CHAPTER 4 – HOMEBUYER ACTIVITIES

Chapter Overview

Overview of NAHTF Program Requirements

The chapter covers the kinds of NAHTF assistance that may be provided to homebuyers, eligibility criteria and long-term affordability. Homebuyers may use NAHTF funds for acquisition only, acquisition/rehabilitation or new construction of homes. Site improvements are also an eligible activity for the NAHTF. A summary of the key homebuyer rules and how to document compliance with the requirements of these rules is provided as Attachment 1.

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, NAHTF 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**

Eligible Activities

Homebuyer programs can be structured in any number of ways to encourage the acquisition, acquisition and rehabilitation, or the new construction of affordable homes. Program design will be guided mainly by community needs and the local housing market.

<u>Acquisition</u>

The grantee can help eligible homebuyers purchase affordable homes by providing downpayment or closing cost assistance, or by reducing the monthly carrying costs of a loan from a private lender.

This approach to homeownership is best used in areas where an adequate supply of housing exists and where a grant or loan can make housing affordable to low-income households.

Acquisition and Rehabilitation
NAHTF funds can also be used to fund rehabilitation activities. In areas where there is insufficient standard housing, the agency may want to incorporate a rehabilitation component into its homebuyer program. In this case, there are two acceptable approaches.

- The grantee might acquire and rehabilitate, or assist a developer to acquire and rehabilitate, substandard properties to be sold after rehabilitation to low-income purchasers.
- As an alternative, the grantee might provide assistance directly to the homebuyer to perform the rehabilitation after the purchase. In such programs, the grantee will often offer rehabilitation loans in addition to, or instead of, the downpayment and closing cost assistance discussed above under "acquisition."

New Construction
In areas where there is an insufficient supply of appropriate housing, the grantee may want to provide subsidies to stimulate construction of new housing.

The grantee may develop housing itself or may work directly with developers to construct this housing. Another option is to provide NAHTF funds to other organizations or individuals to contract for the construction.

Site Improvements
Site preparation and infrastructure necessary for the development of affordable housing is an allowable activity.

- Site preparation includes demolition, clearance and dirt work activities.
- Infrastructure includes sidewalks, utility connections, streets and sewer and water lines.

Qualifications regarding the funding of site improvements

- The Department would prefer to fund housing construction and direct homebuyer assistance rather than site improvements.
- The NAHTF used to fund site improvements must benefit only NAHTF-eligible beneficiaries (in other words those costs must be tied to NAHTF-eligible properties and figure into the assistance provided to produce affordable housing)
- Site improvements are never stand-alone activities. Thirty-six months following completion of site improvement activities, properties meeting NAHTF requirements must be constructed and occupied.

Lease-Purchase
A lease-purchase option may be used in conjunction with a homebuyer program.

Ownership must be conveyed to an eligible homebuyer within 36 months of signing the lease-purchase agreement, or within 42 months of project completion. If at the end of the 36-month period, the household occupying the lease-purchase unit is not eligible or able to purchase the unit, the agency has an additional six months to identify an eligible homebuyer to purchase the unit. If lease-purchase housing is not conveyed within 36 months of signing the lease purchase agreement or within 42 months of project completion, the project becomes a NAHTF rental project subject to NAHTF rental rules.

The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. Lease-purchase arrangements can assist households at the lower end of the income range by helping them to accumulate a downpayment while they build their "ownership skills."

Rental to Homeownership

NAHTF-assisted rental units may be converted to homeownership units with or without the use of additional NAHTF funds by having the owner of the rental units sell, donate or otherwise convey the units to the existing tenants.

If additional NAHTF funds are used to help the tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided.

If no additional NAHTF funds are used, the homeownership units are subject to the resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.

Forms of Financial Assistance

Generally, for homebuyer assistance programs, grantees will use the following forms of assistance:

- Grants;
- Deferred-payment loans; and
- Below-market-rate loans.

The pros and cons of the subsidy approaches are provided in Attachment 2.

In determining the forms of assistance, the agency should consider the particular needs of the program's target participants. The following list discusses alternative designs for homebuyer programs and the appropriate forms of assistance.

Downpayment and Closing-Cost Assistance

For many potential homebuyers, the biggest barrier to homeownership is the downpayment and closing costs. While they may have a steady income that would allow them to make monthly payments, they do not have the means to save for the upfront costs of purchasing a home. In these cases, NAHTF funds can be provided in the form of a grant or a deferred-payment loan. When deciding whether to use grants or deferred-payment loans, consider the factors listed in Attachment 2.

Gap Financing
Other homebuyers may have a steady income that is insufficient to cover the total monthly payment. In this case, NAHTF funds can be used to reduce monthly carrying costs by providing gap financing.

- The most efficient way to reduce the size of the monthly payment is to provide the homebuyer a grant or a loan (deferred-payment or below-market interest) to reduce the principal amount that he or she must borrow. (However, the grantee may also consider an "interest buydown" --providing funds directly to the lender to reduce the interest rate on the borrower's loan.)
- The gap financing, if provided as a loan, can be paid in small monthly installments (for a below-market-rate loan) or at the sale of the property (if a deferred-payment loan).

Development Subsidy
Another way to reduce the homebuyer's monthly housing costs is to use NAHTF funds to reduce the gap between the cost to develop housing and the market price. If the NAHTF program provides a developer a subsidy, the developer can then offer the home at a lower sales price that presents a lower burden to low-income homebuyers. The development subsidy is generally a grant to the developer.

Eligible Costs

Hard Costs

- Acquisition of land 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 investigations
- Builders' or developers' fees
- Affirmative marketing and marketing costs
- Homebuyer counseling provided to purchasers of NAHTF-assisted housing

- Management fees
- Fees paid to real estate agents

Relocation Costs

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

Eligible Property Types

Eligible property types include any property that will serve as the purchaser's principal residence, including:

- A one-unit single-family property.
- A two-to-four-unit single-family property. If NAHTF funds are used to assist a purchaser to acquire one unit in a two-to-four-unit rental property and that unit will be the principal residence of the purchaser, the long-term affordability requirements apply to the assisted ownership unit only.
- A condominium unit.
- A manufactured home. At the time of project completion, the manufactured housing must be connected to permanent utility hook-ups and must be located on land that is owned by the manufactured housing unit owner.

The Nebraska Affordable Housing Program considers a Manufactured Home to be a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, and is taxed as real property.

The Nebraska Affordable Housing Program considers a Mobile Home to be a housing unit constructed off-site that does not meet the definition of a Manufactured Home.

Maximum Property Value

To use NAHTF funds, the value of the NAHTF assisted property must not exceed 95 percent of the median purchase price for the area, as published by HUD. The figures published by FHA for its 203(b) program had been used for this number; however, with the passing of HERA and the Economic Stimulus Act, these numbers now exceed those limits permissible under the HOME statute. In early February 2008, FHA issued Section 203(b) mortgage limits based upon the methodology that existed before the Economic Stimulus Act and HERA became law. Grantees may continue to use these February 2008 Section 203(b) mortgage limits as the purchase price or after-rehabilitation value limit for their homeownership activities, or may adopt the actual 95 percent of median sales price for their area. A link to the current limits is provided at the Department's website.

Acquisition Only
In the case of property that does not require rehabilitation, the sales price of the NAHTF property to be acquired by a homebuyer may not have a value that exceeds the applicable pre-stimulus 203(b) limit or 95 percent limit.

Acquisition and Rehabilitation
If rehabilitation is required, the value of the property ***after rehabilitation*** may not exceed the applicable pre-stimulus 203(b) limit or 95 percent limit. The after-rehabilitation value estimate must be completed prior to investment of NAHTF funds.

Determining After-Rehabilitation Value

The process for determining the after-rehabilitation value for a NAHTF-assisted property is the same for properties rehabilitated by the existing homeowner as it is for properties purchased and rehabilitated by a new homebuyer. Grantees must use a reasonable method to determine property value. Acceptable methods include:

- An estimate of value performed by the grantee;
- An appraisal performed by a licensed fee appraiser; or
- A tax assessment of a comparable, standard property, if current and computed for 100 percent of the after-rehabilitation value.

These methods are discussed further in Chapter 3 - Homeowner Rehabilitation, under the section on "Maximum Property Value."

Property Standards

As with all NAHTF-assisted properties, homebuyer properties must meet certain written standards. This section discusses these standards briefly.

Acquisition
If no rehabilitation is planned or if construction work began prior to the submittal of the project's application to the Department, the housing acquired must meet the Department's Rehabilitation Standards.

Acquisition and Rehabilitation
Housing that is being rehabilitated after the submittal of the project's application to the Department must meet the Department's Rehabilitation 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.

New construction
Housing that is being constructed after the submittal of the project's application to the Department 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 2003 International Energy Conservation Code.

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

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:

- No-step/zero grade entrance with a 36" door into the unit's main floor (at least one).
- Minimum 32" clear space opening in interior doorways.
- Minimum 36" wide hallways.
- First floor bathroom which allows for wheelchair access (while maintaining privacy).
- Reinforcement in bathroom walls to permit future installation of grab bars.
- Modification in location of light switches, electrical outlets and environmental controls.

Manufactured housing
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.

Grantees providing NAHTF 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.

Manufactured housing that is rehabilitated with NAHTF funds must meet the requirements outlined above that apply to all housing constructed or rehabilitated with NAHTF funds.

Timing
All codes and standards must be met at the time of occupancy, except when the project involves acquisition and rehabilitation by the homebuyer. If the assisted homeowner is acquiring and rehabilitating a home with NAHTF funds:

- The grantee must inspect the property prior to occupancy for health and safety defects. The property must be free from any defects that pose a danger to the health and safety of occupants before occupancy and not later than six months after property transfer.

- The grantee must inspect the property again at project completion. The property must meet the Department's Rehabilitation Standards and local codes and ordinances (or a model code if no local code) at project completion, and within two years of property transfer to the owner.

Lead-Based Paint

HUD's new consolidated Federal lead-based paint regulation took affect September 15, 2000. This regulation makes several important changes in the requirements for federal community development programs that fund housing. The Department requires all homebuyer programs to incorporate the HUD regulation on controlling lead-based paint hazards in housing receiving federal-assistance (24 CFR Part 35), unless the grantee requests and approves an amended version of these regulations on a project-by-project basis (see Chapter 2 – Administrative Overview for further information). Subparts J and K of the regulation provides guidance on meeting lead-based paint requirements for homebuyer assistance programs.

The Applicant/Beneficiary

To be eligible for NAHTF funds, the prospective purchaser must:

- Be low-income; that is, with an annual (gross) income that does not exceed 120 percent of median for the area; and
- Occupy the property as a principal residence.

Income Eligibility Requirements

The purchasing household must be low-income at either:

- In the case of a contract to purchase existing housing, at the time of purchase;
- In the case of a contract to purchase housing to be constructed, at the time the contract is signed; and
- In the case of a lease-purchase agreement (for existing housing or housing to be constructed), at the time the lease-purchase agreement is signed.

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.

<u>Third Party Verification</u>

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 qualifications must be completed in accordance with the timeframes outlined above. Income need not be reexamined at the time NAHTF assistance is actually provided unless more than six months have elapsed since the initial determination.

Other Eligibility Requirements

Ownership
The NAHTF program requires ownership of the property using one of the approved forms described below. Title insurance must be purchased for all properties assisted unless a request is made and the Department approves another method of ownership verification. Families or individuals own the property if they:

- Have fee simple title to the property; or
- Maintain a 99-year leasehold interest in the property; or
- Own a condominium; or
- Maintain an equivalent form of ownership approved by the Department.

The ownership interest may be subject only to the following:

- Mortgages, deeds of trust or other debt instruments approved by the Department; or

- Any other encumbrances or restrictions that do not impair the marketability of the ownership interest, other than the NAHTF Program restrictions on resale.

<u>Principal residence</u>
Purchasers must occupy the properties as their principal residence. These stipulations apply for a principal residence:

- A deed restriction or covenant running with the land should incorporate this requirement.
- The loan documents should also incorporate this requirement.
- Temporary subleases are not allowed (exceptions can be made for military families).
- Loan default and subsequent foreclosure negates the principal residence limitation.

Long-Term Affordability

For homebuyers, the monthly housing costs (principal, interest, property taxes and insurance, known as "PITI") do not need to meet initial affordability (e.g., 30 percent of annual (gross) income). Moreover, the homeowner's PITI need not remain below a fixed percentage of his or her income over time.

However, the NAHTF program ***does*** set affordability periods that relate to the resale of the property. These periods are based on the amount of NAHTF funds, or the amount of direct subsidy, provided for the property (see table below). How the affordability period affects the resale of the property is described in the section titled "Recapture/ Resale. "

NAHTF Funds Provided	Affordability Period
<$15,000	5 years
$15,000 - $40,000	10 years
>$40,000	15 years

Recapture/Resale

The Department requires grantees to define in their program guidelines the method that will control the resale of homebuyer property. There are two options allowed by the NAHTF program – resale and recapture. Grantees must specify the option to be used in their homebuyer program or explain the circumstances that will dictate the use of a particular option on a property. The option must be specified in the approved homebuyer program guidelines and communicated to the homebuyer before any assistance is provided to the homebuyer. The grantee cannot allow the homebuyer to select the option.

In order to discuss the two options, it helps to understand several terms:

Direct subsidy: A direct subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise subsidizes the purchase (e. g., downpayment or closing cost assistance, subordinate financing).

Development subsidy: A development subsidy is the difference between the cost to develop housing and the market price. For example, the grantee might provide a $50,000 construction loan to a developer. The appraised value after construction will be $45,000 because of neighborhood and market conditions. The $5,000 difference between the $45,000 sale price and

$50,000 construction loan is not repaid to the grantee and represents a development subsidy provided to the developer. While the subsidy does not go directly to the homebuyer, it helps make development of an affordable home feasible.

Homebuyer investment: The homebuyer's investment consists of the portion of initial downpayment paid by the homebuyer combined with the value of any capital improvements made with the homebuyer's funds.

Net proceeds: The net proceeds of a sale are the sales price minus closing costs and any non-NAHTF loan repayments.

The Recapture Option

This is a mechanism to recapture all or a portion of the direct NAHTF subsidy if the homebuyer assisted with NAHTF funds decides to sell the house ***within the affordability period*** at whatever price the market will bear. The homebuyer may sell the property to any willing buyer.

- The sale of the property during the affordability period triggers repayment of the direct NAHTF subsidy that the buyer received when he/she originally purchased the home.

Example: Mrs. James agrees to buy her first home for $50,000, and her lender, Citywide Federal, requires a 10 percent ($ 5,000) downpayment. Since Mrs. James is low-income and has qualified for private financing, the city's NAHTF Program agrees to provide a $4,000 deferred-payment loan --$3,000 for downpayment assistance and $1,000 to help with closing costs. The $4,000 loan will be subject to recapture should Mrs. James sell her property during the five-year period of affordability.

The grantee may require full or partial repayment of the direct NAHTF subsidy when resale occurs during the affordability period. The amount to be repaid can be reduced using the following alternatives (the repayment alternative must be specified in the grantee’s program guidelines):

Forgiveness: The grantee may decide to forgive part or the entire direct NAHTF subsidy, either to compensate for uncertain market conditions (for example, to encourage families to move into a transitional neighborhood), or to provide protection to the homebuyer in the event that the sale proceeds are insufficient to repay the NAHTF subsidy and the homebuyer's investment.

- The decision to forgive must be made as part of the homebuyer program design process and spelled out in the program guidelines, not on a case-by-case basis.
- The grantee must make the conditions for forgiveness clear to the homebuyer at the time of purchase.
- Forgiveness must be tied to the length of time the homebuyer has occupied the home in relation to the period of affordability (that is, the grantee would forgive 50 percent of the subsidy amount for an owner who sold the home half-way through the period of affordability).

Example: Mrs. James, whose $4,000 direct NAHTF subsidy triggered a five-year affordability period, decides to sell at the end of year two. Two-fifths, or $1,600, of her deferred payment loan is forgiven, resulting in a loan balance of $2,400 to be repaid from the net proceeds of the sale.

Sharing of net proceeds: When the net proceeds are insufficient to repay the direct NAHTF subsidy and the homebuyer's investment, the net proceeds may be shared in either of two ways:

- *Option #1:* Recapture of the NAHTF funds may be based on the ratio of the NAHTF subsidy to the sum of the homeowner's investment (downpayment and any capital improvement investment made by the owner since purchase), plus the NAHTF subsidy.

[NAHTF Subsidy/NAHTF Subsidy + Homeowner Investment] x Net Proceeds = NAHTF Recapture

Example: Mrs. James invested $3,000 in her home, including a $2,000 downpayment and $1,000 in closing costs. When she sells the house at the end of year two, the net proceeds are $5,000. The amount of direct NAHTF subsidy to be recaptured equals:

[$4,000/$4,000 + $3,000] x $5,000 = $2,857

Mrs. James receives the balance of the proceeds, or $2,143 ($ 5,000 -$2,857)

- *Option #2:* The homebuyer's investment may be repaid in full before any NAHTF funds are recaptured. The grantee may choose to use the available proceeds from the resale to repay the homeowner's investment first. The NAHTF subsidy is then repaid to the extent that proceeds are available.

Example: From the $5,000 net proceeds, Mrs. James receives her entire investment of $3,000 back and the grantee receives $2,000, or one-half of its investment.

Excess proceeds: Since net proceeds may exceed the amount necessary to repay both the homeowners investment and the NAHTF subsidy, grantees must plan in their program designs for how excess proceeds would be distributed. Excess proceeds may be paid to the homeowner, retained by the grantee, or shared by both parties.

When recapture is not an option: Development subsidies are not subject to recapture. Therefore, the recapture option may not be used for properties that receive development subsidies only (that is, no direct subsidy of $1,000 or greater to the homebuyer). Also, if the agency provides the NAHTF subsidy in the form of a grant the recapture option is not an option. These properties are required to meet the resale requirements discussed below.

<u>The Resale Option</u>
This option ensures that the NAHTF-assisted unit remains affordable over the entire affordability term.

If a grantee is using the resale option, described in their program's guidelines, the sale of a NAHTF-assisted unit sold during the affordability period must meet the following criteria:

- The new purchaser must be low-income, meeting the NAHTF Program definition, and occupy the property as the family's principal residence.
- The sales price must be "affordable" to the new purchaser. Affordable is defined by the grantee in the program guidelines; some define it as a maximum percentage of the purchaser's income that can be used to pay the fixed costs of owning a home (that is, loan payments of principal and interest, taxes and insurance, the sum of which is called PITI in the lending industry).

Example: The City of Clarendon has implemented the resale option for its homebuyer program. It has chosen to define affordability for a subsequent homebuyer as PITI, which does not exceed 32 percent of annual (gross) income.

- The original homebuyer, now the home seller, must receive a "fair return" on his or her investment. Fair return is also defined by the grantee.

Example: The City of Clarendon has defined a fair return as the return of the homebuyer's initial investment during the affordability period. Program managers considered allowing the homebuyer to keep part of any appreciation that might accrue, but decided against it in hopes of creating a strong incentive to retain ownership for the duration of the affordability period.

Grantees must use deed restrictions, land covenants or other similar legal mechanisms to enforce these resale restrictions.

Enforcement of the recapture or resale options: Attachment 3 shows the legal instruments that can be used to meet the requirements of the recapture or resale restrictions.

<u>Selecting an Appropriate Recapture/Resale Method</u>
Grantees may use either the recapture option or the resale option, or both, to meet the resale requirements of the NAHTF Program. However, the options and the criteria for use must be specified in the program guidelines approved by the Department. The option can not be selected by the homebuyer. The homebuyer must be informed prior to assistance as to the particulars of the resale or recapture method the grantee is using.

Recapture option: The recapture option provides grantees and homebuyers with maximum flexibility.

- The homebuyer can resell the property on the open market to any willing buyer at whatever price the market will bear.
- Lenders are generally comfortable with the recapture option, since it does not restrict or affect the resale transaction until the lender's loan has been repaid.
- The grantee can tailor the level of the homebuyer's risk to market conditions.

Example: Property values for single-family homes in the City of Clarendon are barely keeping pace with inflation. To encourage participation in the City's NAHTF homebuyer program, the City is offering homebuyers who sell during the period of affordability guaranteed recovery -- to *the extent that net proceeds are available -- of their investment in the property before any direct NAHTF subsidy funds are recaptured.*

In contrast, the County of Kirk has seen strong growth and increasing property values in many areas. The County has structured its recapture provisions to create an incentive for homebuyers to stay in their properties by offering to forgive the NAHTF subsidy over the period of affordability. Since it is possible that net proceeds will exceed the amount necessary to repay the homebuyer's investment and the NAHTF Program, the County has specified that the NAHTF Program will receive 25 percent of any additional proceeds that remain after both the homeowner and the County have recaptured their initial contributions.

- The recapture of NAHTF funds can be an important source of funds for the grantee if they have been approved by the Department to use recaptured funds.
- The recapture option is relatively easy to administer, since the agency's role is limited to ensuring that funds are disbursed appropriately at settlement.

Recapture cannot be used when: (1) no direct NAHTF subsidy of $1,000 or greater is provided to the homebuyer (i.e., development subsidy only) or (2) when the direct assistance is provided as a grant.

Resale option: Using the resale option enables grantees to control the affordability of NAHTF-assisted properties over time.

- Used in rapidly appreciating neighborhoods or communities, the resale option ensures that the price of the property remains affordable to low-income buyers for the duration of the period of affordability. If additional NAHTF funds are invested in the property at resale, the affordability period begins anew.

Example: Mr. and Mrs. Chen's homebuyer loan has a 10-year period of affordability. During year eight, Mr. and Mrs. Chen decide to sell their home, and the NAHTF Program provides the new buyer with a $5,000 second mortgage for downpayment and closing cost assistance. The new loan carries a five-year affordability period. The affordability period has effectively been extended to 13 years.

- Homebuyers may have difficulty understanding the implications of the resale option, or may view the requirement for the resale price to be affordable as an unreasonable constraint on their ability to profit from the transaction.
- The resale option is more complex to administer than the recapture option and requires a greater level of effort to enforce.

What is marketable: Ultimately, agencies must be concerned with which option is marketable to potential homebuyers, since a homeownership program needs applicants to be successful.

Implementing a Homebuyer Program

Program Guidelines

Homebuyer Program Guidelines must contain the following information:

1) Clearly defined Application Process that includes
   a) applicant eligibility, including income eligibility. Persons assisted with NAHTF homebuyer funds must have incomes at or below 120% of the area median income. The Annual (Gross) Income definition found at 24 CFR 5.609 must be included in the guidelines;
   b) formal notification of selection and non-selection;
   c) application acceptance dates; and
   d) 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) Conflict of Interest Clause
4) Grievance Procedures
5) Process for Amending Program Guidelines, including language that amendments must be approved by the Department Program Representative
6) Types of assistance provided, including NAHTF funds and other sources.
7) Amounts of assistance allowed, including NAHTF funds and other sources. The NAHTF financial assistance per unit cannot exceed the Maximum per unit NAHTF Subsidy. Do not include general administration in your per unit costs for this calculation.
8) Eligible Properties, including the geographic boundaries where the properties must be located. Address how all programs will comply with HUD's lead-based paint regulation requirements. Address how all units assisted with NAHTF funds will meet the Department's Rehabilitation Standards. The maximum purchase price or after-rehab value will not exceed the 2008 pre-stimulus Section 203(b) Single Family Mortgage Limit or 95 percent of median sales price limit.
9) Affordability Period. The first buyer and subsequent buyers (unless recapture provisions are used) must occupy property purchased by a new homebuyer as a principal residence for the affordability period, which will be at least 5 years from the date that NAHTF funds are invested in the property. Please state the required affordability period for your project in your answer. Renting a unit is not permitted unless the tenant is part of a short-term lease/purchase program in which the unit will be purchased within 36 months.
10) Methods for ensuring the affordability period and principle residence requirement that include (1) program-wide recapture or resale provisions and (2) legal instruments to be used. Deed restrictions or other enforcement mechanisms must reflect this occupancy requirement.
11) Appropriate Lead Based Paint Procedures, this applies to all programs.
12) Relocation policy, if applicable
13) Rehabilitation process, if applicable. Purchase/rehabilitate/resale programs and Acquisition/Rehabilitation Programs must include rehabilitation procedures, including LBP procedures, in the guidelines. Address how all units assisted with NAHTF funds will meet Department Rehabilitation Standards where homes will be rehabilitated.
14) Newly constructed housing must meet or exceed the 2003 International Energy Conservation Code and the Nebraska Energy Office must approve building specifications.

15) Provide a statement that assures all programs will be in compliance with the Fair Housing Act, including a narrative with a specific reference to all areas of the Fair Housing Act applicable to the project.
16) Marketing procedures that include marketing to local or regional residents and tenants of public housing and manufactured housing, other families assisted by public housing agencies, and households identified to be potentially eligible but least likely to apply.

Beneficiaries
In order to be eligible, an applicant must be income-qualified, credit-worthy and a homebuyer.

Procedures
Grantees must develop guidelines regarding conflict of interest. For example, no member of the local government or nonprofit organization who exercises decision-making functions in the implementation of a homeownership program shall benefit from this program. Also, a statement of disclosure may be required by an applicant.

Applicants receiving assistance under the homeownership program should consist exclusively of low-income persons. Low-income persons are defined as multi- or single-person families having incomes equal to or less than the income limits for their resident county. The income limits as published by HUD are determined for each Nebraska county on the higher of either: 120% of the median income of the county, or 120% of the median income of the entire non-metropolitan area of the state. This income is anticipated annual income.

Property
The property can either be a newly constructed unit or an existing "for sale" property. Existing sales property must meet the Department's Rehabilitation Standards.

Homebuyer Responsibilities
A homebuyer must understand such issues as insurance, taxes, maintenance and homeowner counseling. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the owner-occupant should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards will be required for the full replacement value of the house. Grantees should develop procedures to verify that the homeowner is paying taxes and insurance annually. Homeowner counseling for first-time homebuyers is often essential in homeownership programs

Maintenance
Guidelines should specify upkeep and maintenance standards of the property expected of the homeowner. The property should be adequately maintained during the life of the loan. At a minimum, Section 8 HUD Housing Quality Standards should be used as guidelines for such maintenance.

Applicant Selection
Applicants can be chosen on a first-come, first-serve basis or a priority system may be developed. Grantees should use their discretion in developing a priority system.

Complaint Procedures

The development of appeal or grievances procedures for those applicants that have been rejected is important in the implementation of homeownership programs. An example of an appeal procedure is an applicant's request, in writing for reconsideration and the reason for the request. A committee (created for this purpose) could then respond to this request and obtain more information from the lender or insurance underwriter if the denial is from them.

Fair Housing

The lenders, grantees and other participants in the homeownership program must adhere to laws which prohibit discrimination in housing. An application selection system must not discriminate against individuals or families based on race, color, religion, sex, age, handicap or national origin. A special outreach effort should be implemented to attract minorities and other protected classes in the homebuyer pool to join the homeownership program.

Distribution Of Funds

Prior to loan closing a title search shall be conducted and title insurance purchased. Generally, the grantee and the first mortgage lender conduct a loan closing with the homebuyer. This procedure consists of reviewing all documents involved in the loan (eg. mortgages or notes). Normally, a local lender will be responsible for scheduling both the permanent and homeownership program loan closings with the borrower, participating agency and appointed attorney. The lender shall facilitate and coordinate the closing process with all participants. The Right of Rescission to the borrower will be forwarded by the lender within a designated time period (eg. 4 days). Once the borrower receives the Notice of Right of Rescission regarding the homeownership program loan, the attorney will prepare and have the homeownership program borrower execute the promissory note and deed of trust. The attorney will then file the deed of trust and promissory note at the Registrar of Deeds Office. During the homeownership program loan close-out, the local lender shall transmit a copy of the borrower's entire application and closing documents, including income to the nonprofit corporation. The grantee shall maintain and keep all applications, as well as all other required documents, records and other evidence in conformance with NAHTF regulations.

Attachment 1

SUMMARY OF KEY HOMEBUYER RULES & HOW TO DOCUMENT

Eligible Participants

	Key NAHTF Requirement	Documentation
Owner Income	Gross income ≤ 120 percent of median income based on the upcoming 12 months. Gross income is defined by 24 CFR Part 5.	Completed application in the client file. Source documentation (wage statements, interest statements) in the client file.
Owner Occupancy	Applicant must purchase property and maintain it as his/her principal residence.	Client must sign a clause on the application form certifying that the property is the principal residence.
Ownership of Property	Applicant must obtain ownership of the property through: • Fee simple title, • 99-year leasehold interest, or • Other form approved by the Department	Title insurance documentation in client file. Copy of deed or other approved ownership document in the client file.

Eligible Property

	Key NAHTF Requirement	Documentation
Property Type	Eligible property types include: • One-to-four unit property; • Condominium unit; or • Manufactured or mobile home	If two-to-four units, indicate status of non-owner-occupied units the application.
Property Location	Property must be located in program area as designated in approved program guidelines.	Client application must contain address.

Eligible Property

	Key NAHTF Requirement	Documentation
NAHTF Minimum & Maximum Subsidy	A minimum of $1,000 in NAHTF funds must be invested in each assisted unit. Assistance must not exceed NAHTF subsidy limit on a unit-by-unit basis.	Maintain records demonstrating that each unit assisted received at least $1,000 in NAHTF assistance but not more than the maximum NAHTF subsidy allowed.
Property Value	Sales price must not exceed applicable pre-stimulus 203(b) limit or 95 percent of area median sales price limit. If rehabilitating property, after rehabilitation value must not exceed the applicable pre-stimulus 203(b) limit or 95 percent of area median sales price limit.	Document method for determining value in file. Copy of sales price or value estimate in file.
Property Standards	If acquisition only, property must meet the Department’s Rehabilitation Standards. If rehabilitation, property must be free of safety and health hazards prior to occupancy or within 6 months of property transfer, whichever is sooner. Also, if rehabilitation, property must meet Department’s Rehabilitation Standards and applicable codes (local codes/standards or one of 3 nationally accepted codes) within 6 months of transfer. New construction must meet local codes/ standards or one of the nationally accepted codes and the 2003 International Energy Conservation Code.	Document local code or model code used. Maintain written rehab standards in program files. Include inspection report or certification by inspector in client file. Keep inspection checklist and work write-up in client file. Checklist indicating compliance with 2003 International Energy Conservation Code requirements for new construction projects.

Eligible Activities	Acquisition w/ or w/o rehabilitation and construction	Document all expenditures.

Long Term Affordability

	Key NAHTF Requirement	Documentation
Affordability Period Recapture/Resale	Property must be subject to either resale or recapture provisions for the period of affordability. • Resale: future sale of property must be to and affordable to low-income buyer. • Recapture: portion or all of assistance to buyer must be recaptured at time of sale.	Resale: mortgage and/or note and deed restriction or covenant restricting future sales. Recapture: mortgage or note showing formula by which funds will be recaptured.

Attachment 2

ADVANTAGES AND DISADVANTAGES OF VARIOUS SUBSIDY APPROACHES

SUBSIDY	PROS	CONS
Grants	• Simple to administer • Easy to explain • Often necessary, especially to reach very-low-income	• Expensive • No repayment possible • May be hard to "sell" politically • May create expectations of additional free assistance in the future • Cannot recapture
Deferred-Payment Loans	• Simple to administer • Easy to explain • Helpful, since no monthly payment required • Flexible, allows for repayment • Helps prevent windfall gain to borrower if property values increase significantly	• No payment received on a monthly basis • Might never be repaid if property has low value or future appreciation likely to be limited
Below-Market Rate Loans	• Provides immediate repayment	• Time-consuming and staff-intensive to process loan requests • Requires underwriting expertise • Loans must be serviced after origination

ENFORCING RECAPTURE OR RESALE RESTRICTIONS

Requirement	Recapture	Resale
Principal residence	Deed restriction or land covenant, affidavit, lien	Deed restriction or land covenant, affidavit, lien
Affordability period	Lien	Deed restriction or land covenant, lien
Repayment of NAHTF subsidy	Lien	Deed restriction or land covenant, lien
Fair Return to owner	N/A	Deed restriction or land covenant, lien
Affordable resale price	N/A	Deed restriction or land covenant, sales contract
Subsequent buyer's income	N/A	Verification, deed restriction or land covenant

Lien is defined as a recorded deed of trust or mortgage securing repayment of the NAHTF subsidy.