

ORDINANCE NO. \_\_\_\_\_

BILL NO. 67 (2018)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR  
OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL  
AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT  
CORPORATION FOR THE HOUSING TRUST FUND PROGRAM

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:


SECTION 1. Purpose. The Hawaii Housing Finance and Development Corporation ("HHFDC"), has awarded to the County of Maui ("County"), as a Subgrantee, \$1,425,000.00 of Housing Trust Fund Program ("HTF") funds. The HTF funds require the County to enter into a Housing Trust Fund Program Subgrantee Agreement, attached hereto and incorporated herein as Exhibit "1". Said Agreement contains certain terms that may create a financial obligation upon the County.

Section 2.20.020, Maui County Code ("MCC"), provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Authorization. The Council hereby authorizes the Mayor or his authorized representative to execute the Agreement, and any further amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY DEOKA  
Deputy Corporation Counsel  
County of Maui  
2018-0014  
2018-05-29 Ordinance IGA

**FY 2017  
HOUSING TRUST FUND PROGRAM  
SUBGRANTEE AGREEMENT**

**Federal Grant Details:**

- i. Federal Award Identification (Federal Grant Name):  
HOUSING TRUST FUND PROGRAM
- ii. Subgrantee Name: COUNTY OF MAUI (“County”)
- iii. Subgrantee Unique Entity Identifier: (DUNS Number) 077680155
- iv. Federal Award Identification Number (FAIN) – F17-SG150100
- v. Date of Federal Award to HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION by HUD: August 28, 2017
- vi. Subaward Period of Performance: HTF Grant Fund Expenditures
  - a. Start Date:
  - b. End Date: January 31, 2022
- vii. Amount of Current Federal Funds Obligated and committed by this action by the HHFDC to the Subgrantee: \$1,425,000.00
- viii. Total Amount of Federal Funds Obligated to the Subgrantee by the HHFDC including the current obligation: \$1,425,000.00
- ix. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA):

HTF ACTIVITY	FY2017 HTF FUNDS
Project	\$1,350,000.00
Program Administration	\$75,000.00
Total HTF Funds	\$1,425,000.00

- x. Name of:
  - a. Federal awarding agency: U.S. Department of Housing and Urban Development
  - b. Pass-through Entity: Hawaii Housing Finance and Development Corporation
  - c. Contact Information for Awarding Official of the Pass-through  
Entity: Craig K. Hirai, Executive Director  
677 Queen Street, Suite 300  
Honolulu, HI 96813

**EXHIBIT "1**

- xi. CFDA Number and Name (pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement): 14.275 - Housing Trust Fund
- xii. Identification of whether the award is R&D: N/A
- xiii. Indirect Cost Rate for the Federal Award (including if the de minimis rate is charged Indirect (F&A) costs): N/A

A. DATE OF THIS AGREEMENT:

B. PARTIES

GRANTEE:

Name: HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HHFDC")

Address: 677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

SUBGRANTEE:

Name: COUNTY OF MAUI ("County")

Address: Housing Division  
Department of Housing & Human Concerns  
35 Lunalilo Street, Suite 102  
Wailuku, Hawaii 96793

C. WORDS USED IN THIS AGREEMENT

1. "Agreement" means this Subgrantee Agreement and any amendments or supplements hereto.
2. "CFR" means the Code of Federal Regulations.
3. "24 CFR, Part 93" means part 93 of title 24 of the CFR containing the regulations for the Housing Trust Fund Program.
4. "Commitment" means the Grantee or Subgrantee has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible Recipient for a project that meets the definition of "Commit to a Specific Local Project".

5. "Commit to a Specific Local Project" means
- (i) If the project consists of rehabilitation or new construction (with or without acquisition) the Grantee or Subgrantee and eligible Recipient have executed a written legally binding agreement under which HTF assistance will be provided to the Recipient for an identifiable project for which construction can reasonably be expected to start within 12 months of the agreement date. The written agreement for rehabilitation or new construction of rental housing may also provide operating cost assistance and /or operating cost assistance reserves.
  - (ii) If the project consists of acquisition of standard housing and the Grantee or Subgrantee is providing HTF funds to a Recipient to acquire rental housing, the Grantee or Subgrantee have executed an agreement under which HTF assistance will be provided for the purchase of the rental housing and the property title will be transferred to the Recipient within 6 months of the agreement date. The written agreement for acquisition of rental housing may also provide operating cost assistance and/or operating cost assistance reserves.
  - (iii) If the project is for renewal of operating cost assistance or operating cost assistance reserves, the Grantee or Subgrantee and the Recipient must have executed a legally binding written agreement under which HTF funds will be provided to the Recipient for operating cost assistance or operating cost assistance reserves for the identified HTF project.
6. "Grantee" means the State or the State-designated entity that receives the HTF funds from HUD. For purposes of this Agreement, the HHFDC is the Grantee for the State of Hawaii.
7. "HTF" or "HTF Program" means the Housing Trust Fund program authorized under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (112 U.S.C. §4568) and implemented by the HTF Interim Rule.
8. "HTF Allocation Plan" means the annual submission to HUD required by the Act that describes how the Grantee or Subgrantee will distribute its HTF funds, including how it will use the funds to address its priority housing needs, what activities may be undertaken with those funds, and how Recipients and projects will be selected to receive those funds.
9. "HTF Interim Rule" means the regulations that govern the HTF at 24 CFR Parts 91 and 93, published in the Federal Register, Vol. 80, No. 20 at 5200 (Jan. 30, 2015), effective March 31, 2015.
10. "HTF Local Account" includes the deposits of HTF funds disbursed from the HTF Treasury account, any program income, and any repayments as required by 24 CFR §93.403. The account must be interest bearing.

11. "HUD" means the U.S. Department of Housing and Urban Development.
12. "HHFDC" means the Hawaii Housing Finance and Development Corporation, successor to the Housing and Community Development Corporation of Hawaii ("HCDCH") pursuant to Act 196, 2005 Session Laws of Hawaii and Act 180, 2006 Session Laws of Hawaii; HCDCH was successor to the Housing Finance and Development Corporation ("HFDC") pursuant to Act 350, 1997 Session Laws of Hawaii.
13. "IDIS" means the Integrated Disbursement and Information System which manages, disburses, collects, and reports information on the use of HTF Program funds in the United States Treasury Account.
14. "Period of Affordability" means the period of time, beginning after project completion, during which HTF-assisted rental housing units must remain affordable to specified income groups. HTF-assisted units must meet the affordability requirements for a minimum period of 30 years. The Subgrantee may impose a longer period.
15. "Program Income" means gross income received by the Grantee, or Subgrantee directly generated from the use of HTF funds, as further defined in 24 CFR §93.2.
16. "Project Applicant" means the entity (i.e. public agency, non-profit agency, for-profit entity) that submits an application to Subgrantee for HTF funds.
17. "Project completion" means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of 24 CFR Part 93 (including the property standards under 24 CFR §93.301); the final drawdown of HTF funds has been disbursed for the project; and the project completion information has been entered into IDIS, except that with respect to rental housing project completion, for the purposes of 24 CFR §93.402(d), project completion occurs upon completion of construction and before occupancy.
18. "Recipient" means an organization, agency, or other entity (including a public housing agency, or a for-profit entity or a nonprofit entity) that receives HTF assistance from the Subgrantee to carry out an HTF-assisted project, as further defined in 24 CFR §93.2.
19. "State" means the State of Hawaii.
20. "Subgrantee" means a unit of general local government or State agency selected by the Grantee to administer all or a portion of its HTF Program. A local government subgrantee must have an approved consolidated plan submitted in accordance with 24 CFR part 91.

21. "Subgrantee HTF Allocation Plan" is the County of Maui Housing Trust Fund Allocation Plan, attached as Exhibit A hereto.

D. RECITALS

1. The National Housing Trust Fund Program (HTF) was created by Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), codified at 12 U.S.C. §4568.
2. Among the purposes of the HTF is to provide grants to state governments to increase and preserve the supply of decent, safe, and sanitary affordable rental housing for extremely low-income households (not exceeding 30% of the area median income), including homeless families.
3. The HHFDC is responsible for administering the HTF Program for the State of Hawaii.
4. The HHFDC desires to engage Subgrantee to carry out the program functions, which are described in the Subgrantee HTF Allocation Plan. (Exhibit A).
5. The purpose of this Agreement is to ensure that HTF funds are used in accordance with the 24 CFR Part 93.

E. SCOPE OF SERVICES

The Subgrantee agrees to administer the HTF program as the Subgrantee and that all activities and services performed under this Agreement shall comply with the requirements of 24 CFR Part 93.

The Subgrantee shall perform and carry out in an expedient, satisfactory and proper manner, as determined by the HHFDC, the activities and administrative services in accordance with the Subgrantee Program Description and Performance Schedule. (Exhibit B)

F. ALLOCATION OF HTF PROGRAM FUNDS

1. Amount of HTF Program Funds to be Allocated to the Subgrantee

The total amount of HTF Program funds to be allocated to the Subgrantee under this Agreement shall be One Million Four Hundred Twenty-Five Thousand Dollars (\$1,425,000.00).

The Subgrantee may utilize no more than Seventy-Five Thousand Dollars (\$75,000.00) of the \$1,425,000 for the administration of the HTF Program.

The Subgrantee may award no more than Four Hundred Seventy-Four Thousand Nine Hundred Fifty-Three Dollars (\$474,953.00) of the \$1,425,000 for operating cost assistance to eligible HTF projects.

2. Designation as a Subgrantee

The Subgrantee has submitted the Subgrantee HTF Allocation Plan as evidence of its interest and intent to administer HTF funds as a Subgrantee, which is incorporated in the Agreement as "Exhibit A".

3. HTF Local Account

The Subgrantee shall establish a HTF Local Account pursuant to 24 CFR §93.400 and the account shall be interest bearing. The HTF Local Account includes deposits of HTF funds disbursed from the HTF Treasury account as well as any program income and any repayments required by 24 CFR §93.403, to be retained by the Subgrantee pursuant to Paragraph G.6 below. The Subgrantee must remit interest earned on federal advance payments to the United States as provided for in 2 CFR §200.305(b)(9), except interest amounts up to \$500 per year may be retained for administrative expenses.

4. HHFDC Responsibilities

Upon the execution of this document and HUD approval of the Subgrantee HTF Allocation Plan, the HHFDC shall subgrant within IDIS the amount of HTF funds allocated to the Subgrantee. The HTF funds shall be allocated and designated as project funds and/or administrative funds. Any change to the designated use of the funds can only be made with the approval of the HHFDC.

5. Subgrantee's Disbursement from IDIS

The Subgrantee shall be responsible for setting up the projects in the IDIS as required in 24 CFR §93.402.

Subgrantee shall not request disbursement from the IDIS until needed for payment of eligible costs, and once received, shall be paid out within 15 days. The amount of each request must be limited to the amount needed. Program Income must be disbursed before requests are made for HTF funds in the United States Treasury account.

In order to obtain funds through the IDIS, the Subgrantee shall create a drawdown voucher from the funded activity assigned to the project. One activity shall be permitted for each project set up in IDIS. The Subgrantee shall subsequently submit to the HHFDC a written request for payment approval, together with copies of all supporting documentation (i.e. incurred bills, invoices and/or purchase orders) which substantiates the draw amount. All bills, invoices and/or purchase orders must:

- a. Be under the letterhead of the eligible Recipient or other legal entity requesting payment;

- b. Bear the signature of the billing party, an authorized official of the Subgrantee; and
- c. Identify the project, the nature of work or materials provided, and the specific phase of the project for which the work or materials were provided.

All bills, invoices and purchase orders shall be reviewed by the HHFDC. The HHFDC shall notify the Subgrantee of discrepancies, if any, and recommend the appropriate action to correct any discrepancies found in the bills, invoices and purchase orders.

The Subgrantee shall maintain in its files, at all times, documentation certifying that the work described in all bills, invoices, and purchase orders sent to the HHFDC are complete, correct, and in accordance with the terms of this Agreement.

#### 6. Federal Funds

This Contract is payable in whole from federal funds. The Subgrantee agrees that the Subgrantee shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the HHFDC to receive anticipated federal funds shall not be considered a breach by the HHFDC.

#### G. TERMS AND CONDITIONS

In administering funds provided under this Agreement, the Subgrantee shall comply with applicable federal and State laws, executive orders, rules, and regulations, including without limitation, those mandated by HUD regarding the HTF. In cases where local, state, and/or federal laws, rules or regulations address similar issues, the Subgrantee shall comply with the most stringent law, rule or regulation. Without limiting the foregoing, Subgrantee shall comply with the following:

1. The Subgrantee must include its Subgrantee HTF Allocation Plan in its Annual Action Plan pursuant to 24 CFR 91.220(l)(5), consistent with the HHFDC HTF Allocation Plan.
2. The Subgrantee shall select HTF projects by eligible Recipients in accordance with its Subgrantee HTF Allocation Plan. Pursuant to 24 CFR §93.300 (b) and consistent with the Grantee's HTF Allocation Plan, the Subgrantee must conduct the following analysis prior to committing funds:
  - Evaluate the project in accordance with underwriting guidelines it has adopted to ensure funding of quality affordable housing that is financially viable for a minimum 30 year period of affordability as cited in 24 CFR §93.302.
  - Examine the sources and uses for each project and determine whether the costs are reasonable.
  - Assess the market conditions of the neighborhood in which the project will be located.



- Assess the experience and financial capacity of the developer.
- Determine whether there are firm financial commitments for the project.

The Subgrantee shall maintain the documentation of the analysis conducted in the project file.

3. The Subgrantee shall enter into written agreements with eligible Recipients as set forth in 24 CFR §93.404(c)(2) of the HTF Program regulations, before it disburses funds.
4. The Subgrantee and its eligible Recipients are prohibited from charging servicing, origination, processing, inspection or other fees for the costs of administering a HTF program, except as permitted by 24 CFR §93.204(b), §93.404(c)(1)(xiv) and §93.404(c)(2)(xii).
5. The Subgrantee shall require all housing assisted with HTF funds to meet the affordability requirements of 24 CFR §93.302, and must repay HTF funds to the HHFDC if the housing does not meet the affordability requirements for the specified time period. The Subgrantee shall require the maintenance of all affordability requirements by executing deed restrictions and lien recordation or through the filing of restrictive covenants running with the land.
6. The Subgrantee shall retain all Program Income, repayments and recaptured HTF Program funds (i.e. interest or other returns on investment) in the Subgrantee's HTF Local Account for redistribution to other HTF eligible activities pursuant to 24 CFR §93.403. The Subgrantee may utilize a sum of 10% of the Program Income deposited in the Subgrantee's HTF Local Account and receipted in IDIS for payment of reasonable administrative and planning costs pursuant to 24 CFR §93.202.
7. The Subgrantee shall comply with the uniform administrative requirements contained within 24 CFR §93.405, including, but not limited to, the requirements in 2 CFR Part 200 except for the following provisions: §§ 200.307, 200.311 200.328(b), 200.329 and 200.333. The provisions of 2 CFR §200.305 apply as modified by §92.502(c). The Subgrantee further agrees that should the administrative requirements contained in §93.405 or 2 CFR Part 200 be amended and/or changed from time to time by HUD, the Subgrantee will comply with the terms and conditions of such changed or amended administrative requirements.
8. Housing assisted with HTF funds shall be subject to the lead-based paint regulations at 24 CFR part 35, subparts A, B, J, K, and R.
9. Projects undertaken with HTF funds shall utilize all reasonable steps to minimize the displacement of persons and shall comply with the relocation policies and requirements set forth in 24 CFR §93.352.
10. The Subgrantee acknowledges that assistance provided under this agreement shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006.

11. The County shall comply with 24 CFR, Part 93 Subpart G relating to project requirements, as applicable.
12. The Subgrantee shall adopt and follow an Affirmative Marketing Plan and requirements in accordance with 24 CFR §93.350 and shall maintain records to verify compliance with the applicable affirmative marketing procedures. The Subgrantee shall require their eligible Recipients to adhere to the Subgrantee's adopted Affirmative Marketing Plan and assess the results.
13. a) The Subgrantee shall ensure that no Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;  
  
b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subgrantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and  
  
c) The Subgrantee will require that the language of subparagraphs (a) and (b) above be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all eligible Recipients shall certify and disclose accordingly.
14. The Subgrantee shall comply with State and local codes and ordinances and other applicable laws.
15. The Subgrantee shall ensure that each project assisted with HTF funds meets the Violence Against Womens Act (VAWA) requirements under 24 CFR §93.356, including notice obligations and obligations under the emergency transfer plan.
16. The Subgrantee agrees that the HHFDC shall have the right to review the performance of the Subgrantee not less than annually.
17. The Subgrantee agrees it must repay any HTF funds invested in projects that terminated before completion in accordance with 24 CFR §93.403 (b).
18. The Subgrantee agrees to establish its own requirements to comply with the HTF Program rules and requirements for income determinations, underwriting guidelines, rehabilitation standards and affordability, as applicable.

19. Should the Subgrantee cause modifications to the HHFDC annual action plan, that result in a need for a substantial amendment as determined by the HHFDC, the Subgrantee shall be responsible to pay all costs associated with processing by HHFDC of such amendment. These costs may include, but are not limited to: advertising, allocable staff compensation, travel, etc. Generally, substantial amendments are required whenever a decision is made to:
  - a. Make a change in allocation priorities or a change in the method of distribution of funds;
  - b. Carry out an activity, using funds from any program covered by the Consolidated Plan (including program income), not previously described in the annual action plan; or
  - c. Change the purpose, scope, location, or beneficiaries of an activity.

H. NONCOMPLIANCE, SUSPENSION AND TERMINATION

The Subgrantee's failure to perform any part of this Agreement shall constitute noncompliance, and the HHFDC, at its sole discretion, may take any one or more of the following actions:

1. Withhold cash payments pending correction of any deficiency by the Subgrantee;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Wholly or partially suspend or terminate the current award of this Agreement with the Subgrantee;
4. Withhold future award(s) to the Subgrantee; and
5. Terminate this Agreement without service of notice or legal process and without prejudice to any other remedy or right or action for breach of contract. Upon termination of this Agreement, the Subgrantee shall transfer to the HHFDC any HTF Program funds on hand at the time of termination and any accounts receivable attributable to the use of HTF funds. Failure to terminate the Agreement upon one or more breaches shall not constitute a waiver of the HHFDC's right to thereafter terminate the Agreement upon a subsequent breach or breaches.

Use of any one remedy should not be construed as a waiver of other remedies available under this section or of any legal, equitable, or statutory remedies available under applicable Hawaii or federal law.

I. TERMINATION FOR CONVENIENCE

Except as provided in Section H, Noncompliance, Suspension and Termination, this

Agreement may also be terminated in whole or in part under the following conditions:

1. By the HHFDC with the consent of the Subgrantee in which case the parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the Subgrantee upon written notification to the HHFDC, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if the HHFDC determines in the case of partial termination that the reduced or modified portion of the Agreement will not accomplish the purposes for which the award of HTF funds were made, the HHFDC may terminate the federal award in its entirety.

J. TIME OF PERFORMANCE

The Subgrantee shall not enter into any agreements for use of HTF funds with eligible Recipients prior to the execution of this Agreement.

This Agreement shall begin upon execution. However, if the HTF funds allocated to the Subgrantee are not committed to a specific local project(s) by December 31, 2018, the HHFDC reserves the right to terminate this Agreement and recapture all uncommitted HTF Program funds.

Once funds have been committed in IDIS to a project, an initial draw must occur within twelve (12) months of the funding date, or the project may be cancelled in IDIS.

Any funds committed to HTF projects must be expended in whole and completed prior to January 31, 2022 or the remaining project funds may be recaptured by the HHFDC.

By execution of this Agreement, the Subgrantee certifies that the HTF activities will be substantially in compliance with the timeline contained in the Subgrantee Program Description and Performance Schedule (Exhibit B). Failure to do so, may affect the Subgrantee's continuing capacity in future funding decisions by the HHFDC.

The HHFDC retains the right to rescind all or any part of funds conditionally committed by this Agreement. Such right may be exercised if action, or the lack of action, by the Subgrantee indicates that the proposed activities are not being implemented in accordance with the terms or schedule provided in the Subgrantee Program Description and Performance Schedule or the provisions of this Agreement.

K. THIRD PARTY AGREEMENTS

Any agreements between the Subgrantee and an eligible Recipient must be in writing and must include appropriate provisions requiring compliance with all applicable federal requirements of the HTF Program. The Subgrantee shall enter into a written agreement that complies with the provisions of 24 CFR §93.404 (c) with any other entity or individual to which it disburses HTF funds. The agreement must be in place before the

HTF funds are provided and must prohibit charging servicing, origination, processing, inspection, or other fees for the costs of administering a HTF program, except as permitted by 24 CFR §93.204. In addition, the agreement must prohibit project owners from charging fees that are not customarily charged in rental housing pursuant to 24 CFR §93.204 (b)(4) and §93.404(c)(2)(xii).

Pursuant to 24 CFR §93.201(d)(1), the Subgrantee may allow for the use of HTF funds to pay architectural and engineering and other professional services costs that are incurred before the commitment of HTF funds. The costs may be paid if they were incurred not more than 24 months before the date that HTF funds are committed to the project and the Subgrantee expressly permits HTF funds to be used to pay the costs in the written agreement committing the funds. The Subgrantee shall limit the reimbursement for these costs to no more than 20% of the HTF funds committed for each activity.

The Subgrantee will maintain copies of executed third party agreements and contracts in the project files before the project will be funded in the IDIS.

L. ENVIRONMENTAL PROVISIONS

The Subgrantee shall ensure that all new construction, acquisition or acquisition rehabilitation activities (including manufactured housing) meet the applicable environmental requirements specified in 24 CFR 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.

The Subgrantee shall be responsible for conducting an assessment of all projects to be funded with HTF funds in accordance with HUD Notice CPD-16-14. The responsibilities include but are not limited to: the determination of the environmental impacts; the review of the assessment; the publication of appropriate notices, if applicable; and the submittal of the required documentation to HHFDC/HUD.

M. INTEREST OF CURRENT OR FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the Subgrantee, no member of the governing body of the locality in which the work is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to this Agreement, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section may, at the option of the HHFDC, result in unilateral and immediate termination of this Agreement by the HHFDC. Further, the Subgrantee agrees to comply with the Conflict of Interest provisions contained in 24 CFR §93.353.

N. ASSIGNABILITY

The Subgrantee shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement whether by assignment or novation.

O. INDEMNIFICATION

The Subgrantee shall indemnify and hold harmless the HHFDC, and the State of Hawaii and their respective officers, agents and employees from any liability, actions, claims, suits, damages, or costs arising out of or resulting from the acts or omissions of the Subgrantee, and the Subgrantee's officers, employees and agents in connection with the activities that may be funded, in whole or in part, from HTF funds provided to the Subgrantee under this Agreement, including actions by HUD against the HHFDC resulting from the Subgrantee's breach of any agreement, laws, or rules and regulations relating to the HTF Program to the extent permitted by law, subject to Maui County Council approval.

The Subgrantee shall require its contractors, if any, to indemnify and hold harmless the HHFDC, the State of Hawaii, the Subgrantee and their respective officers, employees and agents from any liability, actions, claims, suits, damages or costs arising out of or resulting from the acts or omissions of the contractor, and its officers, employees and agents in connection with the activities that may be funded, in whole or in part, from HTF funds provided to the Subgrantee under this Agreement.

The HHFDC and the State of Hawaii shall not be liable for the failure on the part of the Subgrantee or any contractor or subcontractor on the project to perform all work in accordance with all applicable laws and regulations.

P. AUDIT REQUIREMENTS

1. The Subgrantee shall provide for an annual audit at the conclusion of each Subgrantee fiscal year. The audit report must meet the criteria established in 2 CFR Part 200, Subpart F, Audit Requirements. The Subgrantee shall submit a copy of the audit report to the HHFDC within the earlier of thirty (30) calendar days after the receipt of the auditor's report(s), or nine months after the end of the audit period.
2. The Subgrantee must specify in its written agreements with eligible Recipients that a cost certification be performed by a certified public accountant for each project assisted with HTF funds. In addition, an annual audit must be performed for the HTF assisted project and submitted annually for the period of affordability.

Q. REPORTING REQUIREMENTS

Required reports are to be submitted to HHFDC or its designee by the applicable deadline. (Exhibit C)

1. Program Reporting Requirements

a. Reporting Requirements During Project Implementation

The Subgrantee will be required to provide quarterly program reports on the progress of the Subgrantee's HTF Program to the HHFDC by the following due dates each fiscal year: January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>.

The program reports shall include a brief narrative description of the status of each project to which HTF funds have been awarded including the major tasks completed for the project (i.e. signing of loan/grant agreement, advertisement for bid, construction start, construction completion, etc.) during the reporting period. Each report shall also include the following information:

- (1) Date of loan or grant agreement between the Subgrantee and the eligible Recipient;
- (2) IDIS activity number; funding amount and initial funding date;
- (3) Total development cost with all sources and uses;
- (4) Schedule of projected and actual drawdown of funds;
- (5) Anticipated completion date; and
- (6) Anticipated date of lease-up.
- (7) If funds are not yet committed to a project at the time program reports are required, the program report shall describe the status of the project selection process and anticipated dates for bids and Contractor selection and the funding commitment.

b. Reporting Requirements During the Period of Affordability

HTF assisted units are required to remain affordable for a minimum of 30 years, which begins at project completion. During the period of affordability, the Subgrantee shall be required to provide reports which shall include the following information:

- (1) Certification by project owners that the project is being maintained in compliance with §93.301;
- (2) Information on rents and occupancy for HTF assisted units to ensure compliance with §93.302;
- (3) Project financial audit;

- (4) Results of project completion inspections of HTF assisted units;
- (5) Loan repayments or other forms of HTF Program Income;
- (6) Summary of the project monitoring visits conducted by the Subgrantee; and
- (7) Description of any cases of noncompliance with HTF program requirements and what measures have been taken or will be taken to achieve compliance.

2. IDIS Reporting Requirements

The Subgrantee shall have access to the IDIS and will be responsible to enter HTF required information as follows:

- (1) Complete Project set-up information as required and ensure that the initial disbursement will be made within 12 months;
- (2) Project completion information within 120 calendar days of the date of the final drawdown or HUD/HHFDC may take corrective action;
- (3) HTF Program reports as required; and
- (4) Reconcile bank records for the HTF Local Account with applicable IDIS reports.

3. Cost Certification

The Subgrantee shall review and ensure a cost certification performed by a certified public accountant is provided for each project assisted with HTF funds.

R. RECORD KEEPING

1. HTF Program Record Keeping Responsibilities

The Subgrantee shall establish and maintain HTF program records pursuant to 24 CFR §93.407. At a minimum, the Subgrantee is required to keep records pursuant to §93.407 (a)(1) Program records, (a)(2) Project records, (a)(4) Program administration records and (a)(5) Records concerning other Federal requirements. These records shall be retained for the period prescribed in 24 CFR §93.407(b).

Records shall be maintained regarding the receipt of all HTF Program Income, the deposit of said income into the HTF Local Account, and the use of said income. Once the Program Income is invested into additional eligible activities, the records required for the new activity shall be maintained in accordance with the time periods in the previous paragraphs of this section.



2. Other Federal Requirements Record Keeping Responsibilities

All additional records as required under the Terms and Conditions of this Agreement shall be maintained by the Subgrantee.

S. MONITORING

1. HHFDC Monitoring Responsibilities

Pursuant to 24 CFR §93.101 and §93.404, HHFDC shall annually review the performance of the Subgrantee as a Subgrantee under the State's HTF Program, to ensure compliance with the HTF regulations, as well as the requirements contained in the Subgrantee Agreement. The annual review may include, but not be limited to, an evaluation of the Subgrantee's program policies and procedures and an assessment of the fiscal and administrative management of the HTF funds.

Project monitoring reviews may also include, but not be limited to, an evaluation of the written agreements between the Subgrantee and other entities, physical inspections of HTF-assisted project, assessment of compliance reports and interviews with property managers to determine compliance with HTF property standards, tenant income requirements, and affirmative marketing requirements.

2. Subgrantee Monitoring Responsibilities

The Subgrantee shall be responsible for monitoring the HTF-assisted projects during project development and implementation, as well as during the period of affordability. The monitoring shall include, but not be limited to, required physical inspections of HTF-assisted projects and interviews with property managers to determine compliance with HTF property standards, tenant income requirements, and affirmative marketing requirements. The Subgrantee may charge owners of rental projects reasonable annual fees for monitoring compliance during the period of affordability. The fees must be calculated and documented in accordance with 24 CFR §93.204.

- a. The Subgrantee shall conduct property inspections for each HTF-assisted project at project completion to determine that the housing meets the property standards of 24 CFR §93.301.
- b. During the period of affordability, the Subgrantee must perform onsite inspections of HTF-assisted projects to determine compliance with the ongoing property standards of 24 CFR §93.301 and to verify the information submitted by owners in accordance with the requirements of 24 CFR §93.302.
- c. The Subgrantee must examine the financial condition of HTF assisted rental projects with 10 or more HTF-assisted units at least annually to determine the continued financial viability of the project.

The Subgrantee shall maintain documentation of its annual project monitoring for

review by the HHFDC.

T. DURATION OF AGREEMENT

1. Term of Agreement

This Agreement shall be effective on the date set forth in Section A, above, and shall remain in force for the period(s) of affordability applicable to the project(s) for which HTF funds are invested, unless the HHFDC determines that a breach of contract has occurred, at which time the HHFDC may exercise any and all of its rights and remedies under the HTF Program Regulations, 24 CFR, Part 93 and 2 CFR Part 200.338, including the right to terminate this Agreement and recapture any HTF funds allocated to the Subgrantee.

2. Extension of Term

The parties hereto may extend the term of this Agreement through written consensus by the HHFDC and the Subgrantee.

3. Closeout or Termination

Upon closeout or termination of this Agreement, the Subgrantee shall transfer to the HHFDC any HTF funds on hand at the time of closeout or termination and any accounts receivable attributable to the use of HTF funds.

In addition, at the written request of the HHFDC, upon closeout or termination of this Agreement, all finished or unfinished documents, data, studies, and reports purchased or prepared by the Subgrantee for the project, shall be transferred and assigned to the HHFDC and become the property of the HHFDC.

U. EQUAL EMPLOYMENT OPPORTUNITY

The Subgrantee agrees to comply with Executive Order 11246, as amended, to ensure nondiscrimination in employment by contractors and subcontractors for federally assisted construction contracts.

1. The Subgrantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, or on any other basis prohibited by State law. The Subgrantee will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin, and without regard to any other basis prohibited by State law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee agrees to post in conspicuous places, available to

employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Subgrantee will, in all solicitations or advertisements for employees placed by or on behalf of the Subgrantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, and without regard to any other basis prohibited by State law.
3. The Subgrantee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice regarding the Contractor's commitments under Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Subgrantee will comply with all provisions of Executive Order 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor (hereafter, collectively "Executive Order 11246").
5. The Subgrantee will furnish all information and reports required by Executive Order 11246, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.
6. In the event the Subgrantee is found to be in noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Subgrantee may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or as otherwise provided by law.
7. The Subgrantee will include the provisions of paragraphs (1) through (6) of this Paragraph in every subcontract or purchase order unless exempted pursuant to section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. The Subgrantee will take such action with respect to any subcontract or purchase order as the HHFDC may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the HHFDC the Subgrantee may request the United States to enter into such litigation to protect the interest of the United States.

V. LABOR STANDARDS

Contracts and any subcontracts that are financed by funds provided under this Agreement may be subject to the Contract Work Hours and Safety Standards Act, as

amended (40 USC §§3701-3708, the Copeland (Anti-Kickback) Act (40 USC §3145), and the Fair Labor Standards Act of 1938. The Subgrantee agrees to comply with the provisions thereof to the extent applicable.

W. LABOR, TRAINING & BUSINESS OPPORTUNITY

The Subgrantee agrees to comply with the federal and State regulations governing training, employment and business opportunities. All contracts covered by section 3 of the Housing and Urban Development Act of 1968 shall include the following clause (referred to as the Section 3 clause):

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitment under the Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeships and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3

clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

X. FAIR HOUSING

Any housing or housing services offered by the Subgrantee must be made available without discrimination based on race, color, national origin, age, sex, religion, familial status, or disability, or on any basis prohibited by State law, in accordance with fair housing laws. In providing rental housing the Subgrantee shall not discriminate against a rental applicant based on the fact that he or she receives a direct rental subsidy, such as a Section 8 voucher or HOME tenant-based rental assistance (TBRA), in accordance with 24 CFR §93.303(d)(4). In addition, Subgrantee acknowledges that the following fair housing and nondiscrimination laws apply to its provision of housing or housing services: Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended and implementing regulations at 24 CFR, Part 100; Title VI of the Civil Rights Act of 1964; The Age Discrimination Act of 1975, as amended and implementing regulations at 24 CFR, Part 146; Executive Orders 11063 and 12259- Equal Opportunity in Housing, and implementing regulations at 24 CFR, Part 107; Section 504 of the Rehabilitation Act of 1973 (Section 504) and implementing regulations at 24 CFR, Part 8; and Title II of the Americans with Disabilities Act (ADA). Subgrantee agrees to comply with all applicable provisions of these statutes and rules.

Y. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

The Subgrantee agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 – 7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 – 1387). The Subgrantee further warrants and agrees to include or cause to be included the criteria and requirements of this section in every nonexempt subcontract in excess of \$150,000. The Subgrantee also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

Z. DEBARMENT AND SUSPENSION

The Subgrantee shall not use HTF funds directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of Executive Orders 12549 and 12689.

AA. NO WAIVER

A waiver of any breach of this Agreement by any Party shall not be deemed to be a waiver by any Party of any other breach of this Agreement.

BB. CAPTIONS & HEADINGS

The captions and headings or paragraphs in this Agreement are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit, nor affect any provisions of this Agreement.

CC. INTERPRETATION

The terms of this Agreement have been negotiated at arms length among knowledgeable Parties represented by experienced counsel. As a result, the rule of "interpretation against the drafter" shall not apply in any dispute over interpretation of the terms of this Agreement.

DD. AMENDMENTS

This Agreement, which constitutes the entire agreement between the Parties, may be changed, amended, or modified only by a written instrument signed by the Parties.

It is the intent of the Subgrantee and the HHFDC that this Agreement shall comply with the term requirements of 24 CFR, Part 93, as amended from time to time. The parties, therefore, agree to execute all documents as shall be necessary to conform this Agreement to the term requirements whenever necessary.

EE. COUNTERPARTS

This Agreement may be signed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Facsimile and Portable Document Format (PDF) signatures shall be deemed valid, original signatures.

FF. ENTIRE AGREEMENT

This Agreement contains all of the terms and agreements between the Parties and

supersedes and cancels each and every other prior conflicting agreement, promise, and negotiation between them.

GG. AUTHORITY

The Parties represent and warrant to each other that they have full power and authority to enter into this Agreement, and to perform in accordance with its provisions, and that any representative executing this Agreement on behalf of any Party is duly authorized by his, her, or its principal to execute and deliver this Agreement.

H. SEVERABILITY

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

Exhibits:

Exhibit A – Subgrantee HTF Allocation Plan

Exhibit B – Subgrantee Program Description and Performance Schedule

Exhibit C – HTF reports

Exhibit D – HHFDC HTF Allocation Plan

Exhibit E – 24 CFR Part 93

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

APPROVED AS TO FORM:

HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

By: \_\_\_\_\_  
Craig K. Hirai  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approval Recommended:

\_\_\_\_\_  
Carol Reimann  
Director, Department of Housing & Human Concerns  
County of Maui

APPROVED AS TO FORM AND  
LEGALITY:

COUNTY OF MAUI

\_\_\_\_\_  
Deputy Corporation Counsel  
County of Maui

By: \_\_\_\_\_  
Alan M. Arakawa  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_



STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared Craig K. Hirai, personally known to me, who being by me duly sworn, did say that he is the Executive Director of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

Jocelyn K. Iwamasa

\_\_\_\_\_  
(Print Name)

Notary Public, State of Hawaii

My commission expires: September 3, 2018

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: Jocelyn K. Iwamasa 1<sup>st</sup> Circuit

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date:

NOTARY CERTIFICATION

STATE OF HAWAII )  
 ) SS  
COUNTY OF MAUI )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared

ALAN M. ARAKAWA, personally known to me, who being by me duly sworn, did say that he is the MAYOR of the COUNTY OF MAUI, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said COUNTY OF MAUI, and that the said instrument was signed and sealed on behalf of said COUNTY OF MAUI pursuant to Section 9-18 of the Charter of the COUNTY OF MAUI; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said COUNTY OF MAUI.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_

Doc. Description: \_\_\_\_\_

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(Notary Stamp or Seal)

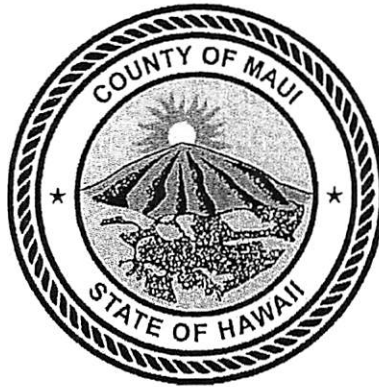
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Notary Signature

\_\_\_\_\_  
Date:

NOTARY CERTIFICATION

**EXHIBIT A**

**COUNTY OF MAUI**  
**NATIONAL HOUSING TRUST FUND PROGRAM**  
**ALLOCATION PLAN**



County of Maui  
Department of Housing and Human Concerns  
Housing Division  
200 South High Street  
Wailuku, Hawaii 96793  
Phone: (808) 270-7351

**COUNTY OF MAUI  
HOUSING TRUST FUND PROGRAM  
ALLOCATION PLAN**

**I. INTRODUCTION**

The National Housing Trust Fund (“HTF”) was created under Title 1 of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289) and is administered by the U.S. Department of Housing and Urban Development (“HUD”). The regulations which govern the HTF are contained in 24 CFR Part 93, Housing Trust Fund. The purpose of HTF is to provide grants to State governments to increase and preserve the supply of decent, safe, and sanitary affordable housing for primarily extremely low-income (30% AMI) households.

**II. STATE ALLOCATION PLAN**

The Hawaii Housing Finance and Development Corporation (HHFDC) is a designated HTF Grantee for the State of Hawaii. HHFDC’s HTF Allocation Plan has received approval from HUD for allocating HTF funds to the counties. HHFDC’s Allocation Plan requires HTF projects to be selected and awarded through an HTF Application issued by the counties. The County of Maui (“County”) is a designated HTF Subgrantee.

**III. DISTRIBUTION OF FUNDS**

The County will receive an allocation of \$1,425,000 in PY 2017 HTF funds. The HTF allocation includes \$1,350,000 in program funds, and \$75,000 for administrative and planning expenses. The County’s Consolidated Plan identifies a substantial need for new affordable rental housing. Consequently, the County will invest PY 2017 HTF funds for rental housing activities. The County expects to implement rental projects through a third-party Recipient (e.g. owner; developer) that meets the eligibility requirements described herein. The annual distribution is described below:

- a. County will retain \$75,000 of the HTF annual allocation for allowable administrative and planning expenses.
- b. The balance of the HTF annual allocation will be provided to Recipient(s) selected through the County’s HTF Application.
- c. The HTF Program requires the commitment of funds within 24 months of HUD’s execution of the HTF Grant Agreement. In order to meet this requirement, the County must commit funds by the commitment date established in the Subgrantee Agreement.

#### **IV. ELIGIBLE ACTIVITIES AND EXPENSES**

Rental Housing – County will focus HTF funds on providing affordable rental housing to 30% AMI households. HTF funds may be used for the production of affordable rental housing through the new construction of non-luxury housing with suitable amenities.

Eligible HTF activities and expenses include: real property acquisition, site improvements and development hard costs, related soft costs, conversion, demolition, financing costs, relocation assistance, operating cost assistance and reasonable administrative and planning costs for HTF program administration.

#### **V. ELIGIBLE RECIPIENTS**

An organization, agency or other entity (including a public housing agency, or a for-profit entity, or a nonprofit entity) is eligible to apply for HTF assistance as an owner or developer to carry out an HTF-assisted project. An HTF Recipient must:

- a. Make assurances to the County that it will comply with the requirements of the HTF program during the entire period that begins upon the selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities;
- b. Demonstrate the ability and financial capacity to undertake, comply and manage the eligible activity;
- c. Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs; and
- d. Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to own, construct and manage an affordable multifamily rental housing development.

#### **VI. CONSOLIDATED PLAN PRIORITY**

A 5-Year Consolidated Plan (2015-2019) has been adopted by the County of Maui to address the County's housing needs and strategic plan. Rental Housing is listed as Priority Need 1 under SP-25 Priority Needs of the Consolidated Plan. Along with the Consolidated Plan, the County will amend the PY 2017 Annual Action Plan to include this HTF Allocation Plan and selected project(s) for PY 2017 HTF funding.

## VII. APPLICATION AND AWARD PROCESS

Applications for the HTF are issued, accepted and selected by the County for project funding consideration, subject to the availability of funds. Applications are reviewed for eligibility and are rated using the selection criteria. Each application must describe the eligible activity to be conducted with HTF funds and contain a certification by the eligible Recipient that housing units assisted with HTF will comply with the HTF requirements.

In addition, Recipients must provide performance goals and benchmarks that the County can use to monitor efforts to accomplish the rental housing objectives. Rental housing projects may provide tenant preferences in accordance with 24 CFR 93.303, if provided for in the County's consolidated plan. Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 93.350.

Based on the County's PY 2017 HTF project selection, no identifiable tenant preferences are provided with this Allocation Plan.

### Minimum Thresholds:

Applicants must meet all of the following Minimum Threshold requirements to receive consideration for an allocation or award of HTF. Failure to meet any Minimum Threshold shall result in the immediate rejection of the application.

1. **Market Assessment** - A market assessment of the housing needs of extremely low income individuals to be served by the project must be submitted as a part of the application. The assessment should review the neighborhood and other relevant market data to determine that there is a current demand for the type and number of housing units being developed.
2. **Site Control** – Evidence of site control shall be submitted with the application for HTF funds. Site control shall be substantiated by providing evidence in the form of an executed lease or sale option agreement, fee simple deed, executed land lease, or any other documentation acceptable to the County. Evidence of site control must be provided for all proposed sites.
3. **Capital Needs Assessment (For projects acquiring an existing property)** – A Capital Needs Assessment of the property shall be submitted with the application. A Capital Needs Assessment is a qualified professional's opinion of a property's current physical condition. It identifies deferred maintenance, physical needs and deficiencies, material building code violations that affect the property's use, structural and mechanical integrity, and future physical and financial needs. A Capital Needs Assessment shall identify any work that must be completed immediately to address health and safety issues, violation of Federal and State law, violation of local code, or any work necessary to ensure that the building can continue to operate as affordable housing.

4. Debt Service Ratio:
  - a. Debt Service Ratio (DSR) for Projects with hard debt service requirements:
    - i. Project is required to evidence a DSR of no less than 1.15x on all hard debt service requirements for the first 15 years.
  - b. Debt Service Ratio for Projects with no hard debt service requirements:
    - i. Project is required to evidence a positive Net Operating Income throughout the 30-year pro forma period.
  - c. Hard Debt Service Requirement:
    - i. Defined as scheduled regular and periodic principal and/or interest payments of project loan obligations made for its direct benefit, as evidenced by a note and loan agreement.
    - ii. Applicants are required to support all hard debt service loans and terms with executed lenders' commitment letters, letters of interest, or term sheets.
5. Underwriting Criteria and Requirements:
  - a. Applicants are required to use the following parameters and assumptions in the preparation of the project pro forma:
    - i. Annual Income Inflation Rate of 2% for first 15 years and Annual Expense Inflation Rate of 3% for first 15 years, or term of the first mortgage, whichever is greater.
    - ii. Annual Income Inflation Rate of 2% and Annual Expense Inflation Rate of 2% for the remaining term of affordability.
    - iii. Vacancy Rate of no less than 5%.
    - iv. Annual Replacement Reserve Allocation of no less than \$300 per unit per year.
6. Phase I Environmental Site Assessment – All proposed multifamily (more than four housing units) HTF projects require a Phase I Environmental Site Assessment. For acquisition/rehabilitation projects, the Phase I Environmental Site Assessment should address lead based paint and asbestos.
7. Developer Fee – For new construction, the maximum developer fee is 15% of total development costs or \$3,750,000 (whichever is less). For acquisition/rehabilitation, the maximum developer fee is 10% of the acquisition costs and 15% of the rehabilitation costs, or \$3,750,000 (whichever is less).



## VIII. SELECTION CRITERIA

The following selection criteria shall be used in the evaluation of HTF Applications:

- a. **Timeliness and Readiness to Proceed (Max. 30 pts.)** – The proposed project is feasible and will meet the required timelines to commit and expend HTF funds. Factors to be considered for timeliness and readiness are site control, financial commitments, environmental factors, zoning, utilities and site and neighborhood standards;
- b. **Consolidated Plan Priorities (Max. 10 pts.)** – The extent to which the project proposes accomplishments that will meet the rental housing objectives for the County. Geographical distribution will be targeted to the primary areas of Maui’s transit and employment, and primary areas of substantive population in the judicial districts of Lahaina, Wailuku, Makawao, Hana, Molokai and Lanai;
- c. **Development Experience and Financial Capacity (Max 25 pts.)** – Applicant’s ability to obligate HTF dollars and undertake funded activities in a timely manner, past performance using federal funds, evidence of experience in developing and managing projects of similar type and scope, staff qualifications, fiscal soundness, and qualifications of the proposed project team, including proven record of experience with comparable projects;
- d. **Financially Feasible Project (Max. 25 pts.)** – Project pro forma to cover a minimum 30-year HTF affordability period and include rents that are affordable to extremely low-income households. Priority to be given for projects with extended affordability periods and project-based rental assistance; and
- e. **Use of Non-Federal Funding Sources (Max. 10 pts.)** – For extremely low-income targeting of 30% AMI, other funding sources compatible with HTF are needed. Priority consideration will be given to the extent HTF leverages non-federal funding sources.

A minimum score of 50 points (out of the 100 total points) must be scored in order to be recommended for the award of HTF funds. Successful Recipient(s) will receive a Notice of Award, which will state that the County’s intent to award HTF funds is subject to approval by the approving authorities of the County, HHFDC, and HUD.

**IX. MAXIMUM PER-UNIT DEVELOPMENT SUBSIDY LIMITS**

Each year, HHFDC must establish maximum limitations on the total amount of HTF funds that may be invested per-unit for development of non-luxury rental housing projects. The HOME Program Maximum Per-Unit Subsidy Limits have been adopted for the HTF program. The development costs of affordable rental housing across the state are generally higher in comparison with the HOME subsidy limits. However, due to the limited funding, the HTF projects will require leveraging with other significant sources of funds. The HOME subsidy limit provides a reasonable maximum to develop a greater number of HTF assisted units throughout the state.

The following table reflects the maximum per unit subsidy limits by bedroom size for housing assisted with HTF within the State of Hawaii, for PY 2017.

Bedrooms	PY 2017 HTF Maximum Per-Unit Subsidy Limits
0	\$141,088.00
1	\$161,738.00
2	\$196,672.00
3	\$254,431.00
4+	\$279,285.00

**IX. REHABILITATION STANDARDS**

The County of Maui will not be using PY 2017 funding for a rehabilitation project.

At this time, the County does not have established rehabilitation standards, however, a rehabilitation standard is currently being developed and will be established for the future.

**EXHIBIT B**

COUNTY OF MAUI  
HTF PROGRAM DESCRIPTION  
Kaiwahine Village, Phase II  
May 2018

In accordance with the Housing Trust Fund Allocation Plan requirements of the Hawai'i Housing Finance and Development Corporation (HHFDC), this Program Description is provided for Kaiwahine Village, Phase II.

**ADMINISTRATIVE OVERVIEW**

The County of Maui, through its Housing Division, issued a HTF Request for Proposal in December 2016, seeking private developers to submit affordable housing applications for use of FY2017 HTF Program funds. Applications were received, reviewed and evaluated. Kaiwahine Village Phase II, to be developed by Ikaika Ohana, has been conditionally selected as the PY2017 HTF Program recipient.

**A. DESCRIPTION OF THE PROPOSED PROJECT**

Kaiwahine Village, Phase II is new construction 56-unit affordable rental housing complex for households at or below 60 percent of AMI. The project is located on a site in Kihei, Maui and identified as Tax Map Key (2) 3-8-004: 28 (lot 134-A). Kaiwahine Village, Phase II, will have 56 rental units comprised of 32 two-bedroom and 24 three-bedroom dwelling units. Unit sizes will be approximately 736 square feet for a two-bedroom unit and 1,104 square feet for a three-bedroom unit. One three-bedroom unit will be reserved for the manager. Pending confirmation of financing, six (6) of the units shall be designated as floating HTF-assisted units as defined in the HTF regulations at 24 CFR § 93.302.

**B. HTF-ASSISTED UNITS**

The project will consist of six (6) HTF-assisted units and that these units will be "floating". Final determination on the number and bedroom mix of the HTF-assisted units will be made once all financing commitments are confirmed. The HTF investment is expected to run approximately \$225,000 per unit, below HTF maximum per unit subsidy limits for 2018. The remaining fifty (50) non-HTF assisted units will be rented to individuals or families at or below 60% AMI for the County of Maui, with one (1) unit reserved for an on-site residential manager.

Total proposed development cost is \$28,896,000. Based on proposed pro-rata share of development cost, a HTF investment of \$1,350,000 will require a minimum of six (6) HTF-assisted units.

**Determination of Number of HTF Units:**

\$ 1,350,000 HTF Funds  
\$28,896,000 Total Development Budget  
= .047, 5% of Development Budget

**Fair Share Test:**

5% x 56 units= 2.8 or 3 units, minimum.

**Subsidy Limit Test:**

2-bedroom: 3 x \$196,672= \$590,016  
3-bedroom: 3 x \$254,431= \$763,293  
Totalling \$1,353,309, above the \$1,350,000 HTF funding

To meet the Subsidy Limit Test, the project requires a minimum of six (6) HTF-assisted units.

**C. FINANCING**

The County plans to provide \$1,350,000.00 in total HTF funds. A Sources and Uses Budget, attached as Exhibit A, was prepared by Ikaika Ohana as part of their application to the County. The total development costs is estimated at \$28,896,000. The County finds the use of HTF funds to be reasonable and necessary project costs.

**D. FORM OF HTF INVESTMENT**

The HTF assistance will be in the form of a forgivable deferred payment loan. This loan will not be required to be paid back and forgiven if the project meets all of the requirements during the thirty (30) year affordability period.

**F. TERM OF AFFORD ABILITY**

The minimum HTF affordability period is thirty (30) years. Because of other funding sources, a longer affordability period for the entire project will be in place. A deed restriction will be recorded to ensure that the minimum HTF thirty (30) year affordability period is met and enforceable.

**G. ELIGIBLE FAMILIES/SELECTION PROCEDURES**

The County requires an affirmative marketing plan to be implemented. Applications received by the submittal deadline will be placed in an application lottery. Ikaika Ohana and their selected property management company is required to conduct income verifications to certify household income at or below the 30% AMI limit for the County of Maui, as established by HUD. The County also reviews income verifications and source documents to ensure that participants are income eligible at the time each household begins tenancy.

**H. CONSOLIDATED PLAN CONSISTENCY**

The County of Maui Consolidated Plan (2015-2020, as amended) identifies the shortage of rental housing for extremely low income families as a housing goal. The County has identified HTF funds as a source to construct affordable rental housing. Based on these identified needs, Maui County believes that the proposed HTF activity is consistent with the County's Consolidated Plan housing objectives and priorities.

**I. PROPOSED TIMEFRAME**

Major project milestones include the following:

Environmental Assessment Completion - June 2018

Completion of HTF Loan Agreement – September 2018

Construction Start Date - October 2018

First Building Completion - February 2019

Project Completion - January 2020

Certificate of Occupancy - February 2020

Initial Occupancy Begins - February 2020

**J. RELOCATION**

The project site is vacant. Kaiwahine Villages, Phase II, will not cause temporary or permanent displacement of any individual or business to require payment of relocation costs pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970.

**KAIWAHINE VILLAGE PHASE II-56 UNITS  
ATTACHMENT 1-B DEVELOPMENT BUDGET**

	ACTUAL COST	HTF FUNDS	OTHER SOURCES	SOURCES OF OTHERS
<b>1 ACQUISITION</b>				
1.1 LAND	1	-	1	TAX CREDIT EQUITY
1.2 CLOSING	-	-	-	
<b>2 PREDEVELOPMENT</b>				
2.1 ARCHITECT FEE DESIGN	448,185	287,500	160,685	R.H.R.F LOAN
2.2 ARCHITECT SUPERVISION	56,000	-	56,000	R.H.R.F LOAN
2.3 ENGINEERING FEE	256,295	-	256,295	R.H.R.F LOAN
<b>3 SITE WORK</b>				
3.1 SITE WORK	4,659,819	-	4,659,819	CONST. LOAN
<b>4 CONSTRUCTION</b>				
4.1 CONSTRUCTION COST	12,279,081	962,500	11,316,581	CONST.LN/R.H.R.F
4.2 CONTRACTOR'S PROFIT	677,556	-	677,556	CONST.LN/R.H.R.F
4.3 CONTRACTOR'S OVERHEAD	677,555	-	677,555	CONST.LN/R.H.R.F
4.4 CONTRACTOR'S GENERAL REQ.	1,016,334	-	1,016,334	CONST.LN/R.H.R.F
4.5 BUILDERS RISK INSURANCE	144,828	-	144,828	CONST.LN/R.H.R.F
4.6 PERFORMANCE BOND	144,828	-	144,828	CONST.LN/R.H.R.F
4.7 HARD COST CONTINGENCY	920,360	-	920,360	CONST.LN/R.H.R.F
<b>5 OTHER RELATED COST</b>				
5.1 BUILDING PERMITS AND FEES	280,000	-	280,000	R.H.R.F LOAN
5.2 APPRAISAL/MARKET STUDY	56,000	-	56,000	R.H.R.F LOAN
5.3 F.F&E	22,400	-	22,400	R.H.R.F LOAN
5.4 ENV. CONSULTANTS /OTHERS	56,000	-	56,000	R.H.R.F LOAN
5.5 PROFESSIONAL SERVICES	392,000	100,000	292,000	R.H.R.F LOAN
5.6 ATTORNEYS FEES	339,000	-	339,000	TAX CREDIT EQUITY
5.7 TAX CREDIT & COMP. FEES	119,000	-	119,000	R.H.R.F LOAN
5.8 ACCOUNTING & REIMBURSEMENT	1,141,444	-	1,141,444	R.H.R.F LOAN
5.9 TAXES OTHER	-	-	-	R.H.R.F LOAN
5.10 SOFT COST CONTINGENCY	312,815	-	312,815	R.H.R.F LOAN
5.11 OWNER'S CONTINGENCY	490,000	-	490,000	R.H.R.F LOAN
<b>6 DEVELOPERS FEE</b>	1,806,499	-	1,806,499	Deferred during const.
<b>7 INTERIM COST</b>				
7.1 BOND ISSUANCE	186,000	-	186,000	R.H.R.F LOAN
7.2 CONST/BRIDGE LOAN INT.	883,000	-	883,000	R.H.R.F LOAN
7.3 CONST. LOAN ORG. FEE	186,000	-	186,000	R.H.R.F LOAN
7.4 CONST. GUARANTEE FEE	479,000	-	479,000	R.H.R.F LOAN
7.5 CONST. MGMT	84,000	-	84,000	R.H.R.F LOAN
7.6 CITI OTHER (INSPECTIONS ETC)	50,000	-	50,000	R.H.R.F LOAN
7.7 TITLE RECORDING	50,000	-	50,000	R.H.R.F LOAN
<b>8 PERMANENT FINANCING FEES</b>				
8.1 PERMANENT LOAN INTEREST	273,000	-	273,000	R.H.R.F LOAN
8.2 PERMANENT LOAN ORG. FEE	10,000	-	10,000	R.H.R.F LOAN
8.3 PERMANENT LOAN LEGAL	105,000	-	105,000	R.H.R.F LOAN
<b>PROJECT RESERVES</b>				
9.1 OPERATING RESERVES	294,000	-	294,000	TAX CREDIT EQUITY
<b>TOTAL COST</b>	<u>28,896,000</u>	<u>1,350,000</u>	<u>27,546,000</u>	

**THE CONSTRUCTION LOAN WILL BE PAID OFF UPON COMPLETION OF THE PROJECT AND THE SOURCES OF FUNDS AT THE PERMANENT PHASE WILL BE AS FOLLOWS:**

1) PERMANENT LOAN	3,370,000
2) FED 4% TAX CREDIT EQUITY	10,834,927
3) STATE 4% TAX CREDIT EQUITY	3,584,127
4) RENTAL HOUSING REV. FUNDS	9,465,460
5) HTF SOFT LOAN	1,350,000
6) DEFERRED DEV. NOTE	291,486
<b>7) TOTAL DEVELOPMENT COST</b>	<u>28,896,000</u>

5/29/2018  
**KV II Investor Run Citibank 5-29-2018**  
**Construction Sources and Uses**

<b>SOURCES OF FUNDS</b>	<u>Total</u>	<u>Per Unit</u>
Construction Loan	\$ 15,604,000	\$ 278,643
Federal 4% Tax Credit Proceeds	903,955	16,142
State 4% Tax Credit Proceeds	283,103	5,055
RHTF / Other Public Sources	8,654,443	154,544
HTF Loan	1,350,000	24,107
Deferred Reserves	294,000	6,125
Deferred Developer's Fees	1,806,499	32,259
<b>TOTAL SOURCES OF FUNDS</b>	<b><u>\$ 28,896,000</u></b>	<b><u>\$ 516,000</u></b>
<b>USES OF FUNDS</b>		
Land and Acquisition Costs	\$ 15,001	\$ 268
New Construction Costs	19,600,000	350,000
Contingency	920,360	16,435
Architecture Fees	504,185	9,003
Survey and Engineering	256,295	4,577
Construction Financing	1,947,999	34,786
Permanent Financing	358,000	6,393
Legal Fees	324,000	5,786
Reserves	294,000	5,250
Other Soft Costs	2,869,661	51,244
Developer Fees	1,806,499	32,259
<b>TOTAL USES OF FUNDS</b>	<b><u>\$ 28,896,000</u></b>	<b><u>\$ 516,000</u></b>
<b>SOURCES LESS USES</b>	<b>\$ -</b>	<b>\$ -</b>

**NOTES:**

**5/29/2018**  
**KV II Investor Run Citibank 5-29-2018**  
**Permanent Sources and Uses**

<b>SOURCES OF FUNDS</b>	<u>Total</u>	<u>Per Unit</u>
Permanent Loan	\$ 3,370,000	\$ 60,179
Federal 4% Tax Credit Proceeds	10,834,927	193,481
State 4% Tax Credit Proceeds	3,584,127	64,002
RHTF / Other Public Sources	9,465,460	169,026
HTF Loan	1,350,000	24,107
Deferred Developer Fee	291,486	5,205
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$ 28,896,000</b>	<b>\$ 516,000</b>

<b>USES OF FUNDS</b>		
Land and Acquisition Costs	\$ 15,001	\$ 268
New Construction Costs	19,600,000	350,000
Contingency	920,360	16,435
Architecture Fees	504,185	9,003
Survey and Engineering	256,295	4,577
Construction Financing	1,947,999	34,786
Permanent Financing	358,000	6,393
Legal Fees	324,000	5,786
Reserves	294,000	5,250
Other Soft Costs	2,869,661	51,244
Developer Fees	1,808,499	32,259
<b>TOTAL USES OF FUNDS</b>	<b>\$ 28,896,000</b>	<b>\$ 516,000</b>

<b>SOURCES LESS USES</b>	<b>\$ 0</b>	<b>\$ 0</b>
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**NOTES:**



HTF PROGRAM  
FY17 ALLOCATION  
PERFORMANCE SCHEDULE

Projected schedule	Task
September, 2018	Subgrantee executes written agreement with Eligible Recipient committing HTF funds for a specific local project (Owner/Developer Agreement)
October, 2018	Commence construction
January, 2020	Construction completion
February, 2020	Project lease up
March, 2020	Subgrantee to expend all HTF funds
June, 2020	Project completion in IDIS

**EXHIBIT C**

**HTF QUARTERLY STATUS REPORT**  
**SUBGRANTEE: \_\_\_\_\_**

**REPORTING REQUIREMENTS FOR QUARTER ENDING: \_\_\_\_\_**

**PROJECT NAME & LOCATION:**

**PROJECT DESCRIPTION:**

**IDIS ACTIVITY #:**

**HTF FUNDING COMMITMENT:**

AGREEMENT DATE:	ELIGIBLE RECIPIENT	AMOUNT FUNDED

**TOTAL PROJECT FUNDING: List all sources**

SOURCE OF FUNDS:	TOTAL AMT	EXPENDED	BALANCE
<b>TOTAL</b>			

**SCHEDULE:**

TASK	SCHEDULE	ACTUAL COMP DATE	% COMPLETED

**PROJECTED DRAW DOWNS:**

HTF FUNDS	MO/YR:	MO/YR:	MO/YR:
PROGRAM FUNDS			

**OUTSTANDING ISSUES OR CONCERNS:**

### HTF ANNUAL REPORT & OWNER'S CERTIFICATION

Project Name: \_\_\_\_\_  
 Project Owner: \_\_\_\_\_  
 Managing Agent: \_\_\_\_\_

Period Report Covers: \_\_\_\_\_ to June 30, \_\_\_\_\_  
 Report Prepared By: \_\_\_\_\_  
 Date Prepared: \_\_\_\_\_

Date of Annual Rent Approval\*: \_\_\_\_\_  
 Approval Granted by: \_\_\_\_\_  
*\*Provide a copy of the approval and rent schedule with this report.*

**HTF Requirements**  
 Total Number of HTF Units: \_\_\_\_\_  
 Fixed / Floating: \_\_\_\_\_  
**TOTAL UNITS**

**Project Status as of End of Report Period (June 30)**  
 Total Number of HTF Units: \_\_\_\_\_  
 Vacant Units: \_\_\_\_\_

Unit #	# BR	Tenant's Last, First Name	Move-In Date	HSLD Size	Initial/Recert Effective Date	Annual (Gross) Income	Current Rent Information						Move-out Date
							Current Tenant Rent	Utility Allowance	Subsidy Amount	Project Based Subsidy Y/N	Gross Rent	Current HTF Program Rent	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
											0		
											0		
											0		
											0		
											0		
											0		
											0		
											0		
											0		
											0		
											0		

**Owner Certification:**  
 I certify that each building and all HTF-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the County to meet the requirements of 24 CFR 93.301.

By: \_\_\_\_\_ Date: \_\_\_\_\_

**HTF ANNUAL AUDIT REVIEW**

HTF Assisted Project: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Cost Certification Date: \_\_\_\_\_

Period of Affordability: \_\_\_\_\_

Audit Review completed by: County of \_\_\_\_\_

Audit for the year ended \_\_\_\_\_ is attached.

Audit Completion Date: \_\_\_\_\_

Audit Received Date: \_\_\_\_\_

(Reports should be submitted within 30 days after receipt of the auditor's report)

The audit report indicated (check one):     NO Findings  
    Findings

If HTF program findings are contained in the audit report, a follow-up letter has been sent to  
Project Owner on \_\_\_\_\_  
(date)

Second follow-up letter sent to Project Owner on \_\_\_\_\_  
(date)

Date findings closed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
Signature of Reviewer                      Print Name & Title                      Date

\_\_\_\_\_  
Signature of Supervisor                      Print Name & Title                      Date

Comments:

**EXHIBIT D**

STATE OF HAWAII  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
HOUSING TRUST FUND PROGRAM  
ALLOCATION PLAN

I. INTRODUCTION

The Housing Trust Fund (HTF) program was created by Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289) and is administered by the U.S. Department of Housing and Urban Development. The regulations which govern the HTF are contained in 24 CFR Part 93, Housing Trust Fund. The purpose of the HTF is to provide grants to State governments to increase and preserve the supply of decent, safe, and sanitary affordable housing for primarily extremely low-income (30% AMI) households, including homeless families. The Hawaii Housing Finance and Development Corporation (HHFDC) is designated as the HTF Grantee for the State of Hawaii.

II. DISTRIBUTION OF FUNDS

The Consolidated Plan identifies a substantial need for affordable housing throughout the State of Hawaii. Consequently, the HHFDC will make its allocation of HTF funds available on a statewide basis. HHFDC will fund projects through subgrantees (a unit of general local government that is selected to administer all or a portion of the state HTF program). The annual distribution is described below:

- a. HHFDC will retain 5% of the HTF annual allocation for allowable administrative and planning expenses.
- b. The balance of the HTF annual allocation will be split (50/50) between the City and County of Honolulu and the designated neighbor island county that receives HHFDC's rotated HOME allocation, (Subgrantees); for PY2017, the City and County of Honolulu and the County of Maui are anticipated to receive the HTF allocation; the next neighbor island allocation would be received by the County of Hawaii in PY2018.
- c. The HTF program requires HHFDC to commit funds within 24 months of HUD's execution of the HTF grant agreement. Should a Subgrantee be unable to identify an eligible HTF project(s) within a specified timeframe, HHFDC, in its sole discretion, may seek alternate activities from the remaining Subgrantees.
- d. The HHFDC anticipates receiving \$3,000,000 in HTF funds for the Program Year 2017 – 2018, to be distributed as follows:

Program Year 2017 – 2018				
Fund Type	City and County of Honolulu	County of Maui	HHFDC	Total
HTF Project Funds	\$1,350,000	\$1,350,000	\$0	\$2,700,000
Administration	\$75,000	\$75,000	\$150,000	\$300,000
<b>Total HTF Funds</b>	<b>\$1,425,000</b>	<b>\$1,425,000</b>	<b>\$150,000</b>	<b>\$3,000,000</b>

### III. ELIGIBLE ACTIVITIES AND EXPENSES

Rental Housing - HHFDC will focus its HTF funds on providing affordable rental housing to 30% AMI households. HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing through the acquisition, new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities.

Eligible activities and expenses include: real property acquisition, site improvements and development hard costs, related soft costs, conversion, demolition, financing costs, relocation assistance, operating cost assistance and reasonable administrative and planning costs for HTF program administration.

HHFDC does not intend to use HTF funds for refinancing of existing debt.

### IV. ELIGIBLE RECIPIENTS

An organization, agency or other entity (including a public housing agency, or a for-profit entity or a nonprofit entity) is eligible to apply for HTF assistance as an owner or developer to carry out an HTF-assisted project. A recipient must:

- a. Make acceptable assurances to the Subgrantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities;
- b. Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;
- c. Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs; and
- d. Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development.



V. APPLICATION AND AWARD PROCESS

Applications for the HTF are issued, accepted and selected by the applicable county housing agencies (Subgrantees) annually for funding consideration, subject to availability of funds. Applications are reviewed for eligibility and rated using the selection criteria. Each application must describe the eligible activity, in accordance with 24 CFR 93.200, to be conducted with HTF funds and contain a certification by each eligible recipient that housing units assisted with HTF will comply with the HTF requirements.

In addition, applications will include performance goals and bench marks that the Subgrantees will use to monitor efforts to accomplish the rental housing objectives.

STATE OF HAWAII SUBGRANTEES

<b>City and County of Honolulu</b>	<b>County of Kauai</b>
Department of Community Services	Kauai County Housing Agency
715 South King Street, Suite 311	Pi'ikoi Building
Honolulu, Hawaii 96813	4444 Rice Street, Suite 330
	Lihue, Hawaii 96766
<b>County of Hawai'i</b>	<b>County of Maui</b>
Office of Housing and Community Development	Department of Housing and Human Concerns
50 Wailuku Drive	35 Lunalilo Street, Suite 102
Hilo, Hawaii 96720	Wailuku, Hawaii 96793

For PY 2017, the applicable Subgrantees to issue the HTF applications are the City and County of Honolulu and the County of Maui.

Minimum Thresholds:

Applicants must meet all of the following Minimum Threshold requirements to receive consideration for an allocation or award of HTF.

Failure to meet any Minimum Threshold shall result in the immediate rejection of the application.

I. Market Assessment

A market assessment of the housing needs of extremely low income individuals to be served by the project must be submitted as a part of the application. The assessment should review the neighborhood and other relevant market data to determine that there is current demand for the type and number of housing units being developed.

2. **Site Control**  
Evidence of site control shall be submitted with the application for HTF funds. Site control shall be substantiated by providing evidence in the form of an executed lease or sales option agreement, fee simple deed, executed land lease, or any other documentation acceptable to the County. Evidence of site control must be provided for all proposed sites.
  
3. **Capital Needs Assessment (For projects acquiring an existing property.)**  
To ensure that the proposed rehabilitation of the project is adequate and that the property will have a useful life that exceeds the affordability period, a capital needs assessment of the property by a competent third party shall be submitted with the application. A capital needs assessment is a qualified professional's opinion of a property's current physical condition. It identifies deferred maintenance, physical needs and deficiencies, and material building code violations that affect the property's use, structural and mechanical integrity, and future physical and financial needs. The Capital Needs Assessment shall identify any work that must be completed immediately to address health and safety issues, violation of Federal or State law, violation of local code, or any work necessary to ensure that the building can continue to operate as affordable housing.
  
4. **Debt Service Ratio**
  - a. **Projects with hard debt service requirements:**
    - i. The Project is required to evidence a Debt Service Ratio of no less than 1.15x on all hard debt service requirements for the first 15 years.
  - b. **Projects with no hard debt service requirements:**
    - i. The Project is required to evidence positive Net Operating Income throughout the 30-year proforma period.
  - c. **Hard Debt Service:**
    - i. Defined as scheduled regular and periodic principal and/or interest payments of project loan obligations made for its direct benefit, as evidenced by a note and loan agreement.
    - ii. The Applicant is required to support all hard debt service loans and terms with executed lenders' commitment letters, letters of interest, or term sheets.
  - d. **Underwriting Criteria and Requirements:**
    - i. Applicants are required to use the following parameters and assumptions in the preparation of the project proforma:
      1. Annual Income Inflation Rate of 2.0% and Annual Expense Inflation Rate of 3.0% for the first 15 years or term of the first mortgage, whichever is greater.
      2. Annual Income Inflation Rate of 2.0% and Annual Expenses Inflation Rate of 2.0% for the remaining term of affordability.
      3. Vacancy Rate of no less than 5.0%
      4. Annual Replacement Reserve Allocation of no less than

\$300 per unit per year.

5. Phase I Environmental Site Assessment  
All proposed multifamily (more than four housing units) HTF projects require a Phase I Environmental Site Assessment.

For acquisition/rehabilitation projects, the Phase I Environmental Assessment should address lead based paint and asbestos.

6. Developer Fee
  - i. New Construction – maximum developer fee of 15% of the total development costs or \$3,750,000 (whichever is less)
  - ii. Acquisition/Rehabilitation – maximum developer fee of 10% of the acquisition costs and 15% of the rehabilitation costs or \$3,750,000 (whichever is less).

## VI. SELECTION CRITERIA

- a. Timeliness and Readiness to Proceed (Max. 30 pts.) – The proposed project is feasible and will meet the required timelines to commit and expend HTF funds. Applicants need to demonstrate project “readiness.” Factors to be considered are site control, financial commitments, environmental factors, zoning, utilities and site and neighborhood standards;
- b. Consolidated Plan Priorities (Max. 10 pts.) - The extent to which the project proposes accomplishments that will meet the rental housing objectives for both the HHFDC and the County. The HTF is primarily a production program meant to add units to the supply of affordable housing for extremely low-income households. Merits of the application in meeting the priority housing needs of the County where the project is located such as accessible to transit or employment centers, housing that includes green building and sustainable development features or housing that serves special needs populations;
- c. Developer Experience and Financial Capacity (Max. 25 pts.) - Applicant’s ability to obligate HTF dollars and undertake funded activities in a timely manner. Need to review evidence of experience in developing and managing projects of similar type and scope, staff qualifications, and fiscal soundness. In addition, applicants who have received federal funds in the past will be evaluated on the basis of their past performance. Qualifications of the proposed project team, personnel and /or contractors to carry out the proposed project including proven record of experience with comparable projects;
- d. Financially Feasible Project (Max. 25 pts.) – Project pro forma to cover a minimum 30 year HTF affordability period and include rents that are affordable to

extremely low-income households. Priority to be given for projects with extended affordability periods and project based rental assistance;

- e. Use of Non-Federal Funding Sources (Max. 10 pts.) – Given the 30% AMI income targeting requirements, viable projects will require other funding sources compatible with HTF. Priority consideration to the extent project will use non-federal funding sources.

A minimum score of 50 points (out of the 100 total points) must be scored in order to be recommended for the award of HTF funds.

Successful Recipient(s) will receive a Notice of Award, which will state that the Subgrantee's intent to award HTF funds is subject to approval of the applicable HTF Allocation Plan/Action Plan by the County Council/Approving Authority, HHFDC and HUD.

#### VII. MAXIMUM PER-UNIT DEVELOPMENT SUBSIDY LIMITS

Each year, HHFDC must establish maximum limitations on the total amount of HTF funds that may be invested per-unit for development of non-luxury rental housing projects. The HOME Program Maximum Per-Unit Subsidy Limits have been adopted for the HTF program. The development costs of affordable rental housing across the state are generally higher in comparison with the HOME subsidy limits. However, due to the limited funding, the HTF projects will require leveraging with other significant sources of funds. The HOME subsidy limit provides a reasonable maximum to develop a greater number of HTF assisted units throughout the state.

The following table reflects the maximum per unit subsidy limits by bedroom size for housing assisted with HTF within the State of Hawaii, for PY 2017.

Bedrooms	PY2017 HTF Maximum Per-Unit Subsidy Limit
0	\$141,088
1	\$161,738
2	\$196,672
3	\$254,431
4+	\$279,285

#### VIII. REHABILITATION STANDARDS

All rehabilitation projects must meet the applicable County HTF rehabilitation standards in accordance with 24 CFR 93.301(b).

If the rental project involves rehabilitation, the following property standards and requirements apply:

1) Local/state or national codes - All rehabilitation projects must meet all applicable state and local codes, ordinances and requirements. In the absence of a State or local building codes, the housing must meet the International Existing Building Code of the International Code Council.

2) Uniform Physical Condition Standards (UPCS) – Standards must ensure that the housing will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703.

3) Health and Safety – Standards must identify the life threatening deficiencies that must be addressed if a housing unit is occupied.

4) Accessibility – Assisted housing must meet the accessibility requirements at 24 CFR part 8 (implementing section 504 of the Rehabilitation Act of 1973) and Titles II and III of the Americans with Disabilities Act implemented at 28 CFR parts 35 and 36. For “covered multifamily dwellings,” as defined at 24 CFR 100.205, standards must require that the housing meets the design and construction requirements at 24 CFR 100.205. (Note that grantees may use HTF funds for other improvements that permit use by a person with disabilities, even if they are not required by statute or regulation.)

5) Lead Safe Housing Rule – All HTF-funded rehabilitation must meet the requirements of the Lead Safe Housing Rule at 24 CFR Part 35.

6) Major Systems – For all rental housing, standards must require an estimate of the remaining useful life of major systems, based on age and condition. For projects with 26 or more units, this must be done with a capital needs assessment. If the useful life of one or more major system is less than the affordability period, it must be replaced or rehabilitated or the standards must require sufficient monthly deposits into replacement reserves so that it can be addressed when needed. Major systems include: structural support, roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

7) Disaster Mitigation – Housing must meet state and local requirements for disaster mitigation, or requirements established by HUD, where they are needed to mitigate the risk of potential natural disasters.

**EXHIBIT E**

**ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR data is current as of August 24, 2017**

Title 24 → Subtitle A → Part 93

Title 24: Housing and Urban Development

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**PART 93—HOUSING TRUST FUND**

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**Contents****Subpart A—General**

- §93.1 Overview.
- §93.2 Definitions.
- §93.3 Waivers.

**Subpart B—Allocation Formula; Reallocations**

- §93.50 Formula allocation.
- §93.51 Formula factors.
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AUTHORITY: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

SOURCE: 80 FR 5220, Jan. 30, 2015, unless otherwise noted.

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### Subpart A—General

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#### §93.1 Overview.

(a) This part implements the Housing Trust Fund (HTF) program established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*) (the Act). In general, under the HTF program, HUD allocates funds by formula to eligible States to increase and preserve the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for extremely low-income and very low-income households, including homeless families.

(b) Section 1337 of the Act requires a percentage of the unpaid principal balance of total new business for the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) (collectively, the government-sponsored enterprises or GSEs) to be set aside and allocated as a dedicated source of annual funding for the HTF, unless allocations are suspended by the Director of the Federal Housing Finance Agency, the agency that regulates the GSEs. These funds will be deposited into an HTF account established in the Treasury of the United States by the Secretary of the Treasury to carry out the HTF program. The Act also provides that the HTF may be funded with amounts appropriated, transferred, or credited to the HTF under other provisions of law.

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#### §93.2 Definitions.

*1937 Act* means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

*Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*).

*Annual income.* See §93.151.

*Commitment* means:

(1) The grantee has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible recipient for a project that meets the definition of "commit to a specific local project" of paragraph (2) of this definition.

(2) "Commit to a specific local project" means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition), the grantee and recipient have executed a written legally binding agreement under which HTF assistance will be provided to the recipient for an identifiable project for which construction can reasonably be expected to start within 12 months of the agreement date.



The written agreement for rehabilitation or new construction of rental housing may also provide operating cost assistance and/or operating cost assistance reserves.

(ii) If the project consists of acquisition of standard housing and the grantee is providing HTF funds to a recipient to acquire rental housing, or to a first-time homebuyer family to acquire single family housing for homeownership, the grantee and recipient or the family have executed a written agreement under which HTF assistance will be provided for the purchase of the rental housing or single family housing and the property title will be transferred to the recipient or family within 6 months of the agreement date. The written agreement for acquisition of rental housing may also provide operating cost assistance and/or operating cost assistance reserves.

(iii) If the project is for renewal of operating cost assistance or operating cost assistance reserves, the grantee and the recipient must have executed a legally binding written agreement under which HTF funds will be provided to the recipient for operating cost assistance or operating cost assistance reserves for the identified HTF project.

*Consolidated plan* means the plan submitted and approved in accordance with 24 CFR part 91.

*Displaced homemaker* means an individual who:

- (1) Is an adult;
- (2) Has not worked full-time full-year in the labor force for a number of years, but has, during such years, worked primarily without remuneration to care for the home and family; and
- (3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

*Extremely low-income families* means low-income families whose annual incomes do not exceed 30 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families.

*Family* has the same meaning given that term in 24 CFR 5.403.

*First-time homebuyer* means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home with assistance under this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section.

*Grantee* means the State or the State-designated entity that receives the HTF funds from HUD.

*HTF allocation plan* means the annual submission to HUD required by the Act that describes how the grantee will distribute its HTF funds, including how it will use the funds to address its priority housing needs, what activities may be undertaken with those funds, and how recipients and projects will be selected to receive those funds. See 24 CFR 91.220 (l)(4) and 91.320(k)(5).

*HTF funds* means funds made available under this part through formula allocations and reallocations, plus program income.

*Homeownership* means ownership in fee simple title in a 1- to 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD.

- (1) The land may be owned in fee simple or the homeowner may have a 99-year ground lease.
  - (i) For housing located in the insular areas, the ground lease must be 40 years or more.
  - (ii) For housing located on Indian trust or restricted Indian lands or a Community Land Trust, the ground lease must be 50 years or more.
  - (iii) For manufactured housing, the ground lease must be for a period at least equal to the applicable period of affordability in §93.304(e).
- (2) Right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made) is not an equivalent form of ownership.
- (3) The ownership interest may be subject only to the restrictions on resale required under §93.304; mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the grantee; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.
- (4) The grantee must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law; however, if the cooperative or mutual housing project receives low income housing tax credits, the ownership or membership does not constitute homeownership.

*Homeownership counseling* has the same meaning given the term in 24 CFR 5.100, and is a type of housing counseling.

*Household* means one or more persons occupying a housing unit.

*Housing* includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, single-room occupancy housing, and group homes. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

*Housing counseling* has the meaning given the term in 24 CFR 5.100.

*HUD* means the Department of Housing and Urban Development.

*Income-eligible* means a family, homeowner, or household (as appropriate given the context of the specific regulatory provision) that is very low-income, extremely low-income, or both, depending on the income-targeting requirements set forth in §93.250.

*Insular areas* means Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

*Neighborhood* means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

*Poverty line* is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902).

*Program income* means gross income received by the grantee that is directly generated from the use of HTF funds. When program income is generated by housing that is only partially assisted with HTF funds, the income shall be prorated to reflect the percentage of HTF funds used. Program income includes, but is not limited to, the following:

- (1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HTF funds;
- (2) Gross income from the use or rental of real property owned by the grantee that was acquired, rehabilitated, or constructed with HTF funds, minus costs that were incidental to generation of the income; therefore, program income does not include gross income from the use, rental, or sale of real property received by the recipient, unless the funds are paid by the recipient to the grantee);
- (3) Payments of principal and interest on loans made using HTF funds;
- (4) Proceeds from the sale of loans made with HTF funds;
- (5) Proceeds from the sale of obligations secured by loans made with HTF funds;
- (6) Interest earned on program income pending its disposition; and
- (7) Any other interest or return on the investment of HTF funds, as permitted under §93.200(b).

*Project* means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HTF funds as a single undertaking under this part. The project includes all the activities associated with the site and building.

*Project completion* means that all necessary title transfer requirements and construction work have been performed, the project complies with the requirements of this part (including the property standards under §93.301 of this part), the final drawdown has been disbursed for the project, and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of §93.402(d) of this part, project completion occurs upon completion of construction before occupancy.

*Recipient* means an organization, agency, or other entity (including a public housing agency, or a for-profit entity or a nonprofit entity) that receives HTF assistance from a grantee as an owner or developer to carry out an HTF-assisted project. A recipient must:

- (1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities;
- (2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;
- (3) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs; and

(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:

- (i) Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development; or
- (ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.
- (iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.

*Reconstruction* means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HTF funds are committed within 12 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is new construction for purposes of this part.

*Shortage of standard rental units both affordable and available to extremely low-income renter households* means

(1) For any State or other geographical area the gap between:

(i) The number of units with complete plumbing and kitchen facilities with a rent that does not exceed 30 percent of 30 percent of the adjusted area median income (AMI) as determined by HUD that either are occupied by extremely low-income renter households or are vacant for rent; and

(ii) The number of extremely low-income renter households.

(2) If the number of units described in paragraph (1)(i) of this definition exceeds the number of extremely low-income households described in paragraph (1)(ii) of this definition, there is no shortage.

*Single family housing* means a one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

*Single parent* means an individual who:

(1) Is unmarried or legally separated from a spouse; and

(2) Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

*State-designated entity* means a State housing finance agency, tribally designated housing entity, or any other qualified instrumentality of the State that is designated by the State to be the grantee.

*Subgrantee* means a unit of general local government or State agency selected by the grantee to administer all or a portion of its HTF program. A local government subgrantee must have an approved consolidated plan submitted in accordance with 24 CFR part 91. The selection of a subgrantee by a grantee is not subject to the procurement procedures and requirements.

*Tribally designated housing entity* has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103).

*Unit of general local government* means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HTF program.

*Urban county* has the meaning given the term in 24 CFR 570.3.

*Very low-income renter households* means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

*Very low-income families* means low-income families whose annual incomes are in excess of 30 percent but not greater than 50 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families. "Very low-income family" also includes any family that resides in a nonmetropolitan area that does not exceed the poverty line applicable to the family size involved.

[80 FR 5220, Jan. 30, 2015, as amended at 81 FR 90657, Dec. 14, 2016]

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### §93.3 Waivers.

HUD may, upon a determination of good cause and subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

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### Subpart B—Allocation Formula; Reallocations

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#### §93.50 Formula allocation.

(a) *Allocations to States.* HUD will provide to the States allocations of funds in amounts determined by the formula described in this part.

(b) *Amount available for allocation.* The amount of funds available for allocation by the formula is the balance remaining after providing for other purposes authorized by Congress, in accordance with the Act and appropriations.

(c) *Allocations for the insular areas.* The allocation amount for each insular area is determined by multiplying the funds available times the ratio of renter households in each insular area to the total number of renter households in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas.

(d) *Allocations for the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia—(1) Amounts available for allocations.* The amount of funds that is available for allocation by the formula to the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia is determined using the most current data available from the U.S. Census Bureau that is available for the same year for all these geographic areas. The amount is equal to the balance of funds remaining after determining formula allocations for the insular areas under §93.50(c). For purposes of paragraphs (d)(1) and (2) of this section, the term "State" means any of the 50 United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(2) *Allocations.* (i) Allocations to the States are determined using the four needs factors described in §93.51(a) through (d), multiplying each factor by the amount available under §93.51(d)(1) by its priority weight, and summing the four factors for each State.

(ii) The factor described in §93.51(a) is weighted 0.5. The factors described in §93.51(b) and (d) are weighted at 0.125 and the factor described in §93.51(c) of this section is weighted at 0.25.

(iii) The sum of the four needs factors for each State is then multiplied by the construction cost factor described in §93.51(e) of this section and by the total amount of funds available for State allocations.

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#### §93.51 Formula factors.

(a) *Need factor one.* The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(b) *Need factor two.* The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(c) *Need factor three.* The ratio of:

(1) Extremely low-income renter households in the State living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs, to

(2) The aggregate number of extremely low-income renter households living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs in all the States.

(d) *Need factor four.* The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(e) *Construction cost factor.* The resulting sum calculated from the factors described in paragraphs (a) through (d) of this section shall be multiplied by the relative cost of construction in the state. For purposes of calculating this factor, the term "cost of construction":

(1) Means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(2) Is calculated so that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

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#### **§93.52 Minimum allocations.**

(a) In accordance with the HTF statute, HUD is required to provide each of the States and the District of Columbia with a minimum grant of \$3 million. If the formula amount determined for a fiscal year is less than \$3 million to any of the 50 States or the District of Columbia, then the allocation to that State or the District of Columbia is increased to \$3 million, and allocations to States and the District of Columbia above \$3 million and to the Commonwealth of Puerto Rico and the insular areas are adjusted by an equal amount on a pro rata basis.

(b) If in any fiscal year, funding in the HTF is insufficient to provide each of the 50 States and the District of Columbia with a minimum grant of \$3 million, HUD will, through notice published in the FEDERAL REGISTER for public comment, describe an alternative method for allocating grant funds to the 50 States and the District of Columbia.

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#### **§93.53 Federal Register notice of formula allocations.**

Not later than 60 calendar days after the date that HUD determines the formula amounts under this subpart, HUD will publish a notice in the FEDERAL REGISTER announcing the availability of the allocations to States.

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#### **§93.54 Reallocations by formula.**

(a) HUD will reallocate under this section:

(1) Any HTF funds available for reallocation because HUD reduced or recaptured funds from an HTF grantee under §93.400(d) for failure to commit or expend the funds within the time specified, or under §93.453 for failure to comply substantially with any provision of this part;

(2) Any HTF funds reduced for failure by the grantee to obtain funds required to be reimbursed or returned under §93.450; and

(3) Any HTF funds remitted to HUD under §93.403(b)(4) when a grantee ceases to be an HTF grantee for any reason.

(b) Any reallocation of funds must be made only among all participating States, except those States from which the funds were recaptured or reduced.

(c) Any amounts that become available for reallocation shall be added to amounts for formula allocation in the succeeding fiscal year.

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### **Subpart C—Participation and Submission Requirements; Distribution of Assistance**

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#### **§93.100 Participation and submission requirements.**

(a) *Notification of intent to participate.* Not later than 30 calendar days after HUD's publication of the formula allocation amounts as provided in §93.53, the State must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding.

(b) *Submission requirement.* To receive its HTF grant, the grantee must submit a consolidated plan in accordance with 24 CFR part 91.

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#### **§93.101 Distribution of assistance.**

(a) A State may choose to be the HTF grantee to receive and administer its grant or it may choose a qualified State-designated entity to be the HTF grantee.

(b) Each grantee is responsible for distributing HTF funds throughout the State according to the State's assessment of the priority housing needs within the State, as identified in the State's approved consolidated plan.

(c) An HTF grantee may choose to directly fund projects by eligible recipients in accordance with the State's HTF allocation plan or to fund projects by eligible recipients through one or more subgrantees. An HTF subgrantee that is a unit of general local government must have a consolidated plan under 24 CFR part 91, and must include an HTF allocation plan in its consolidated plan (see 24 CFR 91.220(l)(4)), and must select projects by eligible recipients in accordance with its HTF allocation plan. Because a State has only one consolidated plan, and HTF allocation plan for an HTF subgrantee that is a State agency must be included in the State's HTF allocation plan. The grantee or subgrantee must determine that the applicant is an eligible recipient that meets the definition of "recipient" in §93.2 before awarding HTF assistance.

(d) If the HTF grantee subgrants HTF funds to subgrantees, the grantee must ensure that its subgrantees comply with the requirements of this part and carry out the responsibilities of the grantee. The grantee must annually review the performance of subgrantees in accordance with 24 CFR 93.404(a).

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## Subpart D—Program Requirements

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### §93.150 Site and neighborhood standards.

(a) *General.* A grantee must administer its HTF program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 *et seq.*, E.O. 11063, 3 CFR, 1959-1963 Comp., p. 652) and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.

(b) *New rental housing.* In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a grantee is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.57(e)(2).

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### §93.151 Income determinations.

(a) *General.* The HTF program has income-targeting requirements. Therefore, the grantee must determine that each family occupying an HTF-assisted unit is income-eligible by determining the family's annual income.

(b) *Definition of "annual income."* (1) When determining whether a family is income-eligible, the grantee must use one of the following two definitions of "annual income":

(i) "Annual income" as defined at 24 CFR 5.609; or

(ii) "Adjusted gross income" as defined for purposes of reporting under the Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes.

(2) The grantee may use only one definition for each HTF-assisted program (e.g., down payment assistance program) that it administers and for each rental housing project.

(c) *Determining annual income—(1) Tenants in HTF-assisted housing.* For families who are tenants in HTF-assisted housing, the grantee must initially determine annual income using the method in paragraph (d)(1) of this section. For subsequent income determinations during the period of affordability, the grantee may use any one of the methods described in paragraph (d) of this section, in accordance with §93.302(e).

(2) *HTF-assisted homebuyers.* For families who are HTF-assisted homebuyers, the grantee must determine annual income using the method described in paragraph (d)(1) of this section.

(d) *Methods of determining annual income.* (1) Examine at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(2) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(3) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

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## Subpart E—Eligible and Prohibited Activities

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### §93.200 Eligible activities: General.

(a)(1) HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. Not more than one third of each annual grant may be used for operating cost assistance and operating cost assistance reserves. Operating cost assistance and operating cost assistance reserves may be provided only to rental housing acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. Not more than 10 percent of the annual grant shall be used for housing for homeownership. HTF-assisted housing must be permanent housing. The specific eligible costs for these activities are found in §§93.201 and 93.202. The activities and costs are eligible only if the housing meets the property standards in §93.301, as applicable, upon project completion.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in the definition of "commitment" in §93.2.

(3) HTF funds may be used to purchase and/or rehabilitate a manufactured housing unit, and purchase the land upon which a manufactured housing unit is located. The manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) *Forms of assistance to projects.* A grantee may provide HTF funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each grantee has the right to establish the terms of assistance, subject to the requirements of this part.

(c) *Multi-unit projects.* (1) HTF funds may be used to assist in the development of one or more housing units in a multi-unit project. Only the actual HTF eligible development costs of the assisted units may be charged to the HTF program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HTF-assisted units can be determined by prorating the total HTF-eligible development costs of the project so that the proportion of the total development costs charged to the HTF program does not exceed the proportion of the HTF-assisted units in the project.

(2) After project completion, the number of units designated as HTF-assisted may be reduced only in accordance with §93.203, except that in a project consisting of all HTF-assisted units, one unit may be converted to an onsite manager's unit if the grantee determines the conversion is reasonable and that, based on one fewer HTF-assisted unit, the costs charged to the HTF program do not exceed the actual costs of the HTF-assisted units and do not exceed the subsidy limit established pursuant to §93.300(a).

(d) *Terminated projects.* An HTF-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and the grantee must repay any HTF funds invested in the project to its HTF account from which the funds were drawn (*i.e.*, local or Treasury account), in accordance with §93.403(b). A project that does not meet the requirements for affordable housing must be terminated and the grantee must repay the HTF funds to the grantee's HTF account.

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### §93.201 Eligible project costs.

HTF funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

- (1) For new construction projects, costs to meet the new construction standards of the grantee in §93.301;
- (2) For rehabilitation, costs to meet the property standards for rehabilitation projects in §93.301(b);
- (3) For both new construction and rehabilitation projects, costs:
  - (i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include onsite roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.

(5) Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of paragraphs (a)(3)(ii) and (iii) of this section are also eligible in connection with the acquisition of standard housing.

(b) *Refinancing costs.* (1) The cost to refinance existing debt secured by rental housing units that are being rehabilitated with HTF funds, but only if the refinancing is necessary to reduce the overall housing costs and to make the housing more affordable and proportional to the number of HTF-assisted units in the rental project. The proportional rehabilitation cost must be greater than the proportional amount of debt that is refinanced.

(2) The grantee must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. The guidelines shall describe the conditions under which the grantee will refinance existing debt. At minimum, the guidelines must demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(d) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or grantee and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HTF funds. These costs include, but are not limited to:

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 24 months before the date that HTF funds are committed to the project and the grantee expressly permits HTF funds to be used to pay the costs in the written agreement committing the funds.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, and builders' or developers' fees.

(3) Costs of a project audit, including certification of costs performed by a certified public accountant, that the grantee may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by §93.350.

(5) For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any HTF funds placed in an operating deficit reserve that remain unexpended after the period of project rent-up may be retained for project reserves if permitted by the grantee.

(6) Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation, loan processing, and inspections. For multi-unit projects, such costs must be allocated among HTF-assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, these costs cannot be charged to or paid by the assisted families.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(e) *Operating cost assistance and operating cost assistance reserves.* For HTF-assisted units for which project-based assistance is not available, when necessary and subject to the limitations in §93.200(a), HTF funds may be used to pay for operating cost assistance and operating cost assistance reserves, as follows:

(1) Operating costs are costs for insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems (provided that the payments must be based on the useful life of each major system and expected replacement cost) of an HTF-assisted unit. The eligible amount of HTF funds per unit for operating cost assistance is determined based on the deficit remaining after the monthly rent payment for the HTF-assisted unit is applied to the HTF-assisted unit's share of monthly operating costs. The maximum amount of the operating cost assistance to be provided to an HTF-assisted rental project must be based on the underwriting of the project and must be specified in a written agreement between the grantee and the recipient. The written agreement may commit, from a fiscal year HTF grant, funds for operating cost assistance for a multiyear period provided that the grantee is able meet its



expenditure deadline in §93.400(d). The grantee may renew operating cost assistance with future fiscal year HTF grants during the affordability period and the amount must be based on the need for the operating cost assistance at the time the assistance is renewed.

(2) An operating cost assistance reserve may be funded by the grantee for HTF-assisted units in a project where the grantee determines in its underwriting of the project the reserve is necessary to ensure the project's financial feasibility. If the operating cost assistance reserve is funded with appropriated HTF funds, the allowable amount of the reserve shall not exceed the amount determined by the grantee to be necessary to provide operating cost assistance for HTF-assisted units, for a period not to exceed 5 years, based on an analysis of potential deficits remaining after the expected rent payments for the HTF-assisted unit are applied to the HTF-assisted unit's expected share of operating costs. The grantee may renew operating cost assistance reserves with future fiscal year HTF grants during the affordability period and the amount must be based on the need for the operating cost assistance reserve at the time the assistance for the reserve is renewed. If the operating cost assistance reserve is funded with non-appropriated HTF funds, the reserve may be funded for the period of affordability.

(f) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(g) *Costs relating to payment of loans.* If the HTF funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

(1) The loan was used for eligible costs specified in this section, and

(2) The HTF assistance is part of the original financing for the project and the project meets the requirements of this part.

(h) *Construction undertaken before the HTF funds are committed to the project.* HTF funds cannot be used for development hard costs, as provided in paragraph (a) of this section, or for acquisition, undertaken before the HTF funds are committed to the project. However, the written agreement committing the HTF funds to the project may authorize HTF funds to be used for architectural and engineering costs and other related professional services, as provided in paragraph (d)(1) of this section.

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#### §93.202 Eligible administrative and planning costs.

(a) *General.* A HTF grantee may expend, for payment of reasonable administrative and planning costs of the HTF, an amount of HTF funds that is not more than 10 percent of the sum of each fiscal year HTF grant and of program income deposited into its local account or received and reported by its subgrantees during the program year. A HTF grantee may expend the funds directly or may authorize its subgrantees, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs are those costs described in paragraphs (b) through (h) of this section:

(b) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff. In charging costs to this category the grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The grantee may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HTF funds;

(iii) Monitoring HTF-assisted housing for progress and compliance with program requirements;

(iv) Preparing reports and other documents related to the program for submission to HUD;

- (v) Coordinating the resolution of audit and monitoring findings;
  - (vi) Evaluating program results against stated objectives; and
  - (vii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vi) of this section;
- (2) Travel costs incurred for official business in carrying out the program;
  - (3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services;
  - (4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space; and
- (c) *Staff and overhead.* Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments), other services related to assisting potential owners, tenants and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs (except homeownership counseling) may be charged as administrative costs or as project costs under §93.201(d)(6) and (f)(2), at the discretion of the grantee; however, these costs (except homeownership counseling) cannot be charged to or paid by the low-income families.
- (d) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HTF funds.
- (e) *Fair housing.* Activities to affirmatively further fair housing in accordance with the grantee's certification under 24 CFR part 91.
- (f) *Indirect costs.* Indirect costs may be charged to the HTF program in accordance with 2 CFR part 200, subpart E.
- (g) *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.
- (h) *Other Federal requirements.* Costs of complying with the Federal requirements in subpart H of this part.

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#### §93.203 HTF funds and public housing.

(a) HTF funds may be used for new construction or rehabilitation of public housing units only in accordance with the following:

(1) HTF funds may be used for new construction of public housing as part of the Choice Neighborhoods (Choice) program under a HUD appropriation act or for new public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

(2) HTF funds may be used for the rehabilitation of existing public housing units in which the public housing assistance will be converted and used at the properties under the Rental Assistance Demonstration (RAD) program under HUD's 2012 Appropriations Act (Pub. L. 112-55, 125 Stat. 552, approved November 18, 2011) or subsequent statutes. HTF funds may also be used for the rehabilitation of existing public housing under the Choice program, and of existing public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

(b) The public housing units constructed using funds under this part must replace units that were removed from a public housing agency's public housing inventory as part of a Choice program grant, or as part of a mixed-financed development under section 35 of the 1937 Act. The number of replacement units cannot be more than the number of units removed from the public housing agency's inventory. The public housing units constructed or rehabilitated using funds under this part must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. These units cannot receive operating costs assistance or operating cost assistance reserves under this part.

(c) Except as provided in paragraph (b) of this section, HTF-assisted housing may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HTF period of affordability.

(d) Consistent with §93.200(c), HTF funds may be used for affordable housing in a project that also contains public housing units, provided that the HTF funds are not used for the public housing units and HTF funds are used only for eligible costs, in accordance with this part.

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#### §93.204 Prohibited activities and fees.

(a) HTF funds may not be used to:

(1) Provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HTF funds or renewal of operating cost assistance or renewal of operating cost assistance reserve) to a project previously assisted with HTF funds during the period of affordability established by the grantee in the written agreement under §93.404 (c)(2) (iv). However, additional HTF funds may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit development subsidy amount established pursuant to §93.300.

(2) Pay for the acquisition of property owned by the grantee, except for property acquired by the grantee with HTF funds or property acquired in anticipation of carrying out an HTF project.

(3) Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds.

(4) Pay for political activities, advocacy, lobbying (whether directly or through other parties), counseling services (except for housing counseling), travel expenses (other than those eligible under §93.202(b)), or preparing or providing advice on tax returns. The prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State, or local office as codified in section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

(5) Pay for administrative, outreach, or other costs to manage and operate the grantee of HTF funds, except those administrative costs necessary to carry out the HTF program in §93.202, including housing counseling.

(6) Pay for any cost that is not eligible under §93.201 and §93.202.

(b)(1) The grantee may not charge (and must prohibit subgrantees and recipients from charging) servicing, origination, or other fees for the costs of administering the HTF program. However, the grantee may charge owners of rental projects reasonable annual fees for monitoring compliance during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HTF-assisted rental projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project underwriting.

(2) The grantee may also charge nominal application fees (although these fees are not an eligible HTF cost) to eligible recipients, to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an extremely low-income family to be able to participate in the grantee's program.

(3) All fees are applicable credits under 2 CFR part 200, subpart E.

(4) In addition, the grantee must prohibit project owners from charging fees that are not customarily charged in rental housing (e.g., laundry room access fees), except that rental project owners may charge:

(i) Reasonable application fees to prospective tenants;

(ii) Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

(iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

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#### Subpart F—Income Targeting

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#### §93.250 Income targeting.

(a) In any fiscal year in which the total amount available for allocation of HTF funds is less than \$1 billion, the grantee must use 100 percent of its HTF grant for the benefit of extremely low-income families or families with incomes at or below the poverty line (whichever is greater). In any fiscal year in which the total amount available for allocation of HTF funds is greater than \$1 billion, the grantee must use at least 75 percent of its grant for the benefit of extremely low-income families or families with incomes at or below the poverty line.

(b) Any grant funds not used in accordance with paragraph (a) of this section must be used for the benefit of very-low income families.

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## Subpart G—Project Requirements

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### §93.300 Maximum per-unit development subsidy amount, underwriting, and subsidy layering.

(a) *Maximum per-unit development subsidy amount.* The grantee must establish maximum limitations on the total amount of HTF funds that the grantee may invest per-unit for development of non-luxury housing, with adjustments for the number of bedrooms and the geographic location of the project. These limits must be reasonable and based on actual costs of developing non-luxury housing in the area. The grantee must include these limits in its consolidated plan and update these limits annually.

(b) *Underwriting and subsidy layering.* Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on recipient's investment in a project and must not invest any more HTF funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability in §93.302 or §93.304) and that will not provide a profit or return on the recipient's investment that exceeds the grantee's established standards for the size, type, and complexity of the project. The guidelines adopted by the grantees must require the grantee to undertake:

(1) An examination of the sources and uses of funds for the project (including any operating cost assistance, operating cost assistance reserve, or project-based rental assistance that will be provided to the project) and a determination that the costs are reasonable; and

(2) An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the recipient, the financial capacity of the recipient, and firm written financial commitments for the project.

(3) For HTF-funded downpayment assistance, a market analysis is not required.

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### §93.301 Property standards.

(a) *New construction projects.* (1) State and local codes, ordinances, and zoning requirements. Housing that is newly constructed with HTF funds must meet all applicable State and local codes, ordinances, and zoning requirements. HTF-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

(2) *HUD requirements.* All new construction projects must also meet the requirements described in this paragraph:

(i) *Accessibility.* The housing must meet the accessibility requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. "Covered multifamily dwellings," as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

(ii) *Energy efficiency.* The housing must meet the energy efficiency standards established pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709).

(iii) *Disaster mitigation.* Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

(iv) *Written cost estimates, construction contracts, and construction documents.* The grantee must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The grantee must review and approve written cost estimates for construction and determine that costs are reasonable.

(v) *Construction progress inspections.* The grantee must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

(vi) *Broadband infrastructure.* For new commitments made after January 19, 2017 for a new construction housing project of a building with more than 4 rental units, the construction must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee determines and, in accordance with §93.407(a)(2)(iv), documents the determination that:

(A) The location of the new construction makes installation of broadband infrastructure infeasible; or

(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden.

(b) *Rehabilitation projects.* All rehabilitation that is performed using HTF funds must meet the requirements of this paragraph (b).

(1) *Rehabilitation standards.* The grantee must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The grantee's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:

(i) *Health and safety.* The grantee's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.

(ii) *Major systems.* Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the grantee's standards must require the grantee to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major system. For multifamily housing projects of 26 units or more, the grantee's standards must require the grantee to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the grantee's standards must require the grantee to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the grantee's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by grantee, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

(iii) *Lead-based paint.* The grantee's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.

(iv) *Accessibility.* The grantee's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. "Covered multifamily dwellings," as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(v) [Reserved].

(vi) *Disaster mitigation.* Where relevant, the grantee's standards must require the housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements, or such other requirements as HUD may establish.

(vii) *State and local codes, ordinances, and zoning requirements.* The grantee's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

(viii) *Uniform Physical Condition Standards.* The standards of the grantee must be such that, upon completion, the HTF-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the grantee's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.

(ix) *Capital Needs Assessments.* For multifamily rental housing projects of 26 or more total units, the grantee must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.

(x) *Broadband infrastructure.* For new commitments made after January 19, 2017 for a substantial rehabilitation project of a building with more than 4 rental units, any substantial rehabilitation, as defined in 24 CFR 5.100, must provide for installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee determines and, in accordance with §93.407(a)(2)(iv), documents the determination that:

(A) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(C) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(2) *Construction documents and cost estimates.* The grantee must ensure that the work to be undertaken will meet the grantee's rehabilitation standards. The construction documents (*i.e.*, written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the grantee's standards. The grantee must review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.

(3) *Frequency of inspections.* The grantee must conduct an initial property inspection to identify the deficiencies that must be addressed. The grantee must conduct progress and final inspections to determine that work was done in accordance with work write-ups.

(c) *Acquisition of standard housing.* (1) Existing housing that is acquired with HTF assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HTF funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, for new construction and rehabilitation projects. The grantee must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance.

(2) All other existing housing that is acquired with HTF assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The grantee must document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the property does not meet these standards, HTF funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.

(3) Existing housing that is acquired for homeownership (*e.g.*, downpayment assistance) must be decent, safe, sanitary, and in good repair. The grantee must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The grantee must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be assisted with HTF funds.

(d) *Manufactured housing.* Construction of all manufactured housing (including manufactured housing that replaces an existing substandard unit under the definition of "reconstruction") must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the Federal standards for the new construction of manufactured housing. The grantees providing HTF funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing (and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction") must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HTF-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or State codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HTF funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The grantee must document this compliance in accordance with inspection procedures that the grantee has established pursuant to §92.301, as applicable.

(e) *Ongoing property condition standards: Rental housing—(1) Ongoing property standards.* The grantee must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The grantee's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HTF rental projects. The grantee's ongoing property standards must address each of the following:

(i) At a minimum, the grantee's ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705.

(ii) *Health and safety.* The grantee's standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

(iii) *Lead-based paint.* The grantee's standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.

(2) *Inspections.* The grantee must undertake ongoing property inspections, in accordance with §93.404.

(3) *Corrective and remedial actions.* The grantee must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

(4) *Inspection procedures.* The grantee must establish written inspection procedures. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with section §93.404(d).

(f) *Environmental provisions—(1) New construction projects environmental requirements—(i) Historic preservation—(A) Standards.* The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places, unless the project activities meet the *Secretary of the Interior's Standards for Rehabilitation*, either as certified through the Federal and/or State historic rehabilitation tax credit programs or as verified by someone that meets the relevant *Secretary of the Interior's Professional Qualification Standards*;

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

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

(iii) *Airport zones.* Projects are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.

(iv) *Coastal Barrier Resource System.* No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service.

(v) *Coastal zone management.* Development must be consistent with the appropriate State coastal zone management plan. Plans are available from the local coastal zone management agency.

(vi) *Floodplains.* Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

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

(B) No HTF assistance may be approved with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

(2) Any new construction critical action located in a coastal high hazard area, 100- or 500-year floodplain; or

(3) Any non-critical new construction action in a coastal high hazard area, unless the action is reconstruction following destruction caused by a disaster and is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V-Zones.

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

(B) A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities, such as the construction

of structural flood protection methods or solid-fill road beds, or mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U. S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

(viii) *Explosives and hazards.* Projects must be in compliance with the standards for acceptable separation distance, as set forth at 24 CFR part 51, subpart C.

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

(A) All proposed multifamily (more than four housing units) HTF projects require a Phase I Environmental Site Assessment (ESA-ASTM). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA-ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard. Single family housing does not require a Phase I ESA.

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

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

(B) External noise levels:

(1) Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.

(2) Sites between 65 dB and less than 75 dB are acceptable with mitigation (*e.g.*, noise walls, careful site planning) that result in an interior standard of 45 dB.

(3) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (*e.g.*, picnic areas, tot lots, balconies, or patios) and *require* sound attenuation in the building shell to achieve the 45 dB interior standard.

(xi) *Endangered species.* The grantee must avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by the U.S. Fish and Wildlife Service or National Marine Fisheries Service, or would result in the destruction or adversely modify the designated critical habitat of such species.

(xii) *Wild and scenic rivers.* The grantee must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Departments of Agriculture or Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

(xiii) *Safe drinking water.* Projects with a potable water system must use only lead-free pipes, solder, and flux.

(xiv) *Sole-source aquifers.* Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, EPA must review the project. EPA review is designed to reduce the risk of ground water contamination that could pose a health hazard to those who use it.

(2) *Rehabilitation projects environmental requirements—(i) Historic preservation.* (A) The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places, unless the project activities meet the *Secretary of the Interior's Standards for Rehabilitation*, either as certified through the Federal and/or State historic rehabilitation tax credit programs or as verified by someone that meets the relevant *Secretary of the Interior's Professional Qualification Standards*;

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

(ii) *Farmland.* Project activities must not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses.

(iii) *Airport zones.* Projects are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.



(iv) *Coastal Barrier Resource System*. No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service.

(v) *Coastal zone management*. Development must be consistent with the appropriate State coastal zone management plan. Plans are available from the local coastal zone management agency.

(vi) *Floodplains*. Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

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

(B) No HTF assistance may be approved with respect to:

(1) Any action, other than functionally dependent uses, located in a floodway;

(2) Any critical action located in a coastal high hazard area, 100- or 500-year floodplain; or

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V-Zones. "Any non-critical action in a coastal high hazard area, unless the action is reconstruction following destruction caused by a disaster and is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V-Zones."

(vii) *Wetlands*. No rehabilitation of existing properties that expands the footprint into a wetland is allowed. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

(viii) *Explosives and hazards*. If the rehabilitation of the building increases the number of dwelling units, then the project must be in compliance with the standards for acceptable separation distance as set forth at 24 CFR part 51, subpart C.

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

(A) All proposed multifamily (more than four housing units) HTF project activities require a Phase I Environmental Site Assessment (ESA—ASTM). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA—ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard. Single family housing does not require a Phase I ESA.

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

(x) *Noise*—(A) *Internal noise levels*. All activities will be developed to ensure an interior noise level of no more than 45 decibels (dB).

(B) [Reserved].

(xi) *Endangered species*. (A) The grantee must avoid all actions that could jeopardize the continued existence of any species designated by the U.S. Fish and Wildlife Service or National Marine Fisheries Service as endangered or threatened.

(B) The grantee must avoid all actions that adversely modify the critical habitat of such species.

(xii) *Wild and scenic rivers*. The grantee must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Departments of Agriculture and Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

(xiii) *Safe drinking water.* Projects with a potable water system must use only lead-free pipes, solder, and flux.

(xiv) *Sole-source aquifers.* Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). The EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, the EPA must review the project. The EPA review is designed to reduce the risk of ground water contamination, which could pose a health hazard to those who use it.

(3) *Acquisition projects environmental requirements.* (i)(A) Existing housing that is acquired with HTF funds, and has been newly constructed or rehabilitated less than 12 months before the commitment of HTF funds must meet the property standards at paragraph (f)(1) of this section.

(B) All other existing housing that is acquired with HTF assistance must meet the property standards requirements of paragraph (f)(2) of this section.

(ii) If under paragraph (f)(3)(i)(A) or paragraph (B) of this section, the property does not meet these standards, with the exception of the noise standards in paragraph (f)(2) of this section, HTF funds cannot be used to acquire the property.

(4) *Manufactured housing environmental requirements.* Manufactured housing is subject to the environmental standards in paragraph (f)(1) of this section for new construction or paragraph (f)(2) of this section for rehabilitation, as applicable. If an existing property does not meet these standards, HTF funds cannot be used to acquire the property unless it is rehabilitated to meet the standards in paragraph (f)(2), as applicable, with the exception of noise standards in paragraph (f)(2)(x).

[80 FR 5220, Jan. 30, 2015, as amended at 81 FR 92636, Dec. 20, 2016]

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#### §93.302 Qualification as affordable housing: rental housing.

(a) *Eligible tenants.* The HTF-assisted units in a rental housing project must be occupied by households who are eligible families in accordance with the income targeting requirements in §93.250.

(b) *Rent limitations—(1)(i) Extremely low-income tenants.* The HTF rent plus utilities of an extremely low-income tenant shall not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a family whose annual income equals 30 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the HTF rent limits on an annual basis.

(ii) *Very-low income tenants.* The HTF rent plus utilities of a very low-income tenant shall not exceed 30 percent of the income of a family whose annual income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the HTF rent limits on an annual basis.

(2) If the unit receives Federal or State project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30 percent of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

(c) *Initial rent schedule and utility allowance.* (1) The grantee must establish maximum monthly allowances for utilities and services (excluding telephone, television, and Internet service).

(2) The grantee must annually review and approve rents proposed by the owner for HTF units. For all units for which the tenant is paying utilities, the grantee must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities.

(d) *Periods of affordability.* (1) HTF-assisted units must meet the affordability requirements for not less than 30 years, beginning after project completion. The grantee may impose longer periods.

(2) The affordability requirements apply without regard to the term of any loan or mortgage, repayment of the HTF investment, or the transfer of ownership. They must be imposed by a deed restriction, covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD under which the grantee and beneficiaries have the right to require specific performance, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The affordability requirements must be recorded in accordance with State recordation laws.

(3) The grantee may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability.

(4) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(5) The termination of the restrictions on the project does not terminate the grantee's repayment obligation under §93.403.

(e) *Tenant income.* (1) The income of each tenant must be determined initially in accordance with §93.151. In addition, in each year during the period of affordability, the project owner must re-examine each tenant's annual income in accordance with one of the options in §93.151(c) selected by the grantee.

(2) An owner who re-examines a tenant's annual income through a statement and certification in accordance with §93.151(a)(1)(iii) must examine the source documentation of the income of each tenant every 6th year of the affordability period, except that, for units that receive project-based assistance, the owner must re-examine the tenant's annual income in accordance with the project-based assistance rules. Otherwise, an owner who accepts the tenant's statement and certification in accordance with §93.151(a)(1)(iii) is not required to examine the income of tenants, unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

(f) *Over-income tenants.* HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(g) *Fixed and floating HTF units.* In a project containing HTF-assisted and other units, the grantee may designate fixed or floating HTF units. This designation must be made at the time of project commitment in the written agreement between the grantee and the recipient, and the HTF units must be identified not later than the time of project completion. Fixed units must remain the same throughout the period of affordability. Floating units must be changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated HTF-assisted unit.

(h) *Tenant selection.* The tenants must be selected in accordance with §93.303.

(i) *Onsite inspections and financial oversight.* See §93.404(d) for the grantee's ongoing responsibilities for onsite inspections and financial oversight.

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#### §93.303 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HTF funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under §93.356(d).

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *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;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *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;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by 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;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *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;

(8) *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; and

(9) *Mandatory supportive services.* Agreement by the tenant to accept supportive services that are offered.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HTF funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with State or local law.

(d) *Tenant selection.* An owner of rental housing assisted with HTF funds must comply with the affirmative marketing requirements established by the grantee pursuant to §93.350. The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to income-eligible families;

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (*i.e.*, to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);

(3) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if the limitation or preference is described in the grantee's consolidated plan).

(i) Any limitation or preference must not violate nondiscrimination requirements in §93.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (*e.g.*, the Housing Opportunity for Persons With AIDS program under 24 CFR part 574), and the limit or preference is tailored to serve that segment of the population.

(ii) If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

(4) Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program (24 CFR part 92) because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

(5) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection; and

(7) Comply with the VAWA requirements prescribed in §93.356.

[80 FR 5220, Jan. 30, 2015, as amended at 81 FR 80805, Nov. 16, 2016]

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#### §93.304 Qualification as affordable housing: Homeownership.

(a) *Homeownership activities.* Housing that is for purchase by a first-time homebuyer must meet the affordability requirements of this section.

(b) *Single family housing.* The housing must be single-family housing, as defined at §93.2.

(c) *Modest housing.* The housing must be modest housing, in accordance with §93.305.

(d) *First-time homebuyer and income requirements.* The housing must be acquired by a first-time homebuyer whose family qualifies as an income-eligible family in accordance with §93.251 and the housing must be the principal residence of the family throughout the period described in paragraph (e) of this section. In determining the income eligibility of the family, the grantee must include the income of all persons living in the housing. Before purchasing the housing, the family must have completed a program of independent financial education and homeownership counseling from an eligible organization that has been certified in accordance with section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x (e)).

(e) *Period of affordability.* The HTF-assisted housing must meet the affordability requirements for not less than 30 years.

(f) *Resale or recapture requirements.* The grantee must establish the resale or recapture requirements that comply with the standards of §93.305 and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate and must specifically approve them in writing.

(g) *Special considerations for single family properties with more than one unit.* (1) If the HTF funds are used only to assist an income-eligible homebuyer in acquiring one unit in a single family property containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit.

(2) If HTF funds are also used to assist the income-eligible homebuyer in acquiring one or more of the rental units in the single family property, the affordability requirements of §93.302 apply to assisted rental units, except that the grantee must impose resale restrictions on all assisted units (owner-occupied and rental units) in the single-family housing. The affordability requirements on all assisted units continue for the period of affordability. If HTF funds are used to assist only the rental units in such a property, then the requirements of §93.302 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of this section.

(h) *Lease-purchase.* (1) HTF funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by an eligible homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as an income-eligible family at the time the lease-purchase agreement is signed.

(2) If HTF funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HTF affordability requirements for rental housing in §93.302 shall apply if the housing is not transferred to an eligible homebuyer within 42 months after project completion.

(i) *Contract to purchase.* If HTF funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as an income-eligible family at the time the contract is signed.

(j) If there is no ratified sales contract with an eligible homebuyer for the housing within 9 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant in accordance with §93.301.

(k) *Preserving affordability.* (1) To preserve the affordability of housing that was previously assisted with HTF funds and subject to the requirements of this section, a grantee may use additional HTF funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or to acquire the housing at the foreclosure sale, undertake any necessary rehabilitation, and provide assistance to another first-time homebuyer. The housing must be sold to a new eligible homebuyer in accordance with the requirements of this section. Additional HTF funds may not be used if the mortgage in default was funded with HTF funds.

(2) The total amount of original and additional HTF assistance may not exceed the maximum per-unit development subsidy amount established pursuant to §93.300. As an alternative to charging the cost to the HTF program under §93.201, the grantee may charge the cost to the HTF program under §93.302 as a reasonable administrative cost of its HTF program, so that the additional HTF funds for the housing are not subject to the maximum per-unit subsidy amount.

(l) *Agreements with lending institutions.* (1) The grantee may provide homeownership assistance through written agreements with for-profit or nonprofit lending institutions that are providing the first mortgage loan to a family. The grantee must independently verify that the family is income-eligible and meets the definition of "first-time homebuyer," and must inspect the housing for compliance with the applicable property standards.

(2) No fees may be charged to the family for the HTF homeownership assistance (e.g., origination fees or points, processing fees, inspection fees). The grantee must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. Reasonable administrative costs of the HTF homeownership assistance can be charged to the HTF program as a project cost. If the grantee requires lenders to pay a fee to participate in the HTF program, the fee is program income to the HTF program.

(m) *Written policies.* The grantee must have and follow written policies for:

(1) Underwriting standards for homeownership assistance that examine the family's housing debt, overall debt, income, and ability to maintain the housing;

(2) Anti-predatory lending; and

(3) Refinancing loans to which HTF loans are subordinated to ensure that the terms of the new loan are reasonable.

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**§93.305 Qualification as affordable housing: modest housing requirements for homeownership; resale or recapture requirements.**

(a) Housing that is for acquisition by a family pursuant to §93.304 must be modest housing.

(1) The housing must be modest housing as follows: The housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area for newly constructed or standard housing. The grantee must use the HTF affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. HUD will provide limits for affordable existing housing based on 95 percent of the median purchase price for the area using FHA single family mortgage program data for existing housing data and other appropriate data that are available nation-wide for sales of existing housing, with a minimum limit based on 95 percent of the state-wide nonmetropolitan area median purchase price using these data. For States with no non-metropolitan areas, the minimum purchase price is defined as the lesser of the State non-metro or the United States non-metro median.

(2) In lieu of the limits provided by HUD, the grantee may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows: The grantee must set forth the price for different types of single family housing for the jurisdiction. The grantee may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a grantee may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the consolidated plan submitted to HUD for review and updated in each action plan:

(i) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey.

(ii) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data must be listed in ascending order of sales price.

(iii) The address of the listed properties must include the location within the grantee. Lot, square, and subdivision data may be substituted for the street address.

(iv) The housing sales data must reflect all, or nearly all, of the one- family house sales in the entire area.

(v) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine 95 percent of the median area purchase price.

(b) *Resale or recapture requirements.* The grantee must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. The HTF-assisted housing must meet the affordability requirements for not less than 30 years if resale restrictions are used. If recapture restrictions are used, the affordability periods are based on the amount of HTF funds per unit as follows:

Homeownership assistance HTF amount per-unit	Minimum period of affordability in years
Under \$30,000	10
\$30,000-\$50,000	20
Over \$50,000	30

(1) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a very low-income family and will use the property as the family's principal residence. The resale requirement must also ensure that the price at resale provides the original HTF-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of income-eligible homebuyers. The grantee must specifically define "fair return on investment" and "affordability to a reasonable range of very low-income homebuyers," and specifically address how it will make the housing affordable to an income eligible homebuyer in the event that the resale price necessary to provide fair return is not affordable to the subsequent buyer. Deed restrictions, covenants running with the land, or other mechanisms approved by HUD must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(2) *Recapture.* (i) Recapture provisions must ensure that the grantee recoups all or a portion of the HTF assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The grantee may structure its recapture provisions based on its program design and market conditions.

Recapture provisions may permit the subsequent homebuyer to assume the HTF assistance (subject to the HTF requirements for the remainder of the period of affordability) if the subsequent homebuyer is income-eligible, and no additional HTF assistance is provided.

(ii) The following options for recapture requirements are acceptable to HUD. The grantee may adopt, modify, or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the grantee is subject to the limitation that, when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HTF funds) and any closing costs.

(A) *Recapture entire amount.* The grantee may recapture the entire amount of the HTF assistance from the homeowner.

(B) *Reduction during affordability period.* The grantee may reduce the HTF assistance amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(C) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HTF assistance (or a reduced amount as provided for in this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the grantee may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HTF funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HTF investment}}{\text{HTF investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HTF amount to be recaptured}$$

$$\frac{\text{homebuyer investment}}{\text{HTF investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

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(D) *Owner investment returned first.* The grantee may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HTF assistance.

(E) *Amount subject to recapture.* The HTF assistance that is subject to recapture is based on the amount of HTF assistance that enabled the homebuyer to buy the dwelling unit. This includes any HTF assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (*i.e.*, the development subsidy). The recaptured funds must be used to carry out HTF-eligible activities in accordance with the requirements of this part. If the HTF assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

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## Subpart H—Other Federal Requirements

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### §93.350 Other federal requirements and nondiscrimination; affirmative marketing.

(a) *General.* The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; drug-free work; and housing counseling.

(b) *Affirmative marketing.* (1) Each grantee must adopt and follow affirmative marketing procedures and requirements for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If a grantee's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §93.303(d)(3), the grantee must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy (*e.g.*, the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices the grantee and owner must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements (*e.g.*, use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by the grantee and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the rental housing or homeownership assistance program without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the grantee and owners to affirmatively market rental housing units and homeownership assistance program and records to assess the results of these actions; and

(v) A description of how the grantee will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A grantee that subgrants HTF funds to subgrantees must require each subgrantee to either follow the grantee's procedures and requirements or adopt its own affirmative marketing procedures and requirements that meet this section.

[80 FR 5220, Jan. 30, 2015, as amended at 81 FR 90657, Dec. 14, 2016]

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#### §93.351 Lead-based paint.

Housing assisted with HTF funds is subject to the regulations at 24 CFR part 35, subparts A, B, J, K, and R.

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#### §93.352 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HTF funds. To the extent feasible, displaced residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons—(1) General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A "displaced person" must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced person.* (i) For purposes of this paragraph (c), the term "displaced person" means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HTF funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(1) The date of the submission of an application to the grantee or HUD, if the applicant has site control and the application is later approved; or

(2) The date the grantee approves the applicable site, if the applicant does not have site control at the time of the application; or



(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(ii) The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

(2) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(ii) Other conditions of the temporary relocation are not reasonable; or

(3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 calendar days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application, but before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The grantee may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under this paragraph (c) to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The grantee may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HTF funds where the displacement is not subject to paragraph (c) of this section. The grantee may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the grantee must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(f) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the grantee.

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§93.353 Conflict of interest.

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

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HTF funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HTF-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HTF-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the grantee or subgrantee.

(d) *Exceptions: Threshold requirements.* Upon the written request of the grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HTF and the effective and efficient administration of the grantee's program or project. An exception may be considered only after the grantee has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of income eligible persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Recipient—(1) General.* No recipient assisted with HTF funds (or officer, employee, agent, elected or appointed official, or consultant of recipient or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of a recipient) whether private, for-profit or nonprofit, may occupy a HTF-assisted affordable housing unit in a project during the required period of affordability specified in §93.302(e) or §93.304. This provision does not apply to an employee or agent of the recipient who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a recipient, the grantee (or subgrantee, if authorized by the grantee) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HTF program and the effective and efficient administration of the recipient's HTF-assisted project. In determining whether to grant a requested exception, the grantee shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of §93.303 are being observed;

- (iv) Whether the affirmative marketing requirements of §93.350 are being observed and followed; and
- (v) Any other factor relevant to the grantee's determination, including the timing of the requested exception.

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#### §93.354 Funding Accountability and Transparency Act.

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

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#### §93.355 Eminent domain.

No HTF funds may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, public use shall not be construed to include economic development that primarily benefits any private entity.

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#### §93.356 VAWA requirements.

(a) *General.* (1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all rental housing assisted with HTF funds, as provided in this section.

(2) For the HTF program, the "covered housing provider," as this term is used in HUD's regulations in 24 CFR part 5, subpart L, refers to:

(i) The owner of HTF-assisted rental housing for the purposes of 24 CFR 5.2005(d)(1), (2), (3), and (4) and 5.2009(a); and

(ii) The owner and the grantee for purposes of 24 CFR 5.2005(e) and 5.2007, except as otherwise provided in paragraph (f) of this section.

(b) *Notification requirements.* The grantee must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HTF-assisted rental housing. The owner of HTF-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HTF-assisted unit at the time the applicant is admitted to an HTF-assisted unit, or denied admission to a HTF-assisted unit based on the owner's tenant selection policies and criteria. The owner of HTF-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HTF-assisted unit.

(c) *Bifurcation of lease requirements.* For purposes of this part, the requirements of 24 CFR 5.2009(b) do not apply. If a family who lives in a HTF-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HTF-assisted unit.

(d) *VAWA lease term/addendum.* The grantee must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease of HTF-assisted rental housing under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the grantee determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e).

(e) *Period of applicability.* The requirements of this section shall apply to the owner of the HTF-assisted rental housing for the duration of the affordability period.

(f) *Emergency transfer plan.* The grantee must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies for an emergency transfer under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), where, for the purposes of §5.2005(e)(7), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the grantee must provide a list of properties in the jurisdiction that include HTF-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HTF-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HTF-assisted units. In addition, the grantee may:

(1) Establish a preference under the grantee's HTF program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e); and

(2) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

[81 FR 80805, Nov. 16, 2016]

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## Subpart I—Program Administration

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### §93.400 Housing Trust Fund (HTF) accounts.

(a) *General.* HUD will establish an HTF United States Treasury account (HTF Treasury account) for each grantee. Each grantee may use either a separate HTF local account or a subsidiary account within its general fund (or other appropriate fund) as the HTF local account.

(b) *HTF Treasury account.* The HTF Treasury account includes the annual grant and funds reallocated to the State by formula.

(c) *HTF local account.* (1) The HTF local account includes deposits of HTF funds disbursed from the HTF Treasury account, any program income, and any repayments as required by §93.403.

(2) The HTF local account must be interest-bearing.

(d) *Reductions.* HUD will reduce or recapture funds in the HTF account by the amount of:

(1) Any fiscal year grant funds in the HTF Treasury account that are not committed within 24 months after the date of HUD's execution of the HTF grant agreement;

(2) Any fiscal year grant funds in the HTF local account that are not expended within 5 years after the date of HUD's execution of the HTF grant agreement;

(3) Any amounts pursuant to §93.453; and

(4) Amounts that the grantee fails to obtain and that were required to be reimbursed or returned under §93.450.

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### §93.401 HTF grant agreement.

Allocated and reallocated funds will be made available pursuant to an HTF grant agreement.

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### §93.402 Program disbursement and information system.

(a) *General.* The HTF Treasury account is managed through a computerized disbursement and information system established by HUD. The system disburses HTF funds that are allocated or reallocated, and collects and reports information on the use of funds in the HTF Treasury account. The grantee must report on the receipt and use of all program income in HUD's computerized disbursement and information system. The grantee must develop and maintain a system to ensure that each recipient and subgrantee uses HTF funds in accordance with the requirements of this part and that any requirements or conditions under which the HTF funds were provided.

(b) *Project set-up.* (1) After the grantee executes the HTF grant agreement, submits the applicable banking and security documents, and commits funds to a specific local project, the grantee shall identify (set up) specific activities (*i.e.*, projects) in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, operating cost assistance, and operating cost assistance reserves. The grantee is required to enter complete project set-up information at the time of project set-up.

(2) If the project set-up information is not completed within 20 calendar days of the date of the initial project set-up, the project may be canceled by the system. In addition, a project that has been committed in the system for 12 months without an initial disbursement of funds may be canceled by the system.

(c) *Disbursement of HTF Funds.* (1) After complete project set-up information is entered into the disbursement and information system, HTF funds for the project may be drawn down from the HTF Treasury account by the grantee by electronic funds transfer. Any drawdown of funds in the HTF Treasury account is conditioned upon the provision of satisfactory information by the grantee about the project and compliance with other procedures, as specified by HUD.

(2) Funds drawn from the HTF Treasury account are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and regulations at 31 CFR part 205.

(3) Funds in the HTF local account must be disbursed before requests are made for funds in the HTF Treasury account.

(d) *Project completion.* (1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 calendar days of the date of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.

(2) Additional HTF funds for development-related costs may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit development subsidy amount established pursuant to §93.300.

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HTF program will be governed by procedures established by HUD.

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#### §93.403 Program income and repayments.

(a) *Program income.* Program income must be treated as HTF funds and must be used in accordance with the requirements of this part. Program income must be deposited in the grantee's HTF local account unless the grantee permits a subgrantee to retain the program income for additional HTF projects pursuant to the written agreement required by §93.404(b). The grantee must report the program income received as well as the use of the program income in the disbursement and information system that HUD designates for the HTF.

(b) *Repayments.* (1) Any HTF funds invested in housing that does not meet the affordability requirements for the period specified in §93.302 or §93.304, as applicable, must be repaid by the grantee in accordance with paragraph (b)(3) of this section.

(2) Any HTF funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the grantee, in accordance with paragraph (b)(3) of this section.

(3) HUD will instruct the grantee to either repay the funds to the HTF Treasury account or the local account. Generally, if the HTF funds were disbursed from the grantee's HTF Treasury account, they must be repaid to the HTF Treasury account. If the HTF funds were disbursed from the grantee's HTF local account, they must be repaid to the local account.

(4) If the grantee is no longer a grantee in the HTF program when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with §93.54 of this part.

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#### §93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

(a) *Responsibilities.* The grantee is responsible for managing the day-to-day operations of its HTF program, ensuring that HTF funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of subgrantees or contractors does not relieve the grantee of this responsibility. The performance and compliance of each contractor and subgrantee must be reviewed at least annually. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

(b) *Executing a written agreement.* Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this part.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *Subgrantee.* The agreement must require the subgrantee to comply with the requirements applicable to the grantee under this part. The agreement between the grantee and the subgrantee must include:

(i) *Use of the HTF funds.* An HTF subgrantee that is a unit of general local government must have a consolidated plan under 24 CFR part 91, and the written agreement must require that an HTF allocation plan to be part of the subgrantee's consolidated plan (see 24 CFR 91.220(l)(5)). The HTF allocation plan of an HTF subgrantee that is a State agency is included in the grantee's HTF allocation plan. The grantee may impose restrictions on the use of funds by the subgrantee, e.g., limit to rental projects. The written agreement must require that the selection of projects by eligible recipients will be in accordance with the HTF allocation plan. The agreement must describe the tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured by the grantee so that the grantee can meet its commitment and expenditure deadlines in §93.400.

(iii) *Audit.* The agreement must state that an audit of the subgrantee must be conducted at least annually, in accordance with §93.406.

(iv) *Program income.* The agreement must state if program income is to be remitted to the grantee or to be retained by the subgrantee for additional HTF eligible activities.

(v) *Uniform administrative requirements.* The agreement must require the subgrantee to comply with the requirements of 2 CFR part 200, as described in §93.405. The agreement must include the information in 2 CFR 200.331.

(vi) *Other program requirements.* The agreement must require the subgrantee to carry out each project in compliance with all Federal laws and regulations described in §§93.350 through 93.356. The agreement must set forth all obligations the grantee imposes on the subgrantee in order to meet the VAWA requirements under §93.356, including notice obligations and obligations under the emergency transfer plan.

(vii) *Affirmative marketing.* The agreement must specify the subgrantee's affirmative marketing responsibilities, in accordance with §93.350.

(viii) *Requests for disbursement of funds.* The agreement must specify that the subgrantee may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subgrantee requests grant funds from the grantee.

(ix) *Reversion of assets.* The agreement must specify that upon closeout of the subgrant agreement, the subgrantee must transfer to the grantee any HTF funds on hand and any accounts receivable attributable to the use of HTF funds.

(x) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(xi) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the subgrantee materially fails to comply with any term of the agreement. The grantee may permit the agreement to be terminated in whole or in part, in accordance with 2 CFR 200.339.

(xii) *Written agreement.* The agreement must require that before the subgrantee provides HTF funds to eligible recipients, first-time homebuyers, or contractors, the subgrantee must have a written agreement that meets the requirements of this section.

(xiii) *Duration of the agreement.* The agreement must specify the period of performance of the agreement.

(xiv) *Fees.* The agreement must prohibit the subgrantee from charging servicing, origination, or other fees for the costs of administering the HTF program, except that:

(A) The subgrantee may charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HTF-assisted rental projects. The basis for determining the amount of the fee amount must be documented and the fee must be included in the costs of the project as part of the project underwriting;

(B) The subgrantee may charge nominal application fees (although these fees are not an eligible HTF cost) to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an income-eligible family's, or other potential recipient's participation in the HTF program; and

(C) The subgrantee may charge homebuyers a fee for housing counseling.

(2) *Eligible recipient.* The agreement between the grantee and the eligible recipient selected for funding must include:

(i) *Use of the HTF funds.* The agreement must describe the use of the HTF funds for the project, including the tasks to be performed, a schedule for completing the tasks and project (including the expenditure deadline), and a project budget. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement. If the grantee is providing operating cost assistance, the written agreement must include the provisions required by §93.201.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured.

(iii) *Audit.* The agreement must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

(iv) *Affordability.* The agreement must specify the affordability period, require housing assisted with HTF funds to meet the affordability requirements of §93.302 or §93.304, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the recipient is undertaking a rental project, the agreement must establish the initial rents and the procedures for rent increases, the number of HTF units, the size of the HTF units, the designation of the HTF units as fixed or floating, and the requirement to provide the address (e.g., street address and apartment number) of each HTF unit no later than the time of project completion. If the recipient is undertaking homeownership projects for sale to first-time homebuyers, in accordance with §93.304, the agreement must establish the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds.

(v) *Project requirements.* The agreement must require the housing to meet the property standards in §93.301 of this part, as applicable, and in accordance with the type of project assisted upon project completion. The agreement must also require owners of rental housing assisted with HTF funds to maintain the housing in compliance with §93.301 of this part for the duration of the affordability period, and to comply with the requirements of §93.303. The agreement may permit the recipient to limit eligibility or give a preference to a particular segment of the population, only if the grantee has described any such limited eligibility or preference in its consolidated plan; provided, however, that any limitation or preference cannot violate nondiscrimination requirements in §93.350.

(vi) *Other program requirements.* The agreement must require the eligible recipient to carry out each project in compliance with all Federal laws and regulations described in §§93.350 through 93.356. The agreement must set forth all obligations the grantee imposes on the recipient in order to meet the VAWA requirements under §93.356, including notice obligations and obligations under the emergency transfer plan.

(vii) *Affirmative marketing.* The agreement must specify the recipient's affirmative marketing responsibilities, as enumerated by the grantee in accordance with §93.350.

(viii) *Requests for disbursement of funds.* The agreement must specify that the recipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted to assist the grantee in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the grantee with information on rents and occupancy of HTF-assisted units to demonstrate compliance with §93.302. If the rental housing project has floating HTF units, the owner must provide the grantee with information regarding unit substitution and filling vacancies so that the project remains in compliance with HTF rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the grantee to determine the financial condition (and continued financial viability) of the rental project.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee and the intended beneficiaries. This means of enforcement and the affordability requirements in §93.302 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(xi) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the grantee under §93.302. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the first-time homebuyer.

(xii) *Fees.* The agreement must prohibit project owners from charging origination fees, parking fees, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

(3) *First-time homebuyer.* When a grantee provides assistance to a homebuyer, the written agreement must include as a minimum:

(i) *Use of the HTF funds.* The agreement must conform to the requirements in §93.304, including the limitations on the value of the property, principal residence requirement, lease-purchase terms, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HTF funds, the form of assistance (e.g., grant, amortizing loan, deferred payment loan), the use of the funds (e.g., downpayment, closing costs), and the time by which the housing must be acquired.

(ii) *Resale or recapture restrictions.* The agreement must specify the resale or recapture restrictions established under §93.304 for the specified time period.

(iii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee. The means of enforcement and the affordability requirements in §93.304 for resale restrictions must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(d) *Onsite inspections—(1) Project completion.* The grantee must perform an onsite inspection of each HTF-assisted project at project completion to determine that the housing meets the property standards of §93.301. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of §93.301.

(2) *Period of affordability.* (i) During the period of affordability, the grantee must perform onsite inspections of HTF-assisted rental housing buildings to determine compliance with the ongoing property standards of §93.301 and to verify the information submitted by the owners in accordance with the requirements of §93.302. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of §93.301.

(ii) The onsite inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(iii) If there are observed deficiencies for any of the inspectable items established by the grantee, in accordance with the inspection requirements of §93.301, a follow-up onsite inspection must occur within 12 months, or within a reasonable time frame established by the grantee depending on the severity of the deficiency, to verify that all observed deficiencies have been corrected. The grantee may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation rather than reinspection. The grantee must adopt a more frequent inspection schedule for properties that have been found to have health and safety violations. Life-threatening health and safety deficiencies must be corrected immediately, in accordance with §93.301.

(iv) The property owner must annually certify to the grantee that each building in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the grantee to meet the requirements of §93.301.

(v) Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project, as set forth by HUD through notice. The grantee must select the sample. For projects with one to four HTF-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HTF-assisted units and 100 percent of the HTF-assisted dwelling units must be inspected.

(e) *Financial oversight.* During the period of affordability, the grantee must examine regularly (at least annually) the financial condition of HTF-assisted rental projects with 10 or more HTF-assisted units to determine the continued financial viability of the housing and must take actions to correct problems.

[80 FR 5220, Jan. 30, 2015, as amended at 81 FR 80805, Nov. 16, 2016]

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#### §93.405 Applicability of uniform administrative requirements, cost principles, and audits.

The requirements of 2 CFR part 200 apply to the grantees and subgrantees receiving HTF funds, except for the following provisions: §§200.307, 200.311, 300.328(b), 200.329, and 200.333. If there is a conflict between the definitions in 2 CFR part 200 and 24 CFR part 93, the definitions in part 93 govern.

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#### §93.406 Audits.

(a) Audits of the grantee and subgrantees must be conducted in accordance with 2 CFR part 200, subpart F. The use of HTF grant funds by the grantee must be audited not less than annually to ensure compliance with this part. Any financial statement submitted by the grantee to HUD must be reviewed by an independent certified public accountant, in accordance with Statements on Standards for Accounting and Review Services, which is issued by the American Institute of Certified Public Accountants.

(b) The written agreement providing HTF assistance to the recipient must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

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**§93.407 Recordkeeping.**

(a) *General.* Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this part. At a minimum, the following records are needed:

(1) *Program records.* (i) The forms of HTF assistance used in the program.

(ii) The subsidy layering guidelines adopted in accordance with §93.300.

(iii) If HTF funds are used for housing for first-time homebuyers, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with §93.305, as set forth in the consolidated plan.

(iv) If HTF funds are used for acquisition of housing for homeownership, the resale guidelines established in accordance with §93.304, as set forth in the consolidated plan.

(v) Records documenting compliance with the 24-month commitment deadline of §93.400(d)(1).

(vi) Records documenting compliance with the 10 percent limitation on administrative and planning costs in accordance with §93.202.

(2) *Project records.* (i) A full description of each project assisted with HTF funds, including the location (address of each unit), form of HTF assistance, and the units assisted with HTF funds.

(ii) The source and application of funds for each project, including supporting documentation, in accordance with 2 CFR 200.333 through 200.337, and records to document the eligibility and allowability of the project costs, including the documentation of the actual HTF-eligible development costs of each HTF-assisted unit (through allocation of costs, if permissible under §93.200(c)) where HTF funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the maximum per-unit subsidy amount established pursuant to §93.300(a), and the subsidy layering and underwriting evaluation in accordance with §93.300.

(iv) Records (e.g., inspection reports) demonstrating that each project meets the property standards of §93.301 of this part at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards, and financial reviews and actions pursuant to §93.404(a).

(v) Records demonstrating that each family is income-eligible.

(vi) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of §93.302 for the required period. Records must be kept for each family assisted.

(vii) Records demonstrating that each lease for an assisted rental housing unit complies with the tenant and participant protections of §93.303. Records must be kept for each family assisted.

(viii) Records demonstrating that the purchase price for each housing unit for a first-time homebuyer does not exceed 95 percent of the median purchase price for the area, in accordance with §93.305.

(ix) Records demonstrating that each housing unit for a first-time homebuyer meets the affordability requirements of §93.304 for the required period.

(x) Records demonstrating that a site and neighborhood standards review was conducted for each project that included new construction of rental housing assisted under this part, to determine that the site meets the requirements of §93.150.

(xi) Records (written agreements) demonstrating compliance with the written agreements requirements in §93.404.

(3) *Financial records.* (i) Records identifying the source and application of funds for each fiscal year, including the annual grant and any reallocation (identified by federal fiscal year).

(ii) Records concerning the HTF Treasury account and local account required to be established and maintained by §93.400, including deposits, disbursements, balances, supporting documentation, and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income and repayments.

(iv) Records demonstrating adequate budget control, in accordance with 2 CFR part 200, including evidence of periodic account reconciliations.

(4) *Program administration records.* (i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

- (ii) Records demonstrating compliance with the applicable uniform administrative requirements required by §93.405.
  - (iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.
- (5) *Records concerning other Federal requirements.* (i) Equal opportunity and fair housing records, as required under 24 CFR part 121.
- (A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HTF funds.
  - (B) Documentation of actions undertaken to meet the requirements of 24 CFR part 135, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).
- (ii) Records demonstrating compliance with the affirmative marketing procedures and requirements of §93.350.
  - (iii) Records demonstrating compliance with the lead-based paint requirements of 24 part 35, subparts A, B, J, K, M, and R.
  - (iv) Records demonstrating compliance with requirements of §93.352 regarding displacement, relocation, and real property acquisition.
  - (v) Records supporting exceptions to the conflict-of-interest prohibition pursuant to §93.353.
  - (vi) Debarment and suspension certifications required by 24 CFR 5.105(c) and 2 CFR part 2424.
  - (vii) Records demonstrating compliance with §93.354.
  - (viii) Records demonstrating compliance with 2 CFR 200.321 regarding the grantee's activities related to minority business enterprise (MBE) and women's business enterprise (WBE).
  - (ix) Documentation on emergency transfers requested under 24 CFR 5.2005(e) and §93.356 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.
- (b) *Period of record retention.* All records pertaining to each fiscal year of HTF funds must be retained in a secure location for the most recent 5-year period, except as provided below.
- (1) For rental housing projects, records may be retained for 5 years after the project completion date, except that records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent 5-year period, until 5 years after the affordability period terminates.
  - (2) For homeownership housing projects, records may be retained for 5 years after the project completion date, except for documents imposing resale or recapture restrictions that must be retained for 5 years after the affordability period terminates.
  - (3) Written agreements must be retained for 5 years after the agreement terminates.
  - (4) Records covering displacements and acquisitions must be retained for 5 years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled, in accordance with §93.352.
  - (5) If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the required period, whichever is later.
- (c) *Access to records.* (1) The grantee must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.
- (2) HUD and the Comptroller General of the United States, and any of their representatives, have the right of access to any pertinent books, documents, papers, or other records of the grantee, subgrantees, and recipients, to make audits, examinations, excerpts, and transcripts.

[80 FR 5220, Jan. 30, 2015, as amended at 81 FR 80805, Nov. 16, 2016]

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§93.408 Performance reports.

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

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## Subpart J—Performance Reviews and Sanctions

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### §93.450 Accountability of recipients.

The grantee shall review each recipient to determine compliance with the requirements of this part and the terms of the written agreement in accordance with the grantee's policies, procedures, and systems established pursuant to §93.404 (a).

(a) *Misuse of funds—(1) Reimbursement requirement.* If a recipient of HTF assistance is determined to have used HTF funds in a manner that is materially in violation of the requirements of this part or any requirements or conditions under which the funds were provided, the grantee must require that, within 12 months after the determination of such misuse, the recipient reimburse the grantee for such misused amounts and return to the grantee any such amounts that remain unused or uncommitted for use. The reimbursement is in addition to any other remedies that may be available under law.

(2) *Determination.* The grantee or HUD may make the determination, provided that:

(i) The grantee provides notification and opportunity for discretionary review to HUD; and

(ii) HUD does not subsequently reverse the determination.

(b) *Reduction for failure to obtain return of misused funds.* (1) If, in any year, a grantee fails to obtain reimbursement or return of the full amount required to be reimbursed or returned to the grantee during the year, the amount of the grant for the grantee for the succeeding year will be reduced by the amount by which the amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned.

(2) In any case in which a failure to obtain reimbursement or return occurs during a year immediately preceding a year in which HTF grants will not be made, the grantee shall pay to HUD, for reallocation among the other grantees, an amount equal to the amount of the reduction for the entity that would otherwise apply.

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### §93.451 Performance reviews.

(a) *General.* HUD will review the performance of each grantee in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the grantee's records and reports, findings from onsite monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a grantee's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the grantee. Onsite comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the grantee.

(b) *Standards for comprehensive performance review.* A grantee's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the grantee has committed and expended the HTF funds as required by §93.400; has met the requirements of this part, particularly eligible activities, income targeting, affordability, and property standards; has awarded the funds in accordance with its HTF allocation plan and requirements of this part; has reviewed its subgrantees and recipients to determine whether they have satisfied the requirements of this part and the terms of their written agreements; and has met its performance measures in its consolidated plan.

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### §93.452 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in §93.451 and in taking corrective and remedial actions.

(b) *Performance review.* (1) If HUD determines preliminarily that the grantee has not met a requirement of this part, the grantee will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 calendar days) and on the basis of substantial facts and data, that it has done so.

(2) If the grantee fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or §93.453.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the grantee to submit and comply with proposals for action to correct, mitigate, and prevent a performance deficiency, including:

- (i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;
- (ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
- (iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HTF funds for the activities;
- (iv) Reprogramming HTF funds that have not yet been expended from affected activities to other eligible activities;
- (v) Reimbursing its HTF account in any amount not used in accordance with the requirements of this part;
- (vi) Suspending disbursement of HTF funds for affected activities; and
- (vii) Establishing procedures to ensure compliance with HTF requirements;

(2) HUD may also change the method of payment from an advance to reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made; determine the grantee to be high risk and impose special conditions or restrictions on the allocation in accordance with 2 CFR 200.207 or 200.336; and take other remedies that may be legally available.

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#### §93.453 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a grantee has substantially failed to comply with any provision of this part, and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the grantee's HTF account by the amount of any expenditures that were not in accordance with the requirements of this part or require the grantee to repay to HUD any amount of the HTF grant that was not used in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

- (i) Prevent withdrawals from the grantee's HTF account for activities affected by the failure to comply;
- (ii) Restrict the grantee's activities under this part to activities or recipients not affected by the failure to comply;
- (iii) Remove the State from participation in allocations or reallocations of funds made available under §§93.50 through 93.54 of this part; or
- (iv) Terminate any HTF assistance to the grantee. HUD may, on due notice, suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (a) of this section, pending such hearing and a final decision, to the extent that HUD determines such action to be necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

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

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Need assistance?

DIGEST

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 67 (2018)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR  
OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL  
AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT  
CORPORATION FOR THE HOUSING TRUST FUND PROGRAM

This bill proposes to authorize the Mayor of the County of Maui to enter into an intergovernmental agreement with the State of Hawaii Housing Finance and Development Corporation for the Housing Trust Fund Program, in the amount of \$1,425,000.

I, JOSIAH K. NISHITA, Deputy County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 67 (2018) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 3rd day of August, 2018, by the following vote:

AYES: Councilmembers Alika Atay, Eleanora Cochran, S. Stacy Crivello, Donald S. Guzman, G. Riki Hokama, Yuki Lei K. Sugimura, Vice-Chair Robert Carroll, and Chair Michael B. White.

NOES: None.

EXCUSED: Councilmember Kelly T. King.

DATED at Wailuku, Maui, Hawaii, this 6th of August, 2018.



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JOSIAH K. NISHITA, DEPUTY COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.