

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**
**24 CFR Parts 91 and 92**
**[Docket No. FR-5246-P-02]**
**RIN 2506-AC30**
**Housing Trust Fund**
**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Housing and Economic Recovery Act of 2008 establishes a Housing Trust Fund (HTF) to be administered by HUD. The purpose of the HTF is to provide grants to State governments to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families. This proposed rule submits, for public comment, the regulations that will govern the HTF.

**DATES:** *Comment due date:* December 28, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

- *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0001.

- *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the

instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Marcia Sigal, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7162, Washington, DC 20410; telephone number 202-402-3002 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8389.

**SUPPLEMENTARY INFORMATION:**
**I. Background**

The Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008) (HERA) was major housing legislation enacted to reform and improve the regulation of Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs), strengthen neighborhoods hardest hit by the foreclosure crisis, enhance mortgage protection and disclosures, and maintain the availability of affordable home loans. The reform of the GSEs is provided in the Federal Housing Finance Regulatory Reform Act of 2008, which is found in Division A, Title I of HERA. Section 1131 of the GSE-reform portion of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (FHEFSSA) to add a new section 1337 entitled "Affordable Housing Allocations" and a new section 1338 entitled "Housing Trust Fund."

Section 1337 of FHEFSSA provides for the HTF to be funded with amounts allocated by Fannie Mae and Freddie Mac. Proceeds equal to 4.2 basis points (.042%) of the GSEs' new mortgage purchases were to be partially diverted to fund the HTF. However, because the GSEs experienced significant declines in their respective capital reserves in 2008, under the authority granted to the Federal Housing Finance Agency (FHFA), the GSE's oversight agency, by Section 1367 of FHEFSSA, Fannie Mae and Freddie Mac were placed in conservatorship in September 2008. Under Section 1337 of FHEFSSA, the Director of the FHFA has the authority to suspend Fannie Mae's and Freddie Mac's contributions to the HTF if such contributions were to have an adverse impact on the financial stability of the GSEs. Shortly after being placed in conservatorship, the GSEs were instructed by the FHFA to suspend such contributions. However, Section 1338 of FHEFSSA provides that the HTF may be funded with amounts appropriated, transferred, or credited to the HTF under other provisions of law. Accordingly, HUD is proceeding with regulatory implementation of the HTF in anticipation of future funding through sources other than GSE proceeds.

Congress authorized the HTF with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income (ELI) families with incomes between 0 and 30 percent of area median income and very low-income (VLI) families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for ELI and VLI families. HUD's periodic reports to Congress on worst-case needs for affordable rental housing document that shortages of affordable rental housing for ELI and VLI families have grown increasingly more severe. A household defined as experiencing worst-case housing needs means that the household has an income at or below 50 percent of the area median income, receives no housing assistance, and has a severe rent burden (paying more than half of its income for rent) and/or lives in severely inadequate conditions (*e.g.*, incomplete plumbing).

As of 2007, the combined number of ELI and VLI renters with worst-case housing needs was 5.9 million, or 37 percent of all ELI and VLI renters (15.9 million). Furthermore, 51 percent of ELI and VLI renters who lack housing assistance have worst-case housing needs. When the 2007 data are broken down further, worst-case needs

occurred to 47 percent of all ELI renters and 73 percent of ELI renters lacking housing assistance. By comparison, 24 percent of all VLI renters and 28 percent of VLI renters lacking housing assistance have worst-case housing needs. ELI renters are particularly burdened with severe housing problems.

There is a shortage of low-cost rental units, as builders and housing providers are unable to construct, finance, and operate a sufficient supply of rental housing affordable to ELI and VLI households. The result is that in 2007, for every 100 ELI renters nationwide, only 44 rental units were both affordable and available for rent or currently occupied by households in this income range. HUD notes that more than half of the 3.8 million ELI renters who occupied affordable units in 2007 were able to do so only because they reported receiving government rental assistance, such as from the public housing, project-based Section 8 or Section 202/811 programs, and the housing choice voucher program. Other units that would have been affordable may have been occupied by higher-income households. For every 100 VLI and ELI renters, on average, there were only 74 affordable units available. The HTF will provide funds to produce additional units affordable to ELI and VLI households with the greatest need, thus increasing the supply and reducing the most critical component of the existing shortage.

#### *Housing Trust Fund—Formula Allocation*

Section 1338 of FHEFSSA directs HUD to establish, through regulation, the formula for distribution of amounts made available for the HTF. The statute specifies that only certain factors are to be part of the formula, and assigns priority to certain factors. HUD's proposed formula for the allocation of HTF funds was submitted for public comment in a proposed rule published on December 4, 2009 (74 FR 63938). The allocation formula will be renumbered and published with the final program rule in §§ 92.710–92.714.

#### *Housing Trust Fund—Administration of the Fund*

In addition to the statutory direction to establish by regulation a formula for the allocation of HTF funds, section 1338 of FHEFSSA directs HUD to establish and manage the HTF, the purpose of which is to provide grants to States for use to: (1) Increase and preserve the supply of rental housing for ELI and VLI families, including homeless families; and (2) increase

homeownership for ELI and VLI families. Section 1338 of FHEFSSA also directs HUD to establish regulations to administer the HTF, and this rule proposes the regulations that will govern the HTF.

## **II. This Proposed Rule**

### *New 24 CFR Part 92 Subpart N*

HUD proposes to codify the HTF regulations in a new subpart N of 24 CFR part 92. Part 92 contains the regulations for HUD's HOME Investment Partnerships program (HOME program). Established by the National Affordable Housing Act of 1992, the HOME program is the largest Federal block grant program that produces affordable housing for VLI households. The HOME program is similar in most aspects to the proposed HTF. Each year, the HOME program allocates approximately \$2 billion to States and more than 600 localities nationwide. Since its inception in 1992, the HOME program has produced approximately one million units of affordable rental and homeownership units. Both programs provide funding through a formula allocation for rental housing production and homeownership. The HOME program provides formula grants that communities use, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing units for rent or homeownership. The HTF will operate in substantially the same manner, with formula grants to States used to develop affordable housing units for rent or homeownership. In addition, the grant activities in both programs require the same grantee administration and HUD oversight functions.

While the HTF provides new resources targeted to producing affordable housing primarily for ELI households, an entirely new or different set of program regulations is not necessary in order to implement the statutory requirements of the HTF. Many of the program requirements applicable to the HOME program are applicable to the HTF. Further, each State is a participating jurisdiction in the HOME program, and all States and their designated housing entities will be the HTF grantees. Accordingly, it is HUD's position that codifying the HTF regulations in part 92 is a logical step that will enable HUD to: (1) Provide a coordinated "menu" of production programs that State and local governments can use to address the affordable housing needs of low-, very low- and extremely low-income

households, including those with special needs, in their communities, and (2) simplify and streamline program requirements for grantees, and avoid making grantees create new or separate structures to administer HTF funds. Additionally, HUD believes that many grantees will use HTF funds in combination with HOME program funds to develop mixed-income housing, and many of the applicable requirements are the same for both programs (e.g., administrative requirements; monitoring, site and neighborhood standards; and affirmative marketing). This approach is expected to expedite the expenditure of HTF funds and deliver more affordable housing sooner to households and communities.

HUD is specifically soliciting input from HTF grantees and interested parties on HUD's proposed coordination of HOME program and HTF regulations, as well as on additional or alternative ways to better coordinate and use HTF funds with funding from other Federal, State, local programs, or private sources typically used to produce mixed-income affordable housing developments.

The Department is embarking on a number of initiatives to incorporate and promote energy efficiency, transit-oriented development, and other sustainability features in the development of units and projects assisted with HUD funds. These efforts will help reduce the impact of the property on the environment and promote a healthier environment for building occupants, as well as reduce the costs of utilities to help make these units affordable. In addition, facilitating the inclusion of affordable housing for ELI and VLI households in transit-oriented development will help ensure that affordable housing is located in areas that are within walking distance of transit facilities and more easily accessible to essential area destinations such as jobs, and educational, retail, and health services. The HTF implements the Department's commitment to further sustainable affordable housing available for ELI households, by requiring energy and water-efficiency features in all HTF-assisted units. In addition, the proposed rule includes specific funding commitment definitions that address the need to commit HTF funds early in the development process of a Transit-Oriented Development (TOD) project.

HUD's efforts to promote energy-efficient homes directly reflect the Department's energy goal contained in its Fiscal Year (FY) 2010–15 Strategic Plan to "promote energy-efficient buildings and location-efficient communities that are healthy, affordable, and diverse." The proposed

energy and water efficiency requirements for the HTF are similar to those of several HUD energy-efficiency and green initiatives, such as the “Green” Community Housing Development Organization Notice Of Funding Availability (HOME Competitive Reallocation of CHDO Funds to Provide for Energy Efficient and Environmentally Friendly Housing for Low-Income Families), the Self-Help Homeownership Opportunity Program (SHOP) NOFA, and the Neighborhood Stabilization Program (NSP)—2 NOFA.

Fostering the development of sustainable, transit-oriented, mixed-use communities with HTF funds is consistent with the Livability Principles established by the Partnership for Sustainable Communities, an interagency collaboration between HUD, the Department of Transportation (DOT), and the Environmental Protection Agency (EPA). This partnership aims to coordinate Federal housing, transportation, and other infrastructure investments to provide communities with the resources they need to build more livable and sustainable communities, promote equitable development, and improve access to affordable housing. Each of the three agencies is responsible for incorporating the Livability Principles into its policies and programs, to the maximum extent feasible.

Energy-efficiency and transit-oriented development definitions and property standards for the HTF can be found in Sections 92.702 and 92.741–92.745, respectively. The following sections highlight key provisions of the HTF regulations established in accordance with section 1338 of FHEFSSA.

#### General Provisions

Sections 92.701–92.703 of new subpart N sets forth the general provisions applicable to the HTF.

Section 92.701 provides an overview of the statutory basis for the HTF, and identifies which subparts of part 92 are applicable to the HTF. To the extent that other sections or subparts of part 92 are applicable to the HTF, § 92.701 provides that references to “HOME” mean “HTF” and that references to “participating jurisdictions” mean “HTF grantees.”

#### Definitions

Section 92.702 incorporates terms defined in the HOME program regulations (24 CFR 92.2) and defines terms that are specifically applicable to the HTF. Key definitions applicable to the HTF include the following:

**Commitment.** The definition of “commitment” implements the statutory requirement that HTF funds must be

used or committed within 2 years of the formula allocation (grant award). Grantees must commit funds to a specific project pursuant to legally binding agreements that meet the requirements of written agreements in § 92.774. To facilitate TOD projects, the definition of “commitment” permits a unit of general local government to acquire the land for a TOD project in advance of having specific project plans. The definition of transit-oriented commitment would allow the acquisition of property without the requirement of having a specific project. The unit of general local government has 36 months from the date of acquisition of the property for a TOD project to commit additional funds to a specific project on the property. To discourage the use of this provision for acquisition of property for any purpose other than the development of HTF-assisted units as part of transit-oriented development, the local government where the development is to take place is required to hold title to the property. If no commitment to a specific HTF-assisted project occurs within 36 months from date of the acquisition of the property, the amount of HTF funds used to pay for the property, or the current value of the property, whichever is greater, must be repaid to the grantee’s HTF account. The amount repaid will be prorated in proportion to the amount of HTF funds to total funds used to purchase the land.

**Energy Efficiency.** Several definitions are included in this rule that will help facilitate the development of energy-efficient residential units, including definitions of ENERGY STAR-Qualified New Homes and WaterSense-labeled products.

**Grantee.** The statute allows a State or State-designated entity to receive the HTF formula allocations. Each State may decide which agency within the State will be the HTF grantee. For example, in many States, there are multiple State agencies, as well as a State housing finance agency, that administer housing programs.

**Recipient.** An HTF recipient means an entity that receives HTF funds solely as a developer or owner of HTF-assisted housing. Section 1338(c)(9) of FHEFSSA requires an eligible recipient of a grant from a State’s HTF formula allocation to have demonstrated experience and capacity to conduct an eligible activity, as evidenced by its ability to: (i) Own, construct, rehabilitate, manage, or operate an affordable multifamily rental housing development; (ii) design, construct, rehabilitate, or market affordable housing for homeownership; or (iii) provide forms of assistance, such

as down payments, closing costs, or interest-rate buy-downs for purchasers.

Section 1338(c)(9) of FHEFSSA also requires an eligible recipient to demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity; demonstrate its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and make such assurances to the grantee that it will comply with the HTF requirements. These conditions of eligibility imposed on recipients are incorporated in the definition of “recipient” found in § 92.702.

**State.** The term “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. (See 1338 (a)(1) of FHEFSSA.)

**State-Designated Entity.** The statute permits a State to use a “State-designated entity” to receive its formula allocation. Permissible designees for the HTF State-designated entity are: A State housing finance agency, a Tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)), or any other qualified instrumentality of the State. (See 1338(c)(2) of FHEFSSA.)

**Subgrantee.** An HTF grantee may choose to distribute HTF funds through one or more subgrantees. A subgrantee may be a State agency or a unit of general local government. All local governments that are HTF subgrantees must have an approved consolidated plan under 24 CFR part 91.

#### Allocation Formula

#### Reallocations

Section 92.714 describes the conditions under which HUD will reallocate HTF funds. Consistent with the statute, funds will be reallocated by formula in the following fiscal year. (See section 1338(c)(10) and (d) of FHEFSSA.)

#### Participation and Submission Requirements; Distribution of Assistance

Section 92.720 requires the State to notify HUD of its intent to participate in the HTF program and to have a consolidated plan that contains its HTF allocation plan required by FHEFSSA. (See section 1338(c)(8) of FHEFSSA.)

## Allocation Plan

Section 1338(c)(5)(A) of FHEFSSA provides that for a grantee to receive an HTF grant, the grantee must submit an HTF allocation plan, which must: (1) Describe the distribution of the grant; (2) be based on priority housing needs, as determined by the grantee in accordance with the HTF regulations; (3) comply with the statutory requirements regarding activities eligible for HTF funding; and (4) include performance goals that comply with HUD's HTF regulations. HUD has chosen to implement the requirement for an HTF allocation plan by amending its regulations in 24 CFR part 91 to include these requirements in the consolidated plans of grantees and, where applicable, subgrantees. The decision to include the HTF allocation plan in the consolidated plan is consistent with the statutory requirement in section 105(a) of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 12705) that HUD may only provide assistance directly to a jurisdiction if the jurisdiction submits a comprehensive housing affordability strategy (the basic framework of the consolidated plan) to HUD and the strategy is approved by HUD.

Sections 91.220 and 91.320 of the consolidated plan regulation are amended to reflect the HTF allocation plan requirements.

In addition, section 1338(c)(5)(B) of FHEFSSA directs each State, in establishing its HTF allocation plan, to: (1) Notify the public of the establishment of the plan; (2) provide an opportunity for public comments regarding the plan, (3) consider any public comments received on the plan, and (4) make the completed plan available to the public. Section 1338(c)(8)(B) of FHEFSSA requires grantees to comply with the requirements of laws related to public participation, including laws related to consolidated plans. Rather than establish new citizen participation requirements, § 92.720 directs States to include the HTF allocation plan in the consolidated plan and follow the citizen participation requirements found in the consolidated plan regulations in 24 CFR part 91.

Section 1338(c)(5)(C) of FHEFSSA also provides that a State's allocation plan must disclose the requirements that the State will impose on eligible recipients that apply for grants under the State's formula allocation. Section 1338(c)(5)(C) provides that such requirements must include: (1) A description of the eligible activities to be conducted using such assistance; and (2) a certification from the eligible

recipient that any housing units assisted will comply with HTF requirements under this section. The statutory requirements are implemented in §§ 91.220 and 91.320.

In the case of HTF-assisted rental housing projects, the plan must provide priority to projects that have Federal, State, or local project-based rental assistance so that rents are affordable to ELI families, and take into consideration the duration of the HTF-assisted units' affordability period. (See 1338 (g)(2)(D) of FHEFSSA.) The HTF allocation plan must consider the merits of the application in meeting the priority housing needs of the State. The rule provides flexibility to allow each grantee to include incentives and priorities in its HTF allocation plan that are appropriate to the communities where housing developed with HTF funds will be located. For example, incentives to promote green building, the use of renewable building materials, or sustainable development, as defined by the grantee, may be included in its HTF allocation plan.

HUD specifically requests comments on how it may provide incentives to encourage the use of HTF funds to develop housing affordable to ELI households that is also accessible to transit and employment centers. HUD is also seeking comments on what program structure or features will encourage or assist States in allocating HTF funding in accordance with metropolitan and regional land use and transportation plans. Similarly, HUD is interested in hearing about how it can provide incentives to HTF grantees and recipients to incorporate "green building" and "sustainability" features in the development of HTF-assisted projects, such as the use of renewable building materials or other techniques that reduce the impact of the property or site on the environment and promote a healthier environment for building occupants. In addition, HUD specifically requests comments on how it could include standards or minimum requirements in the HTF regulations for specific "green building" or sustainable development features.

### Distribution of Assistance: HTF Grantees, Subgrantees, and Recipients

Section 92.725 describes the way HTF funds will flow to the communities and recipients, as well as the participation and submission requirements for grantees receiving an HTF allocation. For each year that funds are made available for the HTF, a formula grant will be provided to each State. The State or State-designated entity is responsible for distributing HTF funds throughout

the State according to its assessment of the priority housing needs, as identified in the State's approved consolidated plan, and in accordance with any priorities that may be established by HUD in allocating grants to the States in accordance with the formula. HUD will issue notices in the future as necessary to communicate policy priorities for the HTF.

FHEFSSA allows a State to choose to be the HTF grantee (to receive and administer its grant) or to choose a qualified State-designated entity to be the HTF grantee. In addition, the HTF grantee may choose to directly fund projects (in accordance with the grantee's HTF allocation plan in its consolidated plan), or a grantee may choose one or more subgrantees (to administer the HTF funds and fund projects). A subgrantee may be a State agency or a unit of general local government that has submitted a consolidated plan under 24 CFR part 91. The subgrantee 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.

Eligible recipients of HTF funds must meet statutorily prescribed criteria, as promulgated through this rulemaking. An HTF recipient means an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that receives HTF assistance from a grantee to be an owner or developer of an HTF-assisted project. In order to qualify as an eligible recipient, the entity must demonstrate its ability and financial capacity to manage the eligible activity in compliance with all applicable HTF requirements. In addition, the entity must demonstrate 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. An eligible HTF recipient must have demonstrated experience in housing construction or rehabilitation of rental housing or housing for homeownership; if it is to be the owner, it must demonstrate experience in the management and operation of affordable multifamily rental housing.

### Income Targeting

Based on tabulations of American Housing Survey data, HUD estimates that during 2007, there were about 9.2 million ELI renter households nationwide, but only about 4.2 million units with rents affordable and available to this income group. As a result, 64.5

percent of ELI renters were severely rent-burdened (paid more than 50 percent of their income for rent) or lived in severely inadequate housing. HUD notes that more than half (51 percent) of the 3.8 million ELI renters who occupied affordable units in 2007 were able to do so only because they reported receiving government rental assistance, such as from the public housing, project-based Section 8 or Section 202/811 program, and the housing choice voucher program.

By contrast, of the 6.7 million renters with incomes between 30 and 50 percent of area median income (VLI renters), only 23.6 percent had severe rent burdens in 2007. Furthermore, there were about 7.8 million units with rents affordable and available to VLI renters, and about one million of these units were assisted.

FHEFSSA requires that not less than 80 percent of the HTF grant shall be used to produce rental housing<sup>1</sup> and, of this amount, section 1338(c)(7)(A) of FHEFSSA requires that not less than 75 percent shall be used for the benefit only of ELI families or families with incomes at or below the poverty line (as such term is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902), including any revision required by such section), whichever is the greater, applicable to a family of the size involved, and not more than 25 percent be used for the benefit only of VLI families.

Under the rulemaking authority of section 1338(g) of FHEFSSA, which provides that "The Secretary shall issue regulations to carry out this section [section 1338]," the Secretary has the discretion to elaborate upon, clarify, define and, in some instances, add to the statutory program requirements and criteria. With respect to the allocation of funds for ELI families or families with incomes below the poverty line, the Secretary has the discretion to direct grantees, in any given year, to use more than 75 percent of the HTF funds for the

benefit only of ELI families or families with incomes at or below the poverty line, whichever is greater. For the first year in which HTF funds are made available, the rule provides that of the amount made available for rental and homeownership housing, grantees are to expend 100 percent of HTF funds to provide rental and homeownership housing for ELI households. The Secretary shall publish subsequent income targeting requirements when HUD's allocation amounts to States are published. Sections 92.736 and 92.737 set forth the income targeting requirements, as required by section 1338(c)(7) of FHEFSSA, for HTF-assisted rental units and homeownership units, respectively.

HUD recognizes that subsidizing the development and operations of rental units targeted to ELI households can be extremely challenging. The resources available to develop rental units targeted to ELI households are scarce, and the financing mechanisms that are often required to develop financially viable and sustainable projects with units targeted to ELI households are complex and dependent on multiple sources of both public and private funding. In implementing the HTF, HUD's goal is to provide resources and a program structure that will help States and local governments, as well as private and nonprofit developers to develop energy-efficient rental housing that is affordable to ELI households. Toward that end, Section 8 project-based vouchers may be made available through appropriations. If Section 8 project-based vouchers are made available, HTF grantees will allocate the vouchers concurrently with HTF funding to specific projects. These Section 8 project-based vouchers will be administered in accordance with the rules applicable to that program. The vouchers will help pay for the operating costs of units constructed with HTF funds. However, an HTF-assisted unit that has a Section 8 project-based voucher attached to it may not also receive HTF operating cost assistance.

HUD is interested in hearing from developers of affordable rental housing for ELI families about the ways to reduce the cost of subsidizing this housing. What specific measures can the Department undertake to help reduce the cost of producing rental units targeted to ELI families? Similarly, what approaches will help to reduce operating costs and reduce the need for ongoing operating subsidies? For example, to what extent do energy-efficiency measures reduce the costs of operations of these units—for both the tenants and project owners? To what

extent do tax abatements significantly reduce operating costs? If HTF funds are used to pay for the entire development cost of these rental units, would the absence of debt significantly impact the financial viability of HTF-assisted units?

If grantees choose to undertake homeownership activities for ELI households, HUD expects that grantees will ensure that the underwriting for these units and homebuyer counseling address the precarious financial conditions that ELI households usually experience. Shared equity models and other types of homeownership program designs, such as lease purchase models, may be more appropriate for HTF-assisted homeownership activities. The Department is seeking comments from the public about appropriate and effective approaches for homeownership programs for ELI households. What specific measures can the Department undertake to help reduce the cost of homeownership targeted to ELI families? Similarly, what approaches will help to reduce operating costs for ELI homeowners? For example, to what extent do energy-efficiency measures reduce the costs of operations of these units?

#### Eligible and Prohibited Activities

Sections 92.730–92.735 reflect the statutory requirements that govern eligible and prohibited activities, eligible project costs, and planning and administrative costs. Allowable and prohibited fees are also addressed in these sections.

#### Eligible Activities

Section 92.730 describes the HTF-eligible activities. Section 1338(c)(7) of FHEFSSA provides that HTF funds may be used for assistance for the production, preservation, rehabilitation, and operating costs of rental housing. The Department views the HTF as primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households. While the statute allows HTF funds to be used for operating costs, it does not provide a limit. In order to achieve the goal of using HTF funds primarily for the production of new affordable units, the Department proposes to limit the amount of HTF funds that may be used for operating cost assistance to 20 percent of each annual grant. In establishing this limit, the Department assumes that HTF funds will be combined with other sources to produce and preserve affordable units, mostly in mixed-income projects. The Department also considered various analyses with different scenarios, including different operating cost assistance caps and

<sup>1</sup> The establishment of a minimum of 80 percent of HTF funds to be used for rental housing is derived by reading two provisions of the statute. Section 1338(c)(10) provides that of the aggregate amount allocated to a State or State-designated entity under section 1338, not more than 10 percent shall be used for activities under section 1338(c)(7)(B), which are the homeownership activities. Therefore, under section 1338, not more than 10 percent of funds can be used for homeownership, leaving 90 percent available for the production, preservation, and rehabilitation of rental housing. Section 1338(c)(10)(D)(iii) limits the amount that a State or State-designated entity may use for administrative costs for carrying out the HTF program, to a maximum of 10 percent. Therefore, the minimum amount available for activities under section 1338(c)(7)(A) (rental housing production) is 80 percent.

different local development practices. HUD anticipates that project-based vouchers will be made available to subsidize operating costs in HTF-assisted units. However, if vouchers or other forms of project-based assistance are not available for the HTF-assisted unit, it may be necessary to use HTF funds for operating cost assistance. This limit would make sufficient funds available to pay for operating cost assistance if needed, while ensuring that additional affordable units continue to be produced with HTF funds. The 20 percent limit applies to each annual grant. Therefore, grantees will have discretion in how they allocate funds to each project's development and operating costs. Grantees may apply the 20 percent limit to all projects or adjust it accordingly, as long as no more than 20 percent of each annual grant is used for operating cost assistance.

Analyses of the use of HTF funds for both development and operating subsidy show that the use of HTF funds for operating cost assistance could very quickly consume each State's formula allocation and would deter the use of HTF funds for production of additional units, as well as preservation and rehabilitation of units, targeted to ELI households—the primary purpose of the HTF. If Section 8 Project-Based Vouchers are made available to HTF projects for HTF-assisted units, limiting the amount of HTF funds available for operating cost assistance will not hinder implementation of the HTF.

Nonetheless, HUD is seeking comments regarding how imposing this or any restriction on the use of HTF funds for operating cost assistance might enhance or hinder the ability of a grantee to maximize the number of units affordable to ELI families produced, by new construction or acquisition, with HTF funds.

Section 1338(c)(7)(B) provides that the production, preservation, and rehabilitation of housing for homeownership, including forms of down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, are eligible activities. HTF funds may be used only for units that will be the principal residence of eligible families who are first-time homebuyers.

Section 1338(c)(10)(A) of FHEFSSA provides that not more than 10 percent of the annual grant may be used for homeownership activities. If a grantee chooses to implement a homeownership program with HTF funds, the regulations require the grantee to perform due diligence and underwriting analysis such that the affordability of the homeownership units is sustainable

for ELI households. In light of the distressed housing market conditions in many jurisdictions, program techniques such as shared equity, lease-purchase, and first options to re-purchase HTF-assisted homeownership units in default might be practical features to include in HTF homeownership programs.

#### Forms of Assistance

Section 92.730(b) provides that HTF funds may be invested as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies, deferred payment loans, grants, or other forms of assistance that HUD may determine to be consistent with the goals and objectives of the HTF.

Section 92.730(c) requires that only the actual cost of development and operation of HTF units can be charged to the program, and describes the methods for allocating costs and determining HTF units in multiunit projects. An HTF-assisted unit that has a Section 8 project-based voucher attached to it may not also receive HTF operating cost assistance.

#### Terminated Project

Section 92.730(d) provides that an HTF-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity, and any HTF funds invested in the project must be repaid to the grantee's HTF account.

#### Prohibited Activities

Prohibited activities are set forth in § 92.735. Section 1338(c)(10)(D) of FHEFSSA provides that HTF funds may not be used for: Political activities; advocacy; lobbying, whether directly or through other parties; counseling services; travel expenses; and 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). This statutory section further provides that, subject to the exception in section 1338(c)(10)(D)(iii), HTF funds may not be used for administrative, outreach, or other costs of the grantee, or any other recipient of such grant amounts. The statutory exception to this prohibition is that a grantee may use up to 10 percent of the State's HTF grant for administrative costs of carrying out its program(s) using the HTF, including homeownership counseling.

#### Eligible Project Costs

Section 92.731 sets forth the eligible project costs, which include development hard costs, refinancing costs in conjunction with rehabilitation, acquisition of standard projects, development related soft costs, architectural and engineering fees, project audit costs, staff overhead related to the development of the units, settlement costs, impact fees, the cost to address and meet environmental and historic preservation property standards, operating costs, relocation costs, repayment of construction or other loans, and certain types of costs for construction undertaken before HTF funds were committed to the project.

Operating cost assistance, as defined in § 92.731(e), may include the cost of utilities, insurance, taxes, and scheduled payments to a replacement reserve. The eligible amount of HTF funds per unit for operating costs 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 written agreement between the grantee and the recipient must set forth the maximum amount of the operating assistance to be provided to the HTF-assisted rental project. The grantee may provide operating cost assistance necessary for the project for up to 2 years from one HTF grant. However, the written agreement may provide for renewal of operating cost assistance during the period of affordability of the project, subject to funding availability.

#### Administration and Planning Costs

As noted earlier, the administrative costs allowed in the HTF program cannot exceed 10 percent of the annual grant. Similar to the HOME program requirements at § 92.207, eligible administrative and planning costs are found in § 92.732.

#### HTF and Public Housing

Section 1338(c)(7)(A) of FHEFSSA provides that HTF assistance may be used for the production, preservation, and rehabilitation of housing, including housing identified in section 1335(a)(1)(B) of FHEFSSA (12 U.S.C. 4565(a)(1)(B)). (**Note:** The statute incorrectly references section 1335(a)(2)(B)). The programs identified in that section include housing projects subsidized under the project-based and tenant-based rental assistance programs under section 8 of the United States Housing Act of 1937 (1937 Act); the program under section 236 of the National Housing Act; the below-market

interest rate mortgage program under section 221(d)(4) of the National Housing Act (note: Section 1335(a)(1)(B) of FHEFSSA incorrectly references the below-market interest rate mortgage program; the correct statutory reference is section 221(d)(3)/(d)(5) of the National Housing Act.); the supportive housing for the elderly program under section 202 of the Housing Act of 1959; the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act; the permanent supportive housing projects subsidized under programs under Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 *et seq.*); the rural rental housing program under section 515 of the Housing Act of 1949; the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended; and comparable State and local affordable housing programs. Although this list is not necessarily exhaustive, it is HUD's determination that the HTF funds are not eligible to be used in existing public housing units. Moreover, the 1937 Act provides annual formula funding for public housing. Accordingly, § 92.734 prohibits the use of HTF funds for public housing.

#### Prohibited Activities and Fees

The section on prohibited activities and fees mirrors the HOME program regulation at § 92.214, except that the HTF section is expanded to expressly cover political activities, advocacy, and lobbying, which are ineligible under FHEFSSA.

#### Program Requirements

##### Site and Neighborhood Standards

Section 92.726 applies the site and neighborhood standards for the HOME program, at § 92.202, to the HTF. If Section 8 project-based vouchers are made available, the Section 8 requirements related to site and neighborhood standards will apply to an HTF-assisted unit that has a Section 8 project-based voucher attached to it.

##### Income Determinations

Section 92.727 defines "annual income" and describes the process for determining the annual income of tenants and homebuyers for eligibility in HTF-assisted housing. Income from all family members must be included when determining income eligibility. As in the HOME program, grantees may use the definition of annual income in 24 CFR 5.609 (Section 8 program definitions) or the Internal Revenue Service (IRS) definition of annual income from IRS Form 1040. Section 92.727(e) provides that a State must

follow HUD's regulations in 24 CFR 5.617 when making income determinations for persons with disabilities who are tenants in HTF-assisted rental housing. For homebuyers, the grantee must determine annual income by examining source documentation for the entire household, or obtain written statements verifying incomes from the household or administrators of government programs from which the household receives assistance.

#### Project Requirements

Sections 92.740–92.750 establish requirements applicable to HTF-assisted housing projects.

##### Maximum Per-Unit Subsidy

Section 92.740(a) establishes maximum per-unit subsidy, underwriting, and subsidy layering requirements. The grantee must establish maximum limitations on the amount of HTF funds the grantee may invest on a per-unit basis.

##### Underwriting and Subsidy Layering

Section 92.740(b) requires the grantee to perform subsidy layering analysis before committing HTF funds to a project. The grantee must determine that costs are reasonable, examine the sources and uses of funds, and ensure that the amounts available and their use are necessary to provide quality affordable rental or homeownership housing for ELI households for the affordability period (30 years). Furthermore, developers or owners of HTF-assisted projects may not receive undue returns on their investments.

##### Property Standards

As described below, the HTF requires energy and water efficiency features in all HTF-assisted units. Each grantee can include incentives and priorities in its HTF allocation plan to further promote sustainable development that is appropriate to the communities where housing developed with HTF funds will be located.

Applicable property standards are established at §§ 92.741 through 92.745. This rule requires, at minimum, that all HTF-assisted units that are newly constructed or undergoing gut rehabilitation must be certified that they meet the guidelines for ENERGY STAR-Qualified New Homes (for residential buildings up to 3 stories) or exceed, by 20 percent, the energy efficiency requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2007, Appendix G: Performance Rating Method (for

residential buildings over 3 stories), as defined in § 92.741. A Home Energy Rater (HER) must inspect the units to certify that the units meet the ENERGY STAR guidelines. HUD is aware that Home Energy Raters may not be available in all places; therefore, the requirement for ENERGY STAR certification will become effective 6 months from the effective date of this rule. ENERGY STAR-labeled products must be installed when older obsolete products are replaced as part of the rehabilitation work for HTF-assisted units, as applicable in § 92.742. All water-usage products installed in HTF-assisted units must also be certified to meet the WaterSense requirements, in accordance with § 92.741 and § 92.742.

The specific property standards addressed by §§ 92.741 through 92.745 are as follows: § 92.741 contains the property standards for new construction and gut rehabilitation, § 92.742 establishes the standards for housing undergoing other rehabilitation, § 92.743 contains the property standards for existing housing that is acquired with HTF funds, § 92.744 establishes property standards for manufactured housing, and § 92.745 establishes ongoing property standards for rental housing during the period of affordability.

HUD requests comments from interested parties on how additional minimum property standards may be imposed to increase the efficiency and reduce the operating costs of HTF-assisted units.

##### Qualification as Affordable Housing

Sections 92.746 and 92.748 establish an affordability period of not less than 30 years for rental housing and homeownership units assisted with HTF funds. As stated earlier, the Department expects that HTF funds will be combined with the other sources of private funding and financing typically used for the development of affordable housing, such as Low-Income Housing Tax Credits (LIHTCs). The affordability period for HTF-assisted units is designed to work in conjunction with the 30-year affordability period for LIHTC projects. Grantees may also establish longer affordability periods in their HTF allocation plans.

Section 92.746(b) establishes the maximum rent (including utilities) for HTF-assisted units at 30 percent of the annual income of a family whose income equals 30 percent of the area median income, or 30 percent of the poverty line, whichever is greater. It is necessary to establish fixed rents for underwriting purposes and required subsidy layering analyses. HUD

recognizes that some ELI tenants living in HTF-assisted units may be rent-burdened if required to pay HTF rents. As stated earlier in this preamble, Section 8 Project-Based Vouchers may be made available to HTF-assisted units; these vouchers alleviate cost burdens for ELI tenants. When project-based assistance from other HUD programs is provided to HTF units, the rents are based on the rent requirements of that program.

Section 92.746(e) requires that HTF project owners verify the initial and continued eligibility of tenants living in HTF-assisted rental units and establishes the methods by which HTF project owners must verify tenant income. Furthermore, this section specifies that when Section 8 Project-Based Vouchers or any other Federal rental assistance programs are used in conjunction with an HTF-assisted rental unit, the income verification rules and procedures of those programs will apply instead of the requirements set forth in this subsection.

Section 92.747 establishes tenant protection, lease, and selection requirements, and incorporates the requirements of section 1338(c)(8) of FHEFSSA.

Section 92.748(d) establishes the HTF requirements for homebuyers. HTF assistance to homebuyers may be provided only to first-time homebuyers and must be for the principal residence of the homebuyer. Before purchasing the housing, in accordance with section 1338(c)(7)(B)(iv) of FHEFSSA, the homebuyer must have completed homeownership counseling from an organization that meets the requirements of section 1132 of the Federal Housing Regulatory Reform Act of 2008.

Section 92.748(f) establishes the resale requirements, as required by section 1338(c)(7)(B)(iii), for homeownership units assisted by the HTF. Upon resale, each HTF-assisted homeownership unit must be sold to an income-eligible family. Each grantee that has an HTF homeownership program must include resale restriction policies in its HTF allocation plan. HTF grantees may adopt their HOME program resale restriction policies, modified for income-eligible households. The grantee may also include purchase options and right of first refusal to purchase the HTF-assisted units upon foreclosure, in order to preserve affordability.

Section 92.749 defines the modest housing requirements in section 1338(c)(7)(B)(ii) of FHEFSSA for HTF-assisted homeownership units. For newly constructed housing, the value of

the housing may not exceed 95 percent of the median purchase price for single-family housing in the area. HUD intends to provide these purchase limits for each area or the grantee can determine 95 percent of the area median purchase price in accordance with the methodology set forth in § 92.749(e).

In the event of foreclosure of HTF-assisted rental or homeownership units, or transfer of deed in lieu of foreclosure, the affordability period required by §§ 92.746 and 92.748 is terminated. In order to preserve the affordability of the housing, the grantee may include purchase options in the HTF written agreement, such as "right of first refusal" to purchase the HTF-assisted units in default. The termination of the affordability restrictions on the project does not terminate the grantee's repayment obligation under § 92.773.

#### Faith-Based Organizations

Section 92.750 provides for the eligibility of faith-based organizations to apply for and use HTF funds under the same requirements as other recipients.

#### Other Federal Requirements

Sections 92.760–92.764 set forth the other Federal requirements that are applicable to the use of HTF funds, including nondiscrimination requirements. For example, the rule requires the grantee to establish affirmative marketing requirements, as required in the HOME program, and grantees must comply with Federal lead-based paint and relocation requirements. These sections also include the funding accountability and transparency requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note), which must be met in accordance with section 1338(i) of FHEFSSA.

#### Program Administration

Sections 92.770–92.779 establish the conditions and requirements by which States are to administer their HTF funds. Section 92.770 describes two HTF accounts that make up the HTF: The HTF Treasury account, which is for HTF funds allocated or reallocated to a grantee under the HTF formula, and the HTF local account, which is for deposits of HTF funds disbursed from the HTF Treasury account, any program income, and any repayments required to be made. Section 92.771 provides that allocation and reallocation of HTF funds will be made available pursuant to an HTF grant agreement.

Section 92.772 establishes the requirements applicable to program disbursement and the establishment of

the information system consistent with section 1338(e) of FHEFSSA. This statutory section provides that (1) HUD must require each grantee to develop and maintain a system to ensure that each recipient of assistance use HTF funds in accordance with the statute, the regulations, and any requirements or conditions under which HTF funds were provided; and (2) establish minimum requirements for agreements between the grantee and recipients. This statutory section further provides that the minimum requirements must include: (1) Appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient, to ensure compliance with the limitations and requirements of the statute and regulations; and (2) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance. These statutory requirements are reflected in §§ 92.776–92.779.

Specifically, § 92.774(b) requires that 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 subpart. Requirements for the HTF written agreement and required provisions are specified in § 92.774(c). Where HOME program funds are used together with HTF funds, a single written agreement meeting the requirements of both § 92.504 and this subpart may be used to enforce requirements for both programs.

Section 1338(g)(2) of FHEFSSA requires that HUD ensure that the use of HTF grants by States or State-designated entities is audited not less than annually to ensure compliance with statutory and HUD's regulatory requirements. Section 1338(g)(2) also authorizes HUD to audit, provide for an audit, or otherwise verify a grantee's activities to ensure compliance with all HTF requirements. Section 1338(g)(2) further provides that any financial statement submitted by a grantee or recipient to HUD shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants. These requirements are reflected in § 92.776.

#### Performance Review and Sanctions Review of Subgrantees and Recipients

Grantees will report on their progress and performance in meeting the requirements of the HTF in HUD's Integrated Disbursement & Information

System (IDIS) and the consolidated plan. For example, grantees will report on the incomes of HTF beneficiaries in IDIS, and will also demonstrate compliance with the deadlines for the commitment and expenditure of funds by data entered into IDIS. As stated earlier, this proposed rule would add the annual HTF allocation plan as a subsection to the strategic plan and annual action plan. Performance benchmarks will be established in the HTF allocation plan in conjunction with the strategic and annual plans, and subsequent reporting on performance will be reported to the public and HUD through the submissions and reports associated with those plans.

Section 1338(e)(2)(B) of FHEFSSA is directed to the misuse of funds and provides that if HUD determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of the HTF statutory requirements or HUD's regulatory requirements, and until HUD is satisfied that there is no longer any such failure to comply, HUD shall: (1) Reduce the amount of assistance to the grantee by an amount equal to the amount of grant amounts that were not used; (2) require the grantee to repay HUD any amount of the grant that was not used; (3) limit the availability of assistance to the grantee to activities or recipients not affected by such failure to comply; or (4) terminate any assistance under this section to the grantee. These statutory requirements are reflected in § 92.782.

Section 1338(e)(1)(B) provides that if any recipient of assistance of HTF funds is determined to have used any such amounts in a manner that is materially in violation of the HTF statutory requirements, HUD's HTF regulatory requirements, or any requirements or conditions under which such amounts were provided, the grantee shall require, within 12 months after the determination of the misuse, that the recipient must reimburse the grantee for the misused amounts and return to the grantee any such amounts that remain unused or uncommitted for use. Section 1338(e)(1)(B) provides that if a grantee makes this determination, the grantee must first provide notification of the determination to HUD for review and concurrence. This statutory section authorizes HUD to reverse the determination if it disagrees. These statutory requirements are reflected in § 92.783.

#### *Consolidated Plan Revisions*

As noted earlier in this preamble, this rule also makes conforming changes to the consolidated plan regulations at 24

Part 91 to require information related to the HTF to be included in strategic and 5-year State or local government strategic and annual action plans.

### **III. Findings and Certifications**

#### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This proposed rule was determined to be a "significant regulatory action," as defined in section 3(f) of the Order but not economically significant, as provided in section 3(f)(1) of the Order. The reasons for the determination are as follows:

As discussed above in this preamble, HERA charged HUD to establish through regulation, the formula for the distribution of HTF grants to States, and to follow that rule with one that implements the programmatic requirements for the HTF. Consistent with that statutory direction, on December 4, 2009 (74 FR 63938), HUD published a proposed rule submitting for public comment the proposed formula for allocating HTF funds. As the first rule to be issued in the rulemaking process for the HTF, the formula allocation constituted, on behalf of the entire HTF rulemaking, an economically significant regulatory action under Executive Order 12866. The preamble to the December 2009 rule summarized the economic impacts of the HTF program, as proposed to be implemented through the formula issued for public comment on December 4, 2009. (For a discussion of the economic impact, please see 74 FR 63940–63941.) HUD's full economic analysis for the allocation rule is available for inspection on HUD's Web site at <http://www.huduser.org/portal/publications/pubasst/riaforhtf.html>.

This proposed rule follows the December 4, 2009, allocation formula rule by submitting for public comment the program requirements that will govern the HTF. The economic impacts of the rulemakings implementing the HTF are largely limited to the procedures governing the allocation and distribution of grant funds set forth in the December 4, 2009, proposed rule. This proposed rule does not revise the HTF allocation formula or otherwise affect the allocation of HTF funds. To the extent that this proposed rule has an economic impact, it derives from the December 2009 allocation formula proposed rule. That economic assessment may be revised to account for any new impacts resulting from changes made at the final rule stage.

The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Under the HTF program, HUD makes grants to the relatively large entities of States or their designated housing entities for the purposes of preserving and increasing the supply of rental housing and increasing homeownership for eligible families. Therefore, the primary focus on the rule is on these large entities. The States and State-designated housing entities may, in turn, make funding available to recipients, which may include smaller entities (such as nonprofit or for-profit organizations), but the funding made available to recipients is provided under application procedures and requirements established by the States or State-designated housing entities, not HUD; however, the grantees must ensure their recipients' adherence to the statutory requirements and regulatory requirements promulgated by HUD.

Additionally, the regulatory text largely reflects statutory requirements of FHEFSSA. Where HUD has exercised the discretion to elaborate on the statutory requirements, HUD has strived to closely model these procedures on existing development programs, which are familiar to entities likely to be participants under the new HTF program. For example, as noted earlier in this preamble, the HTF program adopts several definitions used under the HOME program. The organization of the HTF regulations is modeled after those for the HOME program, and HUD has elected to adopt many existing HOME program requirements. Given that HTF funding is statutorily provided for the benefit of the States and is to be

allocated to the States, HUD has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule does not have federalism implications, and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or Tribal government or the private sector within the meaning of UMRA.

*Paperwork Reduction Act*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Reg. section	Paperwork requirement	Recordkeeping hours	Reporting hours	Number of jurisdictions	Total hours
§ 91.215	Strategic Planning—Draft Housing Section of Localities Plan.	10		62	620
§ 91.220	Allocation Planning—Draft the localities allocation plan.	30		62	1,860
§ 92.725	Distribution of Assistance	2		56	112
§ 92.726	Site and Neighborhood Standards	2		56	112
§ 92.727	Income Determinations	1		4,573	4,573
§ 92.730, § 92.731, § 92.736, § 92.737, § 92.740, § 92.746, and § 92.748.	Documentation required by HUD to be included in project file to determine project eligibility (i.e., eligible activities and costs, income targeting, subsidy limits, qualification as affordable housing).	5		415	2,075
§ 92.741, § 92.742, § 92.743, § 92.744, and § 92.745.	Property Standards (new construction, rehabilitation, acquisition, manufactured housing, rental housing).	1		415	415
§ 92.747	Tenant Protections and Selection (including lease requirement).	1		4,573	4,573
§ 92.748	Qualification as Affordable Housing: Homeownership.	1		58	58
§ 92.720	Public Participation	4		56	224
§ 92.760	Other Federal Requirements and Non-discrimination (including minority and women business enterprise and minority outreach efforts).	5		415	2,075
§ 92.760	Affirmative Marketing	10		415	4,150
§ 92.762	Displacement, Relocation, and Acquisition (including tenant assistance policy).	5		457	2,285
§ 92.761	Lead-based paint	1		208	208
§ 92.778	Debarment and Suspension	1		25	25
§ 92.771	HTF Grant Agreement (HUD 40101)	1		56	56
§ 92.774	Grantee Written Agreements	10		415	4,150
§ 92.725	Distribution of Assistance—State Designation of Local Recipients.		2	52	78
§ 92.731	Eligible Project Costs—Refinancing		1	25	25
§ 92.772	Program Disbursement and Information System (IDIS).		1	415	415

REPORTING AND RECORDKEEPING BURDEN—Continued

Reg. section	Paperwork requirement	Recordkeeping hours	Reporting hours	Number of jurisdictions	Total hours
Total Annual Respondents and Burden Hours .....		90	4	12,809	28,089

Total Estimated Burden Hours

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5246) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: 202-395-6947, and

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7233, Washington, DC 20410.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs-housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 91 and amend 24 CFR part 92 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601-3619, 5301-5315, 11331-11388, 12701-12711, 12741-12756, 12901-12912, and 12 U.S.C. 1301 et seq.

2. In § 91.2, remove the word "and" at the end of paragraph (a)(3), remove the period at the end of paragraph (a)(4) and add "; and" in its place, and add paragraph (a)(5) to read as follows:

§ 91.2 Applicability.

- (a) \* \* \*
- (5) The Housing Trust Fund (HTF) program (see 24 CFR part 92).

3. Revise the first sentence of § 91.10(a) to read as follows:

§ 91.10 Consolidated program year.

(a) Each of the following programs shall be administered by a jurisdiction on a single consolidated program year, established by the jurisdiction: CDBG, ESG, HOME, HOPWA, and HTF. \* \* \*

4. Revise § 91.215(b)(2) to read as follows:

§ 91.215 Strategic plan.

- (b) \* \* \*
- (2) The affordable housing section shall include specific objectives that describe proposed accomplishments the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing, 24 CFR 92.254 for homeownership, and 24 CFR 92.746 and 24 CFR 92.748 (if the jurisdiction receives HTF funds from the State) over a specific time period.

5. Add § 91.220(l)(4) to read as follows:

§ 91.220 Action plan.

\* \* \* \* \*

(4) Housing Trust Fund. If the jurisdiction receives HTF funds from the State, under 92.725, the action plan must include the HTF allocation plan (consistent with the State's HTF requirements) that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the jurisdiction's priority housing needs. The plan must include the following:

(i) The plan must identify priority factors for funding that shall include the following: geographic diversity (as defined by the grantee in the consolidated plan); the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; in the case of rental housing projects, the extent to which rents for units in the project are affordable to ELI families; in the case of rental housing projects, the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the jurisdiction (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, and housing that serves special needs populations); and the extent to which the application makes use of non-Federal funding sources.

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 92.730) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 92.702).

(iii) The plan must provide for performance goals, consistent with the jurisdiction's goals established under 24 CFR 91.215(b)(2).

(iv) The plan must provide the jurisdiction's rehabilitation standards, as required by 24 CFR 92.742.

(v) The plan must describe the conditions under which the grantee will refinance existing debt.

6. Revise § 91.315(b)(2) to read as follows:

**§ 91.315 Strategic plan.**

\* \* \* \* \*

(b) \* \* \*

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments the State hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families to which the State will provide affordable housing, as defined in 24 CFR 92.252 for rental housing, 24 CFR 92.254 for homeownership, 24 CFR 92.746 for rental housing, and 24 CFR 92.748 for homeownership (if the jurisdiction receives HTF from the State) over a specific time period.

\* \* \* \* \*

7. Add § 91.320(k)(5) to read as follows:

**§ 91.320 Action plan.**

\* \* \* \* \*

(k) \* \* \*

(5) *Housing Trust Fund*. The action plan must include the HTF allocation plan that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. The plan must also establish the State's maximum per-unit subsidy limit for housing assisted with HTF funds. If the HTF funds will be used for first-time homebuyers, the plan must include resale restrictions in accordance with 24 CFR 92.748. The plan must reflect the State's decision to distribute HTF funds through grants to subgrantees and/or to select applications submitted by eligible recipients. If the State is selecting applications submitted by eligible recipients, the plan must include the following:

(i) The plan must provide priority for funding based on geographic diversity (as defined by the grantee in the consolidated plan); the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; in the case of rental housing projects, the extent to which the project has Federal, State, or local project-based rental assistance so that rents are affordable to ELI families; in the case of rental housing projects, the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the State (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations); and

the extent to which the application makes use of non-Federal funding sources.

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 92.730) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 92.702).

(iii) The plan must provide for performance goals and benchmarks against which the State will measure its progress, consistent with the State's goals established under 24 CFR 91.315(b)(2).

(iv) The plan must include the State's rehabilitation standards, as required by 24 CFR 92.742.

(v) The plan must include the refinancing guidelines as required by 24 CFR 92.731(b).

(vi) The plan must describe the conditions under which the grantee will refinance existing debt.

**PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM**

8. The authority for 24 CFR part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12701–12839, and 12 U.S.C. 1301 *et seq.*

9. In § 92.2, revise the definition of "First-time homebuyer" to read as follows:

**§ 92.2 Definitions.**

\* \* \* \* \*

*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.

\* \* \* \* \*

10. Add new subpart N to read as follows:

**Subpart N—Housing Trust Fund**

**General**

Sec.  
92.701 Overview.  
92.702 Definitions.  
92.703 Waivers.

**Allocation Formula; Reallocations**

92.710–92.713 [Reserved]  
92.714 Reallocations by formula.

**Participation and Submission Requirements; Distribution of Assistance**

92.720 Participation and submission requirements.

92.725 Distribution of assistance.

**Program Requirements**

92.726 Site and neighborhood standards.  
92.727 Income determinations.

**Eligible and Prohibited Activities**

92.730 Eligible activities: general.  
92.731 Eligible project costs.  
92.732 Eligible administrative and planning costs.  
92.734 HTF funds and public housing.  
92.735 Prohibited activities and fees.

**Income Targeting**

92.736 Income targeting: rental units.  
92.737 Income targeting: homeownership.

**Project Requirements**

92.740 Maximum per-unit subsidy amount, underwriting, and subsidy layering.  
92.741 Property standards: new construction projects and gut rehabilitation projects.  
92.742 Property standards: rehabilitation projects.  
92.743 Property standards: acquisition of standard housing.  
92.744 Property standards: manufactured housing.  
92.745 Ongoing property standards: rental housing.  
92.746 Qualification as affordable housing: rental housing.  
92.747 Tenant protections and selection.  
92.748 Qualification as affordable housing: homeownership.  
92.749 Qualification as affordable housing: modest housing requirements for homeownership.  
92.750 Faith-based organizations.

**Other Federal Requirements**

92.760 Other Federal requirements and nondiscrimination; affirmative marketing.  
92.761 Lead-based paint.  
92.762 Displacement, relocation, and acquisition.  
92.763 Conflict of interest.  
92.764 Funding accountability and transparency.

**Program Administration**

92.770 Housing Trust Fund (HTF) accounts.  
92.771 HTF Grant Agreement.  
92.772 Program disbursement and information system.  
92.773 Program income and repayments.  
92.774 Grantee responsibilities; written agreements; onsite inspections; financial oversight.  
92.775 Applicability of uniform administrative requirements.  
92.776 Audit.  
92.777 Closeout.  
92.778 Recordkeeping.  
92.779 Performance reports.

**Performance Review and Sanctions**

92.780 Accountability of recipients.  
92.781 Performance reviews.  
92.782 Corrective and remedial actions.  
92.783 Notice and opportunity for hearing; sanctions.

## Subpart N—Housing Trust Fund

### General

#### § 92.701 Overview.

(a) This subpart implements the Housing Trust Fund (HTF) program established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), as amended by the Federal Housing Finance Regulatory Reform Act of 2008 (12 U.S.C. 4568). 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 ELI and VLI households, including homeless families.

(b) Section 1337 of FHEFSSA 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. FHEFSSA also provides that the HTF may be funded with amounts appropriated, transferred, or credited to the HTF under other provisions of law.

(c) Other subparts of part 92 are not applicable to the HTF program, except as expressly provided in this subpart N. To the extent that sections of other subparts of this part are made applicable, references to HOME shall mean HTF and references to participating jurisdictions shall mean grantees.

#### § 92.702 Definitions.

(a) The definitions in 24 CFR 92.2 apply to this subpart, except as modified in paragraph (b) of this section.

(b) As used in this subpart:

*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 or with a unit of general local government for a project that

meets the definition of “commit to a transit-oriented development” of paragraph (3) of this definition.

(2) Commit to a specific project, which 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.

(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 single-family housing or rental housing and the property title will be transferred to the family or recipient within 6 months of the agreement date.

(iii) If the project includes operating cost assistance, the grantee and the recipient must have executed a legally binding written agreement under which HTF assistance will be provided to the recipient for operating cost assistance for the identified HTF project. The legally binding agreement must include the amount of HTF funds necessary for operating cost assistance for a period of not more than 2 years, which may be renewed during the period of affordability.

(3) Commit to a transit-oriented development means a unit of general local government and the property owner have executed a legally binding written contract for sale of an identifiable property for use for HTF-assisted units within a transit-oriented development and that the property title will be transferred to the unit of general local government within 6 months of the date of the contract. Within 36 months of the date of the transfer of title, the local government must commit an additional amount of HTF funds or other resources, as necessary, to a specific local project (that meets the definition in paragraph (2) of this definition) for this property.

*Energy-Efficient Improvements* mean activities undertaken to minimize energy waste in existing housing through rehabilitation work, including home weatherization and other improvements such as installing additional insulation, sealing or reducing air leakage, upgrading to

energy-efficient lighting, installing programmable thermostats, and converting to high-efficiency HVAC equipment and appliances. Energy-efficient improvements can increase comfort levels, and improve health in homes, reduce operating costs, improve building performance, lower maintenance costs, and reduce energy-related pollution of the environment.

*ENERGY STAR* is a joint program of the Environmental Protection Agency (EPA) and the Department of Energy to save money and protect the environment through endorsement of energy-efficient products and practices.

*ENERGY STAR-Qualified New Homes* means homes that earn the ENERGY STAR label. To earn the ENERGY STAR label, a home must meet strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA) and be independently verified by a third-party Home Energy Rater. Any home three stories or less can earn the ENERGY STAR label if it has been verified to meet EPA's guidelines, including: single-family, attached, and low-rise multifamily homes; manufactured homes; systems-built homes (*e.g.*, SIP, ICF, or modular construction); log homes; concrete homes; and existing retrofitted homes. ENERGY STAR qualified homes can include a variety of energy-efficient features that contribute to improved home quality and homeowner comfort, lower energy demand, and reduced air pollution, including effective insulation, high-performance windows, tight construction and ducts, efficient heating and cooling equipment, and efficient ENERGY STAR qualified products.

*ENERGY STAR-Qualified Products and Appliances* means that the energy-efficient products and appliances have earned the ENERGY STAR label by meeting guidelines for energy efficiency set by the EPA, and will help deliver energy savings and environmental benefits. Products that can earn the ENERGY STAR label include lighting, windows, heating and cooling equipment, and appliances such as refrigerators, dishwashers, and washing machines.

*Extremely Low-Income (ELI) 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, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents,

or unusually high or low family incomes.

*FHEFSSA* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 1301 *et seq.*).

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

*Gut Rehabilitation* means the total removal and replacement of all interior (nonstructural) systems, equipment, components, or features of the existing structure, and may include structural and nonstructural modifications of the exterior of the structure.

*Home Energy Rater (HER)* means an independent third-party rater who verifies that a home meets ENERGY STAR guidelines. Home Energy Raters are trained and certified through the Residential Energy Services Network (RESNET) to evaluate construction techniques, recommend improvements, take key measurements, and perform inspections and testing procedures during and after construction to verify a home's energy-efficient performance and conduct Home Energy Rating System (HERS) ratings.

*Home Energy Rating* means an analysis of a home's projected energy efficiency in comparison to a "reference home" based on the International Energy Conservation Code. A home energy rating involves both an analysis of a home's construction plans, as well as onsite inspections and testing by a certified Home Energy Rater.

*HTF Allocation Plan* means the annual submission to HUD required by FHEFSSA 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.

*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 established by the Secretary for the fiscal year.

*Observed Deficiency (OD)* means any deficiency identified during an onsite inspection of each inspected item for each inspected area. The grantee can establish its own standards for an observed deficiency for each inspected

item, except that at a minimum, the grantee's standards shall identify each deficiency (regardless of the level of severity) for each inspected item and inspected area included in the latest Uniform Physical Condition Standards (UPCS) Dictionary of Definitions established by HUD pursuant to 24 CFR 5.703 and 24 CFR 5.705, or such other requirements that the Secretary of HUD may establish.

*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 excludes 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 § 92.730(b).

*Project Completion* means that all necessary title transfer requirements and construction work have been performed, the project complies with the requirements of this subpart (including the property standards under §§ 92.741 through 92.745 of this subpart), 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.

*Recipient* means an organization, agency, or other entity (including 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.

*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 public 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.

*Transit-Oriented Development (TOD)* refers to a compact, mixed-use, mixed-income development that is within walking distance (no more than ½ mile) of a proposed or existing transit facility, that is easily accessible to essential neighborhood destinations including jobs, education, retail, and health services.

*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).

*Uniform Physical Condition Standards (UPCS)* means uniform

national standards established by HUD pursuant to 24 CFR part 5.703 that ensure that assisted housing is decent, safe, sanitary, and in good repair. Standards are established for inspected items for each of the following areas, which must be inspected: site, building exterior, building systems, dwelling units, and common areas.

*Very Low-Income (VLI) 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, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. "Very low-income family" includes any family that resides in a rural area that does not exceed the poverty line applicable to the family size involved.

*WaterSense* is a partnership program sponsored by the EPA that seeks to protect the future of our Nation's water supply by promoting water efficiency and enhancing the market for water-efficient products, programs, and practices. WaterSense-labeled products must be independently tested and certified by an EPA-licensed certifying body to meet the criteria in EPA's specifications for water efficiency and performance.

#### § 92.703 Waivers.

The Secretary may, upon a determination of good cause and subject to statutory limitations, waive any provision of this subpart 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)).

#### Allocation Formula; Reallocations

##### §§ 92.710–92.713 [Reserved]

#### § 92.714 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 § 92.770 for failure to commit or expend the funds within the time specified, or under § 92.783 for failure to comply substantially with any provision of this subpart;

(2) Any HTF funds reduced for failure by the grantee to obtain funds required to be reimbursed or returned under § 92.780; and

(3) Any HTF funds remitted to HUD under § 92.773(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.

#### Participation and Submission Requirements; Distribution of Assistance

##### § 92.720 Participation and submission requirements.

(a) *Notification of intent to participate.* Not later than 30 days after receiving notice of its formula allocation amount, a State must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding.

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

##### § 92.725 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, and as may be directed by HUD at the time of allocation of HTF funds for the fiscal year.

(c) An HTF grantee may choose to directly fund projects by eligible recipients in accordance with the grantee's HTF allocation plan or to fund projects by eligible recipients through one or more subgrantees. The HTF subgrantee must have a consolidated plan under 24 CFR part 91, 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 plan. The grantee or subgrantee must determine that the applicant is an eligible recipient that meets the definition of "recipient" in § 92.702 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 subpart and carry out the responsibilities of the grantee. The grantee must annually review the performance of subgrantees in accordance with 24 CFR 92.774(a).

#### Program Requirements

##### § 92.726 Site and neighborhood standards.

The site and neighborhood standards contained in § 92.202 apply to the HTF.

##### § 92.727 Income determinations.

(a) *General.* The HTF program has income-targeting requirements for HTF-assisted projects. 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, except that government cost-of-living allowances that are not included in income (*e.g.*, for a Federal civilian employee or a Federal court employee who is stationed in Alaska, Hawaii, or outside the United States) must be added to adjusted gross income.

(2) To calculate *adjusted* income, the grantee must apply exclusions from income established at 24 CFR 5.611.

(3) The grantee may use only one definition for each HTF-assisted program (*e.g.*, down payment assistance program) that it administers.

(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 § 92.746(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 for determining annual income.* A grantee must use one of the following methods to determine annual income, as described in paragraph (c) of this section:

(1) Examine the 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 that examines the annual income of the family each year. 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 VLI or ELI families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(e) *Calculation of annual income.* (1) The grantee must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the grantee determines that the family is income-eligible. Annual income shall include income from all family members and must include the annual income of all families in the unit. Income or asset enhancement derived from the HTF-assisted project shall not be considered in calculating annual income.

(2) The grantee is not required to re-examine the family's income at the time the HTF assistance is provided, unless more than 6 months has elapsed since the grantee determined that the family qualified as income-eligible.

(3) The grantee must follow the requirements in 24 CFR 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HTF-assisted rental housing.

### Eligible and Prohibited Activities

#### § 92.730 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 20 percent of the annual grant may be used for operating cost assistance. Operating cost

assistance may be provided only to rental housing acquired, rehabilitated, preserved, 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 or transitional housing. The specific eligible costs for these activities are found in §§ 92.731 and 92.732. The activities and costs are eligible only if the housing meets the property standards in §§ 92.741 through 92.744, 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 § 92.702(b).

(3) A unit of general local government may purchase improved or unimproved land for use for HTF-assisted units to be part of a transit-oriented development within the time frame established in the "commitment" definition of "commit to a transit oriented development" in § 92.702. The unit of general local government must own the improved or unimproved property until the project meets the requirement for "commit to a specific local project" in § 92.702. If the unit of general local government does not have a commitment for a specific HTF-assisted project within 36 months from the date of the contract to acquire the property, the cost to purchase or the current value of the property, whichever is greater, must be repaid to the grantee's HTF account from which the funds were drawn (*i.e.*, local or Treasury account). The amount repaid must be prorated in proportion to the amount of HTF funds to total funds used to purchase the land.

(4) HTF funds may be used to purchase and/or rehabilitate a manufactured housing unit, or 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.* A grantee may invest HTF funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this subpart, 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 HTF-assisted units designated as part of the development process may not be reduced, 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 § 92.740(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 the HTF account from which the funds were drawn (*i.e.*, local or Treasury account), in accordance with § 92.773(b). A project that does not meet the requirements for affordable housing must be terminated and the HTF funds must be repaid to the grantee's HTF account.

#### § 92.731 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 in § 92.741;

(2) For rehabilitation projects, costs to meet the property standards for rehabilitation projects in § 92.742;

(3) For both new construction and rehabilitation projects, costs:

(i) To demolish existing structures;

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

(iii) To make improvements to the project site that is 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 that 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 paragraphs (a)(3)(ii) and (iii) of this section, are also eligible, in connection with 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.

(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, attorney's fees, private appraisal fees, fees for an independent cost estimate, and builder's or developer's fees.

(3) Costs of a project audit and 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 § 92.760.

(5) For new construction and rehabilitation of rental housing, 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 the amount necessary for a period of 18 months). Any HTF funds that are placed in an operating deficit reserve that remain unexpended after the project rent-up may be retained for project reserves if permitted by the participating jurisdiction.

(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. 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.

(8) Costs to address and meet environmental and historic preservation property standards on the project, including any necessary studies, research, or mitigation in accordance with §§ 92.741(f) and 92.742(c).

(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 § 92.730(a), HTF funds may be used to pay for operating costs and operating cost assistance reserves, as follows:

(1) Operating 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 grantee may agree to provide operating cost assistance during the entire period of affordability, subject to the availability of funds. The maximum amount of the operating assistance to be provided to an HTF-assisted rental project must be specified in a written agreement between the grantee and the recipient. The grantee may provide for the amount of expected operating cost assistance necessary for the project in the written agreement, for a period of not more than two years, which may be renewed during the period of affordability, subject to the availability of funds. The amount of HTF funds for operating cost assistance that a grantee may provide to a project from any fiscal year HTF grant may not exceed the eligible amount for operating cost assistance for the HTF-assisted units in a project for a period of not greater than two years.

(2) Operating Cost Assistance Reserves may be established by the grantee for HTF-assisted projects where such reserves are deemed necessary by the grantee to ensure a project's financial feasibility. The allowable amount of an operating cost reserve shall not exceed, for a period of more than 5 years, the amount determined to be necessary to provide operating cost assistance for HTF-assisted units, as determined by the grantee, 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.

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

(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, including acquisition of construction 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 soft costs, as provided in paragraphs (d)(1) and (2) of this section, that were incurred before HTF funds were committed to the project.

**§ 92.732 Eligible administrative and planning costs.**

(a) *General.* A grantee may expend, for payment of reasonable administrative and planning costs of the HTF program, an amount of HTF funds that is not more than 10 percent of the fiscal year HTF grant. A grantee may also expend, for payment of reasonable administrative and planning costs of the HTF program, a sum up to 10 percent of the program income deposited into its local account or received and reported by its subgrantees during the program year. A grantee may expend such funds directly or may authorize its subgrantees, if any, to expend all or a portion of such funds, provided that total expenditures for planning and administrative costs do not exceed the maximum allowable amount. For purposes of this section, "reasonable administrative and planning costs" are the 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 involve 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 (b)(1)(i) through (b)(1)(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.

(c) *Staff and overhead.* (1) 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 inspections (visual assessments, inspections, and risk assessments); housing counseling; and other services related to assisting potential owners, tenants, and homebuyers; 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.

(2) These costs, except housing counseling, may be charged as administrative costs or as project costs under §§ 92.731(d)(5) and 92.731(f)(2), at the discretion of the grantee; however, these costs cannot be charged to or paid by the assisted 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 under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122, as applicable.

(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 §§ 92.760 through 92.764 of this subpart.

**§ 92.734 HTF funds and public housing.**

(a) HTF funds may not be used for public housing, including public housing that is developed under section 24 of the 1937 Act (HOPE VI).

(b) HTF-assisted housing may not receive operating assistance under section 9 of the 1937 Act during the HTF period of affordability.

(c) Consistent with § 92.730(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 subpart.

**§ 92.735 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) to a project previously assisted with HTF funds during the period of affordability established by the grantee in the written agreement under § 92.774. 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 subsidy amount established pursuant to § 92.740.

(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 § 92.732(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, including housing counseling.

(6) Pay for any cost that is not eligible under § 92.731 and § 92.732.

(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 (except as allowed in § 92.731(d)(2)). However, the grantee may charge owners of rental projects reasonable annual fees for monitoring compliance during the period of affordability and may charge nominal application fees (although these fees are not an eligible HTF cost) to eligible recipients, to discourage frivolous applications.

(2) The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an ELI family to be able to participate in the grantee's program. All fees are applicable credits under OMB Circular A-87.

(3) In addition, the grantee must prohibit project owners from charging origination fees, parking fees that exceed usual and customary charges, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

#### Income Targeting

##### § 92.736 Income targeting: Rental units.

Unless otherwise directed by HUD at the time of allocation of HTF funds for a fiscal year, in each fiscal year, not less than 75 percent of HTF grant amounts provided to rental projects under each grant must be used for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater. For the first year of HTF funding, States must use 100 percent of HTF rental housing funding for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater. For subsequent

funding years, HUD will advise the percentage of funds to be used for the benefit of ELI families or families with incomes at or below the poverty line, if such percentage is to be greater than 75 percent.

##### § 92.737 Income targeting: Homeownership.

Unless otherwise directed by HUD at the time of allocation of HTF funds for a fiscal year, in each fiscal year, not less than 75 percent of HTF grant amounts provided to homeownership projects under each grant must be used for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater. For the first year of HTF funding, each assisted homeownership unit must be for purchase only by ELI families, or families with incomes at or below the poverty line, whichever is greater, who qualify as first-time homebuyers. For subsequent funding years, HUD will advise the percentage of funds to be used for the benefit of ELI families or families with incomes at or below the poverty line, if such percentage is to be greater than 75 percent.

#### Project Requirements

##### § 92.740 Maximum per-unit 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, with adjustments for the number of bedrooms and the geographic location of the project. 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 this purpose and make a determination that it will 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 a minimum, the period of affordability in § 92.746 or § 92.748) and will not provide undue return on the owner's or developer's investment or undue profit. This analysis must include any operating cost assistance or project-based rental assistance that will be provided to the project. In addition, the grantee must examine the sources and uses of funds for the project, and determine that the costs are reasonable.

##### § 92.741 Property standards: New construction projects and gut rehabilitation projects.

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

(2) All new construction and gut rehabilitation housing must also meet the requirements described in paragraphs (b) through (f) of this section:

(b) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(c) *Accessibility.* (1) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(2) 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).

(3) Construction may include improvements that permit use by persons with disabilities, but are not required by regulation or statute.

(d) *Energy and water efficiency.* Upon completion, the housing must meet energy and water efficiency standards, as set forth in paragraphs (d)(1), (2), and (3) of this section.

(1) All residential buildings up to three stories must meet the guidelines for ENERGY STAR-Qualified New Homes, as certified by a qualified Home Energy Rater. The requirement for ENERGY STAR certification by a qualified Home Energy Rater shall apply to all projects to which funds are committed after 6 months from the effective date of this rule.

(2) All mid- or high-rise multifamily housing over three stories must exceed, by 20 percent, the minimum energy efficiency requirements defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2007, Appendix G: Performance Rating Method. When the ASHRAE standard is updated, the updated standard, plus 20 percent, must be applied to all projects

with HTF funds committed after the date that the updated standard is published. At such time as an ENERGY STAR standard is established for all housing taller than three stories, the ENERGY STAR guidelines and certification requirements shall apply.

(3) All water-usage products installed in HTF-assisted units must be certified "WaterSense"-labeled products, including toilets, showers, and faucets.

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

(f) *Environmental review requirements.* (1) *Historic preservation.*

(i) 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, or identified as historic by the State, territory, Tribe, or municipality (i.e., listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance), unless the project activities comply with at least one of the following conditions:

(A) The project activities must meet the *Secretary of the Interior's Standards for Rehabilitation*, as verified by someone that meets the *Secretary of the Interior's Professional Qualification Standards*;

(B) The project activities must comply with the State (or territory) historic preservation law and requirements (applies to projects that are defined as State-assisted); or

(C) Project activities must comply with local historic preservation ordinances and permit conditions (applies to projects affecting locally designated historic landmarks or districts).

(ii) *Archaeological resources.* If archaeological resources or human remains are discovered on the project site during construction, the recipient must comply with applicable State (or territory) law and/or local ordinance (e.g., State unmarked burial law).

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

(3) *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.

(4) *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.

(5) *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.

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

(i) 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). In certain situations, including but not limited to, post-disaster development or redevelopment, interim FEMA information will be the source of these designations. If FEMA information is unavailable, other Federal, State, or local data may be used.

(ii) No Housing Trust Fund financial assistance may be approved with respect to:

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

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

(C) 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.

(7) *Wetlands.* (i) 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.

(ii) 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 wetlands 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.*).

(8) *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.

(9) *Contamination.* It is HUD policy that all properties to be used in the HTF program 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 utilization of the property.

(i) All proposed multifamily (more than 4 housing units) development of HUD-assisted HTF project activities requires a Phase I Environmental Site Assessment (ESA-ASTM-E 1527-05). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA-ASTM-E 1903-97) will be required. Single-family properties (up to 4 units) do not require a Phase I ESA.

(ii) 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 utilization of the property.

(10) *Noise.* (i) Internal noise levels: All activities will be developed to ensure an interior noise level of 45 decibels (dB).

(ii) External noise levels: (A) Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.

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

(C) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (e.g., picnic areas, totlots, balconies, or

patios) and require sound attenuation in the building shell to achieve the 45 dB interior standard.

(11) *Endangered species*. Recipients must avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by 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.

(12) *Wild and scenic rivers*. Recipients 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.

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

(14) *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, that could pose a health hazard to those who use it.

(g) *Written standards for methods and materials, plans, specifications, work write-ups, and cost estimates*. (1) The grantee must establish written standards for methods and materials to be used for new construction and gut rehabilitation.

(2) The grantee must ensure that plans and specifications for new construction or work write-ups for gut rehabilitation that describe the work to be undertaken are in compliance with State and local codes, ordinances, requirements, and the grantee's standards for methods and materials.

(3) The grantee must review and approve a written cost estimate based upon a finding of cost reasonableness.

(h) *Property inspections*. The grantee must establish written procedures for initial, progress, and final inspections during construction including:

- (1) Detailed inspection checklists;
- (2) Description of how and by whom inspections will be carried out; and
- (3) Procedures for training and certifying qualified inspectors.

(i) *Frequency of inspections*.

(1) For gut rehabilitation, the grantee must conduct an initial property

inspection to identify the deficiencies that must be addressed.

(2) The grantee must conduct progress and final inspections to ensure that work is done in accordance with approved standards for methods and materials, plans, specifications, and work write-ups, as applicable to the work.

(3) In accordance with § 92.774(d), the grantee must comply with ongoing responsibilities for onsite inspections during the affordability period.

(j) *Payment schedule*. The grantee must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until project completion.

#### **§ 92.742 Property standards: Rehabilitation projects.**

Housing that has undergone gut rehabilitation with HTF funds must meet the requirements of § 92.741. All other rehabilitation must meet the requirements of this part.

(a) *State and local codes, ordinances, and zoning requirements*. Housing that is rehabilitated with HTF funds must meet all applicable State and local codes, ordinances, and requirements. The housing must meet the applicable requirements upon project completion.

(b) *Written standards for methods and materials*. The grantee must establish written standards for methods and materials to be used for rehabilitation work and describe these standards in its consolidated plan, whether or not there are applicable State or local rehabilitation codes. The housing must meet the grantee's standards upon project completion. The grantee's description of its standards must be in sufficient detail to establish the basis for a uniform inspection of the property. At a minimum, the grantee's standards must cover all items included in HUD's most recent Uniform Physical Condition Standards (UPCS) Comprehensive Listing of Inspectable Areas, or such other requirements as the Secretary of HUD may establish. The grantee's rehabilitation standards must address each of the following:

(1) *Health and safety*. The housing must be free of all health and safety defects. The grantee's standards must identify life-threatening deficiencies that must be addressed.

(2) *Habitability and functionality*. The housing must meet minimum standards of habitability and functionality for each of the following areas: site, building exterior, building systems, dwelling units, and common areas. All inspected items with an observed deficiency (OD) must be corrected.

(3) *Major systems*. Upon project completion, each of the following major systems must have a useful life for a minimum of 15 years. The grantee may specify a longer period.

- (i) Structural support;
- (ii) Roofing;
- (iii) Cladding and weatherproofing (e.g., windows, doors, siding, gutters);
- (iv) Plumbing;
- (v) Electrical; and
- (vi) Heating, ventilation, and air conditioning.

(4) *Lead-based paint*. The housing must meet the lead-based paint requirements at 24 CFR part 35.

(5) *Accessibility*. (i) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(ii) If the rehabilitation includes an addition, 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).

(iii) Rehabilitation may include improvements that are not required by regulation or statute that permit use by persons with disabilities.

(6) *Energy and water efficiency*. ENERGY STAR-labeled and WaterSense-labeled products must be installed when older obsolete products (such as windows, doors, lighting, fans, water heaters, furnaces, boilers, air conditioning units, refrigerators, clothes washers, dryers, dishwashers, toilets, showers, and faucets) are replaced as part of the approved rehabilitation work, and such products are appropriate for achieving energy efficiency for the climate area in which the housing is located.

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

(8) *Other improvements*. Discretionary housing improvements beyond those described in paragraphs (b)(1) through (7) of this section may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community and must avoid luxury improvements, as defined by the grantee.

(c) *Environmental requirements*. (1) *Historic preservation*. (i) 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, or identified as historic by the State, territory, Tribe, or municipality (*i.e.*, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance), unless the project activities comply with at least one of the following conditions:

(A) The project activities must 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 *Secretary of the Interior's Professional Qualification Standards*;

(B) The project activities must comply with the State (or territory) historic preservation law and requirements (applies to projects that are defined as State-assisted); or

(C) Project activities must comply with local historic preservation ordinances and permit conditions (applies to projects affecting locally designated historic landmarks or districts).

(i) *Archaeological resources.* If archaeological resources or human remains are discovered on the project site during construction or rehabilitation, the recipient must comply with applicable State (or territory) law and/or local ordinance (*e.g.*, State unmarked burial law).

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

(3) *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.

(4) *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.

(5) *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.

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

(i) 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). In certain situations, including, but not limited to, post-disaster development or redevelopment, interim FEMA information will be the source of these designations. If FEMA information is unavailable, other Federal, State, or local data may be used.

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

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

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

(C) 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.

(7) *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 wetlands 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.*).

(8) *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.

(9) *Contamination.* It is HUD policy that all properties to be used in the HTF 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 utilization of the property:

(i) All proposed multifamily (more than four housing units) development of HUD-assisted HTF project activities requires a phase I Environmental Site Assessment (ESA—ASTM—E 1527—05). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA—ASTM—E 1903—97) will be required. Single-family properties (up to four units) do not require a Phase I ESA.

(ii) 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 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.

(10) *Noise.* (i) Internal noise levels: All activities will be developed to ensure an interior noise level of 45 decibels (dB).

(ii) External noise levels:

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

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

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

(11) *Endangered species.* (i) Recipients 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 as endangered or threatened.

(ii) Recipients must avoid all actions that adversely modify the critical habitat of such species.

(12) *Wild and scenic rivers.* Recipients 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.

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

(14) *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.

(d) *Work write-ups and cost estimates.*

(1) The grantee must ensure that a work write-up that describes the work to be undertaken is in compliance with State and local codes, ordinances, requirements, and the grantee's standards for methods and materials.

(2) The grantee must review and approve a written cost estimate based upon a finding of cost reasonableness.

(e) *Property inspections.* The grantee must establish written inspection procedures for initial, progress, and final inspections during construction (see § 92.774(d) for the grantee's ongoing responsibilities for onsite inspections during the affordability period) including:

- (1) Detailed inspection checklists;
- (2) Description of how and by whom inspections will be carried out; and
- (3) Procedures for training and certifying qualified inspectors.

(f) *Frequency of inspections.* (1) The grantee must conduct an initial property inspection to identify the deficiencies that must be addressed.

(2) The grantee must conduct progress and final inspections to ensure that work is done in accordance with approved standards for methods and materials, and work write-ups.

(3) In accordance with § 92.774(d), the grantee must comply with ongoing responsibilities for onsite inspections during the affordability period.

(g) *Payment schedule.* The grantee must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until all punch list items are completed.

**§ 92.743 Property standards: Acquisition of standard housing.**

(a) Existing housing that is acquired with HTF assistance, and has been newly constructed or gut-rehabilitated less than 12 months before the commitment of HTF funds, must meet the property standards at § 92.741 for new construction and gut rehabilitation projects. The grantee must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and a current inspection that is conducted no earlier

than 30 days prior to the commitment of HTF assistance.

(b) All other existing housing that is acquired with HTF assistance must meet the property standards requirements of § 92.742. The grantee must document this compliance based upon a current inspection that is conducted no earlier than 30 days prior to the commitment of HTF assistance, in accordance with the inspection procedures that the grantee established pursuant to § 92.742.

(c) If the property does not meet these standards, with the exception of noise standards at § 92.741(f)(10) or § 92.742(c)(10), the property must be rehabilitated to meet the standards of § 92.741 or § 92.742, as applicable.

**§ 92.744 Property standards: Manufactured housing.**

(a) *Compliance With manufactured home construction and safety standards.* Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing.

(b) *Installation and standards for new construction and gut rehabilitation of manufactured housing projects.* (1) If the grantee provides HTF assistance to install a manufactured housing unit, the installation 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. Manufactured housing constructed or rehabilitated using HTF funds must be on a permanent foundation. The grantee must document this compliance in accordance with the inspection procedures that the grantee has established pursuant to § 92.742.

(2) Manufactured housing that is newly constructed or has undergone gut rehabilitation using HTF funds must meet the energy and water efficiency standards in § 92.741. An ENERGY STAR-qualified manufactured home is a home that has been designed, produced, and installed in accordance with ENERGY STAR's guidelines by an ENERGY STAR-certified plant. A plant must be certified by a Quality Assurance Provider (QAP), which is an EPA-designated organization that meets certain qualifications, to produce ENERGY STAR-qualified manufactured homes on an ongoing basis. Once certified, a plant must follow ENERGY STAR guidelines for producing and installing homes to maintain its plant certification. To comply with the requirement in § 92.741 to meet the

guidelines for ENERGY STAR-Qualified New Homes, a QAP may provide quality assurance oversight for the ENERGY STAR verification process of energy-efficient manufactured homes that cannot be certified by a qualified Home Energy Rater.

(c) *Manufactured housing rehabilitation.* Manufactured housing that is rehabilitated (other than gut rehabilitation) using HTF funds must meet the property standards requirements of § 92.742, as applicable. The grantee must document this compliance in accordance with the inspection procedures that the grantee has established pursuant to § 92.742, as applicable.

(d) *Environmental requirements.* Manufactured housing is subject to the environmental standards in § 92.741(f) for new construction and gut rehabilitation or § 92.742(c) for rehabilitation, as applicable. If an existing property does not meet these standards, the property must be rehabilitated to meet the standards in § 92.741 or § 92.742, as applicable, with the exception of noise standards at § 92.741(f)(10) or § 92.742(c)(10).

**§ 92.745 Ongoing property standards: Rental housing.**

(a) *Property standards.* The grantee must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period, and describe these standards in its Consolidated Plan. 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 the property. At a minimum, the grantee's standards must include all inspectable items included in HUD's most recent Uniform Physical Condition Standards (UPCS) Comprehensive Listing of Inspectable Areas, or such other requirements as the Secretary of HUD may establish. The grantee's ongoing property standards must address each of the following:

(1) *Compliance with State and local codes, ordinances, and requirements.* The housing must meet all applicable State and local codes, ordinances, and requirements.

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

(3) *Habitability and functionality.* The housing must meet minimum standards

of habitability and functionality for each of the following areas: site, building exterior, building systems, dwelling units, and common areas. All inspected items with an observed deficiency (OD) must be corrected within a reasonable time frame established by the grantee.

(4) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(b) *Inspection procedures.* The grantee must have written inspection procedures for ongoing property inspections, in accordance with § 92.774(d). These procedures must include:

- (1) Detailed inspection checklists;
- (2) Description of how frequently the property inspections will be undertaken;
- (3) Description of how and by whom inspections will be carried out; and
- (4) Procedures for training and certifying qualified inspectors.

(c) *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.

**§ 92.746 Qualification as affordable housing: Rental housing.**

(a) *General.* Not less than 75 percent of the HTF grant amounts a grantee provides to rental projects under each grant must be used for the benefit only of ELI families or families at or below the poverty line, whichever is greater, except that in any given fiscal year, the Secretary may establish a higher minimum percentage. The HTF-assisted units in a rental housing project must be occupied only by households that qualify as ELI and must meet the requirements of this section to qualify as affordable housing. The affordability requirements also apply to the HTF-assisted rental units in single-family housing purchased by a first-time homebuyer with HTF funds, in accordance with 24 CFR 92.748(g).

(b) *Rent limitations.* (1) The HTF rent plus utilities 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.

(2) If the unit receives Federal or State project-based rental subsidy, 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 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, 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 in order 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 § 92.773.

(e) *Tenant income.* (1) The income of each tenant must be determined initially in accordance with § 92.727(d)(1). 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 § 92.727(c) selected by the grantee.

(2) An owner who re-examines a tenant's annual income through a statement and certification in accordance with § 92.727(d)(2), must examine the source documentation of the income of each tenant every 6th year of the affordability period, except that, for units that receive Federal 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 § 92.727(d)(2) 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 § 92.747(d) and must enter into a written lease that complies with § 92.747.

(i) *Nondiscrimination against rental assistance subsidy holders.* The owner cannot refuse to lease HTF-assisted units to a voucher holder under 24 CFR part 982, the Housing Choice Voucher Program, or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

(j) *Onsite inspections and financial oversight.* See § 92.774(d) for the grantee's ongoing responsibilities for onsite inspections and financial oversight.

**§ 92.747 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 a shorter period is specified by mutual agreement between the tenant and the owner. Renewal of the tenancy also requires a written lease. The lease must comply with this subpart and with State law. The lease period for transitional housing must equal the tenancy period established by the grantee or the owner in accordance with the definition of "transitional housing."

(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.

(9) *Mandatory supportive services.* Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

(c) *Termination of tenancy.* (1) 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; violation of applicable Federal, State, or local law; completion of the tenancy period for transitional housing or failure to follow a transitional housing services plan; or other good cause. Good cause does not include an increase in the tenant's income.

(2) 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 § 92.760. 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.*, pay the rent, not damage the housing, not interfere with the rights of and quiet enjoyment by other tenants).

(3)(i) 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).

(ii) Any limitation or preference cannot violate nondiscrimination requirements of § 92.760. The use of HTF funds for a project that limits eligibility to persons with disabilities or persons with a particular type of disability 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, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, and supportive housing programs for the elderly or persons with disabilities under 24 CFR part 891).

(iii) When a project is limited to persons with disabilities or with a particular type of disability as set forth in paragraph (d)(3)(ii) of this section, the owner may advertise the project as being open only to those who are eligible under the relevant statute and admit only those persons who meet the statutory requirements.

(iv) In the absence of a statute that limits occupancy to persons with disabilities or to persons with a particular type of disability, a project may propose to provide a preference to such persons, if necessary to provide housing, aid, benefits, or services equally as effective as those provided to others, so long as the project is in the most integrated setting appropriate to meet their needs and otherwise complies with 24 CFR 8.4.

(4) Do not reject an applicant with a voucher under the Section 8 Housing Choice Voucher Program (24 CFR part 982) or an applicant with HOME tenant-based rental assistance (24 CFR 92.209) because of the status of the prospective tenant as a recipient of tenant-based rental assistance.

(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.

**§ 92.748 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 § 92.2.

(c) *Modest housing.* The housing must be modest housing, in accordance with § 92.749.

(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 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 meets the requirements of section 1132 of the Federal Housing Finance Regulatory Reform Act of 2008 (12 U.S.C. 1701x note).

(e) *Period of affordability.* (1) The HTF-assisted housing must meet the affordability requirements for not less than 30 years.

(f) *Resale during period of affordability.* (1) To ensure continuing affordability, the grantee may apply its HOME program resale restrictions to the

HTF-assisted units or the grantee may develop and adopt resale restrictions for the HTF program. The HTF resale provisions must be included in the State's consolidated plan. If a grantee uses resale provisions established for the HOME program, it must amend those provisions to accommodate subsequent purchasers who are income-eligible families.

(2) The 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:

(i) The housing is made available for subsequent purchase only to a first-time homebuyer whose family qualifies as an income-eligible family and will use the property as its principal residence; and

(ii) 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 ensures 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 income-eligible homebuyers."

(3)(i) The mechanism to impose the resale provisions must be 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.

(ii) The affordability restrictions may terminate upon foreclosure, transfer in lieu of foreclosure, or assignment of a mortgage insured by the Federal Housing Administration to HUD.

(iii) 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.

(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 § 92.746

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 § 92.746 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 § 92.746 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) *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 subsidy amount established pursuant to § 92.740. As an alternative to charging the cost to the HTF program under § 92.731, the grantee may charge the cost to the HTF program under § 92.732 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.

(k) *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), although reasonable administrative costs can be charged to the HTF program as project costs (e.g., nominal application fees, credit report fees, and appraisal 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. If the grantee requires lenders to pay a fee to participate in the HTF program, the fee is program income to the HTF program.

(l) *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.

**§ 92.749 Qualification as affordable housing: Modest housing requirements for homeownership.**

(a) *General.* Housing that is for acquisition by a family pursuant to § 92.748 must be modest housing in accordance with this section.

(b) *New construction.* In the case of acquisition of newly constructed housing or standard housing, the housing must have an appraised value that does not exceed 95 percent of the median purchase price for the type of single-family housing for the area, as described in paragraphs (d) and (e) of this section.

(c) *Rehabilitation.* In the case of acquisition with rehabilitation, the housing must have an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, as described in paragraphs (d) and (e) of this section.

(d) *Options for determining purchase price limits.* If a grantee intends to use

HTF funds for homebuyer assistance, the grantee must either:

(1) Use the limits issued by HUD for the HTF program (*i.e.*, 95 percent of the median purchase price for the area); or

(2) Determine 95 percent of the area median purchase price for single-family housing in the jurisdiction, in accordance with paragraph (e) of this section.

(e) *Determining 95 percent of area median purchase price.* A grantee that elects to determine the purchase price limit under paragraph (d)(2) of this section must use the following methodology:

(1) The grantee must establish the price for different types of single-family housing for different areas within its jurisdiction. The 95 percent of area median purchase price must be established in accordance with a market analysis that ensures that a sufficient number of recent housing sales are included in the survey.

(2) Sales must cover the requisite number of months based on volume:

(i) For 500 or more sales per month, a one-month reporting period;

(ii) For 250 through 499 sales per month, a 2-month reporting period; and

(iii) For less than 250 sales per month, at least a 3-month reporting period.

(3) The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the jurisdiction. Lot, square, and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire jurisdiction.

(4) To determine the median, the grantee must:

(i) Use the middle sale on the list if an odd number of sales; or

(ii) Use the higher of the middle numbers if an even number of sales.

(5) After identifying the median sales price, the amount must be multiplied by 0.95 to determine the 95 percent of the area median purchase price. This information must be updated annually and submitted to the relevant HUD Field Office for review.

#### **§ 92.750 Faith-based organizations.**

Faith-based organizations are eligible to participate in the HTF, as provided in 24 CFR 92.257.

#### **Other Federal Requirements**

#### **§ 92.760 Other Federal requirements and nondiscrimination; affirmative marketing.**

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to the HTF program.

(b) The affirmative marketing requirements contained in 24 CFR 92.351(a) apply to the HTF program.

#### **§ 92.761 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.

#### **§ 92.762 Displacement, relocation, and acquisition.**

The displacement, relocation, and acquisition requirements of 24 CFR 92.353 apply to the HTF program.

#### **§ 92.763 Conflict of interest.**

The conflict-of-interest requirements contained in § 92.356 apply to the HTF program.

#### **§ 92.764 Funding accountability and transparency.**

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).

#### **Program Administration**

#### **§ 92.770 Housing Trust Fund (HTF) accounts.**

(a) *General.* The HTF consists of the accounts described in this section solely for use in accordance with the provisions of this subpart. 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 § 92.773.

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

(d) *Reductions.* (1) HUD will reduce or recapture funds in the HTF account by the amount of:

(i) Any funds in the HTF Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the State of HUD's execution of the HTF Grant Agreement;

(ii) Any funds in the HTF local account that are not expended within 5 years after the last day of the month in which HUD notifies the State of HUD's execution of the HTF Grant Agreement;

(iii) Any amounts pursuant to § 92.783; and

(iv) Amounts that the grantee fails to obtain and that were required to be reimbursed or returned under § 92.780.

(2) For purposes of determining the amount by which the HTF account will be reduced or recaptured under paragraphs (d)(1)(i) and (ii) of this section, HUD will consider the sum of commitments or expenditures, as applicable, from the fiscal year grant being examined, as well as from previous and subsequent grants. The sum must be greater than the amount of the fiscal year grant being examined and all previous grants.

#### **§ 92.771 HTF Grant Agreement.**

Allocated and reallocated funds will be made available pursuant to an HTF Grant Agreement.

#### **§ 92.772 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 subpart 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, and operating cost assistance. 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 days 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. The funds will be deposited in the HTF local account of the grantee within 72 hours of the disbursement request. 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.

(4) The grantee will be paid on an advance basis, provided it complies with the requirements of this subpart.

(d) *Project completion.* (1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 days 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 § 92.740.

(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.

#### § 92.773 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 subpart. 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 § 92.774. 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 § 92.746 or § 92.748, 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 § 92.714 of this subpart.

#### § 92.774 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, and procurement contracts shall be governed by 24 CFR 85.36 and 84.44. The performance of subgrantees and contractors of the grantee 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 subpart 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 subpart. Where HOME program funds are used together with HTF funds, a single written agreement meeting the requirements of both § 92.504 and this subpart may be used to enforce requirements for both programs.

(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 subpart. The agreement between the grantee and the subgrantee must include:

(i) *Use of the HTF funds.* The HTF subgrantee must have a consolidated plan under 24 CFR part 91, and the written agreement must require that an HTF allocation plan be part of the subgrantee's consolidated plan (*see* 24 CFR 91.220(l)(4)). 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 HUD, as provided in § 92.770.

(iii) *Audit.* The agreement must state that an audit of the subgrantee must be conducted at least annually, in accordance with § 92.776.

(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 eligible activities.

(v) *Uniform administrative requirements.* The agreement must require the subgrantee to comply with applicable uniform administrative requirements, as described in § 92.775.

(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 §§ 92.760–92.764 of this subpart.

(vii) *Affirmative marketing.* The agreement must specify the subgrantee's affirmative marketing responsibilities, in accordance with § 92.760.

(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 funds from the grantee.

(ix) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subgrantee must transfer to the grantee any HTF funds on hand at the time of expiration 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 24 CFR 84.62 or 85.43, 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 for convenience, in accordance with 24 CFR 84.61 or 85.44.

(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 duration 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.

(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 § 92.731(c).

(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 HUD, as provided in § 92.770.

(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 § 92.746 or § 92.748, 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 § 92.748, the agreement must establish the resale 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 §§ 92.741–92.745 of this subpart, 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 § 92.745 of this part for the duration of the affordability period, and to comply with the requirements of § 92.747. 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 § 92.760.

(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 §§ 92.760–92.764 of this subpart.

(vii) *Affirmative marketing.* The agreement must specify the recipient's

affirmative marketing responsibilities, as enumerated by the grantee in accordance with § 92.760.

(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 in order 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 § 92.746. 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 § 92.746 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 § 92.746. 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 § 92.748, including the limitations on the value of the property, principal residence requirement, lease-purchase terms, if applicable, and the resale 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 restrictions.* The agreement must specify the resale restrictions established under § 92.748 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. This means of enforcement and the affordability requirements in § 92.748 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.

(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 §§ 92.741 through 92.744. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of §§ 92.741 through 92.744.

(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 § 92.745 and to verify the information submitted by the owners in accordance with the requirements of § 92.746. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of § 92.745.

(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 § 92.745, 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. Life-threatening health and safety deficiencies must be corrected immediately, in accordance with § 92.745(a)(2).

(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 § 92.745.

(v) Inspections must be based on a sufficient sample of units. 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. For projects with more than four HTF-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HTF-assisted units and at least 20 percent of the HTF-assisted dwelling units in each building, but not less than four HTF-assisted units in each project and one HTF-assisted unit in each building, 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 housing to determine the continued financial viability of the housing and must take actions to correct problems.

#### **§ 92.775 Applicability of uniform administrative requirements.**

The uniform administrative requirements contained in § 92.505 apply to the HTF.

#### **§ 92.776 Audit.**

(a) Audits of the grantee and subgrantees must be conducted in accordance with 24 CFR 84.26 and 85.26. The use of HTF grant funds by the grantee must be audited not less than annually to ensure compliance with this subpart. 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 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.

#### **§ 92.777 Closeout.**

HTF funds will be closed out in accordance with procedures established by HUD.

#### **§ 92.778 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 subpart. 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 § 92.740.

(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 § 92.749, 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 § 92.748, as set forth in the Consolidated Plan.

(v) Records documenting compliance with the 24-month commitment deadline of § 92.770(d)(i).

(vi) Records documenting compliance with the 10 percent limitation on administrative and planning costs in, accordance with § 92.732.

(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 24 CFR 85.20, 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 § 92.730(c)) in situations 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 § 92.740(a), and the subsidy layering and underwriting evaluation in accordance with § 92.740(b).

(iv) Records (e.g., inspection reports) demonstrating that each project meets the property standards of §§ 92.740–92.745 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 § 92.774(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 § 92.746 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 § 92.747. Records must be kept for each family assisted.

(viii) Records demonstrating that the purchase price or estimated value after rehabilitation 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 § 92.749. The records must demonstrate how the estimated value was determined.

(ix) Records demonstrating that each housing unit for a first-time homebuyer meets the affordability requirements of § 92.748 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 subpart, to determine that the site meets the requirements of § 92.726.

(xi) Records (written agreements) demonstrating compliance with the written agreements requirements in § 92.774.

(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 § 92.770, 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 24 CFR 85.20, 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 subpart are met.

(ii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.775.

(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 Development Act of 1968, as amended (12 U.S.C. 1701u).

(ii) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.760.

(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 § 92.762 regarding displacement, relocation, and real property acquisition.

(v) Records supporting exceptions to the conflict-of-interest prohibition pursuant to § 92.763.

(vi) Debarment and suspension certifications required by 24 CFR parts 24 and 91.

(vii) Records demonstrating compliance with § 92.764.

(viii) Records demonstrating compliance with § 85.36(e) regarding the grantee's activities related to minority business enterprise (MBE) and women's business enterprise (WBE).

(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 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 § 92.762.

(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, in order to make audits, examinations, excerpts, and transcripts.

#### § 92.779 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 such format and at such time as HUD may prescribe. These reports must describe the program's accomplishments, and the extent to which the grantee complied with its approved allocation plan and the requirements of this subpart. HUD will make the performance and management reports publicly available.

**Performance Reviews and Sanctions****§ 92.780 Accountability of recipients.**

The grantee shall review each recipient to determine compliance with the requirements of this subpart and the terms of the written agreement in accordance with the grantee's policies, procedures, and systems established pursuant to § 92.774(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 subpart 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.

**§ 92.781 Performance reviews.**

**(a) General.** HUD will review the performance of each grantee in carrying out its responsibilities under this subpart 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 subpart 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 § 92.770; has met the requirements of this subpart, particularly eligible activities, income targeting, affordability, and property standards; has awarded the funds in accordance with its HTF plan and requirements of this subpart; has reviewed its subgrantees and recipients to determine whether they have satisfied the requirements of this subpart and the terms of their written agreements; and has met its performance measures in its consolidated plan.

**§ 92.782 Corrective and remedial actions.**

The corrective and remedial actions contained in § 92.551 apply to the HTF, except paragraph (c)(1)(viii).

**§ 92.783 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 subpart, 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 subpart 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 subpart; 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 subpart 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 §§ 92.710 through 92.714 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 (b)(1) 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.

Dated: September 28, 2010.

**Shaun Donovan,**

*Secretary.*

[FR Doc. 2010-27069 Filed 10-28-10; 8:45 am]

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