

# Municipality of Anchorage



## Housing Trust Fund Policies and Procedures Manual

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## Introduction

The National Housing Trust Fund (HTF) is authorized by HUD's Regulations at Title 24 Code of Federal Regulations (24 CFR) Part 93.

The Municipality of Anchorage is a Participating Jurisdiction with the US Department of Housing and Urban Development and receives HTF funds from HUD through Alaska Housing Finance Corporation (AHFC). HTF funds may be used for acquisition, rehabilitation, new construction, and operating cost for HTF units. The HTFs have a requirement to serve households that are at or below 30% of the median income for Anchorage and have a 30 year affordability period.

This HTF Policies and Procedures Manual provides program information to help prospective applicants understand the process and regulations. The guide will also help owners understand and successfully administer their contracts in accordance with federal, state and local programmatic and compliance requirements.



## **I. Definitions**

For convenience and consistency, below are a few definitions.

“Municipality” means the Municipality of Anchorage.

“Eligible Recipient” means an organization, agency, or other entity (including a public housing agency, or a nonprofit entity) that receives HTF assistance from the Municipality as an owner or developer to carry out an HTF-assisted project as defined in 24 CFR 93.2.

## **II. Eligible Projects**

HTF program provides funding to acquire, construct, or rehabilitate affordable multifamily rental-housing to be provided to households at or below 30% median family income including:

- Affordable rental housing;
- Permanent housing for disabled homeless persons;
- Single Resident Occupancy housing; and
- Transitional housing.

Emergency shelters or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, and student dormitories are not eligible projects.

## **III. Eligible Project Costs [24 CFR 93.201]**

The following are eligible expenses.

- Acquisition costs
- Development hard costs for constructing or rehabilitating housing
- Demolition of existing structures
- Utility connections
- Site improvements
- Architectural, engineering or related professional services
- Lender origination fees
- Credit reports
- Fees for title evidence
- Recording fees
- Legal fees
- Building permits and development impact fees
- Appraisal fees

- Environmental review
- Builder or developer fees
- Project audit
- Affirmative marketing and fair housing information
- Initial operating deficit reserve, not to exceed 18 months
- Staff and overhead costs directly related to carrying out the project
- Relocation costs
- Operating cost assistance and operating cost assistance reserves

The following are ineligible expenses.

- Project reserve funds
- Assistance to a project that previously received HTF funds
- Delinquent taxes, fees, or charges on the property
- Acquisition of property owned by the Municipality of Anchorage except for property acquired by the Municipality of Anchorage with HTF funds or property acquired with anticipation of carrying out a HTF project
- Political activities, advocacy, lobbying
- Development, operations, or modernization of public housing financed under the 1937 Act
- Pay for any cost that is not eligible under §93.201 and §93.202

#### IV. **Performa Limits**

The limitations discussed below pertain to the development-cost line-items. The fees charged to the development may not exceed the amounts in the following table. Exceptions will be considered only if significant evidence is provided which suggests that the project is of a nature that warrants such higher fees.

	Maximum Gross Developer/Admin Fee*	Maximum Gross Contractor Fee/Overhead*	General Requirements*	Construction Contingency*
New Construction	15%	10%	10%	5%
Acquisition & Rehabilitation or Rehabilitation Only	15% of rehabilitation cost plus 5% of acquisition costs	10% of rehabilitation cost	10% of rehabilitation cost	10%
Acquisition Only	5% of acquisition	na	na	na

\*as a percentage of hard construction costs

The maximum allowable developer fee or administrative fee must include all payments made to any consultants or other third parties hired to advise the sponsor (general partner, limited partner) where the cost of said intermediaries is included as a project cost. Additionally, the Municipality reserves the right to reduce the above identified fees if, in the Municipality's opinion, it is warranted based on the scope of work proposed to be performed by the developer and/or contractor.

"Contractor Overhead" is defined as any cost related to the administration of the project that is not unique to the specific project, i.e. office personnel, accounting, legal fees, etc. and is limited to 10% of the hard construction cost.

"General Requirements" is defined as any overhead cost solely related to the construction of the specific project, i.e. backhoe or other equipment rentals, mobilization costs, payment and performance bonds, contractor paid project fees, and is limited to 10% of the hard construction cost.

Construction Contingencies are limited to 5% of the hard construction cost for new construction projects, and 10% of the rehabilitation contract for rehabilitation projects.

## **V. Replacement and Operating Deficit Reserves**

All project owners receiving HTF funds will be required to maintain a "replacement reserve" to pay for extraordinary maintenance or repairs that occur over time. Examples of "extraordinary maintenance or repairs" are roof replacement, heating-system replacement, complete painting of the building exterior, etc. Normal repairs or maintenance that result from tenant wear are not considered "extraordinary." Unless otherwise approved by the Municipality in writing, funds shall be deposited in accordance with the determinations made in the Replacement Schedule and Cash Flow analysis in the financial worksheet attached to the Application. All replacement-reserve funds shall be held in a federally-insured financial-institution.

HTF funds may be used as operating reserves to meet any shortfall in income during the period of project rent-up (not to exceed 18 months) and may only be used to pay project operating expenses, replacement reserve, and debt service. Any HTF funds placed in an operating deficit reserve that remain unexpended after the period of project rent-up may be retained in the reserve fund to be used for activities in accordance with 24 CFR Part 93.201 (d)(5). There is not a minimum or maximum balance that must be kept in this fund; however, the maximum amount of HTF funds that can be placed in an operating-reserve fund are determined by the following formula: *Number of HTF Units x Current HTF Program Rents x 18 months*

## **VI. Affordability Requirements [24 CFR 93.302 (d)]**

### **A. Periods of Affordability**

HTF-assisted units must meet the affordability requirements for not less than 30 years, beginning after project completion.

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

## **VII. Property Acquisition**

### **A. Real Estate Acquisition [49 CFR 24.101 (b)(1) - (5)]**

When a HTF-assisted development includes the acquisition of property, be it purchase or donation, certain requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act apply. Acquisitions undertaken by private owner/developers must be a voluntary acquisition. A voluntary acquisition occurs when there can be no threat of eminent domain or condemnation. The sales price may be negotiated, but the seller must be informed of the following about the acquisition:

1. The buyer is utilizing federal funds to purchase the property;
2. The buyer does not have the power of eminent domain; and
3. The estimated fair market value of the property.

A notice should be provided to the seller prior to making a formal offer. While the primary intent is to protect the seller in the transaction, the notice also protects the buyer from after-the-fact claim by sellers who have ulterior motives.

Receipt of the notice must be evidenced by certified mail or a signed affidavit from the seller. To address the fair market value portion of the notice, the value must be determined. Typical avenues for obtaining fair market value are an appraisal or tax assessor's appraisal, or a broker's opinion of value. The offer to purchase may be less than market value and the sale price and terms can be freely negotiated.

If the property is donated, a formal appraisal must be completed to determine the market value, unless the donator decides to waive that requirement. The donator must acknowledge, in writing, his or her decision waive the requirement for a formal appraisal.

Options to purchase a site executed prior to completion of the environmental review must comply with the NSP Policy Alert dated September 16, 2011. All buy/sell agreements must be reviewed and approved by Municipal staff.

## **B. Acquisition of Standard Housing [24 CFR 93.301 (c)]**

1. Existing housing that is acquired with HTF assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HTF funds, must meet the property standards of 93.301 (a) or (b), as applicable, for new construction and rehabilitation projects. The Eligible Recipient must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance.
2. All other existing housing that is acquired with HTF assistance for rental housing must meet the rehabilitation property standards requirements of 93.301 (b). The Eligible Recipient must document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the property does not meet these standards, HTF funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of 93.301 (b).

## **C. Displacement, Relocation, and Acquisition [24 CFR 93.352]**

HTF-assisted projects must comply with the Uniform Relocation Assistance Act of 1970 and the implementing regulations at 49 CFR Part 24 and HTF policies for relocation assistance.

Under these acts, the Eligible Recipient must take all reasonable steps to prevent or minimize the displacement of families, individuals, or businesses. If displacement or relocation will occur, the Eligible Recipient must certify that it has officially adopted and will follow an anti-displacement and relocation assistance plan, submitted to and approved by the Municipality prior to any displacement.

## **VIII. Environmental Requirements [24 CFR 93.301 (f)]**

All federally-assisted projects are subject to the requirement for environmental review and documentation. HUD requires an environmental review that adheres to the guidance in 24 CFR 93.

### **A. Key Environmental Steps**

1. Upon identification of a potential property, contact the Environmental Review Specialist at the Municipality who can run a quick scan for environmental red flags including airport clear and accident potential zones.
2. Review the “Choosing an Environmentally Safe Site,” at <http://nhl.gov/offices/adm/grants/nofa08/safesite.pdf> for tips on how to choose a site that will pass HUD’s environmental criteria.
3. Complete the Preliminary Environmental Checklist.

4. Include the language dictated in NSP Policy Alert dated September 16, 2011 in the option agreement with the seller.
5. Once you have placed an option on the property, conduct a Phase I Environmental Assessment in accordance with 93.301 (1)(ix), and if needed a Phase II. Submit the Phase I to the Municipality.
6. Municipal staff will complete the environmental review process that is described in 24 CFR 93. This process can take up to three months from the date the application is submitted. No funds expended before the Environmental Review is approved by the Municipality will be eligible for reimbursement.
7. Based on the outcome of the environmental review, the Municipality may reject the project or require mitigating measures to address an environmental concern.

Do not break ground nor sign a construction contract prior to receiving the environmental clearance. HUD requires that the project is viewed in its entirety because initiation of construction, even on the non-HTF funded portion, limits environmental alternatives available for examination. Therefore, the project must be evaluated in its entirety, regardless of the percentage of HTF funds leveraged.

All proposed multifamily (more than four housing units) HTF projects require a Phase I Environmental Site Assessment (ESA–ASTM). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA–ASTM) will be required.

## **IX. Property Standards [24 CFR 93.301]**

Below are the applicable requirements quoted from the regulation.

### **(a) New construction projects.**

1. State and local codes, ordinances, and zoning requirements. Housing that is newly constructed with HTF funds must meet all applicable State and local codes, ordinances, and zoning requirements. HTF-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.
2. HUD requirements. All new construction projects must also meet the requirements described in this paragraph:
  - (i) Accessibility. The housing must meet the accessibility requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) implemented at 28 CFR parts 35 and 36, as

applicable. “Covered multifamily dwellings,” as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

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

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

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

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

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

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

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

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

1. Rehabilitation standards. The grantee must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The grantee’s description of its standards must be in sufficient detail to determine the required rehabilitation work including

methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:

- (i) Health and safety. The grantee's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.
- (ii) Major systems. Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the grantee's standards must require the grantee to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major system. For multifamily housing projects of 26 units or more, the grantee's standards must require the grantee to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the grantee's standards must require the grantee to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed.
- (iii) Lead-based paint. The grantee's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.
- (iv) Accessibility. The grantee's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) implemented at 28 CFR parts 35 and 36, as applicable. "Covered multifamily dwellings," as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.
- (vi) Disaster mitigation. Where relevant, the grantee's standards must require the housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements, or such other requirements as HUD may establish.
- (vii) State and local codes, ordinances, and zoning requirements. The grantee's standards must require the housing to meet all applicable

State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

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

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

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

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

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

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

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

grantee must conduct progress and final inspections to determine that work was done in accordance with work write-ups.

**(c) Acquisition of standard housing.**

1. Existing housing that is acquired with HTF assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HTF funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, for new construction and rehabilitation projects. The grantee must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance.
2. All other existing housing that is acquired with HTF assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The grantee must document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the property does not meet these standards, HTF funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.

**(d) Manufactured housing.**

Construction of all manufactured housing (including manufactured housing that replaces an existing substandard unit under the definition of “reconstruction”) must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the Federal standards for the new construction of manufactured housing. The grantees providing HTF funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer’s written instructions for installation of manufactured housing units.

All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing (and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction”) must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HTF-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or State codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using

HTF funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The grantee must document this compliance in accordance with inspection procedures that the grantee has established pursuant to §92.301, as applicable.

**(e) Ongoing property condition standards: Rental housing**

1. Ongoing property standards. The grantee must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The grantee’s description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HTF rental projects. The grantee’s ongoing property standards must address each of the following:
  - (i) At a minimum, the grantee’s ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705.
  - (ii) Health and safety. The grantee’s standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.
  - (iii) Lead-based paint. The grantee’s standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.
2. Inspections. The grantee must undertake ongoing property inspections, in accordance with §93.404. (Grantee responsibilities; written agreements; onsite inspections; financial oversight)
3. Corrective and remedial actions. The grantee must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.
4. Inspection procedures. The grantee must establish written inspection procedures. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with section §93.404(d).

**X. Fair Housing Act (42 U.S.C. 3601–3619)**

The Fair Housing Act applies to almost all housing sold or rented in the United States. The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to provide

protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities.

The Fair Housing Act also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities.

The Fair Housing Act requires that covered multifamily dwelling units designed and constructed for occupancy after March 13, 1991, be designed and constructed to be accessible. Covered multifamily dwelling units are:

- All units in buildings with of 4 or more units served with an elevator, or
- Ground floor dwelling units in buildings with 4 or more units without an elevator.

The Act, as applied to these units, can be broken down into the following technical requirements:

- There must be at least one building entrance with an accessible route;
- The public and common use portions of such dwellings are readily accessible to and usable by disabled persons;
- All the doors are designed to allow passage into and within the premises are sufficiently wide to allow passage by disabled persons in wheelchairs; and
- All premises within such dwellings contain the following features of adaptive design:
  1. An accessible route into and through the dwelling;
  2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  3. Reinforcements in bathroom walls to allow later installation of grab bars; and
  4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Please consult HUD's Fair Housing Act Design Manual for further detail.

## **XI. Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in the operation of programs receiving federal financial-assistance. HUD regulations implementing Section 504 contain accessibility requirements for new construction and rehabilitation of housing as well as requirements for ensuring that the programs themselves are operated in a manner that is accessible to and usable by persons with disabilities.

Dwelling units designed and constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) are deemed to comply with the Section 504 regulation. Owners/developers and their architects will be required to certify that the 504 units meet or exceed the UFAS requirements.

### New Construction

Section 504 requires that new construction of multifamily projects be designed and constructed to be readily accessible to and usable by persons with disabilities. Multifamily housing projects are defined at 24 CFR §8.3 as "projects containing five or more dwelling units". Both the individual units and the common areas in the building must be accessible. A minimum of five percent (5%) of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional two percent (2%) of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e. hearing or vision impairments).

### Substantial Rehabilitation

Section 504 requires that if alterations are undertaken to a housing project that has 15 or more units, and the rehabilitation costs will be 75 percent or more of the replacement cost of the completed facility, then such developments are considered to have undergone "substantial alterations" (24 CFR 8.23 (a)). For substantial alterations of multifamily rental housing, a minimum of five percent (5%) of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional two percent (2%), at a minimum (but not less than one unit), must be accessible to individuals with sensory impairments.

### Increasing Program Accessibility

HUD's Section 504 regulations require that the Eligible Recipient of federal financial-assistance ensure that the program is accessible to persons with disabilities. The following are some suggestions to ensure program accessibility.

- To the maximum extent feasible, distribute accessible units throughout the development, and make them available in a sufficient range of sizes and amenities so as not to limit choice.
- Adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities. Take reasonable nondiscriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to an individual without a disability, offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- When an applicant or tenant requires an accessible feature or modification to accommodate a disability, the Eligible Recipient must provide such feature

modification unless doing so would result in an undue financial and administrative burden.

- Ensure that activities and meetings are conducted in accessible locations.
- Consider including a lease provision that requires a non-disabled family occupying an accessible unit to move if a family with a disability needing that size unit applies and there is an appropriately sized non-accessible unit available for the relocating family.

## **XII. Lead-Based Paint**

The Lead-Based Paint Regulations [24 CFR 35] apply to all HTF-assisted projects after March 15, 2001. The regulation do not apply to the following situations

- Residential structures built after January 1, 1978, are exempt because Congress banned the use of lead-based paint for residences after this date;
- Properties previously tested for compliance with standards that meet or exceed current standards and were reported as lead-free;
- Properties where all lead-based paint has been identified and removed;
- Units that will be demolished for which no work will be done prior to demolition;
- Dwellings in which it is unlikely that children will be exposed to lead-based paint hazards, such as zero-bedroom units and housing for the elderly;
- Property not used for human habitation; and
- Rehabilitation that does not disturb a painted surface is exempt, although notification is required.

The Eligible Recipient must follow the EPA Renovation, Repair, and Painting program requirements even if the lead-based paint regulations under 24 CFR 35 do not apply.

Please refer to the Community Safety & Development's Lead Based Paint Policies and Procedures for details on how to comply with the Lead-Based Paint Regulations.

## **XIII. Labor and Contract Standards**

### **A. Davis Bacon Labor Standards**

Davis Bacon Labor Standards does not apply to HTF projects.

### **B. Equal Opportunity [24 CFR 93.350 & 93.407 (a)(5)(i)]**

1. Executive Order 11246 establishes that contractors performing under federally-assisted construction contracts must promote and insure equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, who are employed or seeking employment with the

contractor. Contracts and subcontracts over \$10,000 must contain the following language that prohibits discrimination.

*The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.*

*The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.*

2. The Eligible Recipient must maintain equal opportunity and fair housing records, as required under 24 CFR part 121.

### **C. Economic Opportunities for Low and Very Low-Income Persons - Section 3**

Section 3 is a HUD requirement designed to ensure that the HTF funds invested in housing activities also provide employment opportunities for low-income people. HUD's regulations state that "to the greatest extent feasible," businesses and employers working on HUD-funded projects must make a good faith effort to train and employ low income individuals in the area (called "Section 3 residents") and also to contract with other businesses that employ Section 3 residents.

In summary, the obligations of Section 3 are:

- Provide outreach/training for Section 3 residents, and report on the outreach and training undertaken;
- To the greatest extent feasible hire and train Section 3 residents, and report on employees and new hires; and
- To the greatest extent feasible contract with Section 3 businesses, and report on contracts and subcontracts.

Eligible Recipients who receive more than \$200,000 in HTF funding must fulfill these obligations. Additionally, if the Eligible Recipient receives more than \$200,000 in HTF funds, all businesses with which the Eligible Recipient contracts (called "contractors") must fulfill the same obligations if the contract is for more than \$100,000. And all the businesses with

which those contractors contract (called “subcontractors”) must fulfill the same obligations if their contract is for more than \$100,000.

#### Formal Section 3 Plan

At the time of grant execution, the developer will submit a Section 3 plan. If applicable, after the General Contractor has been selected the General Contractor shall submit a Section 3 Plan, signed by the General Contractor. The Section 3 Plans will include the Section 3 goals of the Developer and the General Contractor, respectively. This comprehensive Section 3 Plan will be submitted to the Municipality for review and approval.

#### **D. Minority/Women Owned Business**

Eligible Recipient must ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts entered into by the developer. Minority and Women’s Business Enterprise Act requirements apply to all contracts which the Eligible Recipient may enter into associated with the projects that are over \$25,000. The developer must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. These steps may include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

#### **E. Federal Debarment**

Eligible Recipient is prohibited from utilizing federally debarred contractors in developments assisted with HTF funds. Eligible Recipient must include checking the debarment status of potential contractors as part of their procurement procedures prior to executing a contract. The System for Award Management is available on-line at

[www.sam.gov](http://www.sam.gov). Eligible Recipient is required to keep records that the debarment status of all contractors has been confirmed.

#### **F. Conflict of Interest**

##### Occupancy of HTF units

No owner/developer (or officer, employee, families member of officers and employees, agent or consultant of the owner/developer) of units assisted with HTF funds may occupy a HTF-assisted affordable housing unit in a development. This provision does not apply to an individual who is an employee or agent of the Eligible Recipient of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

##### Financial Benefit

Further, no person, described above, exercises any functions or responsibilities with respect to activities assisted with HTF funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HTF-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

### **XIV. Construction Process [24 CFR 93.301]**

All solicitation of bids for goods and services to be paid with HTF Program funds must be conducted openly and competitively in accordance with the owners/developer written procurement policy. The policy must be in compliance with 2 CFR Part 200 and the Municipality's Construction Policies and Procedures Manual.

#### **A. Deficiency and Code Inspection (Rehabilitation Projects)**

The Eligible Recipient shall conduct a comprehensive property-inspection report and submit to the Municipality for approval. Comprehensive inspection reports shall include, but not be limited to, the Uniform Physical Conditions Standards (UPCS) including all other applicable property standards listed in 24 CFR 93.301(b). All deficiencies revealed in the UPCS and other inspections/assessments must be remedied. Additionally, the report shall also contain the Eligible Recipient's recommendations for what should be included in the scope of work. Furthermore, the report shall incorporate any other comments, such as advocating for the use of specialized expertise (i.e., a structural engineer), that the Eligible Recipient judges to be pertinent to the project.

#### **B. Scope of Work, Work Specifications, and Detailed Independent Cost-Estimate**

The Eligible Recipient shall provide the Municipality a copy of the Scope of Work, Work Specifications, and Detailed Independent Cost-Estimate for all rehabilitation or new construction projects. An independent cost estimate includes a detailed breakdown of costs including labor, material, overhead, and profit A general contractor that is involved in the cost estimate process in any way cannot bid on the project. The Eligible Recipient shall

provide project budgets in sufficient itemized detail for the Municipality to evaluate not only the sufficiency of the budget but also to evaluate whether project costs are reasonable both on a line item basis and in aggregate.

For rehabilitation projects, the Eligible Recipient shall use the deficiency list and preliminary inspection report to determine a scope of work containing the items that will be addressed in the project.

From the scope of work, a work write-up shall be created. The work write-up shall provide a clear and accurate description of the technical requirements for the material, product, or service to be procured. The requirements shall consist of all the items the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. The work descriptions shall contain all the technical requirements in terms of functions to be performed, or performance required, including the range of acceptable characteristics or minimum acceptable standards. When requiring “brand name or equal”, the specific features that bidders will be required to meet shall be included.

Work write-ups are also required when force-account labor is used for the projects. The work write-ups provide a basis upon which to create the cost estimate and to control the quality and economy of the project. Cost estimates shall be prepared prior to the bid process and may use some form of price or cost analyses as appropriate.

1. Price analysis, which may include comparisons of price quotes or market prices, may be used when purchasing single items such as boilers, light fixtures, windows, and other materials.
2. Cost analysis shall be used for installation or construction where there are multiple cost-drivers. A cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

The comprehensive property-inspection report, scope of work, work specifications, and detailed cost-estimate shall be submitted to Municipal staff for approval prior to the bid process.

### **C. Contractor Procurement**

Bid-solicitation packages shall include information on when and where the packages may be obtained, date and place of pre-bid and project walk-through (when necessary), when bids are due, where to turn them in, when opened, and expected award-date. The packages shall contain the same scope of work on which the cost estimate was developed. Also included in the packages are any necessary drawings or schematics, and bidder instructions. Jobs shall be broken out into units: roof squares; square feet, linear feet; time and material as applicable. There shall be no lump-some bids. Additionally, the “cost-plus-a-percentage-of-cost”, “percentage of construction cost”, other “cost-plus” or any other open-ended methods of contracting shall not be used.

The instructions, at a minimum, shall inform the bidders of contractor responsibilities for permitting and building-code compliance, verification of job conditions pre-bid and the

conditions for accepting change orders, and brand-name or equal conditions, inspection schedules and responsibilities, contractor liabilities for damages to property, payment procedures, and construction debris disposal. The Eligible Recipient shall verify on the System for Award Management, SAM System ([www.sam.gov](http://www.sam.gov)) that the contractor or subcontractor is not debarred; and a debarment printout shall be obtained for all contractors and subcontractors.

If possible, a minimum of three bids shall be obtained. If three bids are not obtained in first round, then either a second round of bid solicitation shall be performed, or the reason for why more bids were not obtainable shall be documented in the project file. Bids shall be evaluated according to the conditions of the bid package only. Bids shall fall within  $\pm 15\%$  of the cost-estimate; or, the package shall be examined for problems in the cost-estimate or bids. In some instances, the entire package may need to be re-bid or documentation placed in the project file explaining why the bids were so variant yet acceptable. Proposals omitting bid items shall be deemed non-responsive. Non-responsive bids shall be rejected. Proposals may not be changed or modified after bid opening unless the entire package is re-bid.

Bid packages shall be submitted to Municipal staff prior to publication for approval.

#### **D. Contract Awards**

The most responsive bidders shall be awarded contracts, not necessarily the lowest cost. Most bid-packages contain evaluation criteria that include factors other than price. In addition to the terms required in the contract to perform the work, all contracts shall contain the applicable provisions set forth in 2 CFR Part 200 for non-profit Subrecipients. Contracts shall also contain provisions for bonding and/or insurance, warranties and lien waivers, and licenses and certifications.

All bids and the proposed contract shall be submitted to Municipal staff for approval prior to the execution of the contract. Municipal staff shall be invited to all pre-bid and pre-construction meetings.

#### **E. Pre-Construction Conference**

A pre-construction conference shall be held before the Notice to Proceed is issued. The contractor, the Eligible Recipient, and the Municipality shall review, for all but simple projects such as small testing and inspection activities, the rehabilitation contract, clarify the roles and responsibilities of each party, and review inspection procedures and the contractor's work and payment schedule.

#### **F. Interim Inspections**

Interim inspections shall be conducted by Municipal and Eligible Recipient staff to insure compliance with the scope of work, professional workmanship, and compliance with time schedules. A daily inspection-log/report shall be provided by the Eligible Recipient to Municipal staff weekly.

## **G. Change Orders**

Changes to the work write-up requires an authorized change order. Work covered by the change order may not commence until all parties have signed the change order. Change orders shall describe the precise modifications to the original scope of work and any change in the contract price. The change order must be cost-reasonable; a work write-up and cost-estimate must be performed. If the cost-estimate and the contractors charge are not within  $\pm 15\%$ , then the estimate and/or the vendor charge must be examined for problems. If the difference cannot be resolved, then the project shall be re-bid or the reason for the acceptance of the vendor charge shall be documented in the file. Change orders must be approved by the Municipality and documented in the project file.

## **H. Dispute Resolution**

Contracts shall contain a provision for the resolution of conflicts, either by informal or formal mediation.

## **I. Final Inspection/Project Close-Out**

A final inspection shall be conducted when all work has been completed in accordance with the scope of work and work specifications. All permitted work shall have a final inspection by the appropriate Municipal Building Safety Inspector. The contractor must submit all copies of warranties and releases of liens and suppliers to the Eligible Recipient. After completing the final inspection process, a certificate of final inspection signed by the contractor and Eligible Recipient shall be issued. Project closeout will occur when the final Certificate of Occupancy is issued by the Municipal Building Inspector; and/or, Eligible Recipient shall certify that the project meets the HTF property standards and fulfills all applicable HTF requirements.

## **XV. Income Eligibility [24 CFR 93.351 & 93.250]**

Income-eligible means a family, homeowner, or household (as appropriate given the context of the specific regulatory provision) that is extremely low-income families or families with incomes at or below the poverty line (whichever is greater). The HTF program has income-targeting requirements. Therefore, the grantee must determine that each family occupying an HTF-assisted unit is income-eligible by determining the family's annual income.

### **A. Definition of "annual income."**

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

- "Annual income" as defined at 24 CFR 5.609; or
- "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.

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

**B. Determining annual income**

(i) 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 (A)(i) of this section. For subsequent income determinations during the period of affordability, any one of the methods described in paragraph (A) of this section, in accordance with 93.302(e).

**C. Methods of determining annual income.**

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

(ii) 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.

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

**XVI. Tenant protections and selection [24 CFR 93.303]**

The Municipality of Anchorage does not provide a model lease-agreement. However, Eligible Recipient must execute lease agreements with tenants that incorporate the specific provisions identified below. These provisions establish tenant responsibilities and avoid certain prohibited provisions.

The Municipality of Anchorage will examine leases during annual monitoring reviews for compliance with the following requirements:

**A. Lease**

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

## B. Prohibited lease terms.

1. **Agreement to be sued.** Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. **Treatment of property.** Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
3. **Excusing owner from responsibility.** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. **Waiver of notice.** Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
5. **Waiver of legal proceedings.** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. **Waiver of a jury trial.** Agreement by the tenant to waive any right to a trial by jury;
7. **Waiver of right to appeal court decision.** Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
8. **Tenant chargeable with cost of legal actions regardless of outcome.** Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and
9. **Mandatory supportive services.** Agreement by the tenant to accept supportive services that are offered.

## C. Termination of tenancy.

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

the grounds for the action and providing a specific period for vacating that is consistent with State or local law.

#### **D. Tenant selection.**

An owner of rental housing assisted with HTF funds must comply with the affirmative marketing requirements established by the grantee pursuant to 24 CFR 93.350. The owner must adopt and follow written tenant selection policies and criteria that:

1. Limit the housing to income-eligible families;
2. Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);
3. Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if the limitation or preference is described in the grantee's consolidated plan).
  - (i) Any limitation or preference must not violate nondiscrimination requirements in §93.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons With AIDS program under 24 CFR part 574), and the limit or preference is tailored to serve that segment of the population.
  - (ii) If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:
    - (a) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;
    - (b) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
    - (c) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.
4. Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance

program (24 CFR part 92) because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

5. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;
6. Give prompt written notification to any rejected applicant of the grounds for any rejection; and
7. Comply with the VAWA requirements prescribed in §93.356.

## **XVII. Termination of Tenancy**

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

## **XVIII. Rent Increases**

Any increase in rents is subject to the provisions in outstanding leases. In any case, the owner must provide 30 days prior written notice before implementing a rent increase.

## **XIX. Operation Policies and Plans**

Owners/operators of rental projects are required to adopt and maintain the following operational procedures:

1. Management Plan
2. Affirmative Marketing Plan
3. Tenant Grievance Procedure
4. Section 504 Plan
5. Limited English Proficiency Plan

The requirements for each type of procedure is described further below.

### **A. Management Plan**

The Management Plan must ensure compliance with applicable state and federal laws. The following outline should be used to write the Management Plan. Eligible Recipient must expand upon these guidelines to address the specific needs of each individual project. The Plan should include the following at a minimum.

1. Description of Project
  - a. Name of owner

- b.** Name and location of project
- c.** Number of units by bedroom size.
- d.** Schedule of rents and utility allowances used in project
- e.** Occupancy types
  - i.** Number of market rate units
  - ii.** Number of units restricted at various income levels
  - iii.** Number of special needs units (persons with disabilities, senior citizens (including age limits), homeless persons)

**2.** Management Company Organization

- a.** An organizational chart should note lines of authority and responsibility including, but not limited to
  - i.** Name, telephone and fax number of the management agent
  - ii.** Name, telephone and fax number of the contact person for the agent
  - iii.** Company hiring policies must be in conformance with applicable equal opportunity requirements of local, State and Federal laws
  - iv.** A general policy statement regarding the delegation of authority to the agent by the owner for managerial responsibilities for the project

**3.** On-Site Staffing Requirements

- a.** The criteria used in selecting employees
- b.** Training for on-site employees
- c.** Methods of monitoring performance and accountability of on-site staff
- d.** Days/hours staff will be available for general tenant questions
- e.** Days/hours staff will be available for maintenance issues
- f.** A description of day-to-day management operations

**4.** Corrective and Preventive Maintenance Procedures

- a.** A description of the Maintenance and Repair Plan (i.e., maintenance/inspections schedules, budgeting, etc.)
- b.** The frequency that staff will perform unit housekeeping or safety unit inspections

## **B. Affirmative Marketing [24 CFR 93.350]**

The Affirmative Marketing Plan consists of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

1. Follow affirmative marketing procedures and requirements for rental projects containing five or more HTF-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If a grantee's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §93.303(d)(3), the grantee must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.
2. The affirmative marketing requirements and procedures adopted must include:
  - (i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
  - (ii) Requirements and practices the grantee and owner must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
  - (iii) Procedures to be used by the grantee and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the rental housing or homeownership assistance program without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
  - (iv) Records that will be kept describing actions taken by the grantee and owners to affirmatively market rental housing units and records to assess the results of these actions; and

The Municipality will annually assess the success of affirmative marketing actions of the applicant and take corrective actions where affirmative marketing requirements are not met up to and including payback.

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

Upon request, the Affirmative Marketing Plan and any records documenting its implementation must be made available to the Municipality.

#### **C. Tenant Grievance Policy**

Eligible Recipient must develop a tenant grievance procedure and a tenant participation plan that allows tenants to participate in Eligible Recipient decisions.

#### **D. Limited English Proficient (LEP) Policy**

Executive Order 13166 requires that reasonable steps be taken to ensure meaningful access to programs by LEP individuals, and that the following four factors be considered in the development of a LEP Plan:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program;
2. The frequency with which LEP persons come into contact with the program;
3. The nature and importance of the program, activity or services provided by the program to people's lives; and
4. The resources available to the agency and costs. In accordance with Limited English Proficiency requirements stated in the Federal Register Vol. 72, No. 13, Jan., 22, 2007, the agency shall develop a Language Access Plan and provide appropriate language assistance given the results of the four factor analysis.

#### **E. Tenant Selection Criteria**

The initial selection of tenants is one of the most important activities that the owner will perform. The tenants must be selected in accordance with §93.303. If applicants are not properly screened at this stage and Eligible Recipient offers apartments to those who are not qualified tenants, Eligible Recipient will encounter many problems during occupancy that will absorb far more time than initially spent in the tenant selection process. Eligible Recipient must be consistent in applying the tenant selection criteria.

The Eligible Recipient may ask applicants for information that can demonstrate that they can meet the obligations of tenancy including financial information, references, prior tenancy history, etc. However, Eligible Recipient may not inquire into the nature and severity of an applicant or tenant's disability, nor may they ask persons with disabilities questions not asked of all applicants, apply different types of screening criteria, or assess an applicant's ability to live independently. Eligible Recipient may ask if the applicant qualifies

for a housing program or unit designed for persons with a disability, when the housing program or unit is designed for such persons.

If waitlists are employed, all information required for determining where a household is to be placed on the waitlist must be recorded during the application phase.

Eligible Recipient must adopt written waitlist (if a waitlist is employed) and tenant selection policies and criteria that:

1. Is consistent with the purpose of providing housing for extremely low-income homeless households;
2. Is reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
3. Defines preferences observed in the housing project, as well as the methodology utilized to implement such preferences;
4. Provides for the selection of tenants from a written waiting list in the chronological order of their application, except for preferences that are defined; and
5. Gives prompt written notification to any rejected applicant, including the reason for rejection.

#### **F. Section 504 Plan**

Eligible Recipient shall adopt a written Section 504 Plan to create and adopt a set of formal procedures that will aid the agency in making, processing or responding to requests for reasonable accommodations. See **XI. Section 504 of the Rehabilitation Act of 1973** of this manual for more information.

#### **XX. Record Keeping**

Eligible Recipient shall keep documentation for rental projects to show that all program regulations have been met.

Project records shall include the following documentation:

- Documentation that all the required operational policies have been adopted and adhered to as described in the Operational Policies and Plans section above;
- Back-up for rent and utility allowance calculations; and
- If the project's HTF-assisted units are "floating," the owner shall also keep records to show how HTF occupancy targets were met (for example, rental logs to show that as units were vacated or tenants became over-income, HTF-assisted units were properly replaced).

Tenant files must include the following documentation:

- A rental application that discloses household composition and income;

- The appropriate documents verifying the income and asset information provided by the tenant;
- The lease between Eligible Recipient and tenant shall be for a term of at least one year (unless otherwise agreed upon by the tenant and Eligible Recipient), and must contain signatures of all adult household members and Eligible Recipient. The lease cannot contain any of the prohibited provisions; and
- Subsequent income recertification documents.

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.

- 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.

## **XXI. Monitoring [24 CFR 93.404 (a)]**

The Municipality is required to perform reviews, including site visits, on developments during the full term of the compliance period. Eligible Recipient will be given prior notice of the Municipality’s compliance reviews. Monitoring will include the following areas to ensure that Eligible Recipient is properly operating the housing-development and is in compliance with all regulations:

- Tenant qualifications, income calculations and appropriate supporting documentation as required by HUD Handbook 4350.3;
- The occupancy history of HTF-assisted and market rent units indicate the correct number of HTF units;
- Ensuring that the development meets 24 CFR 93.301 Property Standards including HUD Uniform Physical Conditions Standards and the section’s other provisions; and
- All items agreed to in the Eligible Recipient Agreement and other applicable documentation.

## **XXII. Additional Regulations**

The HTF Program is subject to federal regulations including, but not limited to those listed below:

- Part 93—Housing Trust Fund;
- Section 42 of the Internal Revenue Services (IRS) regulations;
- Non-Discrimination: Section 109 of Section 109 of the Act (24CFR570.602) refers to Section 109 of Title I of the Housing and Community Development

Act of 1974 (42 U.S.C. 5301 et seq.), and with the implementing regulations in 24CFR570.602 and 24CFR6;

- Limited English Proficiency requirements stated in the Federal Register Vol. 72, No. 13, Jan., 22, 2007;
- Copeland Anti-Kick Back Act at 40 USC 276c;
- Contract Work Hours and Safety Standards Act at 40 USC 327-333;
- Fair Labor Standards Act (FLSA);
- Displacement, relocation, and acquisition requirements of 24 CFR 93.352;
- Fair Housing Amendments of 1988;
- Environmental Standards in compliance with the requirements of 24 CFR 93.301 (f);
- Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR 135;
- Federal Fair Housing Act, Section 504 of the Rehabilitation Act of 1973;
- Administrative Requirement, Cost Principals, and Audit Requirements at 2 CFR 200;
- Title VIII of the Civil Rights Act of 1968;
- HUD publications including HTF Supplements and Fires;
- Guidelines, requirements, regulations, and/or policies issued by the U. S. Department of Labor (DOL), HUD, and/or other state and federal departments that supplement the foregoing laws and regulations; and
- Any applicable state or local laws.

***The Municipality of Anchorage retains the ability to revise the Housing Trust Fund's policies and procedures at its sole discretion.***