements).	On projects with 5 or more NAHTF-assisted units at least 20 percent of the units must serve households with incomes at or below 50 percent of area median income.

Rent Requirements

NIFA Tax Credit Program Rules	Combining NIFA Tax Credits with HOME	Combining NIFA Tax Credits with NAHTF
Rents for qualified units must not exceed the rent limit set for the 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 HOME-assisted units, rents cannot exceed either program limit. Low HOME rent units are subject to Low HOME rents and tax credit limits and High HOME rent units are subject to High HOME rents and tax credit limits.	For units to qualify as both tax credit and NAHTF-assisted units, rents cannot exceed either program limit. Low NAHTF rent units are subject to Low NAHTF rents and tax credit limits, High NAHTF rent units are subject to High NAHTF rents and tax credit limits, and Other NAHTF rent units are subject to Other NAHTF rents and tax credit rent limits.

Establishing Tenant Eligibility

NIFA Tax Credit Program Rules	Combining NIFA Tax Credits with HOME	Combining NIFA Tax Credits with NAHTF
Documentation --Tenants must provide acceptable documentation of income from a third party source. All sources of income are verified. *Definitions* --The tax credit program defines income using the Section 8 definition of annual (gross) income. *Asset Income* --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.	*Documentation* --Initial tenant eligibility documentation for both programs is the same. *Definitions* –The Department also requires the use of the Section 8 definition of income for HOME. *Asset Income* --Follow more stringent HOME rules and verify all asset income.	*Documentation* --Tenants must provide acceptable documentation of income from a third party source. All sources of income are verified. *Definitions* --The tax credit program defines income using the Section 8 definition of annual (gross) income. *Asset Income* --Follow more stringent NAHTF rules and verify all asset income.

Reexaminations of Income

NIFA Tax Credit Program Rules	**Combining NIFA Tax Credits with HOME**	**Combining NIFA Tax Credits with NAHTF**
Reexaminations are performed annually following the same procedures as at initial certification; however, an owner may request a waiver from NIFA for reexamination requirements if all units in the project are tax credit units.	Tax credit/ HOME projects may request waivers from NIFA in order to perform reexaminations similar to HOME. Otherwise, the project must follow the more stringent tax credit requirements.	Tax credit/NAHTF projects must follow the more stringent NIFA tax credit requirements.

Over-Income Tenants

NIFA Tax Credit Program Rules	**Combining NIFA Tax Credits with HOME**	**Combining NIFA Tax Credits with NAHTF**
Rent for over-income tenants remains restricted. An owner *may* increase an over-income tenants rent, but *only **after*** 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 owner to be eligible for the credit. "Over-income" is defined as above 140 percent of the project income limit (<u>not</u> 140 percent of the area median income).	HOME rules defer to tax credit rules --rent remains restricted. (In other words, in no case can the rent exceed limits set by the tax credit program).	NAHTF rules defer to tax credit rules – rent remains restricted. (In other words, in no case can the rent exceed limits set by the tax credit program).

Monitoring

NIFA Tax Credit Program Rules	**Combining NIFA Tax Credits with HOME**	**Combining NIFA Tax Credits with NAHTF**
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.	The Department and NIFA will each monitor according to their program requirements.	The Department and NIFA will each monitor according to their program requirements.

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 NAHTF-assisted units must meet NAHTF rent requirements. If a unit is being counted under both programs, the stricter rent limit applies.

- Low NAHTF rent units are subject to the lower of the Low HOME rent and the tax credit rent.
- High NAHTF rent units are subject to the lower of the High HOME rent and the tax credit rent.
- Other NAHTF rent units are subject to the lower of the Other NAHTF rent limits set-forth in the project contract and the tax credit rent.

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

- NAHTF allows the rent to be raised to the rental assistance program limit 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/ NAHTF-assisted unit, where the NAHTF unit is designated by the Department as a HOME-eligible match unit, the stricter HOME requirements would apply.
- In a joint tax credit/NAHTF-assisted unit, where the NAHTF unit is not designated by the Department as a HOME-eligible match unit, 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.

Establishing tenant eligibility

Both the NAHTF and tax credit programs require project owners 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.
- The Department requires the use of the Section 8 definition of annual (gross) income for NAHTF projects.

A difference between NAHTF and tax credit rules is that NAHTF 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 NAHTF requirements.

Reexaminations of tenant eligibility
The tax credit program does not allow alternative methods of tenant recertification.

Over-income tenants
The NAHTF and tax credit programs have slightly different approaches to over-income tenants. 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 NAHTF, the tenants are considered over-income if their income rises above 80 percent of area median income.

Further, unlike under NAHTF, the rent remains restricted under the tax credit program. An owner may increase an over-income tenant's rent, but only **after** 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 owner to be eligible for the credit. To resolve this conflict, the Department states that when funds from both programs are used on the same unit, the tax credit rules should be followed.

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 NAHTF and Other Local, State and Federal Subsidy Programs

NAHTF funds may be used with other subsidy programs, including but not limited to, Nebraska HOME, Lincoln and Omaha Community Development Block Grant and HOME 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 NAHTF 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.

Attachment 1

SROs AND GROUP HOUSING COMPARED

CATEGORY	SRO	GROUP
Description	Single-room occupancy units (SROs) are single-room dwelling units with either sanitary and/ or food preparation area in the unit. If project is new construction or reconstruction, it may have both. If acquisition or rehabilitation, not required to have sanitary and food preparation areas. May have common facilities. NOT student housing.	One unit with separate bedroom(s) and shared living, kitchen, dining, and/ or sanitary facilities. Occupied by two or more single persons or families. NOT student housing.
Maximum Subsidy	Based on zero-bedroom unit subsidy limit times number of NAHTF-assisted units; common area costs prorated based on percent of NAHTF-assisted units.	Based on number of bedrooms, including bedrooms of caretakers.
Targeting	All tenants of NAHTF-assisted units must be low-or very-low-income.	All tenants, excluding live-in service providers, must be low-income.

CATEGORY	SRO	GROUP
Rents	If the unit has neither food preparation nor sanitary facilities, or only one, the rent may not exceed 75 percent of the FMR for a zero-bedroom unit. The "lesser of" rule comparing the FMR to 30 percent of 65 percent of area median income and low HOME rents does not apply. If the unit has food and sanitary facilities, High and Low NAHTF rents apply. In projects with 5 or more units, 20% of the units should have Low NAHTF rents. Low NAHTF rents are defined for SROs as not more than 30 percent of the occupant's monthly adjusted income or not more than 30 percent of the gross income of a family at 50% of the area median income, adjusted for family size. High NAHTF rents apply to all other units. (They are defined, as for other projects, as the lesser of the FMR or 30% of 65% of area median income, adjusted for family size.)	Maximum rent based on appropriate FMR (based on number of bedrooms excluding rooms occupied by live-in service providers); each household pays proportionate share of rent. There is no Low NAHTF rent requirement.
Tenancy	Permanent and transitional rental housing.	Permanent and transitional rental housing.

Attachment 2

ELDER COTTAGE HOUSING OPPORTUNITY UNITS

Elder Cottage Housing Opportunity (ECHO) units are small, free-standing, barrier-free, energy- efficient, removable and designed to be installed adjacent to existing single-family dwellings.

- The owner of an ECHO unit must be the owner-occupant of the single-family host property on which the ECHO unit will be located, or a non-profit organization.
- During the affordability period, the tenant must be a low-income family and an elderly or disabled family as defined in 24 CFR 5.403.
- NAHTF rental housing restrictions apply, except for the following:
  - Only one ECHO unit may be provided per host property.
  - The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet NAHTF requirements.
  - The ECHO unit must meet the NAHTF affordability restrictions. If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:
    - Rent the unit to another eligible occupant on site;
    - Move the ECHO unit to another site for occupancy by an eligible occupant; or
    - If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the NAHTF funds in accordance with the Department’s recapture provisions.