



HOME

Investment Partnership
Program Manual

Community Housing

Division

(615) 815 -2030

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CHAPTER ONE - GENERAL PROGRAM REQUIREMENTS

1.1 – Introduction

- A) **The HOME Investment Partnership Act was approved on November 28, 1990 as Title II of the Cranston - Gonzalez National Affordable Housing Act. The program provides Federal funds to state and local Participating Jurisdictions to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing units and through tenant-based assistance. The purpose of the program is to expand the supply of decent, safe, sanitary and affordable housing for low and very low-income households. The State of Tennessee has chosen to focus its HOME program on homeowner rehabilitation projects, and homeownership activities.**
- 1) The State of Tennessee operates the HOME program through local governments and non-profit organizations. This manual is designed to provide information about how to implement a HOME program at the local level. Each section describes each task needed to accomplish a HOME project. The supporting materials include samples of forms, documents, letters and file checklists.
 - 2) The HOME program is governed by Title 24 Code of Federal Regulations, Part 92, as amended. Those regulations are incorporated by reference in this manual. The federal regulations take precedence over any material presented in this manual.

1.2 – Eligible Activities

- A) **REHABILITATION – The maximum allowable HOME funds per Homeowner Rehabilitation unit are capped by the HOME subsidy limits, which are established by HUD and cannot be exceeded.**
- 1) All units built prior to 1978 require a lead-based paint (LBP) inspection. If hazards are identified, a risk assessment by a qualified lead risk assessor is required. If the risk assessment of a pre-1978 unit discloses no lead, then the cap for rehabilitation costs is capped by the HOME subsidy limit.
 - 2) If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs are less than \$25,000, interim control/lead safe-work practices will apply and the maximum HOME subsidy for rehabilitation hard costs is limited to \$25,000.
 - 3) If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs exceed \$25,000, then abatement using a qualified abatement contractor and will be required to provide assistance up to the HOME subsidy limits.
- B) **NEW CONSTRUCTION – New Construction is defined as (1) newly built projects; (2) existing projects which involve the addition of new units outside the existing walls of the structure; and (3)**

property completed within a one-year period prior to commitment of HOME funds. Property completion is measured from the date of the certificate of occupancy.

- C) **RECONSTRUCTION** – Reconstruction is rehabilitation for purposes of the HOME program. Reconstruction is defined as rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. The reconstructed housing unit must be substantially similar (i.e., single or multi-family housing) to the original housing
- D) **HOMEOWNERSHIP PROGRAMS** – Under homeownership programs, THDA encourages the use of THDA mortgages or comparable financing whenever possible. The proposed permanent financing must be at an interest rate which does not exceed the prevailing THDA Great Choice Program rate by more than one percentage point. All loans must be fully amortizing and have a fixed interest rate over the 30-year term of the loan. There can be no pre-payment penalty for early payoffs.
- 1) Before construction or acquisition and rehabilitation can begin under homeownership, all units must have qualified buyers pre-approved for a permanent loan. No speculative construction or acquisition is allowed (with the exception of CHDOs, as noted in Section E below). Additionally, an agent of THDA must first perform an initial construction review prior to acquisition. Prior to purchase, all buyers must complete a homebuyer education program provided by [a THDA-qualified homebuyer education trainer](#). The sales limits for homeownership programs are the same as the property value limits for homeowner rehabilitation programs (see Property Value Limits at <https://thda.org/business-partners/home>).
- E) **HOMEOWNERSHIP PROGRAMS BY CHDOs** – Community Housing Development Organizations (CHDOs) may undertake development of homeownership properties through acquisition & rehabilitation or new construction. The CHDO must be the developer of the project which is defined as: a) ownership as fee-simple absolute and b) sole responsibility for financing and construction activities.
- 1) *Construction financing* – HOME funds are used as an up-front source of funds (without interest costs) to build affordable, new single-family units for sale to low-income households. At the time of permanent financing the HOME funds are repaid to the CHDO and are treated as CHDO proceeds. The CHDO proceeds must then be used for other affordable housing activities.
 - 2) *Acquisition and rehabilitation* – HOME funds are used to acquire existing units and to provide the necessary rehabilitation for subsequent sale to a low-income household. At the time of permanent financing the HOME funds are repaid to the CHDO and are treated as CHDO proceeds. The CHDO proceeds must then be used for other affordable housing activities.
 - 3) A CHDO must leave at least \$1,000 and up to \$39,999 of HOME funds with the unit as a soft second mortgage. The soft second should only be in the amount necessary to qualify the household for the permanent financing. If fewer than \$1,000 is required to make the unit affordable, a valid HOME unit has not been developed.
 - 4) *CHDO Operating Expenses and Developer's Fees* – A CHDO may request up to 7% of the grant as CHDO operating expenses to help with the administrative costs of the organization. This is in effect, an administrative cost separate from project costs. A CHDO may also claim as a project

soft cost an 8% developer's fee *if the CHDO is acting as a developer of housing. The developer's fee is limited to 8% of the HOME funded construction costs in the unit.*

- 5) *CHDO proceeds* – The first time HOME funds are repaid to the CHDO, the CHDO may use an additional 15% of the CHDO proceeds for operating expenses (7% for administration and 8% developer's fee). The rest must be used to develop more housing. Once the CHDO proceeds are used a second time, the HOME restrictions on the use of proceeds are eliminated.
- F) **HOMEOWNERSHIP PROGRAMS BY CITIES, COUNTIES AND NON-PROFIT ORGANIZATIONS (non-CHDO)** – Homeownership programs are restricted to soft second mortgages as necessary to qualify the household for permanent financing.
- G) **ACQUISITION OF PROPERTY** – The acquisition of real estate must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames **established in 17.4 (2) below.**
- H) **SELECTIVE ELIGIBLE ACTIVITIES** – Several activities can be funded with HOME funds only when conducted in conjunction with the above listed activities. They are:
 - 1) *Acquisition of Vacant Land* – Acquisition of vacant land using HOME funds must be undertaken only with respect to a particular housing project intended to provide affordable housing and construction will begin within 12 months.
 - 2) *Site Improvements* – Must be “in keeping with improvements to surrounding standard projects.” Costs of utility connections are included.
 - 3) *Demolition* – Demolition using HOME funds must be undertaken only when the intention is to replace a unit with affordable housing and in accordance with Section 104(d) of the Housing and Community Development Act ("The Barney Frank Amendments") and construction will begin within 12 months.

1.3 – Prohibited Activities

- A) **INELIGIBLE PROPERTIES** – HOME funds cannot be used for assistance on any of the following properties: properties not cleared through an Environmental Review; properties receiving Rental Rehabilitation Program funds; projects assisted under Title VI of NAHA (Prepayment of Mortgages insured by HUD); and commercial properties.
- B) **EMERGENCY REPAIR PROGRAMS** – Activities that do not bring the property into compliance with local building codes or the applicable code of the International Code Council are prohibited.
- C) **TERMINATED PROJECTS** – A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the State's HOME Investment Trust Fund in accordance with §92.503(b).

- D) **PREVIOUSLY-ASSISTED HOME PROJECTS** – HOME funds cannot be used to provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the State in the written agreement under 24 CFR 92.504.
 - 1) Additional HOME funds may be committed to a project up to one year after project completion (24 CFR 92.502), but the amount of HOME funds in the project cannot exceed the maximum per-unit subsidy limit, set by HUD.
- E) **HOMEOWNER REHABILITATION PROJECTS ARE NOT AN ELIGIBLE ACTIVITY FOR A CHDO** – A CHDO can only participate in the HOME program if it is the developer of a homeownership project.
- F) **ANY COST THAT IS NOT ELIGIBLE UNDER 24 CFR 92.206 THROUGH 92.209.**

1.4 – Forms of Assistance (92.205(b))

- A) **FORGIVABLE GRANT** – Any assistance from local government or non-profit grant recipients to program beneficiaries will be limited to forgivable grants. These are grants that are completely forgiven after a specified period of time as long as the beneficiary adheres to the conditions of the grant. Grants may be forgiven at the end of the compliance period or proportionally each year.
- B) For homeowner rehabilitation projects, if the assisted homeowner dies during the compliance period, THDA does not require repayment as long as the ownership of the property passes to the heirs. Starting with the 2005 grant year, the heirs may occupy the unit, rent it or leave it unoccupied, without triggering the repayment clause. However, if the heirs sell the property, or if the property is sold with monetary gain by any actions of a court to settle outstanding claims or settle the estate, the grant must be repaid into the State's HOME account, less any forgivable portion. (This policy may be applied retroactively to prior HOME projects as needed.)
- C) **SOFT SECOND MORTGAGES** – In order to qualify a family for homeownership programs, HOME funds may be used for soft second mortgages. Using the HOME recapture provision, the soft second mortgages are limited to a maximum subsidy of \$14,999 per household with a five-year affordability period *forgiven at the end of the fifth year or \$39,999 per household with a 10 year affordability period forgiven at the of the tenth year*. If the unit is sold or transferred (voluntarily or involuntarily) during the affordability period, there is a forgiveness feature of 20% per year for the time the family has owned and occupied the house, with the remaining HOME funds due on sale to THDA. However, if the property is rented, or ceases to be the principal residence of the homebuyer, the entire soft second mortgage is to be repaid to THDA.

1.5 – Affordability Requirements

- A) **HOMEOWNERSHIP PROGRAMS (92.254(a)(4))** - Affordability periods in homeownership programs relate to the subsequent sale of the property by the HOME- assisted homeowner. The affordability period is based on the amount of HOME funds provided for the property.

HOME FUNDS PROVIDED	AFFORDABILITY PERIOD
Under \$15,000	5 Years
\$15,000 to \$40,000	10 Years
Over \$40,000	15 Years

- B) **The HOME Rule allows two options for controlling the subsequent sale of the homebuyer property during the affordability period: the recapture option and the resale option. THDA has chosen to implement the less restrictive recapture option for its homeownership programs under HOME.**

- 1) **RECAPTURE (92.254(a)(5)(ii))** - The homeowner is required to repay all or a portion of the direct HOME subsidy to the homebuyer if the property is sold or transferred during the affordability period.
- 2) The homeowner may sell the property to any willing buyer at whatever price the market will bear as long as all or a portion of the HOME debt remaining on the property is repaid.
- 3) THDA has chosen the pro-rata forgiveness for its Recapture provision. The Grantee reduces the amount of the HOME subsidy to be recaptured on a prorated basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.
- 4) The recapture option may only be used with direct financial assistance to the homebuyer. Development subsidies are not subject to recapture but are subject to the more restrictive resale option which is not covered in this manual.
- 5) THDA requires that each homebuyer execute a Grant Note and Deed of Trust to secure the soft second mortgage for the direct purchase assistance. There is a maximum subsidy of \$14,999 per household with a five-year affordability period forgiven at the end of the fifth year. If the unit is sold during the affordability period, there is a forgiveness feature of 20% per year for the time the family has owned and occupied the house, with the remaining HOME funds due on sale to THDA.
- 6) The Grantee must be listed as a Loss Payee on the homeowner's insurance.

- C) **The Grantee will be responsible for long-term monitoring for principal residency. Grantees operating homeownership programs will submit the Homeownership Occupancy Report for Long Term Compliance (HB-4) by January 1st each year.**

- D) **REPAYMENTS (92.503(b))** - If the unit does not remain in compliance for the affordability period, i.e., the unit is leased or does not remain the principal residence of the homebuyer, then the entire amount of the HOME subsidy used to develop the unit must be repaid. Please note that the pro-rata forgiveness under the Grantee's Recapture provision does not apply.

- E) **HOMEOWNER REHABILITATION (92.254(b))** – Housing that is currently owned by a family and is rehabilitated with HOME funds remains affordable only if:
- 1) The value of the property, after rehabilitation does not exceed 95% of the median purchase price for the type of single-family housing (1 – 4 family residence, condominium unit, etc.), for the jurisdiction as determined by HUD. (See Property Value Limits at <https://thda.org/business-partners/home>).
 - 2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time the HOME funds are committed to the property.
- F) **Deferred and forgivable grants for homeowner rehabilitation shall have a compliance period of 5 years. *Deferred and forgivable grants for homes requiring reconstruction shall have a compliance period of 15 years.*** These are state HOME program requirements, not federal requirements. THDA requires homeowners to sign a Grant Note and Deed of Trust to secure the compliance period.

1.6 – Income Determinations

- A) **INCOME LIMITS** – HOME funds can only be used to benefit low and very low-income households. The income limits applicable are the current “HOME Program Income Limits” (adjusted for family size) produced by the Department of Housing and Urban Development. Tennessee income limits are provided at <https://thda.org/business-partners/home>.
- B) **ANNUAL INCOME (GROSS INCOME)** – The State’s HOME program uses the income definitions of the Section 8 program to determine the annual income (gross income) used to classify a household for purposes of eligibility found at 24 CFR 5.609. Grantees must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the family is determined to be income eligible. Annual income shall include income from all persons in the household. Annual income means all amounts, monetary or not, which:
- 1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
 - 2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date. In other words, it is the household’s *future or expected* ability to pay rather than its past earnings that is used to determine program eligibility. If it is not feasible to anticipate a level of income over a 12- month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period; and
 - 3) Which are not specifically excluded in paragraph 6.8 (Income Exclusions) below.
 - 4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
- C) **MONTHLY GROSS INCOME** – Monthly gross income is Annual Gross Income divided by 12 months.

- D) **ASSETS** – In general terms, an asset is a cash or noncash item that can be converted to cash. There is no asset limitation for participation in the HOME program. Income from assets is, however, recognized as part of Annual Gross Income. Assets have both a market value and a cash value.
- E) **MARKET VALUE** – The market value of an asset is simply its dollar value on the open market. For example, a stock's market value is the price quoted on a stock exchange on a particular day, and a property's market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.
- F) **CASH VALUE** – The cash value of an asset is the market value less reasonable expenses required to convert the asset to cash, including:
- 1) Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value (e.g., penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds, or broker fees for converting stocks to cash); and/or
 - 2) Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in the real estate.
 - 3) Under Section 8 rules, only the cash value (rather than market value) of an item is counted as an asset.
- G) **INCOME FROM ASSETS** – The income counted is the actual income generated by the asset (e.g., interest on a savings or checking account.)
- 1) The income is counted even if the household elects not to receive it. For example, although a household may elect to reinvest the interest of dividends from an asset, the interest or dividends is still counted as income.
 - 2) The income from assets included in Annual Gross Income is the income that is anticipated to be received during the coming 12 months.
 - 3) To obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account; or
 - 4) If the value of the account is not anticipated to change in the near future and interest rates have been stable, a copy of the IRS 1099 form showing past interest earned can be used.
 - 5) Checking account balances (as well as savings account balances) are considered an asset. This is a recognition that some households keep assets in their checking accounts, and is not intended to count monthly income as an asset. Grantees should use the average monthly balance over a 6-month period as the cash value of the checking account.
- H) **When an Asset Produces Little or No Income:**

- 1) If the family's assets are \$5,000 or less, actual income from assets (e.g., interest on a checking account) is not counted as annual income. For example, if a family has \$600 in a non-interest bearing checking account, no actual income would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.
- 2) If the family's assets are greater than \$5,000, income from assets is computed as the greater of:
 - a) actual income from assets, or
 - b) calculate income from assets based on a passbook rate applied to the cash value of all assets. For example, if a family has \$3,000 in a non-interest bearing checking account and \$5,500 in an interest-bearing savings account, the two amounts are added together. Use the standard passbook rate to determine the annual income from assets for this family.
- I) **Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an "arm's length" transaction) have, in essence, voluntarily reduced their ability to afford housing. Section 8 rules require, therefore, that any asset disposed of for less than fair market value during the 2 years preceding the income determination be counted as if the household still owned the asset.**
- J) **The value to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset (less any fees associated with disposal of property, such as a brokerage fee).**
- K) **Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce or separation is not included in this calculation.**
- L) **These procedures are followed to eliminate the need for an assets limitation and to penalize people who give away assets for the purpose of receiving assistance or paying a lower rent.**
- M) **ASSETS INCLUDE:**
 - 1) Amounts in savings accounts and six-month average balance for checking accounts.
 - 2) Stocks, bonds, savings certificates, money market funds and other investment accounts.
 - 3) Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset. *DO NOT INCLUDE EQUITY OF PRINCIPAL RESIDENCE AS AN ASSET FOR HOMEOWNER REHABILITATION PROGRAMS.*
 - 4) The cash value of trusts that are available to the household.
 - 5) IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in penalty.
 - 6) Contributions to company retirement/pension funds that can be withdrawn without retiring or terminating employment.

- 7) Assets which, although owned by more than one person, allow unrestricted access by the applicant.
- 8) Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
- 9) Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
- 10) Cash value of life insurance policies.
- 11) Assets disposed of for less than fair market value during two years preceding certification or recertification.

N) ASSETS DO NOT INCLUDE:

- 1) Necessary personal property, except as noted under paragraph 6.5(9) (Assets Include) above
- 2) Interest in Indian Trust lands
- 3) Assets that are part of an active business or farming operation.

O) NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant/tenant's main occupation.

- 1) Assets not accessible to the family and which provide no income to the family.
- 2) Vehicles especially equipped for the handicapped.
- 3) Equity in owner-occupied cooperatives and manufactured homes in which the family lives.

P) INCOME INCLUSIONS – The following are used to determine the annual income (gross income) of an applicant's household for purposes of eligibility:

- 1) The full amount, before any payroll deductions, of wages and salaries, over-time pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- 2) The net income for the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness cannot be used as deductions in determining net income; however, an allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession is included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- 3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness cannot be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in

income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income includes the greater of the actual income derived from net family assets or a percentage of the value of such assets based on the current passbook saving rate, as determined by HUD.

- 4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except Supplemental Security Income (SSI) or Social Security).
- 5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (3) under Income Exclusions).
- 6) Welfare Assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income consists of:

Q) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

R) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph is the amount resulting from one application of the percentage.

- 1) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.
- 2) All regular pay, special pay and allowances of a member of the Armed Forces (see paragraph (8) under Income Exclusions).

S) INCOME EXCLUSIONS – The following are excluded from a household's income for purposes of determining eligibility:

- 1) Income from employment of children (including foster children) under the age of 18 years.
- 2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone). Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
- 3) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
- 4) Income of a live-in aide.

- 5) Certain increases in income of a disabled member of the family residing in HOME assisted housing or receiving HOME tenant-based rental assistance (see 6.12 (7) under Determining Whose Income to Count).
- 6) The full amount of student financial assistance paid directly to the student or to the educational institution.
- 7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- 8) Amounts received under training programs funded by HUD.
- 9) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).
- 10) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care etc.) which are made solely to allow participation in a specific program.
- 11) Amount received under a resident's service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner or manager on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination and serving as a member of the governing board. No resident may receive more than one such stipend during the same period of time.
- 12) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded must be received under employment training programs with clearly defined goals and objectives, are excluded only for the period during which the family member participates in the employment training program.
- 13) Temporary, nonrecurring or sporadic income (including gifts).
- 14) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse).
- 15) Adoption assistance payments in excess of \$480 per adopted child.
- 16) For public housing only, the earnings and benefits to any family member resulting from participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, Section 22 of the 1937 Act, or any comparable federal, state or local law during the exclusion period.

- 17) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- 18) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- 19) Amounts paid by a state agency to a family with member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
- 20) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which exclusions set forth in 24 CFR 5.609I apply. The following is a list of types of income that qualify for that exclusion (9/27/89 regulations):
- 21) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
- 22) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through VISTA; Retired Senior Volunteer Program, Foster Grandparents Program, youthful offenders incarceration alternatives, senior companions);
- 23) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));
- 24) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 259e);
- 25) Payments or allowances made under the department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- 26) Payments received under programs funded in whole or in part under the Job Training Partnership Act;
- 27) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians;
- 28) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117);
- 29) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- 30) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f));
- 31) Any earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;

- 32) Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other funds established pursuant to the settlement in the In Re Agent Orange product liability litigation MDL No. 381 (E.D.N.Y.)
- 33) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- 34) Payments received under the Maine Indian Claims Settlement Act of 1980.
- 35) Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);
- 36) Payments made by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- 37) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
- 38) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- 39) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance); and
- 40) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998.

T) TIMING OF INCOME CERTIFICATIONS – All households that receive HOME assistance must be income eligible. At a minimum, income certification must be completed before assistance begins. A preliminary determination of eligibility may be made much earlier in the process.

- 1) Application processing is labor intensive. Early screening for income eligibility can eliminate excessive work in processing an ineligible applicant.
- 2) Establishing a deadline for formal eligibility determinations is a challenging part of the planning process. Generally, the HOME Program permits verification dated no earlier than 6 months prior to eligibility.
- 3) The Grantee must calculate the annual income of the household by projecting the prevailing rate of income of the family at the time the Grantee determines that the family is income eligible. The eligibility of a household must be re-verified if more than six months elapses between the date the Grantee determines that a household is income-eligible and the date HOME assistance is provided.

- 4) For homeowner rehabilitation projects, the date assistance is provided is the date of the rehabilitation contract. Homeowner rehabilitation applications pending beyond six months will need to be updated to verify ALL income sources are current.
- 5) For homeownership programs, the income eligibility of the families is timed as follows:
 - a) In the case of a contract to purchase existing housing, it is the date of the purchase;
 - b) In the case of a lease-purchase agreement for existing housing or for housing to be constructed, it is the date the lease-purchase agreement is signed; and
 - c) In the case of a contract to purchase housing to be constructed, it is the date the contract is signed.
- U) **INCOME VERIFICATION** – Grantees must verify annual income by examining at least two months of source documents evidencing annual income (e.g., wage statements, interest statements, and unemployment compensation) for each member of the household and retain documentation of all information collected to determine a household’s income. Under the Section 8 Program, there are three forms of verification which are acceptable: third-party, review of documents, and applicant certification. Applicant certification is not allowed in the HOME program. However, grantees may use an applicant certification in a homeowner rehabilitation program when more than 6 months has lapsed and the household has not yet received the HOME assistance and the total household income/asset sources are limited to annual amounts (e.g., Social Security).
- V) **THIRD-PARTY VERIFICATION** – Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person and date of the call.
 - 1) To conduct third party verifications, a Grantee must obtain a written release from the household that authorizes the third party to release required information.
 - 2) Third-party verifications are helpful because they provide independent verification of information and permit Grantees to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.
- W) **REVIEW OF DOCUMENTS** – Documents provided by the applicant (such as pay stubs, IRS returns, etc.) may be most appropriate for certain types of income and can be used as an alternative to third-party verifications. Copies of documents should be retained in project files.
 - 1) Grantees should be aware that although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, a pay stub may not provide sufficient information about average number of hours worked, over-time, tips and bonuses.
- X) **CALCULATION METHODOLOGIES** – Grantees must establish methodologies that treat all households consistently and avoid confusion.

- 1) It is important to understand the basis on which applicants are paid (hourly, weekly or monthly, and with or without over-time). An applicant who is paid “twice a month” may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).
- 2) It is important to clarify whether over-time is sporadic or a predictable component of an applicant’s income.
- 3) Annual salaries are counted as Annual Income regardless of the payment method. For instance, a teacher receives an annual salary whether paid on a 9- or 12-month period.

Y) DETERMINING WHOSE INCOME TO COUNT – Knowing whose income to count is as important as knowing which income to count. Under the Section 8 definition of income, the following income *is not counted*:

- 1) **INCOME OF LIVE-IN AIDES** – If a household includes a paid live-in aide (whether paid by the family or a social service program), the income of the live-in aide, regardless of its source, is not counted. (Except under unusual circumstances, a related person can never be considered a live-in aide).
- 2) **INCOME ATTRIBUTABLE TO THE CARE OF FOSTER CHILDREN** – Foster children are not counted as family members when determining family size to compare with the Income Limits. Thus, the income a household receives for the care of foster children is not included.
- 3) **EARNED INCOME OF MINORS** – Earned income of minors (age 18 and under) is not counted. However, unearned income attributable to a minor (e.g., child support, TANF payments, and other benefits paid on behalf of a minor) is counted.
- 4) **TEMPORARILY ABSENT FAMILY MEMBERS** – The income of temporarily absent family members is counted in Annual Income – regardless of the amount the absent family member contributes to the household. For example, a construction worker earns \$600/week at a temporary job on the other side of the State. He keeps \$200/week for expenses and sends \$400/week home to his family. The entire \$600/week is counted in the family’s income.
- 5) **ADULT STUDENTS LIVING AWAY FROM HOME** – If the adult student is counted as a member of the household in determining the Income Limit used for eligibility of the family, the first \$480 of the student’s income must be counted in the family’s income. Note, however, that the \$480 limit does not apply to a student who is head of household or spouse (their full income must be counted).
- 6) **PERMANENTLY ABSENT FAMILY MEMBER** – If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.
- 7) **PERSONS WITH DISABILITIES** – During the annual recertification of a family’s income, increases in the income of a disabled member of qualified families residing in HOME assisted housing or receiving HOME tenant- based rental assistance is excluded. 24 CFR 5.61(a) outlines the eligible increases in income. These exclusions from annual income are of limited duration. The full

amount of increase to an eligible family's annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, 50 percent of the increase in income is excluded. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

Z) USING ADJUSTED GROSS INCOME – Adjusted Gross Income is *not* needed for HOME homeowner rehabilitation programs, homeownership programs, or for determining tenant eligibility for rental housing programs. Adjusted Gross Income is needed only to calculate:

- 1) The subsidy and tenant's share of rent under a HOME-funded tenant based rental assistance program. This calculation is done when the tenant first receives assistance and whenever the tenant's income is recertified.
- 2) The rent for a tenant in a HOME assisted rental unit whose rent must be adjusted because the household income increases above 80 percent of the area median; and
- 3) A household's eligibility for and the amount of assistance to be provided under the Uniform Relocation Act or Section 104(d) relocations and tenant assistance requirements.

AA) CALCULATING ADJUSTED GROSS INCOME – Adjusted gross income is the annual gross income minus any of the five following deductions (also called allowances) that apply to the household. The household's eligibility for deductions depends, in part, on the type of household that it is. Monthly adjusted income is Annual Adjusted Income divided by 12 months. *An existing tenant in a HOME rental project whose income has increased above the income limits must pay 30% of adjusted gross income as rent.*

- 1) FOR ALL HOUSEHOLDS:

BB) \$480 for each dependent. (A dependent is a person, other than the head or spouse, who is under 18, or handicapped or disabled, or a full-time student of any age.)

CC) Reasonable childcare expenses (for children 12 and under) that enable a family member to work or go to school and are not reimbursed. The allowable expenses cannot exceed the income generated by that household member during the period the care is being provided. To document that the anticipated childcare expenses can be deducted, the household must:

DD) Identify the child(ren) who will be cared for;

EE) Identify the family member who is enabled to work or attend school because of childcare (generally the person with the lowest income – the person who would quit work to take care of the children if no child care were available – is considered the family member enabled to work). This family member must provide documentation that he or she is employed, actively looking for work or is currently enrolled in a vocational program or degree-granting institution. The family member does not need to be a full time student;

FF) Demonstrate that no other adult household member is available to care for the child;

GG) Identify the childcare provider; and

HH) Provide documentation of costs.

- 1) Expenses (in excess of 3% annual gross income) for the care of a handicapped or disabled family member that enable that person or another person to work (includes care attendant and necessary equipment and apparatus). Expenses may be deducted only if (1) they are reasonable; (2) they are not reimbursed from another source, such as insurance; (3) they do not exceed the amount of income generated by the person enabled to work; and (4) they are in excess of three percent of annual income.

2) FOR ELDERLY OR DISABLED HOUSEHOLDS ONLY:

II) An elderly household is any household in which the head, spouse, or sole member is 62 years of age or older. For example, a husband, age 59, and wife, age 62, would be considered an elderly household.

JJ) A disabled household is any household in which the head, spouse or sole member is a person with disabilities. For example, a husband, age 42, and wife, age 38 and disabled, would be considered a disabled household.

KK) Living with an elderly or disabled relative does not qualify a household for this deduction unless the relative is the head or spouse of the family. For example, if a non-elderly, non-disabled couple take in an elderly parent this is not a qualified elderly or disabled household. But if the couple moves in with the elderly or disabled parent, the parent is the head of household and the family is qualified for the deduction.

LL) Medical expenses in excess of 3% of annual income that are not reimbursed by insurance or other sources.

MM) Any household that meets the definition of an elderly or disabled household is entitled to a deduction of \$400 per household.

1.7 – PROPERTY STANDARDS (92.251)

A) APPLICABLE CODES – Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.

- 1) **WRITTEN STANDARDS - Rehabilitation work undertaken with THDA HOME funds should use the THDA Design Standards for New Construction/Rehabilitation of Single Family and Multi-Family Attached Housing Units (Exhibit B) as a guide. These written rehabilitation standards, when used in conjunction with applicable codes and the UPCS checklist will ensure the work fully complies with regulatory requirements.**

- 2) **NEW CONSTRUCTION - HOME-assisted new construction projects must be HUD Energy Star certified by an independent HERS rater or achieve a HERS index of 85 or less when tested by a certified rater and must meet the current, State-adopted edition of the International Energy Conservation Code; and the current State-adopted edition of the International Residential Code for One- and Two-Family Dwellings.**

This policy does NOT apply to rehabilitation projects without discretion from the grantee and/or THDA representative. Therefore, Energy Audit payment requests should not be automated without being properly procured and audited by a certified auditor. Again, an “energy audit” is not required but THDA does encourage grantees to make a genuine effort to make every project more energy efficient.

- 3) **All other HOME-assisted housing (e.g. acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are not such standards or code requirements, the housing must meet the ongoing property standards as specified by HUD based on the HUD Uniform Physical Standards (UPCS), Pursuant to 24CFR5.705.**
- B) IN ABSENCE OF A LOCAL CODE – In the absence of a local code, new construction of single-family units or duplexes must meet the current, State-adopted edition of the International Residential Code for One- and Two-Family Dwellings; and rehabilitation of existing homeowner units must meet the current, State-adopted edition of the International Existing Building Code. In addition, HOME funded units must also conform to the THDA Design Standards for New Construction and Rehabilitation of Single Family and Multi-family Attached Housing Units. The International Code books are available from: Website: www.iccsafe.org**
- C) Visitability Standards. CHDOs developing units for homeownership are encouraged to include design features to make the units accessible to both the residents and their visitors. These options include a step-free entrance; free passage of 32-36” for interior/exterior doorways; and easy use by individuals confined to a wheelchair.**
- D) ACCESSIBILITY - 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) and covered multifamily dwellings—as defined at 24 CFR 100.201—must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).**
- 1) For new construction of multi-family projects (five or more units), a minimum of 5% of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. The total number of units in a HOME-assisted project, regardless of whether they are all HOME-assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are HOME-assisted, the accessible units may be either HOME-assisted or non-HOME-assisted.
 - 2) The Section 504 definition of substantial rehabilitation for multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75% or more of the replacement cost. In such developments, a minimum of 5% of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2% (but not less than one unit) must be accessible to individuals with sensory impairments. As in the case of new construction, the total number of units in a HOME-assisted

project, regardless of whether they are all HOME-assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are HOME-assisted, the accessible units may be either HOME-assisted or non-HOME-assisted.

- 3) When rehabilitation is undertaken in projects of 15 or more units, alterations must, to the maximum extent feasible, make the units accessible to and usable by individuals with handicaps, until a minimum of 5% of the units (but not less than one unit) are accessible to individuals with mobility impairments. For this category of rehabilitation, the additional 2% of unit's requirement for individuals with sensory impairments does not apply. Alterations to common spaces must, to the maximum extent feasible, make those areas accessible.
 - 4) In addition to housing, Grantee and CHDO offices must also be accessible to program applicants under Section 504.
- E) **RENTAL HOUSING STANDARDS - All previously funded HOME-assisted rental housing (e.g., acquisition) must meet the Uniform Physical Condition Standards (UPCS).**

1.8 – CONTRACTOR QUALIFICATIONS

- A) **GENERAL CONTRACTOR'S LICENSE - At a minimum, any contractor for construction or rehabilitation projects with contract amounts of \$25,000 or more must have a general contractor's license issued by the Board for Licensing Contractors, State of Tennessee. For a listing of Tennessee Licensed Contractors contact: Board for Licensing Contractors**

500 James Robertson Parkway, Suite 110
Nashville, TN 37243-1150
Telephone: (615)741-8307

- B) **HOME IMPROVEMENT LICENSE - As of June 23, 2010, any contractor for rehabilitation projects with contract amounts between \$3,000 and \$24,999 in Bradley, Davidson, Hamilton, Haywood, Knox, Marion, Robertson, Rutherford, and Shelby counties are required to have a Home Improvement license. This is a local option, and it is anticipated that additional counties will adopt this requirement.**
- C) **EXCLUDED PARTIES - The State must require its Grantees to have participants in lower tier covered transactions (contractors and their subcontractors) certify that neither it nor its principals are presently excluded from working under a Federal government award. Excluded parties covers: debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction. The System for Awards Management (SAM) covers excluded parties: <https://www.sam.gov/portal/public/SAM/#1>. Documentation of contractor and subcontractor eligibility must be maintained in the project record.**
- D) **The above are minimum licensing standards required by the State of Tennessee. Grantees may choose to impose stricter requirements for local programs. A Grantee choosing to require more**

than the minimum standards would incorporate those requirements in the policies and procedures adopted for the operation of its HOME program.

CHAPTER TWO – FINANCIAL MANAGEMENT

2.1 – Agreement

- A) The written agreement between your community or organization and THDA will be a very important document throughout the life of the project. The written agreement must be executed before any funds can be disbursed or expended. FUNDS COMMITTED OR EXPENDED BEFORE THE WRITTEN AGREEMENT IS SIGNED WILL NOT BE REIMBURSED FROM HOME FUNDS. The written agreement will ensure compliance with the regulations of the HOME program.

2.2 – Eligible Costs

- A) **DEVELOPMENT HARD COSTS** - The actual cost of constructing or rehabilitating housing. These costs include the following:
- 1) For new construction and reconstruction, costs must meet the applicable new construction standards of the State and the Model Energy Code (See Property Standards).
 - 2) For rehabilitation, costs to meet applicable rehabilitation standards of the State (see Property Standards in Chapter I, Section VIII); to make essential improvements including energy-related repairs or improvements; improvements necessary to permit the use by persons with disabilities, and the abatement of lead-based paint hazards; and to repair or replace major housing systems in danger of failure.
 - 3) For new construction, reconstruction and rehabilitation, costs to demolish existing structures; to make utility connections including off-site connections from the property line to the adjacent street; and to make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is property, owned by the property owner, upon which the project is located.
- B) **ACQUISITION COSTS** - Costs of acquiring improved or unimproved property.
- C) **PROJECT "SOFT" COSTS** - Other reasonable and necessary costs incurred by the owner and associated with the financing or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. Administrative costs of the Grantee cannot be reimbursed as a "soft cost". Eligible project "soft costs" include:
- 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 lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorney fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.
 - 3) Costs of a project audit that the State may require with respect to the development of a project.
 - 4) Costs to provide information services such as affirmative marketing and fair housing information.
 - 5) For new construction, reconstruction or rehabilitation projects, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended at the end of the 18 months must be returned to the State's HOME Trust Account.
 - 6) For new construction, reconstruction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.
 - 7) Costs for paint testing, risk assessments, and clearance testing will be paid as soft costs. There is an acceptable range for costs involving these activities. Please contact your specialist for cost approval prior to contracting for these services.
 - 8) Expenses incurred conducting lead activities, interim controls, standard treatments, and abatement.
- D) **LIMITATIONS TO PROJECT SOFT COSTS** - Work write-ups and inspections billed as project related soft costs reduce the total dollars available for rehabilitation of houses. In addition, the total of soft costs plus the rehabilitation costs are subject to the HOME subsidy limitations and the after rehabilitation value limits.
- 1) Grantees can charge as soft costs the cost of work write-ups and inspections conducted by the Rehab Coordinator, not to exceed \$10,000.
 - 2) It is the responsibility of the Grantee to determine reasonableness of these charges and whether they are covered by administration or should be charged separately as a project soft cost.
 - 3) If the HOME program administrator is undertaking these activities and is being paid from the project related costs category and if the program administrator has already been chosen through the procurement process to be the administrator, the program administrator will not have to go through procurement again. Otherwise, procurement procedures outlined in Section III of this Chapter will have to be followed.

- E) **RELOCATION COSTS** - The costs of relocation payments and other relocation assistance to persons permanently or temporarily displaced by the project. (*See Chapter Four: Relocation and Displacement*). 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.
- F) **ADMINISTRATIVE AND PLANNING COSTS** - (92.207) Reasonable and necessary costs (as described in OMB Circular A-87) for the administration of the HOME program such as salaries and wages; other employee compensation and benefits; and employee education, training and travel. The cost of completing an environmental review is included under administrative cost. Administrative costs do not include eligible project-related costs that are incurred by and charged to project owners.
- G) **CHDO OPERATING EXPENSES** - (92.208) Reasonable and necessary costs for the operation of the community development organization and in accordance with standard accounting practices. Eligible operating expenses include: salaries, wages, other employee compensation and benefits; employee education, training and travel; rent; utilities; communication costs; taxes; insurance; equipment, materials and supplies.

2.3 – Establishing Procedures for Financial Management

- A) **GOVERNMENTAL ENTITIES** - The requirements of OMB Circular No. A-87 (*Cost Principles for State and Local Governments*) and the following requirements of 24 CFR Part 85 apply to any governmental entity receiving HOME funds: 85.6 (Additions and Exceptions), 85.12 (Special Grant or Sub-grant Conditions for "High Risk" Grantees), 85.20 (Standards for Financial Management Systems), 85.22 (Allowable Costs), 85.26 (Non-federal Audit), 85.32 - 85.34 (Equipment, Supplies and Copyrights), 85.36 (Procurement), 85.44 (Termination for Convenience), 85.51 (Later Disallowances and Adjustments) and 85.52 (Collection of Amounts Due).
- 1) **NON-PROFIT ORGANIZATIONS** - The requirements of OMB Circular No. A-122 (*Cost Principles for Non-profit Organizations*) and the following requirements of 24 CFR part 84 apply to private, non-profit organizations receiving HOME funds: 84.2 (Definitions), 84.5 (Sub-awards), 84.13 (Debarment and suspension; Drug-Free Workplace), 84.14 (Special award conditions), 84.15 (Metric system of measurement), 84.16 Resource Conservation and Recovery Act), 84.21 (Standards for Financial Management Systems), 84.22 (Payment), 84.26 (Non- Federal audits), 84.27 Allowable costs, 84.28 (Period of availability of funds), 84.30 (Purpose of property standards), 84.31 (Insurance coverage), 84.34 (Equipment), 84.35 (Supplies and other expendable property), 84.36 (Intangible property), 84.37 (Property trust relationship), 84.40 - 84.48 (Procurement Standards), 84.51 (Monitoring and reporting program performance), 84.60 (Purpose of termination and enforcement), 84.61 (Termination), 84.62 (Enforcement), 84.72 (Subsequent adjustments and continuing responsibilities) and 84.73 (Collection of amounts due).

- 2) *DETERMINING COSTS* - OMB Circular A-87 and OMB Circular A-122 provide uniform rules for determining costs applicable to grants and contracts with state and local governments and non-profit organizations respectively. They define allowable costs and set forth the procedures to recover them. The basic underlying intent of the circulars is that federally assisted programs bear their fair share of costs.
- a) *ALLOWABLE COSTS* - Generally, costs must be necessary, reasonable, and directly related to the grant. In addition, they must be legal and proper, and consistent with the policies that govern the grantee's own expenditures.
- b) *UNALLOWABLE COSTS*
- (1) The following costs are specifically not allowed under the provisions of Circular A-87: bad debts; contingencies; contributions and donations; entertainment; fines and penalties; interest and other financial costs; legislative expenses; under- recovery of costs under grant agreements.
- (2) The following costs are specifically not allowed under the provisions of Circular A-122, Attachment B: bad debts; contingencies; contributions and donations by the organization to others; lobbying; entertainment; fines and penalties; interest; fund raising; investment management costs; and losses on other awards.
- c) *DIRECT COSTS* - These are costs that are specifically identifiable to the grant. Typical examples are employee compensation, material, equipment, and services furnished specifically for the grant by others.
- d) *INDIRECT COSTS* - These are costs incurred for common or joint purposes that benefit more than one activity. These costs should be allocated so that the grant program bears its fair share of total indirect costs.
- e) *COST ALLOCATION PLAN* - To recover indirect costs as well as direct costs, grantees must have a cost allocation plan prepared in accordance with OMB Circulars A- 87 or A-122, as applicable, which forms the basis for the percentage cost rate. The plan must cover all costs of the department administering the grant and the costs of other agencies that will be charged against the grant. The plan should:
- (1) Describe the services provided and explain their relevance to the grant program
- (2) List the expenses to be charged to the grants, and
- (3) Explain the method used to distribute costs.
- f) THDA will require that the cost allocation plan for non-profit agencies be reasonable, approved by the organization's accountant, and authorized by the organization's cognizant agency.

- 3) **OMB CIRCULARS** – Copies of OMB Circulars may be obtained Monday - Friday, 9:00 AM to 4:00 PM from:

E. O. P. Publications
Room 2200, New Executive Office Building
Washington, DC 20503
(202) 395-7332 or FAX (202) 395-9088

2.4 – Procurement Procedures

- A) **LOCAL PROCUREMENT STANDARDS** - All cities, towns and counties in Tennessee are governed by procurement policies. Policies vary from community to community. If your community does not have a specific procurement policy or law, the County Purchasing Law of 1983 or the Municipal Purchasing Law of 1983 will apply. Both of these laws require formal bidding for all purchases of \$2,500 or greater. Some cities and counties in Tennessee have procurement policies that require formal bidding for purchases less than \$2,500. Grantees may use their own procurement procedures provided they conform to the standards of the HOME program.
- B) **HOME PROCUREMENT STANDARDS** - For cities and counties, HOME procurement standards are at 24 CFR Section 85.36. For non-profit organizations, HOME procurement standards are at 24 CFR Sections 84.40 - 84.48. 24 CFR 85.36 and 24 CFR Section 84.44 require formal procurement procedures for all purchases of \$25,000 or greater. It is the grantee's responsibility to ascertain whether the local policies, 85.36 or 84.44 provisions apply. The stricter standard must always be used.
- C) **SMALL DOLLAR PROCUREMENT** - Informal methods that are sound and appropriate are allowed for the procurement of supplies and other property whose total cost is not more than the local bidding limit (\$2,500 in most cases). Informal procurement methods would also apply to professional service contracts of \$10,000 or less.
- 1) *SMALL DOLLAR PURCHASES OF EQUIPMENT, SUPPLIES AND NON-PROFESSIONAL SERVICES*
Price or rate quotations must be obtained from at least 3 qualified sources. These quotations may be obtained over the telephone as long as the Grantee keeps a written record of the price quotations in the grant file. The contract should be awarded to the source with the lowest price quotation.
- 2) *PROFESSIONAL SERVICE CONTRACTS (LESS THAN \$10,000)* - Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least 3 firms that offer the type of service the grantee wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required if the professional service contract amount is less than \$10,000. The contract must be awarded solely on the basis of qualifications and cost.
- D) **PROCUREMENT THAT REQUIRES FORMAL BIDDING** - Procurement of equipment, non-professional services and construction contracts whose total cost is more than the local bidding limit (\$2,500 in most cases) must formally advertise for sealed bids or competitive proposals and a public bid opening in a newspaper of general circulation.

- 1) **ADVERTISEMENT REQUIREMENTS** - The invitation to bid must be published in a newspaper of general circulation at least 14 days prior to the public bid opening. To avoid delays, a Grantee may wish to publish the invitation for bids in the newspaper of the closest major city (Knoxville, Nashville, Memphis, or Chattanooga) to gain wider circulation and thereby increase chances of receiving at least 3 bids. The cost of publication is a reimbursable administrative expense.
- 2) **BID SOLICITATION** - Bid Solicitation must be a free, open competitive process. Every effort must be made to solicit minority and female businesses. The Grantee should not structure its procedures in order to keep business "in town". Absolute fairness must prevail in every aspect of the program, and any questions concerning conflict, or apparent conflict of interest should be discussed with THDA.
- 3) **BID SELECTION** - **A minimum of three (3) bids must be received.** Bids will be opened on the date and time previously established. A bid tabulation form will be prepared. The owner will select the lowest qualified bid. **THDA requires that the project be re-bid if there are not at least three (3) valid bids in response to the invitation for bids.**
 - a) If the project is re-bid and 3 bids still are not obtained, contact THDA for an exception to the 3 bid requirement. THDA may consider your project as a sole source procurement and/or allow you to award the contract with less than 3 bidders. **Written permission must be obtained from THDA before you may award a contract with less than three bids.**
 - b) Should the Grantee/owner decide to select a bid other than the lowest qualified bid, the Grantee/owner should state the reasons/justification in writing. If the owner's justification is not acceptable, the owner will be required to finance any rehabilitation amount that exceeds the lowest qualified bid through his/her personal resources.
 - c) The Grantee will reject a bid in instances where the bid exceeds the cost estimate by a percentage determined by the Grantee in its policies and procedures, unless a review of the cost estimate demonstrates an error. If a low bid is under the cost estimate, a meeting will be arranged with the contractor to assure that his cost is within reason and will allow him to satisfactorily complete the job. The homeowner will be advised if no acceptable bids are received on their house and the project will be re-bid.
- 4) **REBID OR CHANGES IN SCOPE** - If all bids exceed the amount of the construction budget, Grantees *may not* negotiate solely with the low bidder. The project can be re-bid or changed in scope. If the scope of the project is changed, then each bidder must be given the opportunity to bid again. Bidders must be informed that they have the right to change their original unit prices as long as they conform to the revised bid specifications. Grantees must maintain documentation to demonstrate that this process was followed.
 - a) **DEDUCTIBLE AND ADDITIVE ALTERNATES** - Bid specifications for construction projects may contain deductible alternates. By definition, a *deductible alternate* is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. The deductible alternates must not change the scope of the project. Bid specifications for construction projects may also

contain additive alternates.

- b) **DISQUALIFIED CONTRACTORS** – The Grantee must disqualify a contractor from bidding on projects when the contractor is listed on HUD’s Limited Denial of Participation and Voluntary Abstention List (the “Debarred List”).
- c) A Grantee may also disqualify a contractor from bidding on projects when:
 - (1) There is documented proof that the contractor has not paid material suppliers; or
 - (2) The contractor has not completed projects within the allotted time frame; or
 - (3) There exist complaints by property owners about quality of work and performance.

5) *PROFESSIONAL SERVICE PROCUREMENT (MORE THAN \$10,000)* - Professional service procurement procedures must be followed prior to the performance of any work by the professional service contractor to be paid with HOME funds. The Grantee may publicly advertise for proposals or solicit requests for proposals from at least 3 firms that offer the type of service the Grantee wishes to procure.

- a) Once the proposals have been received, the preferred method of review is by a committee of at least three people who have technical knowledge of the type of service being considered.
- b) The review, including the criteria for selection, should be thorough, uniform and well- documented. The reviewers should have no potential conflicts of interest with any of the firms or individuals under review (i.e., family relationships, close friendships, or business dealings).

2.5 - Preparation of Automatic Deposits Form and Authorized Signatures Form

A) AUTHORIZATION AGREEMENT FOR AUTOMATIC DEPOSITS - The Authorization Agreement for Automatic Deposits (ACH Credits - FM-1) tells the State to which financial institution the transfer of HOME funds should be sent. The ACH forms must be submitted directly to the State of Tennessee Finance and Administration Department. The address for return of the ACH form is included in the instructions for the document.

B) SIGNATURE AUTHORIZATION FORM - The Signature Authorization Form (FM-2) designates who is permitted to sign the community's "Request for Payment". It requires at least two signatures. These forms must be completed carefully with no erasures or corrections. Blank forms will be sent to you with your contract.

C) REVISIONS - If these forms need to be changed (e.g., using a different financial institution or staff members change) simply provide the State with copies of revised forms with original signatures.

D) RESUBMISSION - Grantees with previous HOME contracts must submit these forms again with each new contract.

2.6 - Program Disbursement and Information System

- A) **IDIS SYSTEM** - The HOME Investment Trust Fund account established in the U.S. Treasury is managed through a computerized disbursement and information system established by HUD. The computerized system manages, disburses, collects and reports information on the use of HOME funds. (For purposes of reporting in the Integrated Disbursement and Information System (IDIS), a HOME project is an activity.
- B) **PROJECT SET UP** - After THDA executes its HOME Agreement with HUD, complies with the environmental review requirements for release of funds, and submits the appropriate banking and security documents – to the appropriate agency, it may set-up (identify) specific investments in the disbursement and information system. Investments that require the set-up of projects are acquisition, new construction, or rehabilitation of housing. The State is required to enter complete project set-up information at the time of project set-up.
- 1) Grantees will enter the project-specific information on the Project Setup screen once the Grant Setup is fully completed and reviewed by THDA staff. The Grantee will then upload the Tiered Environmental site-specific checklist on the Document tab for each project in the appropriate upload location. If using a Tiered Environmental Strategy, the site specific checklist and back-up documentation must be submitted with the set-up for the Program Specialists to enter the data into IDIS.
 - 2) A project, which has been committed in the system for 12 months without an initial disbursement of funds, will also be automatically cancelled.
- C) **DISBURSEMENT OF HOME FUNDS** - After complete project set-up information is entered into the disbursement and information system, HOME funds for the project may be drawn down from the U. S. Treasury account by THDA by electronic funds transfer.
- 1) THDA will request HOME funds from the U.S. Treasury at the same time it requests funds from the State HOME account for transfer to the grantees.
 - 2) HOME funds drawn from Tennessee's U. S. Treasury HOME account must be expended for eligible costs within 15 days. Any funds drawn and not expended for eligible costs within 15 days of disbursement must be returned to HUD for deposit in THDA's U. S. Treasury HOME account.
 - 3) To draw down funds, a grantee must submit a Request for Payment Form (FM-4) with appropriate documentation. (See *Section 7: Requests for Payment* in this Chapter.)
- D) **PAYMENT CERTIFICATION** - As post-documentation of each drawdown of funds from the U.S. Treasury account, THDA or the state recipients with direct access to the disbursement and information system must keep in their project files a payment certification for each drawdown in the form of a HOME Voucher Request.
- E) **PROJECT COMPLETION REPORTS** - A Project Completion Report (FM-8/HR for Homeowner Rehabilitation Projects; FM-8/HB for Acquisition and Rehabilitation Projects; must be submitted

to HUD within 120 days of the final drawdown request for the project. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further project set-ups for the State or entitlement grantee. Project set-ups will remain suspended until a satisfactory Project Completion Report is received and entered into the system.

- F) **PROJECT REVISIONS** - Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount set by HUD.

2.7 - Requests for Payment

- A) **REQUEST FOR PAYMENT FORM** - HOME funds are requested by using the "Request for Payment Form" (FM-4). This form must be completely and accurately filled in or it cannot be processed. Consult TDA representative (HOME Manager, Senior Housing Coordinator, etc.) for further information and/or training.

- B) **SIGNATURES AND DOCUMENTATION** - The Request for Payment – (FM-4) must be signed by two people authorized to do so and accompanied by adequate documentation of the expenditures for it to be processed. Submit the original to THDA and retain a copy for your files.

1) For project set-up of rehabilitation projects, please include the following documentation; the project set-up form identifying total projected HOME costs (FM-3); the construction contract; work write-up (HO-6B), with each page initialed by the homeowner, and signed by the contractor and administrator; and the Status of Compliance with Lead-Based Paint Regulations (LBP-4) form and LBP inspection or risk assessment (if applicable).

a) If making an interim draw, please include the following documentation: the Request for Payment form (FM-4), Certification and Authorization for Interim Draw (FM-5). An interim draw of 50% of the contract amount is only permitted if 60% of the project is completed; invoices supporting hard and soft costs; change orders (if applicable) and the THDA approved progress inspection report (submitted by the RC).

b) If making a final draw, please include the following documentation: the Certification of Completion and Final Inspection (FM-7) with REQUIRED Certificate of Compliance or official document from the local codes official. In communities that have opted out of the state residential building codes program, a state certified inspector will conduct the final inspection and issue documentation stating code compliance; invoices supporting hard and soft costs and change orders (if applicable); if lead hazards were identified a lead clearance report and the LBP-3 is required. Please also submit the executed Deed of Trust and the FM-8 closeout report.

2) For draws to reimburse administrative costs, invoices or other acceptable methods of documenting the cost of administration must be submitted. This documentation must support the charges without question.

a) Any salaries being charged to the grant must be listed with inclusive payroll dates, name of employee, percentage of time spent on HOME and the amount of each salary charged. For local governments, time sheets should be maintained at the locality to support these costs. DO NOT submit time sheets with the Request for Payment. CHDO's, however are required to submit time sheets with the Request for Payment.

b) Any salaries or consultant billings must be further documented by task performed. A suggested format is the Detail of Administrative Costs (FM-6). Claims for time spent on administrative activities will NOT be paid without this documentation.

c) Other documentation of administrative costs must be submitted (e.g., telephone bills, supply invoices, travel claims).

d) Ten percent (10%) of administrative funds may be requested to cover start-up costs, then reimbursement for administrative expenses will only be made in proportion to the drawdown of program funds.

e) All travel and per diem costs to be charged to HOME must conform to the Comprehensive Travel Regulations of the State of Tennessee. If you do not have a copy of the current travel regulations, one may be obtained from your Program Specialist.

C) **TIMEFRAME FOR PAYMENTS** - If the request is in order and can be approved, allow thirty working days after THDA receives the request for F&A to process your direct deposit. If the request is not in order, you will be contacted to correct the deficiencies.

D) **PAYMENT LIMITATIONS** – Drawdowns should only be made in amounts necessary to meet current disbursement needs. Current disbursement needs are those funds that will be expended for eligible costs within fifteen days of THDA drawing the HOME funds from the U.S. Treasury. Any funds that are drawn down and not expended for eligible costs within the 15 days must be returned to the Treasury and any interest earned after 15 days must also be remitted to the Treasury.

2.8 – HOME Program Income (92.2 and 92.503)

A) **DEFINITION OF PROGRAM INCOME** - Program income means gross income received by the State or its Grantees (excluding CHDOs) which is directly generated from the use of HOME funds (including HOME program income) and matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds or match used. Program income includes, but is not limited to:

- 1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
- 2) Gross income from the use or rental of real property, owned by the State or its Grantees (excluding CHDOs), that was acquired, rehabilitated, or constructed with HOME funds or matching contributions, less costs incidental to generation of income.
 - a) Rental income from property owned by entities other than the State or its Grantees does not constitute program income;
- 3) Payment of principal and interest on loans made using HOME funds or matching contributions;
- 4) Proceeds from the sale of loans made with HOME funds or matching contributions;
- 5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
- 6) Interest earned on program income pending its disposition; and
- 7) Any other interest or return on the investment permitted under 92.205(b) of HOME funds or matching contributions. (Note: This does not include recaptured funds, repayments or CHDO proceeds).
- 8) Income generated by a project that is funded with program income, is also HOME program income. The Final Rule at 24 CFR 92.2 defines "HOME funds" as funds made available through allocations and reallocations, *plus program income*.
- 9) Interest earned on funds in the State's local HOME account or on HOME funds retained by Grantees (excluding CHDOs) also constitutes HOME program income.

B) ACCOUNTING FOR PROGRAM INCOME - Grantees must maintain records which adequately identify the source and application of their HOME funds, including program income, as part of the financial transactions of their HOME program in accordance with 24 CFR part 85.20 or 24 CFR 84.21, as applicable.

- 1) Grantees are not required to identify program income by program funding year. However, the Grantee must be able to identify which projects generate program income and which projects receive program income, including the amount.
- 2) When program income is generated, reporting on the amount, date received, identification of the housing units and any usage of program income must be submitted to THDA at reasonable intervals.
- 3) A Grantee must also be able to reasonably predict anticipated program income during the next program year. Thus, a Grantee's financial management system should enable the Grantee to track program income receivable.

C) DISBURSEMENT OF PROGRAM INCOME - Program income that is deposited into a Grantee's

(excluding CHDOs) local HOME account must be used before additional HOME allocation funds are drawn down from the State. A Grantee may not allow program income to accumulate in its local account. Available program income must be used to pay the next eligible program cost (or portion thereof). Under IDIS this is known as “first in, first out” or “fifo”.

- 1) Grantee’s receiving program income must report their cash balances of program income to THDA. THDA will then reduce the next draw for that Grantee by the amount of program income on hand. If program income has not been reported to THDA, future pay requests will not be processed for payment.
- 2) A Grantee must give careful attention to its program design and management to ensure that it is able to expend any program income generated and its HOME allocation within the timeframe of its HOME contract.

D) **USE OF PROGRAM INCOME** - In accordance with 24 CFR 92.503(a)(1), the State as the participating jurisdiction may authorize a Grantee to retain program income for additional HOME projects pursuant to the Written Agreement.

- 1) Any program income generated must be disbursed before receiving additional HOME funds. Upon expiration of the Written Agreement, any program income on hand, as well as any future program income (accounts receivable), must be returned to the State as the participating jurisdiction, as specified in the Written Agreement.
- 2) HOME program income must be used for HOME eligible activities, and all HOME program rules and requirements apply to the program income. The amount of program income must be included when calculating the total amount of HOME assistance for the purposes of allocating costs (24 CFR 92.205(b)) and designating HOME-assisted units (24 CFR 92.242(j)).
- 3) The amount of assistance provided by program income must also be included in determining the maximum per unit subsidy (24 CFR 92.250(a)); subsidy layering (24 CFR 92.250(b)); additional rental limitations (24 CFR 92.252(b)); affordability periods for rental housing (24 CFR 92.252(e)); and applicable affordability periods for homeownership (24 CFR 92.254).
- 4) The HOME program does not permit the establishment of a Revolving Loan Fund. However, when a Grantee administers only one HOME activity (such as a rehabilitation loan program or a homeownership program) and the State has authorized the Grantee to retain the program income by contractual arrangement, the activity may operate in a manner similar to a revolving loan fund. In those cases, the program income is deposited directly into the Grantee’s HOME account to be used to fund additional HOME projects. The HOME regulations do not allow the State to authorize the establishment of multiple HOME accounts for the same Grantee in order to create a “de facto” revolving loan fund.

E) **PROCEEDS FROM CHDO PROJECTS** - In accordance with the options given in the HOME Final Rule at 24 CFR 92.300(a)(2), the State as the participating jurisdiction permits CHDOs to retain any proceeds resulting from the CHDO’s investment of its HOME grant.

- 1) Proceeds which the CHDO is permitted to retain are not HOME program income and,

therefore, are not subject to the HOME requirements, except as described below. Once CHDO proceeds are used, there are HOME requirements which must be met. Funds generated from the use of CHDO proceeds are not CHDO proceeds.

- 2) Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds.

F) **USE OF CHDO PROCEEDS** - The CHDO must use any CHDO proceeds which it is authorized to retain for HOME-eligible or other housing activities to benefit low-income families.

- 1) The CHDO may use up to 5% of its proceeds to pay administrative or operating costs. CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). Thus, the Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds.
- 2) HOME requirements continue to apply as long as a CHDO receives and uses CHDO proceeds, even if the CHDO proceeds are received or used after the Written Agreement has expired.
- 3) When CHDO proceeds are used, reporting on the amount, date received, identification of the housing units and any usage of CHDO proceeds must be submitted to THDA. Refer to paragraph 8.5 (1) above. The Grantee's financial management system must enable the CHDO to track CHDO proceeds.

G) **RECAPTURED FUNDS** – Recaptured funds are HOME funds which are recouped by the Grantee whom HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a)(5)(ii). In accordance with 24 CFR 92.503(c), THDA requires that recaptured funds must be returned for deposit in the State's HOME Investment Trust Fund local account, unless the State permits the Grantee to retain the recaptured funds pursuant to the Working Agreement required by 24 CFR 92.504.

CHAPTER THREE – ENVIRONMENTAL REVIEW

3.1 – Overview

- A) The HOME Rule (Section 92.352) requires that the environmental effects of each activity carried out with the HOME funds be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58. The assessment is conducted considering HUD's and other federal laws covering areas such as noise, air quality, historic properties, floodplains, wetlands, water quality, solid waste disposal, man-made hazards, farmlands protection, wild and scenic rivers, coastal areas and endangered species. Refer to <https://www.hudexchange.info/environmental-review/> for a copy of the environmental regulations.
- B) The applicable level of environmental review is based upon the type of HOME project or activity (e.g., new construction, rehabilitation, acquisition, disposition), not the particular cost(s) paid with HOME funds. For example, if HOME funds are provided for down payment assistance but the property does not meet property standards and requires rehabilitation, the environmental review must be based upon the rehabilitation activity, regardless of the source of funds for the rehabilitation. Refer to sec. 58.32 regarding aggregating related activities for purposes of an environmental review.

3.2 – Responsibility for the Environmental Review

- A) **LOCAL GOVERNMENTS** – The environmental review procedures as outlined in 24 CFR Part 58 require that units of general local governments such as cities and counties assume the responsibility for the environmental review including public notifications and request for the release of HOME funds by the state, as required. This role is referred to as the Responsible Entity (RE).
- B) **NON-PROFIT AGENCIES (AS INVOLVED PARTIES)** – For non-profit agencies, including Community Housing Developments (CHDOs), the state as a participating jurisdiction will be the Responsible Entity (RE) for the environmental review. However, the state will depend on the non-profit agency/CHDO to gather the necessary information and publish the required notices with the assistance of the state. Only the state can certify that the environmental review requirements have been met and will be responsible for requesting a release of funds (RROF) from HUD/Knoxville for each non-profit agency/CHDO.

3.3 – Limitations Pending Clearance

- A) According to NEPA and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. The RE or other involved parties such as nonprofits and contractors may not commit or expend resources, either public or private funds (HUD, other Federal, or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until environmental clearance has been achieved. Environmental clearance may sometimes include public notification and receiving state/HUD approval. Consequently, the RE/involved parties must avoid any and all actions that would preclude the selection of alternative choices or could have an adverse

impact before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore, and enhance the human environment (i.e., the natural, physical, social, and economic environment).

B) For the purposes of the environmental review process, “commitment of funds” includes:

- 1) Execution of a legally binding agreement;
- 2) Expenditure of HOME funds;
- 3) Use of non-HUD funds on actions that would have an adverse impact – e.g., demolition, dredging, filling, excavating; and
- 4) Use of non-HUD funds on actions that would be “choice limiting,” such as, acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures; conversion of land or buildings/structures.

C) Prior to completion of the environmental review processes and receiving THDA or HUD approval, when required, the RE/involved party may enter into a **non-binding agreement to conditionally commit HOME funds** to a specific project– i.e., a contractual agreement between the RE and project participant to use a specific amount of HOME funds to produce affordable housing, or an executed written agreement with a CHDO committing a specific amount of its set- aside funds. The *conditional commitment* must incorporate language that will ensure the project participant does not have a legal claim to any amount of HOME funds to be used for the specific project or site until the environmental review process is satisfactorily completed. In addition, the agreement must explicitly state that the agreement to provide funds to the project is conditioned on the RE’s determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. (See HUD Notice CPD-01-11 for suggested agreement language.)

D) Other types of actions that are not considered a commitment of funds for purposes of Part 58 compliance are:

- 1) Statements of funding reservation (such as an approval of Consolidated Plan or annual action plan), planning for and reserving non-HUD funds (including tax credits for a HUD- funded project), and CHDO agreements that are not project specific.
- 2) Agreements to obtain site control, such as an option agreement (i.e., exclusive right of the buyer to purchase a property at a specific price within a specified time period without obligation to purchase) OR for acquisition of existing single family and multifamily residential buildings, a non-legally binding agreement that establishes that there is no obligation on the part of the buyer to purchase the property, that acquisition will proceed only if the property is determined environmentally acceptable, and the deposit is a reasonable amount and refundable or, if not refundable, is a nominal amount of the purchase price. Refer to HUD memo, “Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58,” August 26, 2011.
- 3) If the RE/involved parties is considering an application from a prospective project participant and is aware that the participant is about to take an action that is prohibited by Part 58, then the RE/involved party must take appropriate action to ensure that the objectives and procedures are met.

- E) NEPA and Part 58 are achieved [§ 58.22(c)]. The RE/involved party is ultimately responsible for establishing internal controls to enforce compliance with NEPA and Part 58.

3.4 – Environmental Review Requirements

- A) **OVERVIEW** - The environmental review process should be initiated as soon as the proposed activities are determined. Environmental review expenses are usually considered as administrative costs under THDA's HOME Program. Private citizens and organizations can object to the release of funds for HOME projects on certain procedural grounds relating to the environmental review. Therefore, it is important that all procedural requirements be met.

B) **ENVIRONMENTAL REVIEW RECORD**

- 1) *Contents* – Each RE/involved party must prepare and maintain a written record of the environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review. The ERR shall contain all the environmental review documents, public notices, written determinations or environmental findings required by 24 CFR Part 58 as evidence of review, and decision making and actions pertaining to a particular project. The ER must:

- a) Describe the project and each of the activities comprising the project, regardless of individual activity funding source;
- b) Evaluate the effects of the project or the activities on the human environment;
- c) Document compliance with applicable statutes and authorities; and
- d) Record the written determinations and other review findings required by 24 CFR Part 58.

The ERR will vary in length and content depending upon the level of review required for the categories of activities. The basis for determinations, public comments and appropriate resolution by the RE/involved party are extremely important and must be fully documented in the ERR.

C) **RESPONSIBILITIES**

- 1) *Local Governments* - The city or county, acting as the RE, must maintain the original written record of the environmental review (ERR) undertaken under 24 CFR Part 58 for each project and the ERR must be made available for public review and comment. A copy must be sent to THDA with the Request for Release of Funds (RROF).
- 2) *Non-Profit Agencies* - Non-profit agencies and CHDO's (involved parties) must send the original ERR to THDA and maintain a copy for their files.

- D) **PROJECT AGGREGATION** - According to Section 58.32, the state or local governmental units must group together and evaluate, as a single project, all individual activities that are related either geographically or functionally, or are logical parts of a composite of contemplated actions.

- 1) When grouping activities, keep in mind that several sites, each requiring some degree of environmental review, may actually be considered one HOME project. The preparer would be

well served if it grouped HOME activities by common locations and functions, and project phasing. Some environmental factors can be considered on a project-wide basis while others will require site-by-site analysis (refer to “Tiering” in Section 4.5 below).

E) **LEVELS OF REVIEW** - There are six categories into which projects may be classified for environmental review: Exempt; Categorically Excluded Not Subject to 24 CFR 58.5; Categorically Excluded Subject to 24 CFR 58.5; Categorically Excluded Activities Converted to Exempt Activities; Environmental Assessment; and Environmental Impact Statement. It is anticipated that nearly all HOME projects will be classified as categorically excluded or requiring an environmental assessment. If there is a question about determining the appropriate level of review, contact THDA.

1) *Exempt Activities* (24 CFR 58.34(a)(1)-(11)) - These activities require minimal compliance documentation. Exempt activities include:

- a) Environmental and other studies, resource identification and the development of plans and strategies;
- b) Information and financial services;
- c) Administrative and management activities;
- d) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, and welfare or recreation needs;
- e) Inspections and testing of properties for hazards and defects;
- f) Purchase of insurance;
- g) Engineering or design costs;
- h) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities, necessary only to control or arrest the effects from disasters or imminent threat to public safety including those resulting from physical deterioration; and
- i) Any of the categorical exclusions listed in 58.35(a) provided there are NO circumstances that require compliance with ANY other Federal laws and authorities cited in 24 CFR 58.5). (See #4 below.)

The Grantee is not required to undertake a NEPA level review or document that the activities comply with other Federal laws and authorities found at §58.5. Additionally, no public notices are published and a Request for Release of Funds and Certification (ER-14) is not submitted to THDA. *The Grantee must document its determination that the activity is exempt from the §58.5 authorities and place the document into the Environmental Review Record.*

F) **CATEGORICALLY EXCLUDED ACTIVITIES NOT SUBJECT TO § 58.5 AUTHORITIES** (24 CFR 58.35(b)) – HUD has determined that certain Categorically Excluded activities would not alter any conditions that would require an environmental review or compliance determination under Federal laws and authorities cited in §58.5.

- 1) Examples of activities that are categorical exclusions not subject to §58.5 (CENST) include the following:
 - a) Activities to assist homebuyers to purchase **existing** dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title.
 - (1) **Warning: Homebuyer assistance *for units NOT already under construction* must be treated as a categorical exclusion subject to §58.5 requiring compliance with the authorities cited in §58.5.**
 - b) Housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact.
 - (1) These activities require minimal compliance documentation. The Grantee is not required to undertake a NEPA level review or document that the activities comply with other Federal laws and authorities found at §58.5. Additionally, no public notices are published and a Request for Release of Funds and Certification (ER-14) is not submitted to THDA. *The Grantee must document its determination that the activity is a categorical exclusion not subject to §58.5 authorities, and place the document into the Environmental Review Record.*
 - (2) However, activities or projects that are determined to be categorical exclusions not subject to §58.5 must comply with the provisions of §58.6 for special flood hazard area, coastal barrier resources systems and run way clear zones or clear zones (ER-16).
- G) **CATEGORICAL EXCLUSIONS SUBJECT TO §58.5** (24 CFR 58.35(a)) - A category of actions that do not individually or cumulatively have a significant effect on the human environment. Categorical Excluded Subject to §58.5 activities (CEST) typically replace or improve existing facilities or structures, i.e., they retain the original usage of a structure or facility; do not increase the size or unit density of the structure or facility being improved by more than 20 percent; do not change land use (e.g., commercial to residential); and in the case of rehabilitation, the cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. Examples of CEST activities are as follows:
 - 1) Rehabilitation of an existing building and improvements when the following conditions are met:
 - a) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or a wetland.
 - b) In the case of multifamily residential buildings: (1) unit density is not changed more than 20%; (2) the project does not involve changes in land use from residential to non-residential; and (3) the estimated cost of the rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.
 - c) An individual action, such as new construction, major rehabilitation, moving or demolition, or disposition, on a one-to-four family dwelling. [New construction of five or more units located within 2,000 feet of each other undertaken as a single action (e.g., a subdivision), is not CEST and requires an Environmental Assessment].

- d) CEST activities require the completion of a "compliance determination" review using a "statutory checklist format." This format lists ten Federal laws and authorities found in §58.5. The proposed activity is reviewed to determine whether it complies with the requirements of the Federal laws and authorities. If the proposed activity triggers any of the Federal law and authority reviews, e.g., E.O. 11988, "Floodplain Management," the specific review must be completed before the "compliance determination" can be considered finished. Section 5.2, that follows, outlines the steps to review a CEST project.
 - e) Activities or projects that are determined to be CEST must also comply with the provisions of §58.6 for special flood hazard areas, coastal barrier resource systems and runway clear zones or clear zones.
- 2) *Categorically Excluded Activities Converted to Exempt Activities* (24 CFR 58.34(12)(a) - Activities that are listed in §58.35(a) (1)-(6) as categorical exclusions may be converted into exempt activities provided all the following conditions are met:
- a) The Grantee completes a compliance determination under the Federal laws and authorities cited in §58.5 for the proposed activity;
 - b) The Grantee concludes that no circumstances exist where any of the Federal laws and authorities require compliance; and
 - c) The Grantee documents its conclusions on the compliance review form (statutory checklist) and places it in the Environmental Review Record (ERR). No public notices need to be published and no Request for Release of Funds (RROF) and Certification is submitted to THDA. The Grantee documents that the activity did not trigger compliance with any Federal laws and authorities and, consequently, the activity was converted into an exempt activity. All documents must be placed in the ERR and a copy sent to THDA.
- 3) *Environmental Assessments (EA)* (24 CFR §58.36) - Activities that cannot be determined to be Exempt under §58.34 or Categorically Excluded from NEPA under §58.35, or which involve a categorical exclusion with "extraordinary circumstances" under §58.2(a) (3), require that a full Environmental Assessment be conducted. While an EA addresses the same Federal Laws and Authorities as those found in a Compliance Determination (Statutory Checklist) review, it also includes the following analysis:
- a) Determines existing conditions;
 - b) Identifies, analyzes and evaluates all potential environmental impacts;
 - c) Examines and recommends feasible ways to eliminate or minimize adverse environmental impacts;
 - d) Examines alternatives to the project;
 - e) Includes a compliance determination for all other Federal laws and authorities cited in §58.5 and §58.6; and
 - f) Leads to a RE's Finding of No Significant Impact (FONSI) or a Finding of Significant Impact (FOSI) which will require the execution of an Environmental Impact Statement (EIS).

- g) An EA, using an Environmental Assessment Format, is normally required for five or more units if the sites are 2,000 feet apart or less and/or there are more than four units on a site. This includes:
 - (1) New construction of five or more residential units;
 - (2) Major rehabilitation and reconstruction of five or more residential units;
 - (3) Conversion of non-residential land use to residential land use; and
 - (4) Acquisition of vacant land for development when five or more units are involved.
- 4) Upon completion of the environmental assessment, the Grantee will make either a **Finding of No Significant Impact (FONSI)**, or a **Finding of Significant Impact (FOSI)** determination.
 - a) If a FONSI is made, the RE/involved party will follow the steps outlined in Section 5.3 of this Chapter.
 - (1) In the event that a FOSI is made, the Grantee must initiate an Environmental Impact Statement (EIS) in accordance with Subparts F and G of Part §58. *Please contact THDA for guidance if this is the case.*
- 5) Activities or projects that require an EA must also comply with the provisions of §58.6 for special flood hazard area, coastal barrier resources systems and runway clear zones or clear zones.
- H) **TIERED STRATEGY** - For some projects it is not possible or feasible to identify the exact physical location of an activity until property owners submit an application for funding assistance. This review process may be streamlined by completion of an environmental assessment county-wide, city-wide or by target neighborhood(s). Information in a data base could be used to complete most of the information required for the checklists. The environmental assessment would describe typical impacts regardless of the specific site and make appropriate determinations regarding such known information. A site specific strategy would then also be developed to include criteria or standards for determining the impact and the need for mitigation measures at each site during the operation of the program as specific sites become known.
 - 1) A checklist must be developed and completed on a site specific basis to document compliance with all of the remaining areas not cleared on a geographical basis. For example, Historic Properties, Floodplain Management and Noise typically cannot be cleared until sites are identified, so these areas would be included on the site specific checklist.
 - 2) Although funds may be released based upon the submittal of the environmental review record at the beginning of the project, individual site specific checklists with the appropriate back-up documentation must accompany the first pay request to THDA on each property assisted.
 - 3) There is special language to insert in the Concurrent or NOI/RROF notices relating to the use of a tiered strategy. See Publication of Notices in Section X below.

- I) **FLOODPLAIN AND WETLANDS ACTIVITIES** - For projects located in a floodplain or a wetland, THDA will follow the 24 CFR Part 55 under the HOME Final Rule (Federal Flood Risk Management Standard). 8-step process and elevation requirements triggered for area subject to flooding based on at least one of the following:

- 1) **Climate-Informed Science Approach (CISA)**
- 2) **0.2-Percent-annual-chance Flood Approach – All new construction and substantial improvements in the 500-year floodplain and 100-year floodplain trigger 8-step and elevation requirements**
- 3) **Freeboard Value Approach (FVA)**

Remember that it is THDA policy not to rehabilitate, reconstruct, or construct homes located in a floodplains without site specific consultation with THDA regarding proper mitigation measures.

Additional guidance may be found at:

<https://www.hudexchange.info/environmental-review/floodplain-management>.

- 4) In rare instances, requests may be made to THDA to conduct projects in a floodplain. If the project is for minor repairs or improvements for one to four family properties, the 8-step decision-making process and special notices do not apply (see 24 CFR Part 55.12(b)(2)). However, for substantial rehabilitation, acquisition and/or new construction the 8-step decision-making process does apply and must be documented. The 8 steps are:
 - a) Determine if the project or activity is in the floodplain.
 - b) If the project is in the floodplain, publish the require notice in a local newspaper to make the public aware of the project and 8-step process. (See ER-1 for a sample Early Public Notice with a 15 day comment period).
 - c) Determine if there is a practical alternative.
 - d) Identify adverse impacts.
 - e) Identify methods to be used to minimize, restore and preserve the floodplains/wetlands.
 - f) Re-evaluate alternatives.
 - g) Announce and explain decision to the public. The grantee must publish a Notice of Explanation (see ER-2) in the local newspaper if the only practical alternative is to locate the project or activity(ies) in the floodplain. The reason for this decision and the alternatives considered must be included in this Notice. It may be published at the same time as the NOI/RROF or the Concurrent Notice.
 - h) Implement the project or activity(ies) with appropriate mitigation.
- 5) The community must participate in the National Flood Insurance Program (NFIP), and flood plain insurance is required of the property owner.
- 6) REs may complete a 3-step process for construction projects that occur in wetland (rather than the 8-step process) provided that the applicant submits a Sec. 404 permit they have received from the U.S. Army Corps of Engineers at the time they submit an application for HOME funds. However, if the project is also within a floodplain, then the 8-step process applies instead.

3.5 – Environmental Review Process

A) **DETERMINE REVIEW LEVEL** - Once a project has been selected and its components defined, (See Project Aggregation), a determination must be made as to whether the project is exempt, Categorically Excluded or requires an environmental assessment. Exhibit ER-3 is a checklist for Environmental Review requirements which is to be included in the ERR. Contact THDA if there are any questions regarding the level of review required.

B) **STEPS TO REVIEW A CATEGORICALLY EXCLUDED PROJECT SUBJECT TO §58.5**

1) *Statutory Checklist* - The Statutory Checklist (ER-4) includes a listing of applicable statutes and regulations by area of compliance. A specific source must be documented for each area, identifying who or on what basis the decision was made on the degree of impact and when the decision was made. The degree of impact for each of the 14 areas must be assessed as either Status A or Status B.

a) Status A: After conferring with appropriate authorities, the project does not affect the resource in question. Document the determination made and the sources of information used.

b) Status B: After conferring with appropriate authorities, it is determined that the project triggers formal compliance consultation with the oversight agency for mitigation or affects the resource. Any compliance documentation should also be attached to the Checklist and included in the ERR.

2) *Historic Properties* - The National Historic Preservation Act (NHPA) extends significant protection to properties that are listed on the National Register of Historic Places and to those that are eligible for listing. Section 106 of the Act requires approving officials to examine all properties in the area of a rehabilitation or project site to determine if the property itself or a surrounding property is listed on or eligible for listing on the National Register of Historic Places. The determination process must include consultation with the State Historic Preservation Office (SHPO) and tribes to obtain any information they might have concerning a particular area or property. **Documentation of the Section 106 review must be completed prior to the approval of the expenditure of any Federal funds.**

There are two (2) possible findings that can be made in consultation with the SHPO:

a) NO EFFECT - There is no effect of any kind on historic properties. The grantee may proceed with the project or activity.

b) ADVERSE EFFECT - There could be a harmful effect to a historic property. The grantee must begin the consultation process with the Advisory Council. This process usually results in a Memorandum of Agreement (MOA). The project may continue subject to the terms of the MOA.

The grantee must communicate directly with SHPO and THPO to obtain the concurrence with its determination and any supporting documentation such as the MOA. The letter must be included in the ERR submitted to THDA, whether in a site specific strategy or in a tiered strategy.

C) *Floodplain Management* – It is THDA policy not to rehabilitate, construct or reconstruct housing in a floodplain without an approved mitigation plan. THDA will follow the 24 CFR Part 55 under the HOME Final Rule (Federal Flood Risk Management Standard). 8-step process and elevation requirements triggered for area subject to flooding based on of the following:

1) **Climate-Informed Science Approach (CISA)**

2) **0.2-Percent-annual-chance Flood Approach – All new construction and substantial improvements in the 500-year floodplain and 100-year floodplain trigger 8-step and elevation requirements**

3) **Freeboard Value Approach (FVA)**

Remember that it is THDA policy not to rehabilitate, reconstruct, or construct homes located in a floodplains without site specific consultation with THDA regarding proper mitigation measures.

- 4) This area is identified by either CISA, 0.2 Percent Annual-Chance Flood Approach, or FVA. These areas are expected to flood at least once every five hundred years. A set of maps may generally be found with local Building Official or Public Works Department. The Regional State Planning Office will also have the maps. Refer to the map panel number/date on the Statutory Checklist. (See Section 4.6 above on floodplain activities.)

- a) Documentation – Grantees are to select Status A or Status B for the condition that best describes their project and document the source of the information.

(1) **Status A:** The grantee provides THDA with documentation that the property is not located within the Special Flood Hazard Area or is “minor repairs or improvements” on 1-4 units, according to 24 CFR 55.12(b)(2). The documentation should cite the map panel number of the official maps issued by FEMA on the basis of which the findings were made.

(2) **Status B:** The grantee provides THDA with a finding that the property is located within the Special Flood Hazard Area and has completed the 8-step process, according to 24 CFR 55.20. To make a floodplain finding, the grantee would use maps issued by the Map Service Center.

- 5) **Wetlands Protection** - It is THDA’s policy not to rehabilitate, reconstruct or construct houses in a floodplain or wetlands. The eight-step process applicable to floodplain activities also applies to projects in a wetland. Note: Under certain circumstances a three-step process may apply in accordance with revised 24 CFR Part 55 rule. The grantee must determine that the proposed project will not have an impact on the wetland, pursuant to E.O. 11990.

Executive Order 11990 requires Federal agencies to avoid adverse impact to wetlands, to the extent practical. As primary screening, grantees must verify whether the project is located within wetlands identified on the National Wetlands Inventory (NWI) or else consult directly with the Department of Interior- Fish and Wildlife Service (FWS) staff. If there is no alternative to the proposed action for new construction in wetlands, *and THDA has granted an exception*, then all practicable measures to minimize harm to wetlands must be taken.

New construction is defined as, "draining, dredging, channelizing, filling, diking, impounding and related project construction activities affecting wetlands." Thus while most rehabilitation activities will not be subject to E. O. 11990, if any change to the grounds are contemplated, then these actions may trigger the E. O. 11990 requirements.

- a) Documentation – Grantees are to select Status A or Status B for the condition that best describes their project and document the source of the information.

(1) **Status A:** The grantee provides THDA with documentation that the project is not within a designated wetland or will not result in an adverse impact to wetlands. These findings

should cite the map panel number of the official maps issued by NWI.

- (2) **Status B:** The grantee provides THDA with a finding that the project will impact wetlands, and has completed the eight-step decision making process. To make a wetlands finding, the grantee would use maps issued by the Department of the Interior (DOI) for the National Wetlands Inventory. Other sources include the Army Corps of Engineers and the Water Pollution Control Division of the Tennessee Department of Environment and Conservation.
- 6) *Coastal Zone Management* – Coastal zones include coastal salt waters and shore lands; intertidal areas; barriers and other islands; estuaries; and land whose use would have significant impact on coastal waters. There are no coastal zones in Tennessee according to the National Oceanic and Atmospheric Administration Office of Ocean and Coastal Resource Management (OCRM). Status A is checked on the Statutory Checklist.
- 7) *Sole Source Aquifers* - This is the sole or primary source for drinking water derived from ground water. There are no sole source aquifers in Tennessee, according to the U. S. Environmental Protection Agency, Region 4, Water Protection Division. Status A is checked on the Statutory Checklist.
- 8) *Endangered Species* – The Endangered Species Act (ESA) of 1973 requires protection of listed or proposed endangered or threatened species or critical habitats. Projects that can affect listed endangered or threatened species or critical habitats require consultation with the Department of Interior in compliance with the procedure of Section 7 of the ESA. *Only for new construction or conversion activities does the ESA authority apply.* It is not anticipated that housing rehabilitation will have an impact on Endangered Species. Listed endangered and threatened species and habitats may be found at: <http://www.fws.gov>
 - a) DOCUMENTATION – Grantees are to select Status A or Status B for the condition that best describes their project and document the source of the information.
 - (1) **Status A:** If the grantee proposes new construction or conversion activities, the grantee provides THDA with a finding made by a qualified data source, such as the U. S. Fish and Wildlife Service or Tennessee Wildlife Resources Agency, that the project is not likely to affect any listed or proposed endangered or threatened species or critical habitat. The finding shall indicate whether the project is located within a critical habitat, and if so, why the project is not likely to affect the species or habitat.
 - (2) **Status B:** If the grantee proposes new construction or conversion activities that are likely to affect listed or proposed endangered or threatened species or critical habitat, the grantee provides THDA with a statement from a qualified data source explaining the likely effect, and/or a finding made by the Fish and Wildlife Service of the Department of the Interior that state as acceptable, the proposed mitigation that the grantee must provide to protect any affected endangered species or critical habitat.
- 9) *Wild and Scenic Rivers* – HUD-assisted activities are subject to the requirements of the Wild and Scenic Rivers Act (U.S.C. 1271 et seq.). New construction of undeveloped land for water resources projects (i.e., water and sewer lines, water retention ponds, etc.), which are proposed in areas within one mile of a listed wild and scenic river, have the potential for impacting this natural resource. It is not expected that the housing rehabilitation will have an impact on rivers designated on the Nationwide Rivers Inventory by the U.S. Department of the Interior, National Park Service. See

- a) **DOCUMENTATION** – Grantees are to select Status A or Status B for the condition that best describes their project and document the source of the information.
- (1) **Status A:** The grantee provides THDA with documentation from a qualified data source that the project is not located within one mile of a listed wild and scenic river or the project will not have an effect upon the natural, free flowing or scenic qualities of such a river.
- (2) **Status B:** The project is located within one mile of a listed wild and scenic river and the Department of the Interior, National Park Service, indicates that the project, as proposed, will have an effect upon the natural, free flowing or scenic qualities of the river.
- 10) *Air Quality* - The grantee must determine whether the project is within a “non-attainment” or “maintenance” area identified in the air quality State Implementation Plan (SIP). The location of areas designated by U.S. EPA as polluted under the Clean Air Act are documented in the U. S. EPA Nonattainment Area List, which should be available at state environmental protection offices or regional U.S. EPA offices.
- a) The Clean Air Act (U.S.C. 7401 et seq.) prohibits federal assistance to projects that are not in conformance with the SIP. New construction and conversion, which are located in “non-attainment” or “maintenance” areas as determined by EPA may need to be modified or mitigation measures developed and implemented to conform to the SIP.
- b) **DOCUMENTATION:** - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.
- (1) **Status A:** The grantee provides the State with a finding from a qualified source which states that the project is not located in a non- attainment” or “maintenance” area of the SIP.
- (2) **Status B:** The proposed project is located in a “non-attainment” or “maintenance” area and a written determination by the state environmental office will be made whether the project is in conformance with SIP.
- 11) *Farmlands Protection* – The location of prime agricultural land may be determined using maps available from the Natural Resources Conservation Service (NRCS), as well as U.S. Census Urbanized Area maps and USGS topographic maps.

A finding of compliance with the requirements of the Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) must be made for HUD-assisted new construction activities and the acquisition of undeveloped land. It is not anticipated that housing rehabilitation will convert farmlands to nonagricultural uses. The definition for farmland is:

PRIME FARMLAND - Land having the best combination of physical characteristics for crop production.

UNIQUE FARMLAND - Land other than prime, with the capacity to produce specific high value food and fiber, e.g., citrus fruits, olives, etc.

- a) **DOCUMENTATION:** - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.

- (1) **Status A:** The grantee provides the THDA with a finding from the local planning agency which states that the proposed project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the Department of Agriculture, Natural Resources Conservation Service (NCRS), or the project site includes prime farmland but is located in an area committed to urban development or water storage. Additional sources of contact are the USDA's District Conservationist or the State Soil Conservation Service.
 - (2) **Status B:** The proposed project site includes farmland and the grantee has requested an evaluation of land type from NRCS using form AD 1006 and has provided the resultant rating to THDA.
- 12) *Environmental Justice* – Environmental Justice (EJ) means ensuring that the environment and human health are fairly protected for all people, regardless of race, color, national origin, or income. Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”, applies in low-income or minority neighborhoods where the grantee proposes the acquisition of land for development, and new construction. Environmental justice issues may include, but are not limited to, new, continued, or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations. The grantee will need to determine if the site or neighborhood suffers from disproportionate adverse human health or environmental effects relative to the community at large.

See <https://www.hudexchange.info/environmental-review/environmental-justice> for guidance on making determinations and documentation. Other sources of documentation may include local planners and public officials.

- a) **DOCUMENTATION:** - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.
 - (1) **Status A:** The grantee provides the THDA with a finding from a qualified source with a finding that the project is not likely to raise environmental justice issues.
 - (2) **Status B:** The project is likely to raise environmental justice issues and has the potential for new or continued disproportionately high and adverse human health and environmental effects on minority and low-income populations. The grantee must consider mitigation or avoidance of adverse impacts from the project to the extent possible.
- 13) *Noise Abatement and Control* – The location of site and noise generation near sites which are noisy include major roads, railroads, industrial plants, etc. Traffic maps and land use maps from highway departments, planning agencies, railroads, and airport authorities may document such noise generators.

The Environmental Planning Division of HUD has developed a guidebook as well as an electronic assessment tool that calculates the Day/Night Noise Level (DNL) from roadway and railway traffic. This is a web-based application of the existing Noise Assessment Guidelines (NAG).

See <https://www.hudexchange.info/environmental-review/noise-abatement-and-control>.

a) **HIGH NOISE AREAS** – High noise areas are those in which the day-night average of exterior noise exceeds 65 decibels.

- (1) The “normally unacceptable” noise zone includes community noise levels from above 65 decibels to 75 decibels. For new construction, approvals in this noise zone require a minimum of 5 dB additional sound attenuation for buildings having noise-sensitive (e.g. residential) uses if the day-night average sound level is greater than 65 dB but does not exceed 70 dB, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70dB but does not exceed 75 dB.
- (2) In “unacceptable noise zones” (exceeding 75 decibels) the use of HUD assistance is prohibited without the specific approval of the noise attenuation measures proposed to be used.

SITE ACCEPTABILITY STANDARDS		
	Day-Night Average Sound Level (in decibels)	Special Approvals and Requirements
Acceptable	Not exceeding 65 dB	None
Normally Unacceptable	Above 65 dB but not exceeding 75 dB	Special Approvals
Unacceptable	Above 75 dB	➤ Attenuation ➤ Special Approvals ➤ Environmental Review

Existing Construction and Noise – For major rehabilitation projects and conversions in the “normally unacceptable” and “unacceptable “ noise zones, THDA actively seeks to have noise attenuation features incorporated as part of the rehabilitation to be undertaken. For those properties in “unacceptable” noise zones, THDA will strongly encourage the conversion of such properties to land uses more compatible with the high noise levels.

Noise factors from major roads or highways, railroads, airports can be identified during the course of the review. The community can adopt policies or standards for mitigation that are applied on a case-by-case basis as properties are identified for rehabilitation. This approach provides for a positive approach to noise problems, but does not require noise assessments at each site. In some cases, noise assessment may be desirable, but this is a local determination. An additional factor is energy conservation measures which can contribute to reduced noise levels in homes. By considering both energy conservation and noise, cost effectiveness is enhanced and activities that might not be cost effective for addressing one concern may be found to be feasible because of its dual benefit.

b) **DOCUMENTATION:** - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.

- (1) **Status A:** The property proposed for new construction, major rehabilitation, or conversion is not located within:
 - (a) 1,000 feet of a more noise source, road or highway;

- (b) 3,000 feet of a railroad; or
 - (c) 5 miles of a civil airport or 15 miles of a military airfield.
- (2) **Status B:** A finding that the property is located within a normally unacceptable or unacceptable noise zone, in which case, the environmental review must:
- (a) State that the plans for the property proposed for new construction, major rehabilitation or conversion activity incorporates noise attenuation features in accord with HUD environmental criteria and standards contained in Subpart B- Noise Abatement and Control of 24 CFR Part 51; and
 - (b) Provide the plans as evidence and a statement of the anticipated interior noise levels.
- 14) *Explosive and Flammable Operations* - The grantee must determine whether its project(s) is located near a facilities handling, storing or processing conventional fuels (e.g. petroleum), hazardous gases (e.g. propane), or chemicals of an explosive or flammable nature (e.g. benzene). To the extent practicable, grantees should avoid locating projects or activities near these hazards or calculate acceptable separation distances. In the case of tanks containing liquid fuels, the requirement for an acceptable separation distance (ASD) calculation only applies to storage tanks that have a capacity of more than 100 gallons.
- a) The Environmental Planning Division of HUD has developed an electronic assessment tool that calculates the separation distance required in situations where explosive or flammable operations are near activity sites.
 - b) For additional guidance and the Acceptable Separation Distance Electronic Assessment Tool go to:
<https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities>.
 - c) **DOCUMENTATION:** - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.
- (1) **Status A:** The grantee provides THDA a finding from a qualified data source that the grantee's proposed property is not located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature by citing data used and maps used.
- (2) **Status B:** The grantee provides THDA a finding by a qualified data source stating:
- (a) That the grantee's proposed property is located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature;
 - (b) The type and scale of such hazardous operations;
 - (c) The distance of such operations from the proposed property;
 - (d) A preliminary calculation of the acceptable separation distance (ASD) between such operations and the proposed property; and
 - (e) A recommendation as to whether it is safe to use the property in accord with 24 CFR Part 51, Subpart C.

- 15) *Hazardous, Toxic or Radioactive Substances* - The grantee must determine that all property proposed for use in the HOME program is free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

For multi-family projects, the environmental must include an evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards.

Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include, but are not limited to, sites listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; located within 3,000 feet of a toxic or solid waste landfill site; or with an underground storage tank.

- a) DOCUMENTATION: - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.

- (1) **Status A:** The grantee provides THDA with a letter of finding made by the local planning agency that the property:

- (a) is not listed on an EPA Superfund National Priorities or CERCLA list or equivalent State list;
- (b) is not located within 3,000 feet of a toxic or solid waste landfill site;
- (c) does not have underground storage tank (which is not a residential fuel tank); and
- (d) is not known or suspected to be contaminated by toxic chemicals or radioactive materials.

- (2) **Status B:** The grantee states the property:

- (a) is listed on an EPA Superfund National Priorities or CERCLA list or equivalent State list;
- (b) is located within 3,000 feet of a toxic or solid waste landfill site;
- (c) has an underground storage tank other than a residential fuel tank; or
- (d) is known or suspected to be contaminated by toxic chemicals or radioactive materials. For any of these conditions, the grantee must provide an ASTM Phase I report.

- 16) *Airport Clear Zones and Accident Potential Zones* – HUD policy as described in 24 CFR 51, Subpart D, is that assistance for construction or major rehabilitation of any real property located in a clear zone is prohibited for a project to be occupied by people.

Buyers receiving Federal assistance to purchase a property in a runway clear zone or military clear zone shall be advised in writing of the hazard of its location and the possibility that their property may be acquired by the airport operator. The buyer must sign an acknowledgment of receipt of this information.

- a) DOCUMENTATION: - Grantees should select A or B on the Statutory Checklist for the condition that best describes the project and document the source of the information.

- (1) **Status A:** The grantee states that that the property is not located within 2,500 feet of the end of a civil airport or 8,000 feet of the end of a military airfield runway.
- (2) **Status B:** For properties located within 2,500 feet of the end of a civil airport runway or 8,000 feet of the end of a military airfield runway, the grantee provides THDA with a finding from the airport operator stating whether or not the property is located within a runway clear zone at a civil airport or a clear zone or accident potential zone at a military airfield. For properties that are located within a runway clear zone or a clear zone or accident potential zone, grantees who propose to rehabilitate such a property provide THDA with estimates of: (i) the cost of the proposed rehabilitation; and (ii) the property value after the completion of the rehabilitation.

17) *Publication and Distribution of NOI-RROF Notice*

- a) LOCAL GOVERNMENTS – Upon completion of the Statutory Checklist and related consultation, the Notice of Intent to Request a Release of Funds (NOI- RROF)(ER-6A) will need to be published in the local newspaper of general circulation by cities, counties acting as REs.
- b) NON-PROFIT AGENCIES - For CHDOs and other nonprofits, contact THDA prior to the publication of this notice (ER-7A). THDA will need to review the checklists and narratives prior to the publication of notices by CHDOs and other nonprofits.
- c) TIERED STRATEGY - If using a Tiered or Unspecified Site Strategy, there is additional language that must be inserted prior to the last paragraph of the Notice of Intent to Request a Release of Funds (NOI-RROF) (Use ER-6B or ER-7B).

Because the grant award year project will involve activities at several scattered sites for which the exact location will not be known for some time, an environmental review strategy has been developed including Site Specific Checklists, to assure that the required environmental review is completed for each site. If environmental factors are identified as having an impact on the project or any of the specific project sites, they will be addressed on a case by case basis.

- d) A seven (7) calendar day local comment period must be allowed and indicated in the notice. The seven days will begin on the day after the notice is published and distributed (See ER-8 showing public comment period for Categorically Excluded Subject to (CEST) projects).
- 18) *Distribution of a Copy of the FONSI* - At the time of publication of the NOI-RROF, a copy of the notice must be distributed to appropriate local, state and Federal agencies (including those listed below) and any other interested parties (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities), to allow seven days for their comments.

Evidence that the notice was sent to the following agencies and any comments received must be included in the ERR:

- a) Tennessee Historical Commission 2941 Lebanon Road
Nashville, Tennessee 37243-0442
- b) EPA - Environmental Review Coordinator Regional Office

61 Forsythe Street, SW Atlanta, Georgia 30303-8960

c) Director, Federal Agency Liaison Division Office of Federal Activities (A-104)
Environmental Protection Agency Washington, DC 20460

d) Local Development Districts

19) Request for Release of Funds and Certification (RROF) to THDA

- a) LOCAL GOVERNMENTS - After allowing seven days for public comment and taking into account any comments received, REs complete the RROF (ER-14) and submit the RROF and ERR to THDA.
- b) NON-PROFIT AGENCIES - For non-profits and CHDOs, THDA will complete the RROF and submit it to HUD Knoxville.

20) Release of Funds

- a) LOCAL GOVERNMENTS - After the ERR is submitted to THDA by REs, THDA may not approve the RROF until 15 days after the receipt of the ERR. THDA will send an Authority to Use Grant Funds/Notice of Removal of Grant Conditions (ER-15) to the cities and counties once the 15 days have passed and any comments have been appropriately handled.
- b) NON-PROFIT AGENCIES - For non-profits and CHDOs, HUD will wait 15 days after receiving the RROF from the State before it issues a release of funds. THDA will send the Authority to Use Grant Funds/Notice of Removal of Grant Conditions to the CHDOs and non-profits after HUD sends the release to THDA.

D) STEPS TO COMPLETE AN ENVIRONMENTAL ASSESSMENT (EA)

- 1) *Environmental Assessment Worksheet (ER-9)* – This is the Statutory Checklist (See paragraph 3.5(b)(1) above for guidance on how to complete this checklist).
- 2) *Environmental Assessment Checklist (ER-10)* - The Environmental Assessment Checklist (ER-10) contains 36 specific impact areas that must be evaluated. These areas have been grouped into the following major categories: Land Development; Noise; Air Quality; Environmental Design and Historic Value; Socioeconomic; Community Facilities and Services; and Natural Features.
 - a) The degree to which the project must be evaluated relative to these impact categories ranges from No Impact Anticipated to Requires Project Modification. The checklist calls for source(s) to be identified which have contributed to the decision in each specific impact category. A source must be provided for all 36 impact areas.
 - b) The Environmental Assessment Checklist also includes narrative components.
- 3) *Publication of Concurrent Notice*
 - a) LOCAL GOVERNMENTS - The Concurrent (FONSI/NOI-RROF) Notice (ER-11) must be published in the local newspaper of general circulation by cities and counties acting as REs.
 - b) NON-PROFIT AGENCIES - For CHDOs and non-profits, contact THDA prior to the publication of this notice (ER-12).

- c) UNSPECIFIED SITE STRATEGY - If using an Unspecified Site Strategy, the following language must be inserted prior to the last paragraph of the Concurrent Notice (ER-11 or ER-12):

Because the grant award year Project will involve activities at several scattered sites for which the exact location will not be known for some time, an environmental review strategy has been developed including Site Specific Checklists, to assure that the required environmental review is completed for each site. If environmental factors are identified as having an impact on the project or any of the specific project sites, they will be addressed on a case by case basis.

- d) A fifteen (15) day local comment period must be allowed and indicated in the notices. The 15 days will begin on the day after the notice is to be published. (See ER-13 for public comment period for a project requiring an environmental assessment.)
- e) DISTRIBUTION OF THE CONCURRENT NOTICE - At the time of publication, a copy of the notice must be distributed to the appropriate agencies as outlined in paragraph 5.2(4) above as well as any other interested parties to allow fifteen days for their comments. Copies of the cover letters to these agencies/interested parties and any comments received must be included in the ERR.

4) *Request for Release of Funds and Certification*

- a) LOCAL GOVERNMENTS - After allowing fifteen days for public comment and taking into account any comments received, cities and counties acting as REs complete the RROF (ER-14) and submit the ERR to THDA
- b) NON-PROFIT AGENCIES - After allowing fifteen days for public comment and taking into account any comments received, CHDOs and non-profits submit the ERR to THDA. THDA will complete the RROF after receiving the necessary information for the environmental review and submit it directly to HUD/Knoxville.

5) *Release of Funds*

- a) LOCAL GOVERNMENTS – THDA may not approve the RROF until 15 days after the receipt of the ERR. THDA will send a Notice of Removal of Grant Conditions (ER-15) to the cities and counties once the 15 days have passed.
- b) NON-PROFIT AGENCIES – HUD/Knoxville will wait 15 days after receiving the RROF from THDA before it issues a release of funds. THDA will send the Notice of Removal of Grant Conditions to the CHDOs and non-profit agencies after HUD sends the release to THDA.

3.6 – Re-evaluations

- A) After completion of the original environmental review process, circumstances may require that the original review be reevaluated. This will occur when:
- 1) Substantial changes to the nature, magnitude, or extent of the project are proposed,
 - 2) New activities not anticipated in the original review are proposed,

- 3) New circumstances and environmental conditions that may affect the project or have a bearing on its impact are discovered during the implementation of the project, or
 - 4) The selection of an alternative not in the original finding is proposed.
- B) If the original findings are still valid, the Grantee must affirm the original findings and update the Environmental Review Record with its re-evaluation. A statement addressing the above four points will suffice as documentation that a reevaluation has been conducted. A new FONSI notice is not required.
- C) If the Grantee determines that the original findings are no longer valid, it must prepare a new Environmental Assessment (or an EIS if its evaluation indicates potentially significant impacts). A new FONSI notice must be published/disseminated and be submitted to HUD (or the State) or disseminated in accordance with §58.43.

3.7 – Emergencies

- A) When an emergency, disaster or imminent threat to health and safety is declared, the combined Notice of FONSI and the Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds and Certification form to HUD (or the state). The combined FONSI Notice and NOI/RROF shall state that the funds are needed immediately due to a presidentially declared disaster and that the comment periods have been combined. Any comments made by the public, other organizations or agencies are to be sent to, both, HUD (or the State) and the Grantee.

3.8 – Program Income and Match

- A) Environmental reviews must be conducted for all activities funded by HOME program income. Aggregation and/or tiering may be appropriate for such situations.
- 1) Environmental reviews are not required for activities supported by HOME match contribution requirements unless they are part of the project also receiving HOME funds.

3.9 – Related Laws and Authorities

- A) There are several related laws and authorities which a HOME project may trigger, and therefore, require a specific type of review and/or compliance in addition to the requirements in 24 CFR 58 (ER-17). These related laws and authorities are identified in 24 CFR 58.5 and 58.6. A partial listing of these related laws are:
- 1) The National Historic Preservation Act of 1966 (Historic Properties) [36 CFR Part 800]
 - 2) Executive Order 11593 (Protection and Enhancement of the Cultural Environment)
 - 3) Executive Order 11988 and 24 CFR Part 55 (Floodplain Management)
 - 4) The Flood Disaster Protection Act of 1973

- 5) Executive Order 11990 and 3 CFR, §§ 2, 5 (Wetland Protection)
- 6) The Coastal Zone Management Act of 1972 (Coastal Area Protection and Management) [16 U.S.C. 1451, §§307(c), (d)]
- 7) Sole Source Aquifers [40 CFR Part 149]
- 8) The Endangered Species Act of 1973 [50 CFR Part 402]
- 9) Wild and Scenic Rivers Act [16 U.S.C. 1271, §§ 7(b), (c)]
- 10) The Clean Air Act [40 CFR Parts 6, 51, 93]
- 11) Farmland Protection Policy Act [7CFR Part 658]
- 12) Executive Order 12898 (Environmental Justice)
- 13) Noise Abatement and Control [24 CFR Part 51, Subpart B]
- 14) Explosive and Flammable Operations [24 CFR Part 51, Subpart C]
- 15) Toxic Chemical and Radioactive Materials [24 CFR Part 58, § 5(i)(2)]
- 16) Airport Clear Zones and Accident Potential Zones [24 CFR Part 51, Subpart D]

3.10 – Definitions

- A) **COMMITMENT** - For purposes of the environmental review process, commitment means the expenditure of private or public funds, or a legally binding agreement by any of the following parties: participating jurisdictions, insular areas, State recipients, subrecipients, contractors, or owners/developers (including a CHDO), to expend funds for a specific project, for project activities such as property acquisition, construction, conversion, demolition, movement, rehabilitation, or repair or the provision of tenant-based rental assistance. HOME funds may not be used to reimburse a non-governmental entity for project-related costs incurred after the entity has submitted an application for HOME funds and before approval by HUD (or the State in the case of State recipients) of the Request for Release of Funds and Certification, except for activities that are exempt or are excluded and not subject to the laws in 24 CFR 58.5 and for certain relocation costs. A conditional HOME commitment of funds (as defined below) does not constitute a commitment for the purposes of the environmental review process.
- B) **CONDITIONAL HOME COMMITMENT** – Any contractual agreement signed prior to the completion of the environmental review process between the participating jurisdiction, insular area or state recipient, and a state recipient, sub-recipient, contractor, owner or developer, to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or an executed written agreement reserving a specific amount of funds to a community housing development organization or nonprofit entity. Any such agreement must be conditional in nature so as not to provide the state recipient, sub-recipient, contractor, owner or developer, legal claim to any amount of HOME funds to be used for the specific project or site until the environmental review process is satisfactorily completed. Such an agreement must explicitly provide that the agreement to provide

funds to the project is conditioned on the responsible entity's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

- C) **CONCURRENT NOTICE** - The Concurrent Notice includes the Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).
- D) **EARLY PUBLIC NOTICE** - The Early Public Notice (EPN) is the first notice which is required for all projects located in a floodplain or wetlands that trigger the eight-step process and is published prior to any other notice.
- E) **ENVIRONMENTAL ASSESSMENT (EA)** - A concise public document (24 CFR Part 58, Subpart F) which provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact. An EA must include brief discussions of the need for the proposal, of alternatives (where required under NEPA), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
- F) **ENVIRONMENTAL IMPACT** - Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, caused or induced in whole or in part, directly or indirectly, by a proposed project.
- G) **ENVIRONMENTAL IMPACT STATEMENT (EIS)** - A detailed written statement as required by 102(2)(c) of NEPA describing, analyzing and assessing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the proposed action and alternatives to the proposed action.
- H) **ENVIRONMENTAL REVIEW RECORD (ERR)** - The Environmental Review Record (ERR) contains all documents, public notices and written determinations issued during the environmental review process.
- I) **EXEMPT ACTIVITIES** - An activity which is exempt from environmental review requirements of Part 58 including the NEPA-related laws listed at 24 CFR 58.5. Exempt activities are listed at 24 CFR 58.34 (see also 24 CFR 58.35(c)). Such activities may still be subject to compliance with authorities listed in 24 CFR 58.6.
- J) **FINDING OF NO SIGNIFICANT IMPACT (FONSI)** - A document briefly presenting the reasons why an action, not otherwise Categorically Excluded or exempt, will not have a significant effect on the human environment and for which an Environmental Impact Statement, therefore, will not be prepared. The FONSI must include the environmental assessment (or summary of it) and note any other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.
- K) **HUMAN ENVIRONMENT** - Interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. When an EIS is prepared and economic or social and natural or physical environment effects are interrelated, then the EIS will discuss all of these effects on the human environment.
- L) **INDIVIDUAL ACTION ON A ONE TO FOUR FAMILY DWELLING** - An individual decision regarding the acquisition, construction, demolition, disposition, leasing, moving, or rehabilitation, of a one to four family residential building. An environmental assessment and finding of no significant impact under NEPA is not required for such activities unless an extraordinary circumstance as defined in § 58.2(a) (3) occurs. Compliance with other applicable Federal environmental laws and authorities listed in §58.5 and

§58.6 is required for all individual actions on a one to four family dwelling.

- M) **NEPA** - The National Environmental Policy Act of 1969, as amended, of generally integrally related activities, designed by a recipient grantee to accomplish in whole or in part, a specific goal.
- N) **NOI/RROF** - Notice of Intent to Request Release of Funds.
- O) **PROJECT** - For the purposes of HOME, a project means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building. However, the Part 58 definition of project is broader. Part 58 defines "project" as an activity, or group of integrally related activities, designed by the grant recipient to accomplish, in whole or in part, a specific goal.
- P) **ROF** - Release of Funds.
- Q) **RROF** - Request for Release of Funds (HUD Form 7015.15).

SAMPLE

FLOODPLAINS AND WETLANDS NOTICE**EARLY PUBLIC NOTICE**

The City of _____, Tennessee is considering _____ as a HOME funded project under the Tennessee Housing Development Agency. The project is located in the 100-year floodplain. _____ is the City's _____ and it is experiencing deterioration. To repair existing damage to the houses, it is necessary to carry out this project in a floodplain. The City is interested in discussing alternatives to this project and securing public perceptions of possible adverse impacts that could result from the project and possible minimization measures.

Please send written comments to Mayor _____, _____, Tennessee. Comments will be received until _____ (give 15 days after date of publication).

Name Typed

_____, Mayor
Signature

SAMPLE

NOTICE OF EXPLANATION

_____ intends to undertake improvements to ___ houses on _____.

These improvements are needed to bring the houses up to Section 8 HQS Standards. This project is located in the 100 year floodplain. Proposed improvements to the houses on _____ cannot be undertaken in any other location. There is, therefore, no practical alternative to the proposed project. *(If there are alternatives, you must discuss them here.)*

The proposed improvements to the existing street conform to all applicable State floodplain protection standards. *(If minimization measures are required, they must be discussed here.)* The proposed action will not affect natural or beneficial floodplain values as it represents an improvement of an existing roadway.

Failure to provide these improvements would result in continued deterioration of these 5 houses.

The other agency involved in this project is the State of Tennessee with funds from the U.S. Department of Housing and Urban Development (HUD). *(List all agencies providing funds and/or approvals and permits.)*

ENVIRONMENTAL REVIEW REQUIREMENT CHECKLIST

(Submit to THDA with ERR)

Project: _____

REQUIREMENTS	Categorically Excluded	Environmental Assessment	THDA Use Only
Statutory Checklist Signature Date:			
SHPO Letter Signature Date			
Finding of Categorical Exclusion			
Map			
Environmental Assessment Narrative			
Environmental Assessment Checklist Signature Date:			
Public Notices (NOI/RROF or Concurrent Notice)			
Proof of Distribution			
Request for Release of Funds (cities and counties acting as REs only)			

STATUTORY CHECKLIST FOR CATEGORICALLY EXCLUDED PROJECTS SUBJECT TO §58.5

PROJECT NAME AND DESCRIPTION (Include all contemplated activities which are either geographically and/or functionally part of the project)

Location: This is a homeowner rehabilitation project and is determined to be Categorically Excluded according to §58.35(a)(3)(i).

If this is a project other than homeowner rehabilitation, cite the appropriate section(s) of the regulation at §58.35(a) which categorically excludes the project.

DIRECTIONS: - Once the review process for each compliance factor has been completed, the Statutory Check list must then be filled out. Specifically, the Responsible Entity (RE) must indicate whether the activity does or does not affect the resources under consideration. Consult the guidance provided in the table below or the web sites. Indicate **Status “A”** on the worksheet if the project does not require formal consultation with an outside agency and does not affect the resource in question. Document the determination made and the sources of information used – information sources are provided in the guidance. If the activity triggers formal compliance consultation with the oversight agency or affects the resource, indicate **Status “B”**. Any compliance documentation should also be attached to the Checklist and included in the ERR.

Compliance Factors:

Statutes, Executive Orders and Regulations listed at 24 CFR §58.5	Status A/B	Compliance Documentation
Historic Preservation [36 CFR Part 800]		

Guidance: <https://www.hudexchange.info/environmental-review/historic-preservation>

Floodplain Management [Executive Order 11988; 24 CFR Part 55]		
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Guidance: <https://www.hudexchange.info/environmental-review/floodplain-management> **Statutes**

Wetland Protection [Executive Order 11990; 3 CFR, §§ 2,5]		
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Guidance: <https://www.hudexchange.info/environmental-review/wetlands-protection>

Coastal Zone Management Act [16 U.S.C. 1451, §§ 307(c), (d)]	A	There are no coastal zones in Tennessee
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Guidance: <https://www.hudexchange.info/environmental-review/coastal-zone-management>

Sole Source Aquifers [140 CFR Part 149]	A	There are no sole source aquifers in Tennessee
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Guidance: <https://www.hudexchange.info/environmental-review/sole-source-aquifers>

Endangered Species Act [50 CFR Part 402]		
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Guidance: <https://www.hudexchange.info/environmental-review/endangered-species>

Wild and Scenic Rivers Act [16 U.S.C. 1271 §§ 7(b), (c)]		
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Guidance: <https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers>

Clean Air Act [40 CFR Parts 6, 51,93]		
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Guidance: <https://www.hudexchange.info/environmental-review/air-quality>

Farmland Protection Policy Act [7 CFR Part 658]		
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Guidance: <https://www.hudexchange.info/environmental-review/farmlands-protection>

Environmental Justice [Executive Order 12898]		
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Guidance: <https://www.hudexchange.info/environmental-review/environmental-justice>

Noise Abatement and Control [24 CFR Part 51, Subpart B]		
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Guidance: <https://www.hudexchange.info/environmental-review/noise-abatement-and-control>

Explosive and Flammable Operations [24 CFR Part 51, Subpart C]		
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Guidance: <https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities>

Toxic Chemicals and Radioactive Materials [24 CFR Part 58, § 5(i)(2)]		
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Guidance: <https://www.hudexchange.info/environmental-review/site-contamination>

Airport Clear Zones and Accident Potential Zones [24 CFR Part 51, Subpart D]		
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Guidance: <https://www.hudexchange.info/environmental-review/airport-hazards>

DETERMINATION:

This project converts to Exempt, per § 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities). Funds may be drawn down for this (now) EXEMPT project; OR

This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Authority to Use Grant Funds (HUD 7015.16) per §§ 58.70 and 58.71 before drawing down funds; OR

The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment. Prepare the EA according to 24 CFR Part 58 Subpart E.

Preparer:

Name Printed_____
Signature_____
Date

Certifying Officer:

Name Printed_____
Signature of Chief Executive Officer_____
Date

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

(To be used by cities and counties only for *site specific* environmental reviews)

Date of Notice:

Name of Responsible Entity [RE]:

Address: (e.g. street number, PO Box):

City, State, Zip Code:

Telephone Number of RE:

On or about _____ (at least one day after the end of the comment period) the _____ (name of RE), will submit a request to the Tennessee Housing Development Agency for release of HOME funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, to undertake a project known as _____ (project title) for the purpose of: _____ (nature/scope of project, estimated funding (included non-HUD funding sources if applicable, and project location))

The activities proposed are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act (NEPA) requirements. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at _____ (name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review) and may be examined or copied weekdays _____ A.M. to _____ P.M.

PUBLIC COMMENTS

Any individual or group, or agency may submit written comments on the ERR to the _____ (RE designated office responsible for receiving and responding to comments). All comments received by _____ (notice publication date plus 7 days) will be considered by the _____ (name of RE) prior to authorizing submission of a request for release of funds.

ENVIRONMENTAL CERTIFICATION

The _____ (name of RE) certifies to the Tennessee Housing Development Agency that _____ (name of Certifying Officer) in his/her capacity as _____ (official title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review

process and that these responsibilities have been satisfied. The Tennessee Housing Development Agency's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the _____ (*name of grant recipient*) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The Tennessee Housing Development Agency will accept objections to its release of funds and the _____ (*RE's*) certification for a period of fifteen (15) days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases:

- (a) the certification was not executed by the Certifying Officer of the _____ (*name of RE*);
- (b) the _____ (*RE*) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58;
- (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by the Tennessee Housing Development Agency; or
- (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to the Tennessee Housing Development Agency, Andrew Jackson Building, Third Floor, 502 Deaderick Street, Nashville, TN 37243, Attention: Community Programs Division. Potential objectors should contact the Tennessee Housing Development Agency to verify the actual last day of the objection period.

City or County Mayor

NOTICE OF INTENT TO REQUEST A RELEASE OF FUNDS

(To be used by cities and counties only for tiered or unspecified site strategies)

Date of Notice:

Name of Responsible Entity [RE]: Address:

(e.g. street number, PO Box): City, State,

Zip Code:

Telephone Number of RE:

On or about _____ (at least one day after the end of the comment period) the _____ (name of RE), will submit a request to the Tennessee Housing Development Agency for release of HOME funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, to undertake a project known as _____ (project title) for the purpose of:

_____ (nature/scope of project, estimated funding included non-HUD funding sources if applicable, and project location)

The activities proposed are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act (NEPA) requirements. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at _____ (name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review) and may be examined or copied weekdays __A.M. - __P.M.

PUBLIC COMMENTS

Any individual or group, or agency may submit written comments on the ERR to the _____ (RE designated office responsible for receiving and responding to comments). All comments received by _____ (notice publication date plus 7 days) will be considered by the _____ (name of RE) prior to authorizing submission of a request for release of funds.

ENVIRONMENTAL CERTIFICATION

The _____ (name of RE) certifies to the Tennessee Housing Development Agency that _____ (name of Certifying Officer) in his/her capacity as

_____ (official title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. The Tennessee Housing Development Agency's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the _____ (name of grant recipient) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

The Tennessee Housing Development Agency will accept objections to its release of funds and the _____(RE's) certification for a period of fifteen (15) days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases:

- (a) the certification was not executed by the Certifying Officer of the _____(name of RE);
- (b) the _____(RE) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58;
- (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by the Tennessee Housing Development Agency; or
- (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Because the grant award year Project will involve activities at several scattered sites for which the exact location will not be known for some time, an environmental review strategy has been developed including Site Specific Checklists, to assure that the required environmental review is completed for each site. If environmental factors are identified as having an impact on the project or any of the specific project sites, they will be addressed on a case by case basis.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to the Tennessee Housing Development Agency, Andrew Jackson Building, Third Floor, 502 Deaderick Street, Nashville, TN 37243, Attention: Community Programs Division. Potential objectors should contact the Tennessee Housing Development Agency to verify the actual last day of the objection period.

City or County Mayor

NOTICE OF INTENT TO REQUEST A RELEASE OF FUNDS

(To be used by CHDOs and Non-Profits *only for site specific* environmental reviews)

Date of Notice:

Name of Responsible Entity [RE]: Address:

(e.g. street number, PO Box): City, State,

Zip Code:

Telephone Number of RE:

On or about _____ (at least one day after the end of the comment period)
the Tennessee Housing Development Agency (THDA), will
authorize

_____ (grant recipient) to submit a request to the U. S. Department of
Housing and Urban Development (HUD) for release of HOME funds under Title II of the Cranston-
Gonzalez National Affordable Housing Act of 1990, as amended, to undertake a project known as
_____ (project title) for the purpose of:

_____ (nature/scope of project, estimated funding
(included non-HUD funding sources if applicable, and project location)

The activities proposed *alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act (NEPA) requirements OR alternative #2: comprise a project for which a Finding of No Significant Impact on the environment was (published/posted) on (date of Finding publication/posting).* An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at Tennessee Housing Development Agency, Andrew Jackson Building, Third Floor, 502 Deaderick Street, Nashville, TN 37243 and
_____ (name and address of grant recipient office
where ERR can be reviewed) and may be examined or copied weekdays 8:00A.M. to 4:30P.M.

PUBLIC COMMENTS

Any individual or group, or agency may submit written comments on the ERR to the Community Programs Division of THDA. All comments received by _____ (notice publication date plus 7 days) will be considered by the Tennessee Housing Development Agency prior to authorizing submission of a request for release of funds.

ENVIRONMENTAL CERTIFICATION

THDA certifies to HUD that Ralph M. Perrey in his capacity as Executive Director consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the
_____ (name of grant recipient) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD will accept objections to its release of funds and THDA's certification for a period of fifteen (15) days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases:

- (a) the certification was not executed by the Certifying Officer of the Tennessee Housing Development Agency;
- (b) the Tennessee Housing Development Agency has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58;
- (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds HUD; or
- (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to the U. S. Department of Housing and Urban Development, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902-4393, Attention: Community Planning and Development. Potential objectors should contact the Tennessee Housing Development Agency to verify the actual last day of the objection period.

Ralph M. Perrey
Executive Director
Tennessee Housing Development Agency

NOTICE OF INTENT TO REQUEST A RELEASE OF FUNDS

(To be used by CHDOs and Non-profits only when using a tiered or unspecified site strategy)

Date of Notice:

Name of Responsible Entity [RE]: Address:

(e.g. street number, PO Box): City, State,

Zip Code:

Telephone Number of RE:

On or about _____ (at least one day after the end of the comment period)
the Tennessee Housing Development Agency (THDA), will
authorize

_____ (grant recipient) to submit a request to the U. S. Department of
Housing and Urban Development (HUD) for release of HOME funds under Title II of the Cranston-
Gonzalez National Affordable Housing Act of 1990, as amended, to undertake a project known as
_____ (project title) for the purpose of:

_____ (nature/scope of project, estimated funding
(included non-HUD funding sources if applicable, and project location)

The activities proposed *alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act (NEPA) requirements OR alternative #2: comprise a project for which a Finding of No Significant Impact on the environment was (published/posted) on (date of Finding publication/posting).* An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at Tennessee Housing Development Agency, Andrew Jackson Building, Third Floor, 502 Deaderick Street, Nashville, TN 37243 and
_____ (name and address of grant recipient office
where ERR can be reviewed) and may be examined or copied weekdays 8:00A.M. to 4:30P.M.

PUBLIC COMMENTS

Any individual or group, or agency may submit written comments on the ERR to the Community Programs Division of THDA. All comments received by _____ (notice publication date plus 7 days) will be considered by THDA prior to authorizing submission of a request for release of funds.

ENVIRONMENTAL CERTIFICATION

THDA certifies to HUD that Ralph M. Perrey in his capacity as Executive Director consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the
_____ (name of grant recipient) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD will accept objections to its release of funds and THDA's certification for a period of fifteen (15) days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases:

- (a) the certification was not executed by the Certifying Officer of the Tennessee Housing Development Agency;
- (b) the Tennessee Housing Development Agency has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58;
- (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds HUD; or
- (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Because the grant award year Project will involve activities at several scattered sites for which the exact location will not be known for some time, an environmental review strategy has been developed including Site Specific Checklists, to assure that the required environmental review is completed for each site. If environmental factors are identified as having an impact on the project or any of the specific project sites, they will be addressed on a case by case basis.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to the U. S. Department of Housing and Urban Development, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902-4393, Attention: Community Planning and Development. Potential objectors should contact the Tennessee Housing Development Agency to verify the actual last day of the objection period.

Ralph M. Perrey
Executive Director
Tennessee Housing Development Agency

PUBLIC COMMENT PERIOD FOR A CATEGORICALLY EXCLUDED PROJECT
--

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	Publish NOI/RROF	Start counting 7- day comment 1	2	3	4	5
6	Last day for Grantee to receive comments 7	Request Release of Funds and submit ERR to THDA*	Start counting 15-day comment period 1	2	3	4
5	6	7	8	9	10	11
12	13	14	Last day for THDA to receive comments 15	THDA sends Notice of Removal of Grant 16	10	11

* For non-profits and CHDOs, THDA will prepare the Request for Release of Funds and submit to HUD. HUD will release the funds after 15 days to THDA. THDA will then notify the grantee.

ENVIRONMENTAL ASSESSMENT WORKSHEET

PROJECT INFORMATION:**Project Name:****Responsible Entity:****Grant Recipient** (if different than Responsible Entity):**State/Local Identifier:****Preparer:****Certifying Officer Name and Title:****Grant Recipient** (if different than Responsible Entity):**Consultant** (if applicable):**Direct Comments to: Project****Location:****Description of the Proposed Project** [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:**Statement of Purpose and Need for the Proposal** [40 CFR 1508.9(b)]:**Existing Conditions and Trends** [24 CFR 58.40(a)]:

Funding Information:

Grant Number	HUD Program	Funding Amount

Estimated Total HUD Funded Amount:**Estimated Total Project Cost** (HUD and non-HUD funds) [24 CFR 58.32(d)]:**Compliance with 24 CFR 50.4, 58.5, and 58.6 Laws and Authorities**

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Formal compliance or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	☒ Yes ☒ No	
Coastal Barrier Resources Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	☒ Yes ☒ No	
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	☐ Yes ☐ No	

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 & 58.5		
Clean Air Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	Yes ☐ No ☐	
Coastal Zone Management Coastal Zone Management Act, sections 307(c) & (d)	Yes ☐ No ☐	
Contamination and Toxic Substances 24 CFR Part 50.3(i) & 58.5(i)(2)	Yes ☐ No ☐	
Endangered Species Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	Yes ☐ No ☐	
Explosive and Flammable Hazards 24 CFR Part 51 Subpart C	Yes ☐ No ☐	
Farmlands Protection Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658	Yes ☐ No ☐	
Floodplain Management Executive Order 11988, particularly section 2(a); 24 CFR Part 55	Yes ☐ No ☐	
Historic Preservation National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800	Yes ☐ No ☐	
Noise Abatement and Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B	Yes ☐ No ☐	

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
Sole Source Aquifers Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149	Yes No ☐ ☐	
Wetlands Protection Executive Order 11990, particularly sections 2 and 5	Yes No ☐ ☐	
Wild and Scenic Rivers Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	☐ ☐ Yes No	
ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	Yes No ☐ ☐	

Environmental Assessment Factors [24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27] Recorded below is the qualitative and quantitative significance of the effects of the proposal on the character, features and resources of the project area. Each factor has been evaluated and documented, as appropriate and in proportion to its relevance to the proposed action. Verifiable source documentation has been provided and described in support of each determination, as appropriate. Credible, traceable and supportive source documentation for each authority has been provided. Where applicable, the necessary reviews or consultations have been completed and applicable permits of approvals have been obtained or noted. Citations, dates/names/titles of contacts, and page references are clear. Additional documentation is attached, as appropriate. **All conditions, attenuation or mitigation measures have been clearly identified.**

Impact Codes: Use an impact code from the following list to make the determination of impact for each factor.

- (1) Minor beneficial impact
- (2) No impact anticipated
- (3) Minor Adverse Impact – May require mitigation
- (4) Significant or potentially significant impact requiring avoidance or modification which may require an Environmental Impact Statement

Environmental Assessment Factor	Impact Code	Impact Evaluation
LAND DEVELOPMENT		
Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design		
Soil Suitability/ Slope/ Erosion/ Drainage/ Storm Water Runoff		
Hazards and Nuisances including Site Safety and Noise		
Energy Consumption		

Environmental Assessment Factor	Impact Code	Impact Evaluation
SOCIOECONOMIC		
Employment and Income Patterns		
Demographic Character Changes, Displacement		

Environmental Assessment Factor	Impact Code	Impact Evaluation
COMMUNITY FACILITIES AND SERVICES		
Educational and Cultural Facilities		
Commercial Facilities		
Health Care and Social Services		
Solid Waste Disposal / Recycling		
Waste Water / Sanitary Sewers		
Water Supply		
Public Safety - Police, Fire and Emergency Medical		
Parks, Open Space and Recreation		
Transportation and Accessibility		

Environmental Assessment Factor	Impact Code	Impact Evaluation
NATURAL FEATURES		
Unique Natural Features, Water Resources		
Vegetation, Wildlife		
Other Factors		

Additional Studies Performed:

Field Inspection (Date and completed by):

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]:

List of Permits Obtained:

Public Outreach [24 CFR 50.23 & 58.43]:

Cumulative Impact Analysis [24 CFR 58.32]:

Alternatives [24 CFR 58.40(e); 40 CFR 1508.9]

No Action Alternative [24 CFR 58.40(e)]:

Summary of Findings and Conclusions:

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

Determination:

- ☐ **Finding of No Significant Impact** [24 CFR 58.40(g)(1); 40 CFR 1508.27]
The project will not result in a significant impact on the quality of the human environment.
- ☐ **Finding of Significant Impact** [24 CFR 58.40(g)(2); 40 CFR 1508.27] The project may significantly affect the quality of the human environment.

Preparer Signature: _____ **Date:** _____

Name/Title/Organization: _____

Certifying Officer Signature: _____ **Date:** _____

Name/Title: _____

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

This form has been removed. The information is now part of ER-9

COMBINED RROF AND FONSI

(To be used by Cities and Counties only)

**NOTICE OF INTENT TO REQUEST A RELEASE OF FUNDS AND NOTICE OF FINDING
OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT**

Date of Notice:

Name of Responsible Entity [RE]: Address:

(e.g. street number, PO Box): City, State,

Zip Code:

Telephone Number of RE:

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the _____ (*name of RE*).

REQUEST FOR RELEASE OF FUNDS

_____ (*name of RE*) will submit a request to the Tennessee Housing Development Agency for the release of HOME funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, to undertake a project known as _____ (*project title*) for the purpose of

_____ (*nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location if applicable.*)

FINDING OF NO SIGNIFICANT IMPACT

The _____ (*name of RE*) has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at

_____ (*name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review*) and may be examined or copied weekdays A.M to P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the _____ (RE designated office responsible for receiving and responding to comments). All comments received by _____ (publication date plus fifteen days) will be considered by the _____ (name of RE) prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

ENVIRONMENTAL CERTIFICATION

The _____ (name of RE) certifies to the Tennessee Housing Development Agency (THDA) that _____ (name of Certifying Officer) in _____ (his/her) capacity as _____ (Official Title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. THDA's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the _____ (name of grant recipient) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

THDA will accept objections to its release of fund and the RE's certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases:

- (a) the certification was not executed by the Certifying Officer of the name of RE;
- (b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58;
- (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by THDA; or
- (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to the Tennessee Housing Development Agency, Andrew Jackson Building, Third Floor, 502 Deaderick Street, Nashville, TN 37243, Attention: Community Programs Division.. Potential objectors should contact THDA to verify the actual last day of the objection period.

Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58), and may be addressed to Tennessee Housing Development Agency, 404 James Robertson Parkway, Suite 1200, Nashville, TN 37243-0900, Attention: Community Programs Division. THDA will consider all objections received within fifteen (15) days following the receipt of this request.

City or County Mayor

COMBINED RROF AND FONSI

(To be used by CHDOs and Non-profits only)

NOTICE OF INTENT TO REQUEST A RELEASE OF FUNDS AND NOTICE OF FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT

Date of Notice:

Name of Responsible Entity [RE]: Tennessee Housing Development Agency

Address: Andrew Jackson Building, Third Floor
502 Deaderick Street

City, State, Zip Code: Nashville, TN 37243

Telephone Number of RE: (615)-815-2030

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the Tennessee Housing Development Agency.

REQUEST FOR RELEASE OF FUNDS

On or about _____ (at least one day after the end of the comment period) the Tennessee Housing Development Agency will authorize _____ (name of grant

recipient) to submit a request to the U.S. Department of Housing and Urban Development for the release of HOME funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, to undertake a project known as _____ (project title) for the _____ purpose of _____

_____ (nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location if applicable).

FINDING OF NO SIGNIFICANT IMPACT

The Tennessee Housing Development Agency has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at the Tennessee Housing Development Agency, Andrew Jackson Building, Third Floor, 502 Deaderick Street, Nashville, TN 37243, Community Programs Division and at _____ (name and address of grant recipient office where the record is available for review) and may be examined or copied weekdays 8:00A.M to 4:30P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the Community Programs Division of the Tennessee Housing Development Agency. All comments received by _____ (*publication date plus fifteen days*) will be considered by the Tennessee Housing Development Agency prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

ENVIRONMENTAL CERTIFICATION

The Tennessee Housing Development Agency (THDA) certifies to the U. S. Department of Housing and Urban Development Agency (HUD) that Ralph M. Perrey in his capacity as Executive Director consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the _____ (*name of grant recipient*) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD will accept objections to its release of fund and the RE's certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases:

- (a) the certification was not executed by the Certifying Officer of the name of RE;
- (b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58;
- (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by THDA; or
- (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to the U. S. Department of Housing and Urban Development, Third Floor, John J. Duncan Federal Building, 701 Locust Street, Knoxville, TN 37902-4393, Attention: Community Planning and Development. Potential objectors should contact HUD to verify the actual last day of the objection period.

Ralph M. Perrey
Executive Director
Tennessee Housing Development Agency

PUBLIC COMMENT PERIOD FOR A PROJECT REQUIRING AN ENVIRONMENTAL ASSESSMENT

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	Publish NOI/RROF	Start counting 15-day comment 1	2	3	4	5
6	7	8	9	10	11	12
13	14	Last day for Grantee to receive 15	Request Release of Funds and submit ERR to	1	2	3
4	5	6	7	8	9	10
11	12	13	14	Last day for THDA to receive comments 15	THDA sends Notice of Removal of Grant 16	

* For non-profits and CHDOs, THDA will prepare the Request for Release of Funds and submit to HUD. HUD will release the funds after 15 days to THDA. THDA will then notify the grantee.

**Request for Release of Funds And
Certification****U.S. Department of Housing
and Urban Development**
Office of Community
Planning and Development

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible		
1. Program Title(s)	2. HUD/State Identification Number	Recipient Identification Number (optional)
4. OMB Catalog Number(s)	5. Name and address of responsible entity	
6. For information about this request, contact (name and phone number)	10. Name and address of recipient (if different than responsible entity)	
8. HUD or State Agency and office unit to receive request		
The recipient(s) of assistance under the program(s) listed above requests the release of fund and removal of environmental grant conditions governing the use of the assistance for the		
9. Program Activity(ies)/Project Name(s)	10. Location (Street address, city, county, state)	
11. Program Activity/Project Description		

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. The responsible entity has assumed responsibility for and complied with and will continue to comply with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian tribes and Native Hawaiian organizations, and the public.
4. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did not require the preparation and dissemination of an environmental impact statement.
5. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
6. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
7. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

8. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
9. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity	Title of Certifying Officer
	Date signed

Address of Certifying Officer

Part 3. To be completed when the Recipient is not the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

Signature of Authorized Officer of the Recipient	Title of Authorized Officer
	Date signed

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

form **HUD-7015.15** (1/99)

**Authority to Use Grant
Funds**

**U.S. Department of Housing
and Urban Development**
Office of Community Planning
And Development

TO: (name & address of Grant Recipient & name & title of Chief Executive Officer)	Copy to: (name & address of Subrecipient)
--	--

We received your Request for Release of Funds and Certification, form HUD	
Your Request was for HUD/State Identification Number	

All objections, if received, have been considered. And the minimum waiting period has transpired. You are hereby authorized to use funds provided to you under the above HUD/State Identification Number. File this form for proper record keeping, audit, and inspection purposes.

Typed Name of Authorizing Officer	Signature of Authorizing Officer	Date (mm/dd/yyyy)
Title of Authorizing Officer		

DETERMINATION OF CATEGORICAL EXCLUSION NOT SUBJECT TO 24 CFR 58.5

GRANTEE: _____

HOMEBUYER NAME _____

PROPERTY ADDRESS _____

The above described property is determined to be Categorically Excluded per 24 CFR 58.35(b) and is not subject to review to part 58.5. However, compliance is required for part 58.6. The compliance is documented as follows:

FLOOD DISASTER ACT

1. Is the property located in a Special Flood Hazard Area as identified on a Federal Emergency Management Agency (FEMA) flood map?

[] Yes [] No.

Community Number _____

Panel Number _____

Date of Map _____

2. If the answer to Number 1 is Yes, is the Community where the property is located participating in the National Flood Insurance Program?

[] Yes [] No

(Note: If the answer to Number 1 is Yes and the answer to Number 2 is No, Flood Insurance is not available and the activity will not be funded.)

3. If the answer to both Number 1 and 2 is Yes, has the homebuyer been informed that flood insurance is required at purchase and that flood insurance will need to be maintained on the property during the period of affordability?

[] Yes [] No.

RUNWAY CLEAR ZONE OR CLEAR ZONE

1. Is the property located within a runway clear zone of a civil airport, or the clear zone of a military airfield? [] Yes [] No.

2. If yes, Preparer certifies that the homebuyer has signed a statement acknowledging that he/she has been informed that there is a possibility that the property may, at a later date, be acquired by the airport operator.

[] Yes [] No.

The above described project is considered environmentally cleared as of the date of the signature below.

Chief Executive Officer

Date

24 CFR Part 58

**ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL
RESPONSIBILITIES**

April 1, 2009 Edition

See <https://www.hudexchange.info/environmental-review/> for a copy of the environmental
regulations

CHAPTER FOUR – RELOCATION AND DISPLACEMENT

4.1 – Overview

- A) **THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (UNIFORM ACT)** - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), and its implementing regulations, 49 CFR Part 24 requires relocation assistance when a project causes the displacement of an occupant through rehabilitation, demolition, or acquisitions including federal funding.
- B) **SECTION 104(d)** - Section 104(d) of the Housing and Community Development Act ("The Barney Frank Amendments") and HUD's Residential Anti-Displacement and Relocation Assistance Plan include additional relocation requirements. This extra level of relocation protection may be triggered for low-income households when units are converted or demolished with CDBG, UDAG, or HOME funds.
 - 1) When Section 104(d) is triggered, jurisdictions may need to replace any low/moderate income dwelling units that are lost to the conversion or demolition. This chapter covers only residential relocation. If non-residential (commercial/industrial) relocation is involved, contact THDA.

4.2 – Program Design Considerations for HOME Administrators

- A) **RELOCATION CONSIDERATIONS IN PROJECT SELECTION** - Concerns about relocation may cause an administrator to consider establishing a preference for vacant buildings. However, administrators should also consider:
 - 1) Vacant buildings are often very deteriorated. Rehabilitating an occupied building even with the cost of assisting tenants to remain or relocate, may be less costly than rehabilitating a vacant building.
 - 2) Occupied buildings may require the displacement of occupants both residential and commercial. Displacement can occur because of eligibility of the existing occupants to remain on the property at the completion due to income and occupancy restrictions. Economic displacement may occur if the cost of occupancy is no longer affordable. An early project planning step would be to determine the existing occupancy of the property and determine if the existing tenants will be able to remain on site once the project is completed or if displacement will be triggered. A fully occupied property may be a good target for modest rehabilitation while not triggering any permanent relocation.
 - 3) Selecting vacant projects does not relieve all relocation concerns. Vacant buildings in good condition may have been recently occupied. If so, the program administrator must consider whether the owner removed the tenants in order to apply for HOME assistance for a vacant building. If so, these tenants are displaced persons.
 - 4) In occupied buildings, program administrators must consider whether occupants will be able to return after rehabilitation and whether Section 8 is available to avoid displacement and whether Section 8 assistance is available to help meet relocation costs.

- 5) Grantees need to evaluate the feasibility of each project including the full scale of the rehabilitation along with all costs and administrative requirements related to the potential displacement. To complete the step grantees will need to gather detailed information about the occupancy of the structure – an existing owner may not have income information for the existing residential tenants. Displacement of commercial tenants can be complicated and expensive.
- B) **MINIMIZING DISPLACEMENT** - Consistent with the HOME rules and THDA's Non- Displacement Plan, each Grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.
- C) **NEED FOR SKILLED RELOCATION STAFF** - Skilled staff can save the local program money and build goodwill with owners and tenants. Failure to understand and follow relocation requirements can result in unnecessary costs for the local program.
- D) **EARLY DISCUSSIONS WITH OWNERS AND PROGRAM STAFF** - It is possible for uninformed owners and staff to take steps that would obligate the local program to provide significant relocation benefits and services. Early briefings for owners and program staff on relocation rules are essential.

4.3 – Relocation Reference Materials and Resources

- A) **HANDBOOK 1378** - Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition consolidates relocation requirements for HOME and other HUD programs in one document. It is available from HUD Field Offices or by contacting THDA.
- B) **INFORMATIONAL BOOKLETS** - HUD informational booklets for persons who are displaced or whose property is to be acquired are available from HUD Field Offices or by contacting THDA.
- C) **HUD WEBSITE** –
https://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation

4.4 – Uniform Relocation Act Requirements

- A) **TRIGGERING URA** - URA requirements are triggered at the time the owner's proposal is submitted and additional requirements are triggered at the time the agreement is signed between the owner and the grantee.
- B) **TREATMENT OF DISPLACED PERSONS** - Treatment of displaced persons depends upon whether the displaced person is a tenant or owner; a business or family; has income above or below the Section 8 Lower Income Limit.
- C) **TEMPORARY RELOCATION OF RESIDENTIAL TENANTS** - Residential tenants who will not be required to move permanently but who must relocate temporarily for the project must be provided reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any

increase in monthly rent/utility costs.

1) In addition, these tenants must also be provided with:

- a. Appropriate advisory services, including advance written notice of the date and approximate duration of the temporary relocation;
- b. The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period; Tenants with special needs such as mobility or sensory impairments will need to be placed in appropriate temporary relocation units;
- c. The terms and conditions under which the tenant may lease and occupy a unit in the building/complex upon completion of the project.
- d. An offer of permanent relocation assistance if the relocation continues in excess of one year.

D) **DISPLACED PERSON** - A person (family individual, business, non-profit organization or farm, including any corporation, partnership or association) that moves from the real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

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

- a. The date of the submission of an application to the State or HUD, if the applicant has site control and the application is later approved; or
- b. The date the State approves the applicable site, if the applicant does not have site control at the time of the application; or

2) Before the date described in paragraph 4.4(1)(a-b) above if the State or HUD determines that the displacement resulted directly from acquisition, rehabilitation or demolition for the project; or

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

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

- i. The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
- ii. The total tenant payment, as determined under 24 CFR 813.107, if the

tenant is low-income, or 30% of gross household income, if the tenant is not low-income; or

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

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

(2) Other conditions of relocation are not reasonable: or

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

E) **NON-DISPLACED PERSON** – A person *does not qualify as a displaced person if:*

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

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

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

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

F) **INITIATION OF NEGOTIATIONS** - For purposes of determining the formula for computing replacement housing assistance to be provided under the Uniform Relocation Act to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term initiation of negotiations means the following:

1) When a Federal or State Agency is acquiring the property, the initiation of negotiations means the initial written offer of compensation to purchase the property from the owner. If the Federal or State Agency issues a notice of intent to acquire the property, but the person moves out before the written purchase offer, the initiation of negotiations means the actual move of the person from the property.

2) When the displacement occurs due to rehabilitation, demolition or a private acquisition, the initiation of negotiations means the Notice of Eligibility for Relocation or if there is no notice, the actual move of the person.

- 3) When the Federal Government, working under the Comprehensive Environmental Response Compensation and Liability Act of 1980, elects to permanently relocate persons to protect public health and welfare, the initiation of negotiations means the formal announcement or advisory.
- 4) When the Agency acquiring the property is receiving Federal financial assistance for project costs, but not the actual acquisition, the initiation of negotiations means the execution of the written agreement between the Agency and the property owner.

G) ADVISORY SERVICES - Relocation advisory services must be offered and shall include such measures, facilities, and/or services as may be necessary or appropriate to:

- 1) Determine the need of displaced persons for relocation assistance.
- 2) Provide current and continuing information on availability, prices, and rentals of comparable replacement properties and housing. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.
- 3) Assure that, prior to displacement, decent, safe and sanitary comparable replacement dwellings will be available to displaced persons.
 - a) Decent, safe and sanitary are defined as meeting local housing and occupancy codes, or where those do not exist, Section 8 Existing Housing Standards. The unit must also be free of lead-based paint hazards. If the person being displaced is disabled, reasonable accommodations must be made specific to the disability.
 - b) Comparable units refer to size, condition, type of neighborhood, and access to employment, public and commercial facilities.
- 4) Ensure that the "decent, safe, and sanitary comparable dwelling" is affordable and available to displaced persons.
 - a) The replacement unit actually selected must be standard and it may be a better unit than the displaced unit. So, if the displacee chooses to relocate to a better unit, the Grantee should base the relocation payment on the difference between the most comparable unit and the displaced unit or ability to pay, and not on the cost of the unit that the displacee wants to move in.
 - b) Affordable means that the monthly housing costs shall not exceed 30% of the household's income with the replacement housing payments.
- 5) Inspect the actual replacement unit selected by the client to ensure it meets "decent, safe, and sanitary" requirements along with any identified special accommodation needs such as accessibility modifications
- 6) Supply information concerning Federal and State housing programs and services.

7) Provide counseling to affirmatively further fair housing. The regulations require that the Grantee make available to low income and minority families special counseling and related services, e.g., transportation services. The Grantee may secure these services through fair housing or civil rights groups.

8) Provide other advisory services to displaced persons in order to minimize hardships.

H) **BENEFITS AS RIGHTS UNDER THE UNIFORM ACT** - The Grantee should stress that the benefits under the Uniform Act are "rights" to which the individual is entitled and that the Grantee's job is to ensure that all displacees receive the maximum amount of benefits to which they are entitled.

1) It should also be explicitly stated that there are no income or need criteria for benefits. All persons, regardless of income level, are eligible if they are relocated.

2) Certain benefits may be prorated for unrelated individuals living together.

I) **NOTICE REQUIREMENTS** - All occupants must receive timely notices explaining whether or not they will be displaced. This applies to REHABILITATION AS WELL AS ACQUISITION projects. *Failure to issue appropriate notices in a timely fashion may result in relocation payments made where they would otherwise not have been required.*

1) The **General Information Notice** must be provided as soon as is feasible after application, and must explain that the project has been proposed, and caution the occupant not to move prematurely. Additional information should also be included in this notice.

2) The **Move-in Notice** informs prospective tenants before moving into potential projects that they may be displaced and that they will not be entitled to assistance.

3) A **Notice of Non-displacement** or a **Notice of Eligibility for Relocation Assistance** must be issued at the time the project agreement is executed. For a rehabilitation project, this refers to the execution of the funding agreement between the Grantee and the owner. For acquisition, this is when an agreement is executed between the purchaser and the seller.

4) The **Temporary Relocation Notice** informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.

5) The **Notice of Eligibility** informs households to be displaced of their rights and levels of assistance under the URA.

6) The **90- and 30-Day Notices** inform displaced households of the day by which they must vacate the property. Note that displaced households may not normally be given less than 90 days to vacate their residence. The 90 Day Notice can be incorporated into the Notice of Eligibility. The 30-Day Notice may be used in certain circumstances.

J) **STEPS IN PROVIDING RELOCATION ASSISTANCE**

1) Design and adopt the relocation assistance program guidelines which address eligibility, payments, counseling services, grievance procedures and operating procedures. They must be written in language that is understandable. If English is not the primary language of the displacee, foreign language translations must be made available.

- 2) Identify individuals to be relocated as soon as possible and any special considerations to special populations, i.e., minorities, the elderly, large families or persons with disabilities.
- 3) All notices must:
 - a) Be written in plain understandable language. If individuals do not speak English, the Grantee must make all notices available in appropriate translations;
 - b) Be hard delivered with receipt documented, or sent certified mail, return receipt requested; and
 - c) Contain the name and phone number of a person who may be contacted for answers to questions or other needed help.
- 4) Interview each recipient to determine his/her need for assistance. A sample interview format is provided to show the type of information that is required. During this interview, review the relocation process with the relocatees and ensure that they understand the process. Special attention should be given to:
 - a) The assistance to be provided;
 - b) The benefits available;
 - c) The fact that replacement housing payments cannot be made unless the household relocates to a standard unit;
 - d) The importance of keeping in touch with the Grantee; and
 - e) The need to notify the Grantee before they move.
- 5) Prepare the relocation record.
- 6) Determine replacement housing needs. All comparable units must be decent, safe, and sanitary, as defined above. In addition, they must be affordable.
- 7) Inventory available housing. The Grantee shall prepare an inventory of available housing which meets the identified needs. Please note that the regulations require that the Grantee make comparable replacement housing available to low income or minority relocatees in areas that do not have concentrations of either low or minority households, if such opportunities are available. This means that if there are vacant, standard affordable units available in middle/upper income areas or predominantly white areas of the city/county, low income or minority relocatees must be given replacement housing choices in those areas before the Grantee can give such relocatees a 90-Day Notice to Vacate.
- 8) Send a "Notice of Eligibility" at initiation of negotiations.
- 9) If the occupant is going to be able to continue to reside in the building or in a nearby building located on the same site, the occupant must be sent a Notice of Non-Displacement.
- 10) Provide assistance in securing suitable units. The process of finding suitable housing will involve

continuous contact with displacees to solicit information, establish rapport, provide referrals to re-housing resources, accompany displacees to inspect possible dwellings, etc.

- a) Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided.
 - b) All units must be inspected and certified as meeting code before being placed on a referral list.
 - c) The Grantee must offer transportation to displaced persons to inspect the units to which they are referred.
 - d) The Grantee must provide assistance in cases of housing discrimination. While it need not become a prosecutor, the Grantee must press displacee's claims of discrimination.
- 11) Complete processing claims and make payments.
- a) If the Grantee has made a reasonable choice of suitable replacement housing opportunities available to the relocated, the Grantee may issue the 90-Day Notice to Vacate. The date on which the property must be vacated cannot be less than 30 days after the Grantee has obtained title to the property or legal right of possession, whichever comes earlier.
 - b) Payments should be issued within 30 days following the submission of sufficient documentation to support the claim.
 - c) Advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the Grantee must document that the payment was used for the purpose intended.
 - d) Grantee should have recipient sign a letter acknowledging receipt of relocation payments.
- 12) If relocation has not been completed within 6 months of the date of issuance of the Notice of Eligibility, the Grantee must document in its files the reason for the delay and a plan for timely completion.
- 13) If the relocation involves inhabitants of mobile homes, the Grantee should follow the procedures contained in the part of the regulations pertaining to mobile home occupants (49 CFR Part 24 Subpart F).
- 14) The Agency may not suggest or request a waiver of relocation assistance. If a displaced person has been advised of all relocation payments and assistance to which they are entitled and still refuses to accept some or all of the assistance, the Agency should document the refusal in writing.

K) PAYMENTS

- 1) *Moving Costs* - All displaced persons are eligible for moving costs. The displaced person can choose to receive either:

- a) A fixed moving expense, based upon number of rooms in the residence. Any person displaced from a dwelling or seasonal residence, is entitled to receive an expense as an alternative to a payment for actual moving and related expenses. This allowance is determined according to the applicable schedule approved by the Federal Highway Administration.
 - b) Actual moving and related expenses, supported by bills and other documentation that cover actual moving costs for:
 - (1) transportation of the displaced person and personal property for a distance up to 50 miles unless it is determined that relocation beyond 50 miles is justified;
 - (2) packing and unpacking personal property;
 - (3) disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property;
 - (4) storage of the personal property for a period not to exceed 12 months unless it is determined a longer period is necessary;
 - (5) insurance in connection with move and storage; and (6) other costs related to the move if approved by the Grantee as reasonable.
- 2) *Replacement Housing Payments Under the URA* - These payments are available to owner-occupants and tenants that meet the following conditions:
- a) A displaced 180-day owner-occupant who relocates to an ownership unit is eligible for a replacement housing payment. The payment represents combined cost of:
 - (1) The cost difference between the acquisition price and the lesser of the actual unit plus purchase price and the decent, safe, and sanitary comparable replacement unit;
 - (2) Increased costs;
 - (3) Eligible incidental settlement (closing) costs; and
 - (4) May not exceed \$22,500.
 - b) A tenant or owner-occupant who has occupied the property for 90 days who relocates into a rental unit is eligible for a replacement housing payment. This payment takes into account several factors, including the household's ability to pay, old rent and utilities, the rent/utilities of a comparable unit, and the rent/utilities of the unit they actually rent. Ability to pay under the URA is 30% of gross monthly income. The replacement housing payment is calculated as the difference between: the lower of the ability to pay and the old rent/utilities; and the lower of the comparable rent/utilities and the rent/utilities of the new unit they actually select. The payment may not exceed \$5,250.

- c) For households who have been in residence less than 90 days, the replacement housing payment is calculated as the difference between the ability to pay and the lower of the comparable unit rent/utilities and the actually selected unit rent/utilities.
 - (1) Both the 90 day and the less than 90 day tenant must receive their replacement housing payment in installments.
- d) A tenant who relocates to an ownership unit is eligible for a down payment assistance payment. The down payment assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses. Down payment assistance for a renter that wishes to become a homeowner is calculated in the same manner as the renter assistance payment except that there is no provision for the new unit actually selected by the household. The down payment assistance must be paid in lump sum.
- e) While not a requirement, the program administrator may work with the local PHA to offer eligible displaced tenants a Section 8 Certificate or Housing Voucher necessary as an alternative to cash rental assistance.
 - (1) A displaced person must be informed of his or her option to choose cash or, if offered, Section 8 assistance.
 - (2) Since Section 8 assistance is adjusted periodically for increased market rents and because it is unlikely to cease at the end of 42 months, this will be a more valuable option than cash for a substantial number of lower-income tenants. The program also benefits when Section 8 assistance is used in place of a replacement housing payment.
 - (3) In the unusual case where the displacement dwelling rent/utility cost is less than the TTP, the tenant is eligible for cash to cover the gap. In the case of a Section 8 Voucher, if the rent/utility cost of the replacement dwelling (actual or comparable, whichever is less) exceeds the payment standard, the tenant will qualify for cash to cover the gap.

L. SPECIAL CONSIDERATIONS CONCERNING THE DENIAL OF CLAIMS

- 1) Payments for down payment assistance must be applied to the purchase of a replacement dwelling and related incidental expenses.
- 2) Payments for rental assistance to owners or renters need not necessarily be applied to housing costs. The rental assistance payment must be made in installments. The Grantee has no right to question the use(s) of that payment so long as the household initially occupies a standard unit.
- 3) If a payment must be denied, the Grantee must:
 - a. Inform the claimant in writing why the claim is being denied.
 - b. Indicate what assistance is available to bring the current unit up to code (in case of a substandard unit).

- c. Indicate the ongoing opportunity to qualify for assistance by moving into a standard unit (if the case of moving to a substandard unit is the reason for denying the claim).
 - d. Fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment, if possible.
 - e. Fully document its initial notification and all later reminders of the requirement to submit the claim within 18 months of the move (if this is the reason for denying the claim).
- 4) The claim may be denied for any of the following reasons:
- a. The unit is substandard.
 - b. The move was not completed within one year of the date of removal from the acquired dwelling or the date of receipt of final payment (if owner-occupant), whichever is later.
 - c. Or the claim was not submitted within 18 months of the move.

4.5 – Rent Burden and Economic Displacement

- A) **RENT BURDEN** - If a tenant's rent increases as a result of a federally assisted activity, and the rent is more than the tenant can afford, the tenant is "rent burdened".
- 1) Rent Burden is defined differently under various HUD programs. In general, the factors considered are (1) whether the old rent went up and (2) what percentage of income the new rent and utility costs represent.
 - 2) The HOME program uses the 30% of gross income threshold for tenants whose incomes are above the Section 8 Lower Income Limit and the Section 8 Total Tenant Payment (TTP) as the threshold for tenants at or below the Section 8 Lower Income Limit.
 - 3) TTP is the greatest of 30% of adjusted income or 10% of gross monthly income.
- B) **ECONOMIC DISPLACEMENT** - Occupants who move because their rent went up and they could not be offered a decent, safe, and sanitary, affordable unit within the project, are "economically" displaced, and are due the same relocation considerations as an occupant who is physically displaced.

4.6 – Optional Relocation Assistance

- A) **TEMPORARY BUT VOLUNTARY DISPLACEMENT** - HOME funds may be used to provide relocation assistance to persons who are temporarily but voluntarily displaced. The Uniform Act does not mandate benefits to homeowners who participate in the program on a voluntary basis but may be temporarily relocated due to reconstruction of their home.

- 1) THDA policy allows the Grantee to cover the cost of the moving expenses and a temporary living arrangement with HOME funds.
 - 2) The Grantee must include the provision of equal relocation assistance within each class of displaced persons in their written Policies and Procedures, which are available for public review.
- B) Although temporary relocation assistance may be provided to households who are voluntarily displaced during rehabilitation, the Grantee must determine if the lead-hazard reduction work will require relocation for the safety of the household. If it is determined that temporary relocation for occupant safety is required, the Grantee *must* provide this assistance. The cost of relocation is a project soft cost and subject to the subsidy levels. *See Chapter 8, Section 6 - Occupant Protection.*

4.7 – Barney Frank (Section 104(d))

- A) **APPLICABILITY** - If CDBG, UDAG, or HOME funds are used as a part of the total project cost, Section 104(d) may apply to the project.
- B) **SECTION 104(d)** - Section 104(d) and its implementing regulations apply to displaced low-income families, and requires one for one replacement of occupiable "low-moderate income dwelling units", including units in substandard condition which are "suitable for rehabilitation", that are demolished or converted to other use (including change in the number of bedrooms). Contact THDA if your project involves low-income housing being demolished or converted. It will be necessary to comply with the conditions of THDA's HOME Residential Anti- Displacement and Relocation Assistance Plan.
- 1) *Low-moderate income dwelling units* are those units that do not exceed the Section 8 Fair Market Rent (FMR) limits.
 - 2) *Suitable for rehabilitation* may be defined by the Grantee but includes units in any condition that have been occupied within a one year period (except by a squatter) preceding the executed contract date between the Grantee and the project owner.
- C) **REPLACEMENT UNITS** - Grantees may take up to three years from the time of demolition or conversion to replace the affected units. The replacement units must be designed to remain at or below the Section 8 rent limits for ten years. In some cases, newly rehabilitated vacant units may count as replacement units.

4.8 – Grievance Procedures

- A) **APPEALS PROCESS** - The grievance procedure must outline the appeals process contained in 49 CFR Part 24.10. These requirements include:
- 1) The grounds for filing an appeal
 - 2) To whom the appeal should be filed
 - 3) Appropriate time limits, the displaced persons right of appeal to the State, if the

complaint cannot be satisfactorily resolved.

4.9 – Record Keeping Requirements

A) **SEPARATE CASE FILES** - Grantees must maintain a separate case file on each displaced person for at least three years after project completion or after receipt of final relocation payment, whichever is later. Each case file must include the following:

- 1) Record form with:
 - a. Data identifying the parcel and dwelling;
 - b. Number of individuals and family units;
 - c. Family composition (including age, sex, location of employment, source and amount of income);
 - d. Veterans' status of family members;
 - e. Description of current dwelling (number and types of rooms);
 - f. Length of time of occupancy;
 - g. Amount of housing payment or rent; and
 - h. Replacement housing preferences regarding tenure type, location and willingness to increase monthly payments; and other important characteristics (health/disability programs, special needs such as furniture, public assistance, etc.).
- 2) Copy of a Notice of Eligibility or Non-Displacement
- 3) Documentation of suitable replacement housing offered to displacees
- 4) Copy of the 90-Day Notice
- 5) Record of inspection with specified information
- 6) Copy of the 30-Day Notice
- 7) Copy of each relocation claim form and supporting documentation
- 8) Copy of evidence of verification of the claim
- 9) Copy of a cancelled check or other evidence or receipt of payment
- 10) Evidence of receipt of all notices
- 11) Copies of all correspondence related to the claim
- 12) Copies of any appeals made and outcomes and other pertinent data, such as referral of discrimination complaints, etc.
- 13) A summary of the relocation

B) **RELOCATION MANAGEMENT CONTROL REPORT** - It is highly recommended for relocation projects which cover several cases, that a Relocation Management Control Report be maintained.

GUIDEFORM GENERAL NOTICE RESIDENTIAL TENANT THAT WILL NOT BE DISPLACED
--

Grantee or Agency Letterhead

(Date)

Dear _____:

On _____ *(date)*, _____ *(property owner)*, submitted an application to the _____ for financial assistance to rehabilitate the building which you occupy at _____ *(address)*.

This notice is to inform you that, if the assistance is provided and the building is rehabilitated, you will not be displaced. Therefore, we urge you not to move anywhere at this time. (If you do elect to move for reasons of your choice, you will not be provided relocation assistance.

If the application is approved that Federal assistance is provided for the rehabilitation, you will be able to lease and occupy your present apartment (or another suitable, decent, safe and sanitary apartment in the same building) upon completion of the rehabilitation. Of course, you must comply with standard lease terms and conditions.

After the rehabilitation, your initial rent, including the estimated average monthly utility costs, will not exceed the greater of (a) your current rent/average utility costs, or (b) 30 percent of your average monthly gross household income. If you must move temporarily so that the rehabilitation can be completed, suitable housing will be made available to you for the temporary period, and you will be reimbursed for all reasonable extra expenses, including all moving costs and any increase in housing costs.

Again, we urge you not to move. If the project is approved, you can be sure that we will make every effort to accommodate your needs. Because Federal assistance would be involved, you would be protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

This letter is important and should be retained. You will be contacted soon. In the meantime, if you have any questions about our plans, please contact: _____ *(name)*, _____ *(title)*, at _____ *(phone)*, _____ *(address)*.

Sincerely,

(name and title)

NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. This is a guide form. It should be revised to reflect the circumstances.

GUIDEFORM GENERAL NOTICE RESIDENTIAL TENANT TO BE DISPLACED
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Grantee or Agency Letterhead

(Date)

Dear _____:

The City of _____ is interested in acquiring the property you occupy at (address) _____, for the _____ (project). This notice is to inform you of your rights under Federal law. If the City acquired the property and you are displaced for the project, you will be eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. However, do not move now. This is not a notice to vacate the premises. You should continue to pay your monthly rent to your landlord because failure to pay rent and meet your other obligations as a tenant may be cause for eviction and loss of relocation assistance. You are urged not to move or sign any agreement to purchase or lease a new unit before receiving formal notice of your eligibility for relocation assistance. If you move or are evicted before receiving such notice, you may not receive any assistance. Please contact us before you make any moving plans.

If the City acquires the property and you are eligible for relocation assistance, you will be given advisory services, including referrals to replacement housing, and at least 90 days advance written notice of the date you will be required to move. You would also receive a payment for moving expenses and may be eligible for financial assistance to help you rent or buy a replacement house. This assistance is more fully explained in the enclosed brochure, "Relocation Assistance to Tenants Displaced from Their Homes."

If for any reason any other persons move into this unit with you after this notice, your assistance may be reduced. If you have any questions, please contact: (name) _____, (title) _____, at (phone) _____, (address) _____.

Again, this is not a notice to vacate and does not establish eligibility for relocation payments or other relocation assistance. If the City decides not to purchase the property, you will be notified in writing.

Sincerely,

(name and title)

Enclosure

NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. This is a guide form. It should be revised to reflect the circumstances.

GUIDEFORM NOTICE OF NONDISPLACEMENT TO RESIDENTIAL TENANT

Grantee or Agency Letterhead

(Date)

Dear _____:

On (date), we notified you that the owner of your building had applied for assistance to make extensive repairs to the building. On (date), the owner's request was approved, and the repairs will begin soon.

This is a notice of non-displacement. You will not be required to move permanently as a result of the rehabilitation. This notice guarantees you the following:

1. You will be able to lease and occupy your present apartment [or another suitable, decent, safe and sanitary apartment in the same building/complex] upon completion of the rehabilitation. Your monthly rent will remain the same or, if increased, your new rent and estimated average utility costs will not exceed 30% of the gross income of all adult members of your household. Of course, you must comply with the reasonable terms and conditions of your lease.
2. If you must move temporarily so that the repairs can be completed, you will be reimbursed for all of your extra expenses, including the cost of moving to and from the temporarily occupied unit and any additional housing costs. The temporary unit will be decent, safe and sanitary, and all other conditions of the temporary move will be reasonable.

Since you have the opportunity to occupy a newly rehabilitated apartment, I urge you not to move. (If you do elect to move for your own reasons, you will not receive any relocation assistance.) We will make every effort to accommodate your needs. Because Federal assistance is involved, you are protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

If you have any questions, please contact: _____ (name) _____, (title) _____, at (phone) _____, (address) _____. Remember, do not move before we have a chance to discuss your eligibility for assistance. This letter is important to you and should be retained.

Sincerely,

(name and title)

NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. This is a guide form. It should be revised to reflect the circumstances.

GUIDEFORM NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE - RESIDENTIAL TENANT
--

Grantee or Agency Letterhead

(Date)

Dear _____:

On _____ *(date)* _____, we notified you of proposed plans to _____ *(identify project)* _____.
On _____ *(date)* _____, the project was approved.

This is a **notice of eligibility for relocation assistance**. To carry out the project, it will be necessary for you to relocate. However, **you do not need to move now**. You will not be required to move without at least 90 days advance written notice of the date by which you must vacate. And when you do move, you will be entitled to relocation payments and other assistance in accordance with Federal regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

The effective date of this notice is *(date of initiation of negotiations)*. You are now eligible for relocation assistance, including:

Counseling and Other Advisory Services.

Payment for Moving Expenses. You may choose either (1) a payment for your actual reasonable moving and related expenses, or (2) if you prefer, a fixed moving expense and dislocation allowance of \$_____.

Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors, including the cost of a "comparable replacement home," the monthly rent and average cost of utility services for your present home, and 30 percent of your average gross household income.

Listed below are three "comparable replacement homes" that you may wish to consider:

ADDRESS	RENT and UTILITY COSTS	CONTACT PERSON and TELEPHONE NUMBER
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

We would be pleased to provide you with transportation to inspect these dwelling units. We believe that the unit at _____ *(address)* _____ is the most representative of your present home. The rent

and the estimated average cost of utility services for that unit is \$_____. Based on the information you have provided about your income, you may be eligible for a rental assistance payment up to \$_____ (42 x \$_____). This is the maximum amount that you would be eligible to receive. It would be paid in (*indicate number of installments or lump sum*). If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than \$_____, your rental assistance payment would be based on the actual cost of such unit.

Contact us immediately if you do not agree that these units are comparable to your home. We will explain the basis for our selecting these units. And, if necessary, we will find other units. We will not base your payment on any unit that is not a "comparable replacement home." Should you choose to buy (rather than rent) a decent, safe and sanitary replacement home, you would be eligible for a down payment of \$_____. Let us know if you would prefer to buy a replacement home, and we will help you find such housing.

I am enclosing a brochure entitled, "Relocation Assistance to Tenants Displaced from Their Homes." Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. For example, to obtain a replacement housing payment you must move to a decent, safe and sanitary home within one year after you vacate your present home. Therefore, do not commit yourself to rent or buy a unit until we inspect it.

I want to make it clear that you are eligible for assistance to help you relocate. In addition to relocation payments and housing referrals, counseling and other services are available to you. A representative of this office will soon contact you to determine your needs and preferences. He/She will explain your rights and help you obtain the relocation payments and other assistance for which you are eligible. If you have any questions, please contact: (*name*)_____, (*title*)_____, at (*phone*)_____, (*address*)_____.

Remember, do not move before we have a chance to discuss your eligibility for assistance. This letter is important to you and should be retained.

Sincerely,

(name and title)

Enclosure

NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. This is a guide form. It should be revised to reflect the circumstances.

SCHEDULE FOR “FIXED MOVING EXPENSE AND DISLOCATION”
--

NEW PAYMENT SCHEDULE

On May 16, 2005, the Department of Transportation (DOT) published in the Federal Register (70 FR 25877, a payment schedule for a “fixed moving expense and dislocation allowance” in lieu of a payment for actual moving and related expenses to persons displaced from a dwelling by a project subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). The schedule covers all residential displacements occurring on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (privately undertaken or public) for a HUD-assisted project. The schedule implements the government-wide URA rule at 49 CFR 24.302 which applies to HUD-assisted programs.

RELOCATION OF MOBILE HOMES

The occupant of a mobile home who relocates the mobile home from the displacement site is not entitled to a fixed moving expense and dislocation allowance. Such persons are eligible for a payment for the actual cost of moving the mobile home plus the actual reasonable cost for packing, securing, moving and unpacking the personal property.

**RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE SCHEDULE
UNDER 49 CFR PART 24 FOR THE STATE OF TENNESSEE**

EFFECTIVE AUGUST 22, 2008

OCCUPANT OWNS FURNITURE									OCCUPANT DOES NOT OWN FURNITURE	
NUMBER OF ROOMS OF FURNITURE									FIRST ROOM	EACH ADDITIONAL ROOM
1	2	3	4	5	6	7	8	Additional Room		
\$500	\$700	\$900	\$1100	\$1300	\$1500	\$1700	\$1900	\$200	\$300	\$50

RECORD OF ADVISORY ASSISTANCE AND OTHER CONTACTS

NAME OF OCCUPANT: _____

PAGE _____ OF _____

[illegible]

RL-8

Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)

APPENDIX 8:

SITE OCCUPANT RECORD - RESIDENTIAL

[HTTP://PORTAL.HUD.GOV/HUDPORTAL/HUD?SRC=/PROGRAM_OFFICES/ADMINISTRATION/HUDCLIPS/HANDBOOKS/
CPD/13780](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780)

Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)

APPENDIX 11:

HUD Form 40054 - Residential Claim for Moving and Related Expenses

[HTTP://PORTAL.HUD.GOV/HUDPORTAL/HUD?SRC=/PROGRAM_OFFICES/ADMINISTRATION/HUDCLIPS/HANDBOOKS/
CPD/13780](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780)

Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.o)

APPENDIX 14:

HUD Form 40058 - Claim for Rental Assistance or Down payment Assistance

[HTTP://PORTAL.HUD.GOV/HUDPORTAL/HUD?SRC=/PROGRAM_OFFICES/ADMINISTRATION/HUDCLIPS/HANDBOOKS/
CPD/13780](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780)

Tenant Assistance, Relocation and Real Property Acquisition Handbook
(1378.0)

APPENDIX 21:

RESIDENTIAL RELOCATION MANAGEMENT REPORT

[HTTP://PORTAL.HUD.GOV/HUDPORTAL/HUD?SRC=/PROGRAM_OFFICES/ADMINISTRATION/HUDCLIPS/HANDBOOKS/CPD/13780](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780)

SAMPLE GRIEVANCE PROCEDURE

I. GROUND

You have the right to appeal any action of _____ on the following grounds:

1. Failure to properly determine your eligibility for, or the amount of, a relocation or other payment due you under the Uniform Act;
2. Refusal to waive the time limit for filing a claim or the one-year purchase and occupancy requirement;
3. Failure to properly inspect the replacement dwelling; and
4. Failure to comply with a requirement of 24 CFR 42.209 (Availability of Comparable Replacement Dwelling Prior to Displacement).

Your acceptance of the amount offered you by _____ does not limit your right to appeal _____'s determination and seek a larger payment.

II. METHODS AND TIME LIMITS FOR INITIATING AN APPEAL

If your appeal concerns your eligibility for, or the amount of, payment, you must file your appeal within 6 months after _____ notifies you of its determination on your claim.

If your appeal concerns an alleged failure to provide appropriate housing referrals or to properly inspect the replacement dwelling or to comply with 24 CFR 42.209 (Availability of Comparable Replacement Dwellings Prior to Displacement), you must file your appeal within 6 months after (a) your permanent move from your home or apartment; or (b) the end of the four-year occupancy period, whichever comes first.

If your appeal concerns _____'s refusal to waive the one-year purchase and occupancy requirement, your appeal must be filed within 30 days after the refusal.

If you have any questions concerning these procedures, do not hesitate to contact:

Relocation Officer: _____
 Agency: _____
 Address: _____
 Telephone: _____

 Occupant's Signature

 Agency Representative

 Occupant's Address

 Date

GUIDEFORM NOTICE TO PROSPECTIVE TENANT

Grantee or Agency Letterhead

(Date)

Dear _____:

On (date) , (property owner) submitted an application to the (Grantee) , for financial assistance to [acquire] [rehabilitate] [demolish] [convert] the building located at (address) . Because Federal funds are being used in this project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1979, as amended (URA) applies for tenants in residence at the time of application. However, as a new tenant, you will not be eligible for relocation benefits under URA.

This notice is to inform you of the following information **before you enter into any lease agreement and occupy a unit at the above address:**

- ◆ You may be displaced by the project.
- ◆ You may be required to relocate temporarily.
- ◆ You may be subject to a rent increase.
- ◆ You will not be entitled to any relocation benefits provided under the URA. If you have to move or your rent is increased as a result of the above project, you will not be reimbursed for any such rent increase or for any costs or expenses incurred by you in connection with a move as a result of the project.

Please read this notification carefully prior to signing a rental agreement and moving into the project. If you should have any questions about this notice, please contact (Grantee) , at (address and telephone number) . Once you have read and have understood this notice, please sign the statement below if you still desire to lease the unit.

Sincerely,

 (Name and Title)

CHAPTER FIVE – ACQUISITION

5.1 – Overview

- A) **UNIFORM ACT** - The acquisition, rehabilitation or demolition of any real property associated with a HOME-funded project must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. Sect. 4601 et seq.), hereafter called the "Uniform Act" or "URA", and the HUD implementing regulations (49 CFR Part 24).

1) The Uniform Act applies:

- a) Regardless of whether the actual acquisition is being paid from local or HOME dollars;
- b) To any acquisition which takes place on or after the date of submission of a HOME application to fund an activity on that property unless the Grantee shows that the acquisition was clearly unrelated to the proposed HOME funded activity; and
- c) Any acquisition that took place before the date of submission of the application can be subject to the Uniform Act if that acquisition was intended to support a later HOME activity.

- 2) All Grantees must either establish that they own the real property necessary for their project, or they will need to acquire that property by following specific federally mandated procedures. The term "property" when used in this context refers to any kind of permanent interest in real property: fee title, permanent easements, long-term leases (50 year or more), and temporary easements.
- 3) Before starting acquisition activities, Grantees should review HUD Handbook 1378 to obtain a better idea of the process, individual procedures to be followed, and recordkeeping requirements.
- 4) Grantees should not assume that acquisition is not required until all city or county records have been searched. The results of this search must be documented in the Real Property Acquisition file.

5.2 – General Acquisition Requirements

- A) For the purposes of this handbook, “property to be acquired” refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are subject to all of the same rules as other forms of acquisition. However, if a temporary easement exclusively benefits the property owner, the URA does not apply. Grantees should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

- 1) Acquisition rules must be followed whenever:
 - a) The grantee undertakes the purchase of property directly;
 - b) The grantee hires an agent, private developer, etc. to act on their behalf; and
 - c) The grantee provides a nonprofit, CHDO, or for-profit developer with funds to purchase a property; or
 - d) The grantee provides Federal assistance to individuals who are acquiring their own home (i.e. homebuyer assistance program).
- B) HUD Handbook 1378, Chapter 5, recently updated, is a resource available for acquisition information and is available at HUD's web site: <https://www.hud.gov/sites/dfiles/OCHCO/documents> and <https://www.hudexchange.info/resource/804/ura-and-real-property-acquisition-policies-act-49-cfr-part-2>

The URA regulations can also be downloaded from HUD's website at <http://www.hud.gov/offices/cpd/library/relocation/lawsandregs/finalrule/>.
- C) The first step grantees should consider before undertaking any acquisition is a title search to determine the legal owner of the property.
- D) Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 3 for detailed guidance.
- E) Acquisitions can be divided into two types of transactions: voluntary and involuntary. It is critical that grantees understand the differences between the two types of sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain.
 - 1) Regardless of the form of acquisition used, it is strongly recommended that the grantee maintain a log of contacts with the owner in the acquisition file (see the sample in Attachment 7-1).
- F) The use of Federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if Federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a Federal or Federally-assisted project at any point during the course of a project.

5.3 – Voluntary Acquisition

- A) The URA recognizes three general types of purchases as potentially voluntary. Generally they are:
 - 1) Purchases in which persons are acting on behalf of an agency with the power of eminent

domain but the community states in writing it will not to use this power.

- a) Example: The grantee has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing and – if the offer is not accepted – be prepared to look for another property. The property will not be taken using the condemnation process.
 - 2) Purchases where the agency or person does not have the power of eminent domain.
 - a) Example: A CHDO or developer without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.
 - 3) Purchases of property from government agencies (Federal, state, or local) where the grantee does not have the power of eminent domain over the other entity.
 - a) Example: A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.
 - 4) To comply with the URA and carry out cost-effective programs, it is strongly recommended that acquisition under HOME be limited to arms-length, voluntary transactions.
- B) Voluntary acquisition may be the most expeditious method available to a Grantee when property is needed for a project activity that is not site-specific. Projects that require particular sites by their very nature preclude the use of this method of acquisition.
- C) Voluntary acquisition must meet **ALL** of the following conditions:
- 1) No specific site needs to be acquired -- the search may be limited to a general geographic area; and
 - 2) The property being acquired is not part of a project area where all or substantially all of the property will be acquired; and
 - 3) The Grantee will not acquire (by condemnation) if negotiations fail and informs the owner of this. The seller must be told in writing that the buyer lacks the power or eminent domain or in will not exercise their power of eminent domain to take the property. The Voluntary Acquisition Notice (see AQ-1) must also include an estimate of the property's fair market value in this notice to the seller. This notice will be included as part of the purchase offer and contract of sale which serves as an Addendum to Sales Contract. (See AQ-1A). Tenants must be informed of potential relocation eligibility upon initiation of negotiation.
- D) For a development project that intends to acquire multiple properties by voluntary acquisition, the Grantee should advertise/solicit sites for the particular project, for instance using a real estate agent's multiple listing service to identify sites. A general geographic location (e.g., the north side of town) can be included.
- E) A formal appraisal which is independent and unbiased is required.

- F) Noncompliance with Voluntary Acquisition Requirements. In those cases where a purchase option or contract for an acquisition prior to the issuance of a voluntary acquisition notice informing the seller of their rights as a voluntary acquisition, the grantee must, in writing, provide the seller the opportunity to withdraw from the existing agreement. After the applicable requirements have been satisfied by the grantee and the seller has been so informed in writing, the seller may elect to void or affirm the original agreement in writing. If the seller voids the original agreement, the grantee can negotiate a new agreement with the seller (AQ-1A) provides a contract addendum to inform the seller of their rights under URA and acknowledge they wish to affirm the original agreement.

5.4 – Acquisition from Another Public Agency

- A) Acquisition between governmental/public agencies is exempt from the Uniform Act, if the acquiring agency does not have condemnation authority over the other agency. The Grantee is simply responsible for documenting that it does not have condemnation authority, and it may then negotiate with the agency from which the property, easement or right of way is needed.

5.5 – Donations

- A) Donations are a common way that many Grantees acquire property. To be considered a voluntary sale, the Grantee must:
- 1) Inform the owner (in writing) of his right to receive just compensation under the Uniform Relocation Act (URA) based on an appraisal of the real property. The owner must waive these rights in a written consent document; and
 - 2) Assure that an appraisal is obtained unless the owner releases them from such obligation (in writing).

B) PROCEDURES FOR ACQUISITION BY DONATION

- 1) Grantees must send donating owners a statement that the Grantee is required by law to offer just compensation to the owner based on an appraisal of the real property which establishes fair market value.
- 2) Provision must be made for a response from the property owner. It should be equally easy to respond either positively or negatively. They may also provide the opportunity for the owner to release the Grantee from its responsibility for an appraisal.
- 3) The property owner then signs the consent agreement.

5.6 – Temporary Easements

- A) URA regulation require that temporary easements required for a project be protected as an acquisition of property unless the acquisition of the temporary easements is exclusively for the benefit of the property owner. 49 CFR 24.101(c)(2) states that, “the provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be

reached.” The acquisition of temporary easements which do not satisfy the exception provided in 49 CFR 24.101(c)(2) above remain subject to the regulatory requirements whether completed as a voluntary acquisition as outline above or as an involuntary acquisition shown in the following section.

5.7 – Involuntary Acquisition Subject to Subpart B

A) BASIC REQUIREMENTS OF INVOLUNTARY ACQUISITION:

- 1) Appraise the real property, inviting the owner to accompany the appraiser, except when:
 - a) The owner is donating the property and releases the locality from the obligation to appraise the property.
 - b) The acquisition is simple and to the best knowledge available to the Grantee, the fair market value is less than \$10,000. The basis for this determination must be well documented.
- 2) Establish just compensation for property in an amount not less than appraised fair market value. For tenant-owned improvements, just compensation shall be the greater of:
 - a) The contributory (enhancement) value of the improvement; or
 - b) Its salvage value.
- 3) Review the appraisal at the local level to determine the adequacy and soundness of the appraiser's opinion of fair market value.
- 4) Offer just compensation for property in writing before initiating negotiations. Include summary statement of basis for determination of just compensation.
- 5) Make reasonable efforts to acquire property expeditiously by negotiation. Do not take any coercive action to induce an agreement on the purchase price.
- 6) Do not require the transfer of possession of property until compensation is made available to owner.
- 7) Pay all costs incidental to the acquisition, including recording fees, mortgage prepayment penalties and prepaid property taxes.
- 8) If occupant is permitted to remain on the property on a short-term basis after acquisition, the rent shall not exceed the fair market rent for such occupancy.
- 9) If tenants occupy the property, they must be informed of potential relocation eligibility upon initiation of negotiation.

B) PROCEDURES

- 1) Notify all property owners as soon as possible of the Grantee interest in acquiring the property and the owner's basis rights (See AQ-3 Preliminary Acquisition Notice). A brochure "When a Public Agency Acquires Your Property" (AQ-4) has been published by HUD in Spanish and English editions. Copies of this publication are available from THDA.
- 2) Determine if an appraisal is needed. This determination must be based on whether the two exceptions mentioned in A.1 apply. If there is no need for an appraisal, then proceed

with step 5.

3) Obtain an unbiased and independent appraisal.

a) An independent appraiser must be selected.

(1) The Grantee shall establish criteria for appraiser qualifications, assuring that they are consistent with the level of difficulty of the appraisal assignment and the Uniform Standards of Appraisal Practice. If the Grantee uses a contract appraiser, he or she must be State licensed or certified in accordance with the title XI of the Financial

(2) No appraiser (or review appraiser) shall have any direct or indirect interest in the property to be appraised.

(3) No one may act as a negotiator for real property that he has appraised if the value of the property exceeds \$2,000.

b) A minimum of one appraisal is required. However, if the project is potentially controversial (e.g., as with an unwilling seller) or where property values are high, it is recommended that two independent appraisals be conducted.

c) The Grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during the inspection of the property prior to the appraisal. This notice should be in writing and a copy placed in the property acquisition file. (See AQ-5 Invitation to Accompany an Appraiser).

(1) Appraisals that are detailed and consistent with established, commonly accepted practices shall be prepared for all acquisitions except for those which, by virtue of their low value and/or simplicity, do not require an in-depth analysis. Nationally recognized appraisal standards shall be used, including the Uniform Appraisal Standards for Federal Land Acquisition to the extent feasible. Minimum requirements for an appraisal as listed at Section 24.103(a)(1)-(6) of the HUD implementing regulations.

4) *Have the appraisal reviewed.*

a) This review must be conducted by a qualified review appraiser with no direct or indirect interest in the property who will assure that the appraisal meets applicable requirements and seek corrections or revisions to the appraisal as necessary. The review appraiser cannot be the same person who appraised the property.

b) The review appraiser may develop appraisal documentation (in accordance with HUD regulations) to support a recommended value IF he is unable to approve the appraisal submitted as an adequate basis for establishing just compensation, AND, it is not practical to obtain an additional appraisal.

c) The review appraiser shall set forth in a signed statement a certification of the

recommended value of the property that identifies appraisal reports reviewed and explains the basis for the recommended value. If there are damages or benefits to any remaining property, these shall also be identified.

- 5) Establish and Offer Just Compensation. This amount cannot be less than the review appraiser's recommended fair market value, and is usually the same. A prompt, written offer to acquire for this amount (AQ-6 Offer to Purchase) must then be sent to the owner. A written "Statement of Basis for Just Compensation" (AQ-7) must accompany this offer.
- 6) Negotiate with the owner, or his representative.
 - a) Discuss the offer and acquisition policies and procedures including the payment of incidental expenses as provided for in Section 24.106 of the HUD implementing regulations.
 - b) Give the owner an opportunity to evaluate the offer and, if he chooses, to present any material that he feels is relevant and/or make a counter-offer.
 - c) Consider any counter-offer and either accept it, obtain a new appraisal (usually only recommended if significant time has passed since the original appraisal), institute condemnation proceedings, or decide not to acquire the property.
 - d) Maintain full documentation of negotiation proceedings in the project acquisition file.
 - (1) **NOTE:** Condemnation can be substantially more expensive than negotiation, particularly if the property owner is an elderly or infirm individual to whom juries tend to be very generous. The Grantee is required to pay the amount established by the court. It is advisable to try to avoid condemnation and secure a successful acquisition by negotiation when at all possible.
- 7) *Prepare, execute and record the contract of sale.* Before taking possession of the property, the Grantee must pay the agreed-upon purchase price to the owner. (See AQ-8 Offer of Sale of Land).
- 8) At the conclusion of settlement, the Grantee must provide the owner with a Closing Disclosure that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the person handling the transaction. A receipt for purchase price must be secured by the Contractor locality. All title/deed transfer documents must also be on file.
- 9) *If the local entity decides not to acquire* the property, it must notify the owner and all tenants in writing by registered mail, return receipt requested, of its intention not to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice must be sent within 10 days of the Grantee's determination not to acquire. (See AQ-10 Notice of Intent not to Acquire).

5.8 – Acquisition and Lead-Based Paint Regulations

- A) **ACQUISITION WITHOUT REHABILITATION** - Prior to the closing, the following steps must be followed for the acquisition of a vacant unit:
- 1) A visual inspection must be conducted to identify any deteriorated paint.
 - 2) Deteriorated paint must be tested or presumed to be lead-based paint.
 - 3) Deteriorated paint must be stabilized.
 - 4) The unit must undergo clearance testing after paint stabilization. Clearance must be achieved prior to purchase of the property and occupancy.
 - a) A copy of the clearance form (LBP-6) must accompany the draw request for acquisition funds.
- B) **ACQUISITION WITH REHABILITATION** - See *Chapter 8: Lead-Based Paint, Section 3 - Requirements for Rehabilitation Assistance (Subpart J)*.

5.9 – Record Keeping Requirements

- A) The following documentation must be kept for each property, easement or rights-of-way acquired:
- 1) Identification of property and property owner(s).
 - 2) Evidence owner was informed on a timely basis about acquisition and his or her rights.
 - 3) Copy of each appraisal report, including the review appraiser's report, and evidence that the owner was invited to accompany each appraiser on appraiser's inspection of property.
 - 4) Copy of written purchase offer and summary statement of the basis for the determination of just compensation and date of delivery to owner.
 - 5) Copy of purchase contract and document(s) conveying property.
 - 6) Copy of Closing Disclosure and evidence that owner received net proceeds due from sale.
 - 7) Copy of any appeal or complaint filed and response.
 - 8) **NOTE:** All notices to the owners and/or tenants should be either sent return receipt requested, or hand delivered and a signed receipt of delivery maintained.

5.10 – Reporting Requirements

- A) The Grantee must complete the Report on Real Property Acquisition Activities (AQ-11). This report should be sent to THDA directly after completion of real property acquisition activities that were paid for with HOME funds. This must occur prior to start of construction.

Attachment 7-1

LOG OF CONTACT WITH THE OWNER

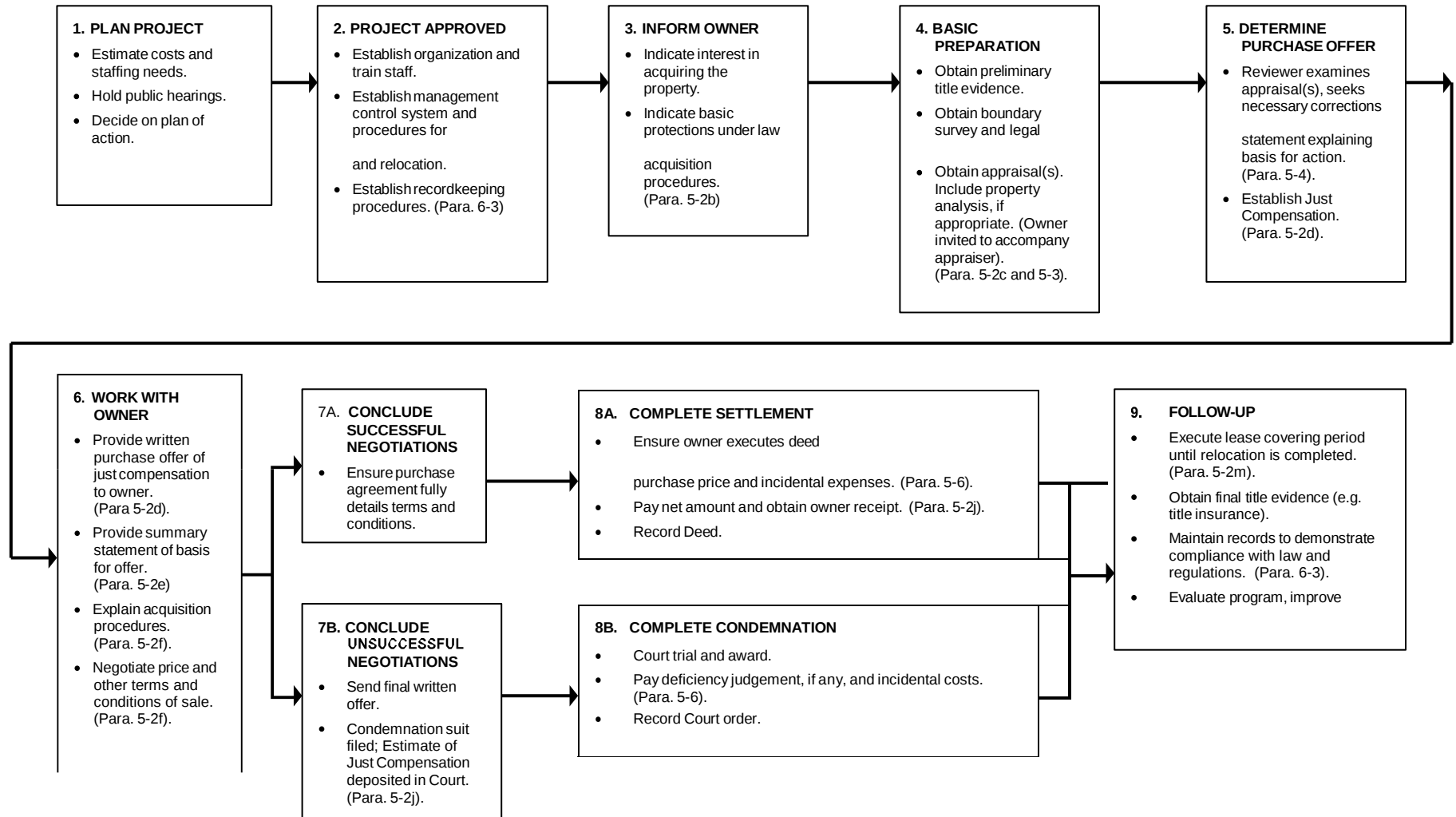
NAME OF OCCUPANT: _____

PAGE _____ OF _____

NAME OF AGENCY REP & DATE OF CONTACT	COMMENTS

ATTACHMENT III:

INVOLUNTARY ACQUISITION PROCESS UNDER URA*



*UNIFORM RELOCATION ACT RULES EFFECTIVE 4/2/89 (HUD HANDBOOK 1378)

SAMPLE VOLUNTARY ACQUISITION NOTICE

- Informational Notice if no existing sales contract is in place -
(Agencies **Without** Eminent Domain Authority)

Grantee or Agency Letterhead

(date)

Dear _____:

Name of Agency/Person)_____, is interested in acquiring property you own at (address)_____for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD).

Please be advised that (Name of Agency/Person)_____does not have authority to acquire your property by eminent domain. In the event we cannot reach an amicable agreement for the purchase of your property, we will not pursue this proposed acquisition.

We are prepared to offer you (\$) _____ to purchase your property. We believe this amount represents the current market value of your property. Please contact us at your convenience if you are interested in selling your property.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance.

If you have any questions about this notice or the proposed project, please contact (name)_____, (title)_____, (address)_____, (phone)_____.

Sincerely,

Agency:

BY:

(name and title)

NOTES.

1. The case file must indicate the manner in which this notice was delivered (e.g., certified mail, return receipt requested) and the date of delivery.
2. Tenant-occupants displaced as a result of a voluntary acquisition may be entitled to URA relocation assistance and must be so informed per 49 CFR 24.2(a)(15)(iv) – Initiations of negotiations, and 49 CFR 24 Appendix A - 24.2(a)(15)(iv).

ADDENDUM TO CONTRACT

CONTRACT ADDENDUM # _____ DATED: _____

Original contract dated ____ / ____ / ____ for purchase of the property located at:

_____ between the following parties:

BUYER:

SELLER:

BUYER INITIATED THIS CONTRACT ADDENDUM # _____ ON _____, 20____.

BUYER'S SIGNATURE INITIATING THIS ADDENDUM

The contract for purchase of the above property was executed prior to the seller being informed of the potential of the use of federal funds as a part of the transaction. The seller was not informed of their rights as a voluntary acquisition. The seller has the right to withdraw from the existing agreement. The seller should have been informed of the following:

_____, the Buyer, will use federal funds through a HOME grant from the Tennessee Housing Development Agency to assist in acquiring your property. Please be informed of the following:

1. _____, the Buyer, does not have the right of eminent domain and, therefore, will not acquire the property that you, the Seller, have voluntarily offered for sale if negotiations fail to result in an amicable agreement; and
2. The terms and conditions of the sale have been set by you, the Seller, and the Buyer based on an agreed upon fair market value; and
3. Even though federal funds will be used in the acquisition of your property, you, the Seller, will not be entitled to any relocation benefits.

I, the Seller, further certify that the above listed property is not currently tenant-occupied and was not tenant-occupied at the time that an offer to purchase the property was made. I further certify that I, the Seller, did not order occupant(s) to move, or fail to renew a lease, in order to sell the property to the Buyer.

I understand that _____, the Seller, having reviewed this Contract Addendum # _____, has the right to accept or not accept this Contract Addendum # _____.

ACCEPTANCE:

I understand the above comments in this Contract Addendum # _____ and wish to accept this Addendum # _____ to the contract. I do not wish to terminate the contract dated ____ / ____ / ____ between myself, the Seller, and _____ (the Buyer).

Seller's Signature of Acceptance

Date of Acceptance

TERMINATION:

I understand the above comments in this Contract Addendum and do not wish to accept this Addendum # _____ to the contract. I wish to terminate the contract dated ____ / ____ / ____ between myself, the Seller, and _____ (the Buyer).

Seller's Signature of Termination

Date of Termination

**WAIVER OF RIGHTS AND BENEFITS OF THE UNIFORM
RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES OF 1970 (42 U.S.C. 4601)**

REMOVED

RELOCATION BENEFITS CANNOT BE WAIVED

PRELIMINARY INVOLUNTARY ACQUISITION NOTICE*

This is to formally notify you of our intent to acquire certain property which you own located at:

(LOCATION OF PROPERTY TO BE ACQUIRED)

We are interested in purchasing the property you own to:

(BRIEF DESCRIPTION OF THE PROJECT)

THIS NOTICE IS PRELIMINARY IN NATURE AND IS NOT A NOTICE TO VACATE. IT DOES NOT ESTABLISH ELIGIBILITY FOR RELOCATION PAYMENTS OR OTHER RELOCATION ASSISTANCE. To help explain the acquisition procedures, we are enclosing a copy of the booklet, "When A Public Agency Acquires Your Property".

You may donate this property or an easement interest in this property if you so desire.

If you have any questions before this office can contact you again, please call (NAME OF PERSON TO CONTACT AT AGENCY), who is the (TITLE OF PERSON TO CONTACT). Our telephone number is (AGENCY TELEPHONE NUMBER), and our regular office hours are (OFFICE HOURS - from _____ to _____, _____ through _____).

Sincerely,

(COMMUNITY OFFICIAL)

* This notice (and all notices) should be hand-delivered and a signed receipt obtained or sent registered or certified mail, return receipt requested.

REQUEST COMPLETE BOOKLET FROM THDA

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

WHEN A PUBLIC AGENCY ACQUIRES YOUR PROPERTY

INTRODUCTION

This booklet describes important features of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended** (URA) and provides general information about public acquisition of real property (real estate) that should be useful to you.

Most acquisitions of real property by a public agency for a Federal project or a project in which Federal funds are used are covered by the URA. If you are notified that your property will be acquired for such a project, it is important that you learn your rights under this important law.

This booklet may not answer all of your questions. If you have more questions about the acquisition of your property, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you sell your property. Afterwards, it may be too late.

INVITATION TO ACCOMPANY AN APPRAISER

(Current Date)

(Name of Owner)

(Address)

(City), (State) (Zip Code)

Dear *(Mr. or Mrs. Owner)*:

I have been requested by the *(Community)* to prepare an appraisal of your property on *(Address of Property)*. I will visit the property *(Date of Appraisal Visit)*. If you wish to accompany me, please phone me at *(Telephone Number)* to arrange a mutually convenient time.

Sincerely,

(Appraiser's Name)

(Title)

OFFER TO PURCHASE

(Current Date)

(Name of Owner)

(Address)

(City), (State) (Zip Code)

Dear _____:

The City would like to buy you property located at:

(LOCATION OF PROPERTY TO BE ACQUIRED)

Your property is needed for:

(BRIEF DESCRIPTION OF THE PROJECT)

Based on fair and independent appraisal of the property, we propose to offer:

(AMOUNT OF OFFER)

We feel the offer represents just and reasonable payment. Please read carefully the attached "Statement Of The Basis For The Determination Of Just Compensation". It contains a complete description of the property and any improvements we propose to acquire. It also explains how the amount of our offer was determined.

If the offer is acceptable, please sign below.

Sincerely,

Signed,

(SIGNATURE AND TITLE OF
COMMUNITY OFFICIAL)

(SIGNATURE OF OWNER)

Attachment

(DATE)

**STATEMENT OF THE BASIS FOR DETERMINATION
OF JUST COMPENSATION**

(Current Date)

(Inside Address)

SUBJECT: Statement of the Basis for Determination of Just Compensation
HOME Program
_____, Tennessee.

Dear _____:

The following information is a summary of how the _____ established the amount of the offer, which is felt to be a fair and reasonable price for certain property you own in the _____ HOME Program Area, _____, Tennessee.

DESCRIPTION OF PROPERTY (Legal description or plat)

STREET ADDRESS (or other positive identification)

INTEREST TO BE ACQUIRED

LISTING OF FIXTURES, STRUCTURES, OR OTHER IMPROVEMENTS TO THE LAND TO BE ACQUIRED

OTHER ITEMS OF REALTY, OWNED BY OTHER PARTIES TO BE A PART OF THE ACQUISITION: (Item and Owner)

AMOUNT OF THE OFFER

\$ (numerical amount)

(Spelled out in CAPS)

We believe that our offer represents just compensation for your property. It is **not less than** the approved appraisal for the property. Any increase or decrease in the market value caused by this project for which your property is being acquired or the likelihood that it would be acquired, other than to physical wear and tear within your reasonable control, has been disregarded by our appraisers. Our offer does not take into account any relocation assistance or payments that you may be entitled to receive. We will pay all reasonable closing costs. Of course, expenses to provide us with good title are your responsibility. This includes such items as liens for taxes, materials and mechanics liens, and outstanding mortgages.

Our offer to you is based on Fair Market Value, defined as "the price the property will bring in a competitive market under conditions requisite to a fair sale resulting from negotiations between a buyer and a seller, each acting prudently and wisely, and without pressure or undue influence."

APPRAISAL PROCEDURES

The appraiser(s) which were hired to appraise your property used practices and techniques recognized by all professional appraisal societies and organizations. These techniques are:

1. **COST APPROACH TO VALUE:** The appraiser appraises the land as if vacant. To that value, he adds the depreciated cost of the improvements. The land value is determined by using recent vacant land sales. The depreciated building value is determined by calculating the cost **today** of reproducing the building new and deducting for all causes of depreciation.
2. **DIRECT SALES COMPARISON APPROACH:** The value of the property is estimated by comparing it with similar properties that have recently sold in the same or similar area. The appraiser makes adjustments to the sales price for differences between the sales and the subject property.
3. **INCOME APPROACH:** This approach depends on determining the market rent for the subject property and finding what similar property has sold for on the market. The sales price is then divided by the actual rent to determine a multiplier (the technical term is the Gross Rent Multiplier or GRM). The market rent of the subject is multiplied by the GRM. The result is the Value Indicated by the Income Approach.

NOTE: For non-residential and large multi-family properties, the income approach is more complicated and involves capitalization of net income. It is not discussed in detail since few such properties are being acquired.

CORRELATION AND FINAL VALUE STATEMENT

The appraiser then has as many as three indications of value if all three approaches are appropriate. At this point, the appraiser re-analyzes all the information and selects one amount that most nearly reflects the consensus of his/her data. This amount is not an average, but the conclusion based on this analysis. The appraiser then recommends this value to us as of a specific date.

Please realize that much of the language above is required by the Federal Regulations and Law, and as such, is sometimes confusing. If you have any questions, please feel free to contact us. We are located (LOCATION OF OFFICE). Our office hours are (OFFICE HOURS) and our telephone number is (OFFICE TELEPHONE NUMBER). (NAME OF PERSON TO CONTACT) is the person who could better answer any questions of a specific nature.

Sincerely,

(GRANTEE)

OFFER OF SALE OF LAND

In consideration of the sum of one dollar (\$1) and other valuable consideration in hand paid, the receipt whereof is hereby acknowledged, the undersigned (hereinafter called the "Seller") being the owner thereof, hereby offers and agrees to sell and convey to the City of _____ (hereinafter called "the City") or its assignee or nominee the following described property located in the City of _____, County of _____, State of _____.

Upon the following terms and conditions:

Upon closing, the Seller shall convey to the City or its assignee or nominee by general warranty deed a good and marketable fee simple title thereto, together with all improvements, hereditaments and appurtenances thereto belonging, free and clear of all liens (except liens for current taxes and assessments), easements, restrictions, delinquent taxes and assessments, leases and encumbrances of any kind, existing or inchoate with proper release of dower, courtesy, and waiver of homestead rights, if any, together with all of his right, title and interest in and to any streets or alleys, adjoining or abutting thereon. Taxes and assessments shall be adjusted as of the time of closing. Possession shall be delivered to the City at the time of closing.

The total purchase price shall be \$ _____. All expenses of examination of title and of preparation and recording of the deed shall be paid by the City. Payment of the purchase price shall be made upon transfer of title to the City.

This offer shall be irrevocable for a period of _____ days from the date hereof and shall remain in force thereafter until terminated by the Seller. Such termination may be effected at any time after the expiration of such _____ days period by Seller giving 60 days prior written notice to the City of such termination. If this offer is accepted, the City shall endorse its acceptance hereon and mail notice thereof to the Seller at the address specified below. The City shall specify the place and time of closing, which shall not be more than 60 days after the date of acceptance. The Seller agrees that this offer shall not be revocable and that he will not sell, mortgage, encumber, or otherwise dispose of such property or any part thereof prior to said expiration date, except to the City. This agreement shall be binding upon the seller and his heirs, executors, administrators, successors, and assigns.

Notwithstanding the prior acceptance of this offer, the City in lieu of completing the purchase of said premises may, at any time prior to closing, proceed to acquire the same by condemnation. The Seller agrees, as an independent stipulation, which shall survive the expiration or termination of this offer, to such condemnation upon the payment of just compensation, which shall be the purchase price above stated, which price the Seller hereby declares to be the fair market value of said premises, inclusive of every interest therein. Loss or damage to the property by fire or casualty shall be at the risk of the Seller until the title has been conveyed to the City.

Accepted _____, 20____ _ _____, 20____

BY:

Address:

Statement of Settlement Costs/HUD 1

NOTICE OF INTENT NOT TO ACQUIRE
--

(Current Date)

(Property Owner)
(Address)

Dear _____:

The (COMMUNITY) has determined not to acquire your (LOCATION OF PROPERTY) property. Any person moving from the premises from the date of this notice will not be eligible for relocation payments or benefits.

Sincerely,

(Community Official)

cc: (Tenant)

REPORT ON REAL PROPERTY ACQUISITION

NOTE: This report is due at the completion of an acquisition

Is this the final report for this Project: ☐ Yes ☐ No

REAL PROPERTY ACQUISITION	DATE (MO/YR)	NUMBER OF PARCELS	AMOUNT PAID
Acquired by Voluntary Acquisition (not site specific, i.e., advertised for proposed sites.)			
Acquired by Donation (right to just compensation waived by owner)			
Acquired from another Public Agency			

REAL PROPERTY ACQUISITION SUBJECT TO UNIFORM ACT	DATE (MO/YR)	NUMBER OF PARCELS	AMOUNT PAID
Accepted "Just Compensation" Amount			
Acquired by Negotiation			
Acquired by Condemnation			

PREPARED BY:

Name: _____

Phone: _____

Title: _____

Date: _____

AQ-12

SITE ACQUISITION REPORT

PROJECT NAME AND NUMBER _____

STATUS AS OF _____

[illegible]

CHAPTER SIX – FAIR HOUSING AND EQUAL OPPORTUNITY

6.1 – Overview

- A) Each Grantee funded under Tennessee Housing Development Agency's (THDA) HOME Program must comply with both state and federal laws with regard to fair housing and equal opportunity (FHEO). FHEO laws and requirements have been developed to protect individuals and groups against discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability and to provide equal opportunities in housing, employment and contracting assisted with federal funds.

6.2 – Fair Housing and Affirmative Marketing

- A) **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED (42 U.C.A. 2000D)** - States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, national origin, religion, sex, familial status or disability. Its implementing regulations may be found in 24 CFR Part 1.
- B) **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED (42 U.C.A. 2000E)** - Prohibits discrimination in employment against any individual on the basis of race, color, national origin, religion, sex, familial status or disability, and allows victims of intentional discrimination to seek punitive and compensatory damages through jury trials.
- C) **TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, AS AMENDED "THE FAIR HOUSING ACT" (42 U.C.A. 3601)** - Prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, national origin, religion, sex, familial status or disability. Its implementing regulations may be found in 24 CFR Part 100-115.
 - 1) The Fair Housing Act does not pre-empt local zoning laws. The Act does, however, apply to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. The Fair Housing Act makes the following unlawful:
 - a) To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
 - b) To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

- c) To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- D) **2.4 EQUAL OPPORTUNITY IN HOUSING (EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259)** - Prohibits discrimination in housing or residential property financing related to any federally-assisted activity against individuals on the basis of race, color, national origin, religion, sex, familial status or disability. Implementing regulations may be found in 24 CFR Part 107.
- E) **2.5 AGE DISCRIMINATION ACT OF 1975, AS AMENDED (42 U.S.C. 6101-07)** - Prohibits age discrimination in programs receiving federal financial assistance. Its implementing regulations may be found in 24 CFR Part 146.

6.3 – Housing for Persons with Disabilities

- A) **SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED (29 U.C.A. 794)** - States that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving HOME funds. The implementing regulations may be found in 24 CFR Part 8.
 - 1) For new construction of all multi-family units and for rehabilitation projects with 15 or more units for which the rehabilitation cost will equal at least 75% of the replacement cost:
 - a) Five percent of the units in the project must be accessible to individuals with mobility impairments; and
 - b) An additional two percent must be accessible to individuals with sight and hearing impairments.
 - 2) Section 504 standards apply to all units in a project and not just the HOME-assisted units.
- B) **FAIR HOUSING ACT:** Multifamily dwellings must meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).
- C) **AMERICANS WITH DISABILITIES ACT (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 AND 225)** – Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

6.4 – Employment and Contracting

A) **EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED** - Prohibits discrimination against any employee or applicant for employment because of race, color, national origin, religion, sex, familial status or disability. Provisions to effectuate the prohibition must be included in all construction contracts exceeding \$10,000. Implementing regulations may be found at 41 CFR Part 60.

1) The HOME assistance will likely generate employment through professional service and/or construction contracts. Those responsible for contracting and hiring must be aware of the Equal Opportunity requirements, including:

- a) Construction contracts must have the proper equal opportunity language and correct goals for minority and female employment. Goals will need to be inserted for contracts other than homeowner rehabilitation. (Refer to EO-7 for Minority goals.)
- b) Document efforts to solicit minority/female-owned businesses (see also 4.2 below).
- c) Any subcontractor working with the prime contractor must also provide documentation where they also attempted to use minority/female-owned businesses.

B) **MINORITY AND WOMEN BUSINESS OPPORTUNITIES (EXECUTIVE ORDERS 11625, 12138, AND 12432)** - To ensure that all federal agencies with substantial procurement or grant making authority adopt minority and woman business development plans (See EO-1). The implementing regulations may be found in 24 CFR Section 511.13(c).

1) Every effort must be made to assure minority/female owned businesses are offered opportunities to bid on service, material and construction contracts. To meet this requirement the following steps should be taken:

- a) The grantee should notify minority and female owned businesses of contracts and bid deadlines.
- b) A list of minority and female contractors and businesses can be found at <http://www.tn.gov/businessopp/regdivcomp.html> and <http://www.tdot.state.tn.us/dbedirectinternet/>. The Diversity Business Enterprise Directory and Disadvantaged Business Enterprise Directory are frequently updated and should be checked each time a project is ready to bid.
- c) Grantees must also notify the Governor's Office of Diversity Business Enterprise when they have projects ready to bid.
- d) Grantees must maintain documentation to demonstrate their efforts to contact minority and female contractors, both in the county in which the project is located and in the surrounding counties.

- e) A contract/subcontract activity report (EO-4) must be completed on all contracts awarded.
- C) **SECTION 3 OF HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED, 12 U.S.C. 1701u.** The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very-low-income persons residing in the project area.
- 1) Section 3 applies to Grantees that receive \$200,000 or more in HOME assistance for certain types of projects. The types of projects that are covered by Section 3 are housing construction (including any demolition and/or rehabilitation) or other public improvements such as infrastructure.
 - 2) Further, contractors or subcontractors that receive contracts in excess of \$100,000 for housing construction, demolition, rehabilitation or other public construction are required to comply with the Section 3 regulations in the same manner as the grantee that provided the funding to them. In cases where a grantee receives HOME funds of over \$200,000 for a project or activity, but no housing or other construction contracts exceeds \$100,000, the Section 3 requirement applies only to the grantee.
 - 3) If the Section 3 threshold is met, the Grantee and, if applicable, its contractors/subcontractors must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by:
 - a) Awarding 10% of the total dollar amount of covered construction contracts to Section 3 businesses; and
 - b) Hiring Section 3 residents for 30% of new employment opportunities.
 - 4) Grantees must document efforts made to comply with Section 3. Files should contain memoranda, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation should show the steps taken to implement the Section 3 requirements, and should cross-reference information in other files, such as procurement and construction contracting. Grantees and contractors may want to utilize HUD's Section 3 Business Registry, which is located at www.hud.gov/sec3biz. Finally, grantees are required to report on Section 3 annually. More information on this report is included in Section 7 below.

6.5 – Site and Neighborhood Standards

- A) **SITE AND NEIGHBORHOOD STANDARDS FOR NEW CONSTRUCTION (24 CFR 882.709)** - HOME requires new construction of rental projects to meet site and neighborhood standards from 24 CFR 983.57(e)(2) and (3), which places limiting conditions on building in certain areas. Specifically, proposed sites for rental new construction units must meet the following site and neighborhood standards:
- 1) Site and neighborhood must be suitable from the standpoint of facilitating and furthering

full compliance with applicable provisions of Title VI of the Civil Rights Act of 1964. The Fair Housing Act, Executive Order 11063 and implementing HUD regulations including HOME.

- 2) The site must be adequate in size to accommodate the number of units proposed and have adequate utilities and streets to service the site.
- 3) The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- 4) The site may be located in an area of minority concentration ONLY if:
 - a) Sufficient comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or
 - b) The project is necessary to meet overriding housing needs that cannot be met in that housing market area.

6.6 – General Responsibilities

- A) HOME-funded grantees and other program partners must adhere to all the laws, executive orders and regulations discussed previously in this chapter as outlined. Additional general responsibilities are outlined below.
- B) **POLICY OF NONDISCRIMINATION** - A written policy of nondiscrimination (EO-6) must be posted conspicuously so all recipients, job applicants, contractors, subcontractors and interested parties may see it.
- C) **FAIR HOUSING & EQUAL OPPORTUNITY BROCHURE** - A copy of the brochure “*Fair Housing and Equal Opportunity for All*” (EO-8) must be distributed to each program applicant. Each grantee will need to maintain records to demonstrate that this requirement has been met.
- D) The Grantee must take actions to ensure that no protected person or group is denied benefits such as employment, training, housing, access to information, or contracts generated by THDA funded projects on the basis of minority status. As the project progresses, the Grantee:
 - 1) Must exercise non-discrimination in the decision-making process for all elements of the project;
 - 2) Must take any necessary actions to ensure that members of the protected groups have equal access to any information, related services, and job opportunities associated with THDA-funded projects;
 - 3) Must make reasonable accommodations (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity participate in the program.

- a) If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not to be deemed a "reasonable" accommodation;
- 4) Must monitor the extent to which protected groups are participating and receiving benefits from the project.
- 5) Must maintain records of all tenants who initially occupy units that have been rehabilitated with HOME funds, by race, ethnicity, and sex and include this information in the Project Completion Report; and
- 6) Must ensure that all sub recipients and contractors are taking all required actions.
- 7) Must ensure compliance with Section 3 requirements by verifying that recipients and contractors are making efforts to utilize low-income residents in the Section 3 area for training and employment opportunities.
- 8) Construction contracts will probably generate the employment of local residents. Those responsible for hiring must be aware of the requirements of Equal Opportunity.
- 9) Must ensure that every effort is being made to notify minority/female owned businesses as well as document efforts, the following documents have been developed:
 - a) Policy and Procedures for Outreach to Minority and Women Business Enterprises (EO-1); and
 - b) Directory of Minority and Female Business Contractors and Suppliers in Tennessee (EO-2).

6.7 – Key Record Keeping and Reporting Requirements

- A) Grantees must maintain careful records of their actions for FHEO monitoring purposes. This documentation must include all items already specific previously in this chapter including: all advertisements for employment and documentation regarding the subsequent applications and individuals hired. Advertisements should contain the required equal opportunity language.
- B) Other records that must be maintained include:
 - 1) Policy of Non-Discrimination.
 - 2) Complaints, if any. Notify THDA who will address the Grantee as proper procedures to follow.
 - 3) City/County/nonprofit hiring policies.
 - 4) Documentation of Fair Housing activity (e.g., signed copies of Fair Housing and Equal Opportunity for All brochure).

- 5) Beneficiary data by race, ethnicity, sex and disability status.
- 6) For HOME-funded homeownership projects, documentation that the units were affirmatively marketed to attract eligible homebuyers without regard to race, color, national origin, sex, religion, familial status or disability.
 - a) Copies of advertisements and announcements in the local media that include the Equal Opportunity logo or slogan;
 - b) Copies of brochures, pamphlets or flyers soliciting applications from persons in the housing market who are not likely to apply for housing without special outreach; and
 - c) A list of community organizations, places of worship, employment centers; fair housing groups, human resource agencies and housing counseling agencies contacted for potential applicants.
- 7) **CONTRACTOR/SUBCONTRACTOR ACTIVITY REPORT** - This form (EO-4) is to report on contract and subcontract activity. The report must be maintained by the Grantee and copies sent to THDA by *August 31st of every year*. This report should include only contracts and subcontracts of more than \$10,000 unless contracts/subcontracts of less than \$10,000 represent a significant portion of contracting activity. The report should reflect all executed contracts and subcontracts between October 1st and September 30th of each year. The report also requires information to demonstrate compliance with Section 3.
 - a) Documentation to solicit minority/female businesses participation (copy of letters or bid packages sent, copy of bid advertisement specifically encouraging participation, etc.).
- 8) Documentation of Section 3 activities and beneficiaries including outreach, employment and training records, bid and contract documents, etc.
- 9) **SECTION 3 REPORT (EO-5 and EO-5A) (HUD 60002)** – This form is to report Section 3 activity and efforts for the period of October 1 through September 30 of every year. This form must be maintained by the Grantee and copies sent to THDA by August 31st of every year.

STATE OF TENNESSEE
TENNESSEE HOUSING DEVELOPMENT AGENCY

**POLICY AND PROCEDURES FOR OUTREACH TO MINORITY
AND WOMEN BUSINESS ENTERPRISES**

It is the policy of the Tennessee Housing Development Agency that contractors, vendors or suppliers may not be denied an opportunity for employment under the HOME program on the basis of:

- ⇒ Race
- ⇒ Color
- ⇒ National Origin
- ⇒ Religion
- ⇒ Sex
- ⇒ Familial Status
- ⇒ Disability

All state recipients and sub-recipients of federal funds must take affirmative steps to assure women and minority businesses are afforded opportunities to bid on service, material and construction contracts. To meet the requirement, recipients must take steps to inform women and minority businesses about federally funded contracts.

Each recipient's outreach effort to minority and women-owned businesses should as a minimum be:

1. A good faith, comprehensive and continuing endeavor;
2. Supported by a statement of public policy and commitment published in the print media of widest local circulation;
3. Supported by an office and/or key, ranking staff person with oversight responsibilities and access to the chief elected official; and
4. Designed to use all available and appropriate public and private sector local resources.

The following activities shall be considered a minimally acceptable level of implementation:

The recipient should notify minority and women businesses of contracts and bid deadlines. This applies to professional service contracts and material and equipment purchases as well as to construction contracts. For construction contracts, notices should be published in the local newspaper. In addition, notice may also be published in a minority publication.

The invitation to bid should be sent directly to minority and women firms in addition to running advertisements. Document your efforts.

Solicit quotes and proposals from minority and women firms. For non-construction contracts, or any contract where formal advertising is not required (e.g., small purchases or local procurement contracts), it is a good idea for larger cities and counties to develop a list of minority and women businesses to use when small purchase and local procurement procedures are followed.

A list of minority/female contractors, vendors and suppliers must be maintained. A state-wide directory will also be maintained and made available to recipients.

Invite by phone or letter any minority and female contractors in a reasonable geographic area to bid. For example, a project in Marion County should solicit bids not only from within the county, but also from Hamilton County. Copies of letters and memos of phone calls should be placed in the file (examples of form letters will be provided).

A contract and subcontractor activity report must be filled out each time a contract or subcontract is awarded. These forms must be sent to the Tennessee Housing Development Agency as soon as contracts have been awarded.

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The Minority and Female Business Directory has been replaced.

Please refer to the Diversity Business Enterprise Directory

(<http://www.tn.gov/businessopp/regdivcomp.html>) and the

Disadvantaged Business Enterprise Director

(<http://www.tdot.state.tn.us/dbedirectinternet/>)

STATE OF TENNESSEE
TENNESSEE HOUSING DEVELOPMENT AGENCY

AFFIRMATIVE MARKETING POLICIES AND PROCEDURES
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I. STATEMENT OF POLICY:

In accordance with the Regulations of the HOME Investment Partnership Program, and in furtherance of the Tennessee Housing Development Agency's (THDA) commitment of non-discrimination and equal opportunity in housing, THDA establishes procedures to affirmatively market rental units or homeownership units developed under the HOME Program. These procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1968, as amended, Executive Order 11063, as amended, and Executive Order 13166. These policies apply to any rental or homeownership project assisted by the HOME program containing 5 or more units.

The Tennessee Housing Development Agency is committed to the goals of affirmative marketing which will be implemented in our HOME program through a specific set of steps that THDA, recipients and owners will follow.

THDA shall require that all HOME grantees carrying out HOME activities addressing rental or homeownership projects of 5 or more units adopt and follow these same policies and procedures as outlined below.

II. IMPLEMENTATION PROCEDURES

A. INFORMING THE PUBLIC, POTENTIAL TENANTS AND RENTAL PROPERTY OWNERS, ABOUT FEDERAL FAIR HOUSING LAWS AND AFFIRMATIVE MARKETING POLICIES:

1. **INFORMING THE PUBLIC** - Local city, county and non-profit recipients will be required to inform the public of the program and their proposed activities through advertisements and announcements in the local media which include the Equal Opportunity logo or slogan.
2. **INFORMING RENTAL PROPERTY OWNERS** – Grant recipients will mail upon request and have available for distribution to rental property owners, an application package which provides further explanation of the Program. The application includes a fair housing certification which the landlord is required to sign. Once an application is received from the landlord, the Grant Recipient will send additional information concerning tenant eligibility, Housing Quality Standards, and Equal Opportunity Housing requirements.
3. **INFORMING POTENTIAL TENANTS** - The owner's application includes a request for the names and mailing addresses of tenants in buildings scheduled for rehabilitation. Upon receipt of the owner application, the Grant Recipient will mail an "information letter" to the current tenants informing them of the landlord's application and referring them to the appropriate agency or local PHA for an explanation of subsidy eligibility. This information letter includes a fair housing statement.

B. REQUIREMENTS FOR OWNERS TO INFORM THE GENERAL RENTER OR HOMEBUYER PUBLIC ABOUT AVAILABLE UNITS:

It is THDA's policy to require substantial steps by Grantees or project owners to carry out affirmative marketing. Grantees and rental property owners should provide for costs associated with these requirements in their planned operating costs and subsidy decisions, which by necessity will take these costs into account.

If it is feasible to advertise in advance of selecting a tenant or homebuyer, without holding units off the market, participating property owners will be required to make information on the availability of units known through:

1. Advertisements and announcements in the local newspaper(s) which include the Equal Opportunity logo or slogan, if the owner ordinarily advertises available units in the news media;
2. Notifying the local PHA or THDA's agent and requesting that staff inform applicants on their waiting lists about upcoming rental vacancies.
3. Contact community organizations, places of worship, employment centers, fair housing groups, human resource agencies or housing counseling agencies about upcoming rental vacancies or homeownership opportunities.
4. Owners of rental properties are required to list their units on THDA's website at TNHousingSearch.org.

THDA will emphasize to owners that to the extent feasible without holding units off the market, they make information about upcoming vacancies to the general public after special outreach efforts are underway.

THDA will require that property owners selected for participation in the program comply with affirmative marketing requirements by means of an Agreement. Failure to carry out the agreement could make an owner ineligible to participate in the Program with future projects.

III. SPECIAL OUTREACH

In order to inform as well as solicit applications from persons in the housing market area who are not likely to apply for units without special outreach, THDA has established methods property owners must use in order to reach the objective.

THDA has identified groups in the housing market area who would probably not apply for the units without special outreach: minorities; single, female heads of household; those with disabilities.

Having identified these groups, THDA will require that owners use special outreach methods as follows:

1. Send notification of upcoming vacancies to the local office of the Department of Human Services and the Human Resource Agency.
2. Contact the local PHA or THDA agent and ask them to inform applicants on their waiting list.
3. Contact community organizations, places of worship, employment centers, fair housing groups, human resource agencies or housing counseling agencies to solicit applications from persons in the housing market who are not likely to apply for housing without special outreach (e.g., racial minorities and female heads of household and those with disabilities).

THDA will require that owners begin their special outreach activities upon learning that a vacancy will occur. THDA will ask that owners request a thirty (30) day notification from tenants intending to move so that special outreach to those identified above can begin before notification to the general public.

IV. RECORDKEEPING

THDA will require that Grantees and/or rental property owners keep records on:

1. The racial, ethnic and gender characteristics of tenants, homebuyers and applicants for at least 90 days following the completion of rehabilitation/new construction.
2. Activities they undertake to inform the general public of the availability or the rental or homeownership units; specifically, copies of advertisements placed in newspapers; and dates on which the Grantee and/or owner contacted the local DHA, HRA and PHA.
3. Activities Grantees and/or owners undertake for special outreach; specifically, dates of contact with the local DHA, HRA and PHA, or THDA agent.

V. ASSESSMENT AND CORRECTIVE ACTION

A. Assessment of the affirmative marketing efforts of property owners will include:

1. **DETERMINATION OF GOOD FAITH EFFORTS** - To determine if good faith efforts have been made, examine records THDA has required Grantees and/or owners to maintain on actions they have taken and compare them with the actions owners were required to take. If THDA finds that the required actions have been carried out as specified, it will be assumed that owners have made good faith efforts to carry out these procedures.
2. **DETERMINATION OF RESULTS** - To determine results assess property owners' affirmative marketing efforts in relation to whether or not persons from a variety of racial and ethnic groups in the community and, in particular, those identified for above for special outreach have in fact applied for and/or become tenants in the rehabilitated units. If THDA finds they have, it will be assumed that owners have carried out Procedures 2 and 3 effectively.

If the representation of racial/ethnic groups is not broad or the identified groups are not represented, THDA will review the affirmative marketing procedures to determine what changes, if any, might be made to make the affirmative marketing efforts more effective in informing persons in all groups about rental opportunities.

B. CORRECTIVE ACTION

THDA will take corrective action if an owner fails to carry out the required procedures or fails to maintain the records on tenants and applicants.

If there are problems, THDA will require owners with vacancies to notify the local PHA or THDA agent immediately upon learning that a unit will become vacant. THDA is asking that owners give the PHA or the THDA agent this information as close to thirty (30) days prior to the upcoming vacancy as possible. The PHA or the THDA agent will then be able to verify on a "spot check" basis if these owners are following the prescribed procedures.

If an owner continues to fail to meet the affirmative marketing requirements, THDA, after fair warning and an opportunity to correct identified deficiencies, may disqualify an owner from further participation in future rental programs administered by THDA. THDA will carry out the assessment activities, and prepare a written assessment of the affirmative marketing efforts in time to report results in the Annual Performance Report submitted to HUD.

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Contractor-Subcontractor Activity Report (form HUD-2516)

<http://www.hud.gov/offices/adm/hudclips/forms/files/2516.pdf>

SECTION 3 QUESTIONNAIRE

	YES	NO
1. Is your grant amount \$200,000 or more? If NO, Section 3 does not apply. No additional information is needed.	☐	☐
2. If YES, will this project necessitate the hiring of new employees on your payroll or the training of present employees? If NO, Section 3 does not apply to the Grantee's new hires.	☐	☐
3. Will any construction-related activities that generate employment opportunities necessitate issuing contracts or subcontracts of \$100,000 or more? If NO, Section 3 does not apply to the contractor or subs and no additional information is needed.	☐	☐
4. If YES, the following documentation should be completed and maintained on file demonstrating your efforts to enhance the employment of Section 3 residents or businesses: a. Types of outreach efforts to inform businesses and area low-income residents of Section 3 opportunities. b. Numbers of Section 3 area residents provided jobs and/or training. c. Numbers and dollar amounts of contracts awarded to businesses within the Section 3 covered project area (metropolitan area or Non-metropolitan County). d. Documentation provided by contractor or subcontractors of their outreach efforts, employment and training statistics.		

LOWER INCOME CLARIFICATION

A family who resides in _____, Tennessee and whose income does not exceed the applicable threshold listed below is considered to be a lower income family.

THRESHOLDS:	FAMILY SIZE	INCOME LIMIT
	_____	_____

Signature: _____ Date: _____

Section 3 Summary Report

Economic Opportunities for Low- and Very Low-Income Persons

(Form HUD-60002)

http://www.hud.gov/offices/lead/library/lead/Section3_Form.pdf

POLICY OF NONDISCRIMINATION

The _____ does not discriminate on the basis of race, color, national origin, religion, sex, familial status or disability in the admission or access to, or treatment or employment in, its federally assisted program or activities.

NAME

ADDRESS

CITY, STATE, ZIP CODE

TELEPHONE NUMBER

has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's (HUD) regulations implementing Section 504 (24 CFR Part 8, dated June 2, 1988), Section 3 (24 CFR Part 135, dated October 23, 1973, Use of Small and Disadvantaged Businesses and Hiring Lower Income Residents of the Project Area), Equal Employment Opportunity Act of 1978 (In House Equal Employment Opportunity), Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity on Federal Assisted Construction Contracts), and Executive Order 11625 (Minority Entrepreneurship).

**MINORITY EMPLOYMENT GOALS BY ECONOMIC AREA
FOR STATE OF TENNESSEE (U. S. Department of Labor
Federal Register, Volume 45, No. 194, 10/3/2008**

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or Federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or Federally- assisted construction contract or subcontract. A covered contractor or subcontractor shall apply the goals of the relevant area where the contract is being performed. **The female goal for the State is 6.9%.**

MINORITY GOAL (%)	AREA
	051 CHATTANOOGA
12.5	TN Hamilton
	TN Marion
	TN Sequatchie
8.6	Non-SMSA Counties
	TN Bledsoe
	TN Bradley
	TN Grundy
	TN McMinn
	TN Meigs
	TN Monroe
	TN Polk
	TN Rhea
	062 JOHNSON CITY- BRISTOL- KINGSPORT SMSA
2.6	TN Carter
	TN Hawkins
	TN Sullivan
	TN Unicoi
	TN Washington
3.2	Non-SMSA Counties
	TN-Greene
	TN Hancock
	TN Johnson
	053 KNOXVILLE, TN
6.6	TN Anderson
	TN Blount
	TN Knox
	TN Union
4.5	Non-SMSA Counties
	TN Campbell
	TN Claiborne

MINORITY GOAL (%)	AREA
4.5	Non-SMSA Counties
	TN Cocke
	TN Cumberland
	TN Fentress
	TN Grainger
	TN Hamblen
	TN Jefferson
	TN Loudon
	TN Morgan
	TN Roane
	TN Scott
	TN Sevier
	054 NASHVILLE SMSA
15.8	TN Cheatham
	TN Davidson
	TN Dickson
	TN Robertson
	TN Rutherford
	TN Sumner
	TN Williamson
	TN Wilson
12.0	Non-SMSA Counties
	TN Bedford
	TN Cannon
	TN Clay
	TN Coffee
	TN DeKalb
	TN Franklin
	TN Giles
	TN Hickman
	TN Houston
	TN Humphreys
	TN Jackson
	TN Lawrence
	TN Lewis

MINORITY GOAL (%)	AREA
	054 NASHVILLE, TN SMSA
12.0	Non-SMSA Counties
	TN Macon
	TN Marshall
	TN Maury
	TN Moore
	TN Overton
	TN Pickett
	TN Putnam
	TN Smith
	TN Stewart
	TN Trousdale
	TN Van Buren
	TN Warren
	TN Wayne
	TN White
	055 MEMPHIS, TN SMSA
32.3	TN Shelby
	TN Tipton
26.5	Non-SMSA Counties
	TN Benton
	TN Carroll
	TN Chester
	TN Crockett
	TN Decatur
	TN Dyer
	TN Fayette
	TN Gibson
	TN Hardeman
	TN Hardin
	TN Haywood
	TN Henderson

MINORITY GOAL (%)	AREA
26.5	Non-SMSA Counties
	TN Henry
	TN Lake
	TN Lauderdale
	TN McNairy
	TN Madison
	TN Obion
	TN Weakley
	050 HUNTSVILLE- FLORENCE, AL SMSA
11.2	Non-SMSA Counties
	TN Lincoln

EO-8

Equal Opportunity for All Brochure

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf

Administrators must document that applicants have received a copy of the brochure.

EO-9

Housing Discrimination Complaint Form (form HUD-903.1)

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12150.pdf

CHAPTER SEVEN – LABOR STANDARDS AND RELATED ACTS

7.1 – Basic Statutory Provisions and Applicability

- A) **DAVIS-BACON ACT (40 USC 276(A)-277)** - Ensures that mechanics and laborers employed in construction work under federally-assisted contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This Act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.
- 1) These provisions apply to any contract for the construction of 12 or more HOME-assisted units (Section 286, National Affordable Housing Act of 1990, as amended). Specifically, this means that the Davis-Bacon requirements are applicable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers.
 - 2) This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, HUD uses the number of units identified as “HOME” units under the program definition whether determined on a pro-rata basis, specific designation or other means permitted by HUD.
 - 3) Davis-Bacon requirements are applicable to contracts for construction covering 12 or more HOME-assisted units. Davis-Bacon requirements do not follow “construction work” or “projects.”
 - a) A HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.)
 - b) If multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.
 - 4) Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project that are not assisted with HOME funds.
 - 5) If Community Development Block Grant (CDBG) funds are being used to support the project, Davis-Bacon applies only if construction work (including rehab) is financed by CDBG for a project of eight (8) or more units.
 - 6) **EXCEPTIONS** - The Davis-Bacon Act does not apply to an individual who:

- a) Performs a service or services for which the individual has volunteered and thus receives no compensation.
 - b) Receives payment for expenses, reasonable benefits, or a nominal fee to perform services for which the individual has volunteered, and such persons are not otherwise employed at any time in the construction work.
 - c) Participates in a sweat equity program which permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments.
- B) **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED (40 USC 327-333)** - Applies to prime contracts over \$100,000 and any subcontracts let under the covered prime contract. Provides that mechanics and laborers employed on Federally-assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This Act also addresses safe and healthy working conditions.
- C) **COPELAND (ANTI-KICKBACK) ACT (40 USC 276C)** - Requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors and subcontractors maintain and submit weekly certified payrolls and statements of compliance.
- D) **FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED (29 USC 201, et. seq.)** - Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.

7.2 – Key Labor Standards Obligations

- A) Apply Davis-Bacon and related requirements properly. Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.
- B) Through education and advice, support contractor compliance with labor standards. Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.
- C) Monitor contractor performance. Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.
- D) Investigate probable violations and complaints of underpayment. Thoroughly explore any evidence of violations, especially allegations of underpayment.
- E) Pursue debarment and other available sanctions against repeat labor standards violators. Carry out a no-tolerance policy toward contractors who violate prevailing wage laws.

7.3 – Grantee Responsibilities for Davis-Bacon Labor Standards

- A) Each Grantee must designate a Labor Standards Officer (Program Administrator) who will be responsible to ensure compliance with all applicable labor standards requirements. Most of the tasks described in the remaining portion of this chapter will be carried out by this individual.
- B) The Grantee should establish a construction contract management system which encourages an open and competitive bidding process. The management system must meet the administrative standards of 2 CFR Part 200 as applicable.
- C) Ensure that all bid documents, contracts and subcontracts for Davis-Bacon covered work contain Federal labor standards provisions and the applicable Davis-Bacon wage decision.
- D) Ensure that no contract is awarded to a contractor that is ineligible (e.g., debarred) for Federally-assisted work.
- E) Conduct on-site inspections including interviews with laborers and mechanics employed on the construction project. Ensure that the applicable Davis-Bacon wage decision and the Department of Labor’s “Notice to Employees” are posted at the job site.
- F) Review certified payroll reports and related documentation. Identify any discrepancies and/or violations. Ensure any needed corrections are made promptly.
- G) Maintain full documentation of Federal labor standards administration and enforcement activities.
- H) Refer potential criminal or complex investigations to HUD in addition to Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages assessments for overtime violations and debarment recommendations.
- I) Comply with all HUD requirements concerning special statutory, program and/or other requirements.
- J) Prepare Federal labor standards enforcement reports as required in Department of Labor (DOL) regulations (29 CFR Part 5, §5.7).

7.4 – Labor Standards Administration

Labor Standards Administration involves activities that take place primarily before construction begins. Administration sets the stage for the enforcement activities that occur during the construction phase.

- A) **DETERMINE THE APPLICABILITY OF THE DAVIS-BACON WAGE REQUIREMENTS** – As stated previously, Davis-Bacon requirements are applicable to contracts for construction covering 12 or more HOME-assisted units. Davis-Bacon does not follow “construction work” or “projects.” This factor has implications in two ways:
 - 1) A HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. *(Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-*

Bacon.)

- 2) If multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

B) Assuming that a determination has been made that Davis-Bacon wage rates are applicable:

- 1) **PREPARE THE BID DOCUMENTS/CONTRACT** – The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and the labor standards clauses, plus work write-up, general conditions, and any special conditions. These are usually bound into the contract specifications (*See LB-1 Sample Advertisement and Invitation for Bids*).
- C) **DAVIS-BACON WAGE DECISIONS.** The Davis-Bacon wage decision (*See LB-2 Project Wage Rate Sheet (HUD 4720)*) is a listing of various construction work job classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

- 1) The Project Wage Rate Sheet is available on-line at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_form.

- 2) The current Davis-Bacon wage decisions are available on-line at: www.wdol.gov.

- 3) **LABOR STANDARDS CLAUSES.** The labor standards clauses obligate the contractor to comply with Davis-Bacon wage and reporting requirements and provide for remedies and sanctions should violations occur. The Federal Labor Standards Provisions are available on-line at: <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>

a) (*See LB-3 Federal Labor Standards Provisions HUD 4010*).

- D) **TEN-DAY CALL** – No more than ten (10) days prior to the bid opening and/or award of the contract, the Labor Standards Officer must determine if the wage decision(s) included in the bid package are still current. Following this call, the Labor Standards Officer will send THDA a confirmation of this call (*See LB-4 Ten Day Call Confirmation*).
- E) **VERIFY CONTRACTOR ELIGIBILITY.** Once the contractor has been selected, the Labor Standards Officer must verify that the contractor and subcontractors are not ineligible (e.g., suspended or debarred) from participation in Federal programs. The debarred contractor list is available on-line at: <https://www.sam.gov/portal/SAM> (*See also HO-13 Contractors Certification of Eligibility to Participate in Chapter Ten*).
- F) **PROVIDE CONTRACTOR TRAINING.** The Labor Standards Officer must make certain that the contractor understands his/her responsibilities for Davis-Bacon compliance. The principal contractor (also referred to as the prime or general contractor) is responsible for the full compliance of all employers (the

contractor, subcontractors and any lower tier subcontractors) with labor standards provisions applicable to the project. HUD has published a *Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects* which provides basic information and instructions to contractors concerning Davis-Bacon wage and reporting requirements. The Guide is available from the (HUD Office of Labor Relations Library) at:

<http://portal.hud.gov/hudportal/documents/huddoc?id=4812-LRguide.pdf>.

Although there are many good reasons to hold a preconstruction conference (such as discussing construction inspections) progress and contractor payment requirements, Section 3 employment and training and other issues particular to the project, a preconstruction conference for labor standards purposes is no longer required.

- a) HUD has determined that basic training for contractors unfamiliar with Davis-Bacon projects can be provided more efficiently through the printed guides referenced above.

7.5 – Labor Standards Enforcement

Labor Standards Enforcement involves the activities that take place during construction to ensure contractor compliance.

- A) **POSTING THE WAGE DECISION AND NOTICE TO EMPLOYEES.** The contractor is required to display on the job site a copy of the applicable Davis-Bacon wage decision and the Davis-Bacon poster. The purpose of the posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage rate for their trade and to inform them of whom to contact if they have any questions or want to file a complaint.
 - 1) **PROJECT WAGE RATE SHEET** (HUD 4720). Many wage decisions are multi-paged and cover several counties and/or more than one type of construction. While it is recommended that the full wage decision be used in the construction contract to obligate the compliance of the prime contractor and any subcontractors, a Project Wage Sheet is a one-page listing of the work classifications and wage rates that are applicable to the specific project for posting on the job site. The Project Wage Sheet also spells out more clearly the work classifications and wage rates contained in the wage decision for the contractor and subcontractors, and is more helpful as a ready reference for Labor Standards Officers reviewing payroll reports (LB-2).
 - 2) **DAVIS-BACON POSTER.** The Davis-Bacon Poster (WH-1321) must be posted on the project site. It is available on-line in English and Spanish at DOL's website at: www.dol.gov/whd/resources/posters.htm (See LB-5 Davis-Bacon Poster).
- B) **CONDUCT ON-SITE INTERVIEWS WITH LABORERS AND MECHANICS.** The Labor Standards Officer must periodically conduct interviews with the construction workers on the job site. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the hours they work, the type of work they perform and the wages they receive. Information gathered during the interviews is recorded on the Record of Employee Interview Form, available on-line at: <http://www.dol.gov/whd/forms/wh347.pdf>.

- 1) The Labor Standards Officer can target on-site interviews with laborers and mechanics as a proactive enforcement tool rather than a means to meet a “representative sampling” quota of all laborers and mechanics on the project. Rather than conducting interviews randomly for the sake of assembling a sample, the Labor Standards Officer is encouraged to focus interviews to projects or groups of workers where violations are suspected or alleged. The on-site interviews can be used to support a specific on-going investigation. While such focusing may mean fewer on-site interviews may be conducted randomly, focusing is a more effective means of utilizing on-site interview resources.

C) **REVIEW CONTRACTOR AND SUBCONTRACTOR CERTIFIED PAYROLL REPORTS.** The Labor Standards Officer reviews the payroll reports generally to ensure that all laborers and mechanics are being paid no less than the wage rates contained on the applicable Davis-Bacon wage decision for the type of work the perform. The Labor Standards Officer should be particularly alert for indications of payroll falsification--misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates a contractor or subcontractor is aware of its obligations, is knowingly underpaying the employees and is attempting to avoid detection of the violations.

- 1) *PAYROLLS* - (LB-7 or equivalent) and *STATEMENTS OF COMPLIANCE* must be submitted weekly to the Labor Standards Officer for review and verification of compliance with labor standards. The week ending period must be clearly marked and all data on each employee must be entered on the first payroll. Any supplemental or corrected payrolls must be submitted in like manner. Payrolls must be submitted to the locality no later than 7 calendar days following the end of the work week.

- 2) *DISCREPANCIES AND/OR UNDERPAYMENTS ON THE PAYROLLS.* Some underpayments and other errors can appear on the face of the payroll (i.e., do not involve falsification.) In these cases, the Labor Standards Officer contacts the employer and/or the prime contractor and provides instructions as to what steps should be taken to correct the payroll and to pay any back wages that may be due to the affected workers.

- a) *INDICATIONS OF FALSIFICATION ON PAYROLLS.* Information reported on payrolls that indicates falsification suggests much more serious violations in terms of the amount of back wages that may be due and the number of employees affected. See Attachment IV: Payroll Falsification Indicators. Such cases most often warrant investigation which can include on- site interviews with the workers, mailing a questionnaire to employees (See *LB-8 Federal Labor Standards Questionnaire ((HUD 4730))*), or complaint intake form.

- (1) (See *LB-9 Federal Labor Standards Complaint Intake Form (HUD 4731))*, and other methods to gather and assess the facts of the case. Both forms are available on-line at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olrform.

- b) Routine payroll review results can be communicated to the employer and/or prime contractor by telephone and documented with a record to the file. Examples of the types of issues than could easily be addressed informally include a missing report or missing apprenticeship certificate, requests for employee authorizations for deductions, and small underpayments that appear on the face of the payroll. If the

employer and/or prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal, written means.

- 3) **INVESTIGATE PROBABLE VIOLATIONS AND COMPLAINTS OF UNDERPAYMENT.** The Labor Standards Officer must investigate probable violations, particularly those involving falsification of payrolls and complaints alleging underpayments.
- 4) **RECOMMEND DEBARMENT AGAINST REPEAT VIOLATORS.** HUD has implemented a no-tolerance policy against contractors who repeat violations of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CHWSSA liquidated damages (for overtime violations) which may be assessed. In addition, the employer must provide a written assurance of future compliance. If the employer promptly completes the corrective actions, the Labor Standards Officer does not have to recommend debarment against the employer unless there are extenuating circumstances which warrant debarment. If the employer is found in violation again, the Labor Standards Officer must require full correction of any underpayments and payment of CWHSSA liquidated damages computed **and** a debarment recommendation by the Labor Standards Officer against the employers is expected.

7.6 – Monitoring Responsibilities

- A) The Labor Standards Officer is responsible for the following monitoring responsibilities and reports:
 - 1) Interviews of the workers must be conducted on a regular basis and should include a representative sampling of the work classifications being employed on the project (*LB-6*).
 - 2) On-site inspections should be made to ensure that the required notices are being posted.
 - 3) Weekly payrolls should be reviewed and compared with employee interviews and wage rates to verify compliance with applicable labor standards requirements (e.g. payment of minimum wages, payment of over-time, no ineligible deduction, etc.). Use the HUD interview form at *LB-6* for the purpose of documenting comparison of the employee interview with the corresponding payroll.
- B) Once the project is completed, a Final Wage Compliance Report shall be filed with THDA (*See LB-10 Final Wage Compliance Report*).

7.7 – Record Keeping Requirements

- A) For each construction contract, the Grantee should maintain a file with the following documentation:
 - 1) Copy of Wage Rate Request.
 - 2) Copy of Wage Rate Determination(s).
 - 3) Bid and Contract Documents with labor standards provisions and wage rates.
 - 4) Ten-day Call Verification.
 - 5) Payrolls, with evidence of their review (*LB-7*).

- 6) Employee interviews, with evidence of interviews compared to payrolls (*LB-6*).
- 7) Evidence of any violations and steps taken to resolve them.

ATTACHMENT IV: PAYROLL FALSIFICATION INDICATORS

Certified payroll reports are fairly straightforward records of employees, work classification, hours worked, rate(s) of pay, gross earnings, deductions and net wages paid. The information required for certified payrolls involves no more than the information any responsible employer must maintain concerning its basic business operations.

Davis-Bacon compliance basically involves three factors: 1. The type (classification) of work performed; 2. The number of hours worked; and 3. The prevailing wage rate for that classification. A fourth factor involves the actual payment of wages by check and/or cash. In order to conceal underpayments, a willfully violating employer must falsify the payroll report as it pertains to one or more of these factors. There are four falsification indicators that are easy to detect on certified payrolls in a “spot-check”:

- 1. Ratio of laborers to mechanics** – Look for excessive use of laborers over mechanics. Generally there should be no more than one laborer for each mechanic (1:1) except for landscaping, or cement or other paving work.
Indicative of: Misclassification – Workers are performing higher-paying mechanic duties but are misclassified and paid at lower Laborer wage rates.
- 2. Too few or irregular hours** – Look for employees that never work 40 hours per week; for crews that work in a scattered fashion; for hours reported in tenths or hundredths (e.g., 13.6 hours). Most people work a 40-hour workweek. Most crews work together on a job site. Most employers and employees track work hours by whole, half and quarter hours not by tenths or hundredths.
Indicative of: Reduction of Hours – Actual hours worked are reduced to “fit” in a fabricated calculation: (Reduced hours) x (Rate required on wage decision) = Substandard wages actually paid based upon a lower rate of pay.
- 3. Discrepancies in wage computations** – Look for gross wages paid in “round” numbers (e.g., \$700) that don’t agree with the product of reported hours multiplied by the rate of pay. For example, a payroll showing 20 hours times \$33.68 (the rate on the wage decision) and gross wages of \$700. (20 hours times \$33.68 equals \$676.60 *not* \$700).
Indicative of: Falsification of rate of pay such as piece work or lower (but more even) rate – For example, the wage decision requires \$33.68/hour for the type or work performed but the employer chooses to pay \$17.50 per hour. (40 times \$17.50 equals \$700). The employer can’t make the fabricated calculation “fit” precisely because the Davis-Bacon wage rate is not an even figure.
- 4. Extraordinary deductions** – Look for unidentified or disproportionate deductions, for example, an employee whose savings account deduction is nearly as much or more than the weekly take-home pay.
Indicative of: Kickbacks or basic underpayment – The employer takes his “cut” from the back end of the computation (after gross earnings) rather than the front end (falsifying the classification, hours or wage rate).

If these indicators appear on payrolls you will want to take preliminary steps to test whether the payrolls are accurate or false. For example, you can target on-site interviews or send questionnaires to the affected workers to get their perspective and compare the interview and/or questionnaire statements to the payroll reports. If an investigation is warranted, you will want to learn what information on the payrolls is false and what is true. (Employers rarely falsify *all* of the information on payrolls). Eventually, you will need to compute the amounts of back wages that are due and knowing what information on the payroll is true can be critical to making these computations

SAMPLE ADVERTISEMENT AND INVITATION FOR BIDS

The *(Name of Local Public Agency)* will receive Bids for *(Brief description of site improvements and project information)* until _____, ____ M., *(Standard time) (Daylight savings time)* on the ____ day of _____ 20____, at *(Address of Local Public Agency), (City) (Zip Code)* at which time and place will be publicly opened and read aloud.

Bids are invited upon the several items and quantities of work as follows:

Item 1.

Item 2.

(List the quantity and brief description of each item of work to be included in this contract for which payments will be made).

Contract documents, including Drawings and Technical Specifications, are on file at the office of *(Local Public Agency) (Engineer)* at *(Address/Zip Code)*.

Copies of the Contract Documents may be obtained by depositing \$_____ with the *(Local Public Agency)* for each set of documents so obtained. Each such deposit will be refunded if the Drawings and Contract Documents are returned in good condition within 10 days after the Bid Opening.

A certified check or bank draft, payable to the order of *(Local Public Agency)*, negotiable U.S. Government Bonds (at par value) or a satisfactory Bid Bond executed by the Bidder and an acceptable surety in an amount equal to five percent (5%) of the total Bid shall be submitted with each Bid.

Attention is called to the fact that not less than the federally determined prevailing wage rates as issued by the Tennessee Department of Economic and Community Development and as set forth in the Contract Documents must be paid on this project, and that the Contractor must ensure that employees/applicants for employment are not discriminated against because of race/color/sex/national origin.

The *(Local Public Agency)* reserves the right to reject any or all Bids or to waive any informalities in the bidding.

Bids may be held by *(Local Public Agency)* for a period not to exceed thirty (30) days from the date of the opening of the Bids for the purpose of reviewing the Bids and investigating the qualifications of the Bidders, prior to awarding the Contract.

Date: _____

BY: _____

Title: _____

TEN DAY CALL CONFIRMATION

Contract Number: _____

This is confirmation that a ten-day call was received by this office on _____ for the
above-referenced contract. The prevailing wage for this contract is _____.

Bid Opening Date: _____

Verified by: _____ Labor Standards Officer

Date: _____

cc:

Send to THDA

FINAL WAGE COMPLIANCE REPORT

Project:_____ Contract #: _____

Construction Completion Date:_____ Contract Amount: _____

Prime Contractor: _____

Subcontractor: _____

1. Were any workers paid less than the specified Davis-Bacon rates applied to this project? YES ()
NO ()
2. If YES:
 - a. What was the total amount of restitution paid? \$_____
 - b. What was the method of restitution?
 _____ Paid by Contractor
 _____ Paid by Locality with funds withheld from payment to the Contractor

FIRM	AFFECTED EMPLOYEES	AMOUNT OF RESTITUTION PAID	NATURAL VIOLATIONS

3. Were any workers not paid the correct overtime payments? YES () NO ()
 If YES, liquidated damages at the rate of \$10 for each calendar day for each worker must be calculated and the contractor notified of liability.

4. If YES, provide the information concerning the nature of the overtime violations. This should include:
- a. Firm's Name, Address and Phone Number
 - b. Date Contractor was notified in writing of the amount liquidated damages which could be assessed.
 - c. Date the Contractor responded to the written notice. (Must be within 30 days of the receipt).
 - d. Did the Contractor seek a reduction or waiver of the liquidated damages?
YES () NO ()
 - e. If YES, was the request approved, and for what?

_____ Yes, Reduction Yes, Waiver No
 - f. On what grounds was HUD's or DOL's response based? _____
 - g. Total amount of liquidated damages paid:
\$_____.
 - h. What was the method of payment of the liquidated damages? Paid by Contractor
_____ Paid by locality with funds withheld from payment to the Contractor.
 - i. Did the Contractor appeal the final decision to assess liquidated damages to the U.S. Claims Court? YES () NO ()
 - j. Attach copies of all correspondence relative to any liquidated damages.
5. If appropriate, attach a recommendation of and justification for sanctions against the Contractor.

Submitted by:

Signature: _____

Name: _____

Title: _____

Date: _____

Department of Labor Forms

- LB-2 Project Wage Rate Sheet (HUD 4720): http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olrf orm
- LB-3 Federal Labor Standards Provisions (HUD 4010): <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>
- LB-5 Davis-Bacon Poster: <http://www.dol.gov/whd/resources/posters.htm>
- LB-6 Record of Employee Interview Form (HUD-11): http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olrf or m
- LB-7 U.S. Department of Labor Payroll: <http://www.dol.gov/whd/forms/wh347.pdf>
- LB-8 Federal Labor Standards Questionnaire (HUD 4730): http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olrf orm
- LB-9 Federal Labor Standards Complaint Intake Form (HUD 4731): http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olrf orm

CHAPTER EIGHT – LEAD-BASED PAINT

8.1 – Overview

- A) Lead Safe Housing Rule (LSHR): In 1992, Congress enacted into law the Housing and Community Development Act of 1992. Title X of that Act, the Residential Lead-based Paint Hazard Reduction Act of 1992, is comprehensive lead-poisoning legislation. It switches the focus from the presence of lead-based paint to lead-based paint hazards. Title X defines lead-based paint hazards as “any condition that causes exposure to lead from lead-contaminated dust, lead- contaminated soil, or lead-contaminated paint that is deteriorated or present on accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.” Title X established specific requirements for action in pre-1978 federally owned or associated housing. On September 15, 1999, HUD published final regulations to implement sections 1012 and 1013 of Title X, which set forth specific policies on lead-based paint hazard reduction in federally assisted and federally owned housing.
- B) Renovation, Repair and Paint Rule (RRP): On April 22, 2008, EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Beginning in April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. The EPA requires anyone performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes must be an EPA-certified renovator and follow lead-safe work practices. There are some differences between the EPA RRP Rule and the HUD Lead Safe Housing Rule (LSHR).
 - 1) A major difference is that the LSHR requires clearance examinations, while RRP does not. All housing receiving federal assistance must still comply with the LSHR requirements that are outlined throughout the rest of the chapter. However, there are training requirements associated with both RRP and LSHR. Simply being trained for the LSHR requirements is not sufficient.
 - 2) Training requirements for workers and supervisors performing interim controls to meet both RRP and LSHR include:
- C) If the supervisor (in HUD terms) or Certified Renovator (in EPA terms) is certified as a lead- based paint abatement supervisor or has successfully completed an accredited abatement supervision or abatement worker course, that person must complete a 4-hour RRP refresher course.
- D) For workers who are not themselves supervisors / Certified Renovators:
 - 1) If their supervisor on this project is a certified lead-based paint abatement supervisor who has completed a 4-hour RRP refresher course, the workers must obtain on-the-job training in lead-safe work practices from the supervisor.
- E) Otherwise, the workers must successfully complete either a one-day RRP course, or another lead-safe work practices course approved by HUD for this purpose after consultation with the EPA. HUD has approved the one-day RRP course, the previously-published HUD/EPA one- day Renovation,

Remodeling and Repair course, and other one-day courses listed on HUD's website, at www.hud.gov/offices/lead.

- F) This chapter provides you with guidance in order to comply with the HUD LSHR regulations. The Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) regulate LBP activities performed on government owned or assisted properties. The Lead Safe Housing Rule is (LSHR) divided into sections that are called subparts. Subparts "C" through "M" apply to specific programs, such as multi-family mortgage insurance, project-based rental assistance, housing rehabilitation, public housing, tenant-based rental assistance, or acquisition, leasing supportive services or operations. Although all of Title X is applicable to the HOME program, the most relevant parts of this legislation are Subparts J and K.
 - 1) SUBPART J - The intent of Subpart J is to eliminate as far as practicable lead-based paint hazards in residential property that receives federal assistance for rehabilitation under a program administered by HUD.
 - 2) SUBPART K - The intent of Subpart K is to eliminate as far as practicable lead-based paint hazards in a residential property that receives federal assistance under certain HUD programs for acquisition, leasing, support services, or operation.
- G) As a general policy, THDA requires that actual testing be performed on any pre-1978 housing that is eligible for rehabilitation. This testing may be a Lead Hazard Screen, a Risk Assessment, or Paint Inspection, as defined in Section 2 below, performed by a certified Risk Assessor. The goal of this testing is to determine through testing whether or not LBP exists in the house and whether or not a LBP Hazard exists. The results of this testing and the corrective measures shall be incorporated in the rehabilitation work write-up.
- H) Presumption of Lead. THDA does not encourage the use of the Presumption of LBP in its programs and requires that the project administrator contact THDA before starting work under this assumption. A Presumption does not provide real evidence as to whether or not LBP or a LBP Hazard exists. In those cases where THDA may allow a Presumption of Lead-Based Paint, there must be at least a laboratory analysis of dust samples collected by a qualified risk assessor prior to beginning work.

8.2 – Definitions

- A) **ABATEMENT** - Any set of measures designed to permanently (at least twenty-years) eliminate lead-based paint or lead-based paint hazards.
- B) **CLEARANCE EXAMINATION** - An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.
- C) **INTERIM CONTROLS** - A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based maintenance activities, and the establishment and operation of management and resident education programs.
- D) **LEAD-BASED PAINT HAZARDS** - Any condition that causes exposure to lead from dust-lead hazards,

soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

- E) **LEAD-BASED PAINT INSPECTION** - A surface by surface testing of all painted, shellacked, or varnished surfaces to determine the presence or absence of lead.
- F) **PAINT TESTING** - The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.
- G) **RISK ASSESSMENT** - An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.
- H) **LEAD SAFE WORK PRACTICES** – Lead based paint hazard reduction using approved methods of paint stabilization, occupant protection, specialized cleaning.
- I) **STANDARD TREATMENTS** - A series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation. NOTE: These are not allowed in THDA's program as these are used with the presumption of lead approach.

8.3 – Requirements for Rehabilitation Assistance (Subpart J)

Subpart J of Title X deals specifically with rehabilitation. The requirements in regard to lead-based paint are dependent on the cost of the rehabilitation. HUD designates three categories of rehabilitation: property receiving less than or equal to \$5,000; property receiving between \$5,000 and \$25,000; and property receiving more than \$25,000. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributed to lead-based paint hazard reduction are not to be included when determining cost of rehabilitation. *However, these costs, plus the cost of rehabilitation, must not exceed the HOME subsidy limits.* The following is a breakdown of what is required for each of these three categories in pre-1978 units:

A) **PROPERTIES RECEIVING LESS THAN OR EQUAL TO \$5,000 PER UNIT**

- 1) Provide the household with a copy of the pamphlet *Protect Your Family From Lead in Your Home* (LBP-1).
- 2) Conduct paint testing of all surfaces in the structure.
- 3) If, with THDA permission, the program administrator opts to Presume the Presence of Lead-Based Paint, there must be a laboratory analysis of dust samples as collected by a qualified risk assessor prior to beginning work.
- 4) Implement lead safe work practices during rehabilitation and repair any disturbed paint. If testing shows the absence of lead-based paint, safe work practices are not required.
- 5) After completion of rehabilitation, conduct clearance testing of the entire unit and common

area. Clearance is not required if testing shows the absence of lead-based paint or if rehabilitation did not disturb painted surfaces greater than the De minimis levels set forth by HUD.

a) De minimis levels:

- (1) 20 square feet on exterior surfaces
- (2) 2 square feet in any one interior room or space
- (3) 10% of the total surface area on an interior or exterior type of component with a small surface area, windowsills, baseboards, and trim.

b) Provide the household with a copy of the COMPLETE Clearance Report within 15 days of completion of the hazard reduction activity or receipt by the administrator of the clearance report. (Documentation that the homeowner has received the complete Clearance Report must be maintained in the project record.)

B) PROPERTIES RECEIVING BETWEEN \$5,001 AND \$25,000 PER UNIT

- 1) Provide the household with a copy of the pamphlet *Protect Your Family From Lead in Your Home* (LBP-1).
- 2) Conduct paint testing of all of the surfaces of the structure.
- 3) Perform a risk assessment in the dwelling unit receiving federal assistance and in associated common areas and exterior painted surfaces before rehabilitation begins.
 - a) A *Lead Hazard Screen* may be conducted first to determine whether a full risk assessment is required.
 - (1) The Lead Hazard Screen is a limited risk assessment activity that involves dust and soil sampling and may include paint testing on deteriorated paint surfaces or surfaces to be disturbed during rehabilitation.
 - (2) A full risk assessment must be performed if any part of the Lead Hazard Screen fails.
- 4) Provide homeowner with a copy of the COMPLETE Risk Assessment, Lead Hazard Screen within 15 days of completion of the report or receipt by the administrator. (Documentation that the homeowner has received the Risk Assessment or Lead Hazard Screen must be maintained in the project record.)
- 5) Perform interim controls of all lead-based paint hazards identified by the paint testing and risk assessment, as well as lead-based paint hazards created as a result of the rehabilitation work. If interim controls are necessary they must be performed by a person trained in accordance with CFR 1926.59 (Hazard Communication) and either be supervised by an individual certified as a lead-based paint abatement supervisor or have successfully completed one of the following courses: a lead-based paint abatement supervisor or worker course accredited in accordance with 40 CFR 745.225; The Lead-Based Paint Maintenance Program; or The Remodeler's and Renovator's Lead-Based Paint Training

Program.

- 6) After completion of rehabilitation, conduct clearance testing of the entire unit and common areas.
- 7) Provide the household with a copy of the COMPLETE Clearance Report within 15 days of completion of the hazard reduction activity or receipt by the administrator of the clearance report. (Documentation that the homeowner has received the complete Clearance Report must be maintained in the project record.)
- 8) On-going lead-based paint maintenance is required if rehabilitation included HOME or CILP.

C) PROPERTIES RECEIVING MORE THAN \$25,000 PER UNIT

- 1) Provide the household with a copy of the pamphlet *Protect Your Family From Lead in Your Home* (LBP-1).
- 2) Conduct paint testing of all surfaces in the structure.
- 3) Perform a risk assessment in the dwelling unit receiving federal assistance and in associated common areas and exterior painted surfaces before rehabilitation begins.
 - a) When a risk assessment is required, a Lead Hazard Screen may be conducted first to determine whether a full risk assessment is required.
 - (1) The Lead Hazard Screen is a limited risk assessment activity that involves dust and soil sampling and may include paint testing on deteriorated paint surfaces or surfaces to be disturbed during rehabilitation.
 - (2) A full risk assessment must be performed if any part of the Lead Hazard Screen fails.
- 4) Provide homeowner with a copy of the COMPLETE Risk Assessment or Lead Hazard Screen within 15 days of completion of the report or receipt by the administrator. (Documentation that the homeowner has received the Risk Assessment or Lead Hazard Screen must be maintained in the project record.)
- 5) Abate all lead-based paint hazards identified by the paint testing and risk assessment, as well as lead-based paint hazards created as a result of the rehabilitation work. Perform abatement on all painted surfaces. **All abatement work must be performed by a certified abatement contractor.**

- D) After completion of rehabilitation, conduct clearance testing of the entire unit and common areas.
- E) Provide the household with a copy of the COMPLETE Clearance Report within 15 days of completion of the hazard reduction activity or receipt by the administrator of the clearance report. (Documentation that the homeowner has received the complete Clearance Report must be maintained in the project record.)
- F) On-going lead-based paint maintenance is required if rehabilitation included HOME or CILP.

- 1) Documentation must be maintained in the HOME program files that all reports have been received by the homeowner, tenant and/or contractor.

8.4 – Steps to Incorporate Lead-Based Paint Procedures in Housing Rehabilitation

- A) Complete the initial walk through and work-write-up. By doing the initial walk-through and work write-up, it is sometimes possible to determine that a unit needs to be reconstructed prior to expending the funds for a paint inspection/risk assessment that is not needed. Other times it may be necessary to have the paint inspection/risk assessment completed in order to make the determination that reconstruction is the best use of funds.
- B) Determine the estimated cost of repairs and the category into which the project falls. (See Attachment V: Quick Reference Guide)
- C) Provide risk assessor with a copy of the initial work write-up showing which areas are to be disturbed by the rehabilitation. Proceed with appropriate paint testing/risk assessment. If the Risk Assessment and testing has already been completed, the findings should be incorporated into the work wire-up. The paint inspection/risk assessment should address not only the areas to be disturbed, but any lead-based paint hazards and potential hazards that are discovered as part of the paint inspection/risk assessment.
- D) Provide homeowner with a copy of the COMPLETE Risk Assessment or Lead Hazard Screen (LBP 2- Homeowner Receipt of Lead-Based Paint Risk Assessment) within 15 days of completion of the report or receipt by the administrator. (Documentation that the homeowner has received the Risk Assessment or Lead Hazard Screen must be maintained the in the project record.)
- E) Incorporate measures recommended by the risk assessor into the work write-up including LBP 4- Status of Compliance with Lead-Based Paint Regulations. The work write-up should be broken out with separate line- i tem costs for both the rehabilitation work and the lead hazard reduction work. In most cases, the cost of lead work hazard reduction will be associated with a particular line item of rehabilitation work. In certain situations placing the cost of interim controls under lead hazard reduction may be the best choice, and the rationale for that decision must be well documented. It is important to remember that only the interim controls recommended in the risk assessment may be used for the rehabilitation.
- F) Determine if relocation is necessary.
- G) Put the project out to bid. The bid sheet must differentiate between rehabilitation work and lead work. The costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation. The two totals will then be added together to arrive at a total bid amount.
- H) Relocation of homeowner and furnishings, if applicable.
- I) After completing work, clearance must be achieved. Provide the household with a copy of the COMPLETE Clearance Report (LBP 5 – Homeowner Receipt of Lead Based Paint Clearance Report) within 15 days of completion of the hazard reduction activity or receipt by the administrator of the

clearance report. (Documentation that the homeowner has received the complete Clearance Report must be maintained in the project record.)

- J) Move homeowner and belongings back into home, if applicable.

8.5 – Safe Work Practices

- A) Homeowner/occupant and their belongings shall be protected and the worksite prepared in accordance with 24 CFR Part 35.1345 and prohibited methods of paint removal shall not be used.
- B) The worksite shall be prepared to prevent the release of lead dust and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of lead dust, paint chips, soil and debris shall be used during worksite preparation.
- C) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or for an exterior hazard reduction activity, where it is easily read from a distance of 20 feet from the edge of the hazard reduction worksite. Each warning sign shall meet the requirements as described in 29 CFR 1926.52(m).
- D) After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum, or other method of equivalent efficacy, and lead-specific detergent or equivalent.

8.6 – Interim Controls

- A) Even though Interim controls are a temporary solution to lead-based paint hazards, they significantly reduce the risk of lead poisoning among the housing residents. Interim control methods include:
 - 1) Paint stabilization – Deteriorated paint can be controlled through repairs, safe paint removal, repainting the surface and/or repairing loose and deteriorated substrate materials.
 - 2) Friction and impact surface treatments – Friction and impact surfaces that create lead dust, such as windows, doors, stair treads and floors, can be treated by re-hanging doors and placing rubber stoppers along impact surfaces, and cushioning window tracks with plastic liners to reduce friction.
 - 3) Treatment for chewable surfaces – If a child under six has chewed surfaces known to contain lead, or if these surfaces are presumed to contain lead, these surfaces must be enclosed or coated so that they are impenetrable.
 - 4) Dust control – All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, window sills, and window troughs must be covered with a smooth cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum. Lead-contaminated dust can be controlled by cleaning surfaces that reduce lead dust. Carpeting must be vacuumed and rugs must be removed and vacuumed on both sides. Vacuuming must be done using HEPA vacuums.

- 5) Soil treatments – Control lead-contaminated soil by limiting access to it. There are two methods: covering contaminated surfaces with sod, grass, mulch, gravel or other appropriate material; and land use controls such as fences or signs.
- B) All interim control strategies require worksite preparation, cleanup, waste disposal, clearance testing, recordkeeping and monitoring.

8.7 – Abatement Strategies

- A) Abatement strategies include the removal of lead-based paint. There are five basic methods of abatement for components that contain lead-based paint:
 - 1) **Component replacement** – The removal of building components that contain lead-based paint.
 - 2) **Paint removal** – The separation of paint from the substrate using safe heat, chemical, or abrasive methods. It is the least preferred method and requires the greatest care and most careful clean-up. It is most appropriate for small surfaces.
 - 3) **Enclosure** – The installation of a barrier (such as paneling) that is mechanically attached to the building component, with all edges and seams sealed to prevent the escape of lead-based dust. It is appropriate for large surfaces such as walls, ceilings, floors and exteriors.
 - 4) **Encapsulation** – Involves a liquid or adhesive material that covers the component and forms a barrier that makes the lead-based paint surface inaccessible by relying upon adhesion. It is most appropriate for most kinds of smooth surfaces but cannot be used effectively on friction surfaces, surfaces in poor condition, or surfaces that may become wet. It must also be compatible with the existing paint.
 - 5) **Soil Abatement** – Includes removal of at least the top six inches of soil but may go to two feet in areas with heavy contamination; and paving the contaminated soil with high quality concrete or asphalt.
- 6) All abatement strategies require worksite preparation, cleanup, waste disposal, clearance testing, recordkeeping and monitoring.

8.8 – HUD Standards for Safe Methods and Prohibited Methods for Treating Lead-Based Paint

- A) Examples of safe treatment methods:

- 1) Wet scraping;
- 2) Wet sanding;
- 3) Chemical stripping off site;
- 4) Replacing painted components;
- 5) Scraping with an infrared or coil-type heat gun with temperatures below 1,100°F;
- 6) HEPA vacuum sanding;
- 7) HEPA vacuum needle gun;
- 8) Abrasive sanding with a HEPA vacuum; and

- 9) Covering a defective surface with durable materials such as wallboard or vinyl siding, with the joints sealed and caulked.
- 10) Examples of prohibited treatment methods:
 - a) Open flame burning or torching;
 - b) Machine sanding or grinding without a HEPA local exhaust;
 - c) Heat guns operating above 1,100°F or charring;
 - d) Dry scraping or dry sanding except in conjunction with heat guns or within one foot of outlets; and
 - e) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance.

8.9 – Occupant Protection

- A) This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.
 - 1) Occupants shall not be permitted to enter the worksite during hazard reduction activities, until after hazard reduction work has been completed and clearance, if required, has been achieved.
 - 2) Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead- based paint hazards, except if:
 - a) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;
 - b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;
 - c) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards; or
 - d) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards; and the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.
 - e) All occupants are over the age of 65 (elderly) and are made aware of the hazards involved with remaining in the home during rehabilitation. The residents must sign a waiver (LBP-7 – Elderly Relocation Waiver) acknowledging that they have received information on the hazards and have chosen to remain in their home.

- 3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with all seams and edges taped or otherwise sealed.

8.10 – Importance of Breaking Out Lead Cost from Non-Lead Costs in a Work Write-Up

- A) It is very important to understand that work write-ups need to clearly delineate lead and non-lead costs and they need to do so on a line item basis. It is very easy to accidentally trigger abatement by using abatement methods as interim controls or by putting rehabilitation costs under lead hazard reduction costs in order to stay under the \$25,000 cap.
- B) In order to generate a work write-up for rehabilitation with lead that does not trigger abatement, it is very important to realize that the work write-up and risk assessment go hand in hand. It is easy to trigger abatement by calling for an abatement method in the work write-up, such as paint removal, component replacement, encapsulation or enclosure, to correct a lead hazard and then allocating the cost of that method to lead hazard reduction and not to rehabilitation hard costs. (Attachment VIII: Applying the Policy in the HUD/EPA Abatement Letter - Scenario 2.) It is also important to remember that *only the interim controls called for in the risk assessment* can be used during rehabilitation.
- C) The following costs and activities are the types of lead costs that can be excluded from the hard cost of rehabilitation:
 - 1) Cost of site preparation;
 - 2) Occupant protection;
 - 3) Relocation;
 - 4) Interim controls;
 - 5) Abatement;
 - 6) Clearance; and
 - 7) Waste handling attributable to lead-based paint hazard reduction.
- D) It should be noted that 'interim controls' is a very gray area and one area that seems to be very troublesome. *Just because a rehabilitation activity uses an interim control or has lead that requires the use of safe work practices, does not mean that the full cost of that activity can be deducted from the hard cost of rehabilitation.* Sometimes the 'interim control' may simply be needed to correct a lead hazard before a particular rehabilitation activity can be done. This type of interim control can be deducted from the rehabilitation hard cost, but not the full cost of the activity. Good documentation is necessary and this is where both intent and the risk assessment play a major role in determining if abatement has been triggered.
- E) In order to prevent the accidental triggering of abatement, one methodology would be to always have a rehabilitation hard cost for each line item in the work write-up that has lead. The cost of the activity if no lead was involved would be the rehabilitation hard cost. The additional cost of the activity, because it does have lead, is the lead reduction cost. (Cost of activity with lead – Cost of activity without lead = Lead hazard reduction cost)

- F) There are two approaches to generating a work write-up and risk assessment for a unit with lead depending on who is doing the inspection and the risk assessment.
- 1) If the housing inspector and the risk assessor are the not the same:
 - a) The housing inspector needs to do the initial codes inspection and identify the rehabilitation work to be done on the house.
 - b) The Risk Assessor completes his testing of the complete structure and gives the report to the housing inspector.
 - c) The housing inspector then modifies the work write-up so that it clearly breaks out rehabilitation work and required lead work separately by:
 - (1) Identifying the housing components that have lead and require safe work practices.
 - (2) Incorporating in the work write-up any interim controls that are required to correct lead-based paint hazards that were identified in the risk assessment but may or may not have been addressed as part of the original write-up.
 - (3) Ensuring that where applicable, line items with lead have both a rehabilitation cost and a lead cost.
 - 2) If the housing inspector and the lead inspector are the same person, the inspector can conduct both the codes inspection and the risk assessment at the same time and generate the work write-up so that it clearly breaks out rehabilitation work and required lead work separately as in 11.6(1)(c) i-iii above.
 - 3) The risk assessment and the work write-up that clearly breaks out the lead costs and non-lead costs on a line-item basis will need to be submitted along with the contract when the set-up information is sent to THDA. The work write-ups will need to identify all line items that have lead and require the use of safe work practices. When interim controls are used, the methods to be used need to be clearly spelled out and the cost properly allocated.

8.11 – Guidance on Relocation

- A) The Lead Safe Housing Rule includes requirements for occupant protection during lead hazard reduction activities. These occupant protection measures often require that a resident leave the unit while work is being performed. Relocation to a temporary unit may be required.
- B) When is relocation required? - Residents must be kept out of the work area during lead hazard reduction work and cannot return to the work area until it has passed clearance. If the residents cannot enter important parts of their home (e.g. bathrooms, kitchens) for more than a day, they need to be relocated temporarily.
- 1) When is relocation not required? - The lead safe housing rule lists several situations that do not require relocation. These include:

- a) The work will not disturb lead-based paint, dust lead hazards, or soil lead hazards.
 - b) Work on the interior of the unit will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health, or environmental hazards.
 - c) Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the worksite are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided.
 - d) Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the containment area is cleared of debris and cleaned; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health, or environmental hazards.
 - e) HUD has advised that the relocation of elderly occupants is not typically required, so long as complete disclosure of the nature of the work is provided and informed consent of the elderly occupant(s) is obtained before commencement of the work. (See LBP-13)
- C) What constitutes an appropriate relocation unit? - The Lead Safe Housing Rule requires that the relocation unit be lead-safe. The Interpretive Guidance provides two ways to demonstrate the lead-safety of a unit:
- 1) Use post-1978 units
 - 2) Perform a clearance examination in the unit to ensure that there is no deteriorated paint or dust hazards
- D) Does relocation for lead hazard reduction trigger the Uniform Relocation Act (URA)? - The URA is triggered if tenants are not treated reasonably during temporary relocation.
- 1) For tenants, this means that the agency must pay the out-of-pocket costs incurred by tenants during temporary relocation, such as the rent charged for the temporary unit above their costs for their existing unit, costs to move back and forth from the temporary unit, storage costs for personal belongings, and utility hookups at the temporary unit. In addition, reasonable advance notice must be provided to the tenant before the tenant is required to move into or out of the temporary unit. Further, the unit they move into must be suitable for their needs. (For more information on URA, consult HUD Handbook 1378.)
 - 2) Work in owner-occupied housing does not trigger the URA. However, agencies may choose to define hardship situations for homeowners and adopt temporary relocation as part of their written policies and procedures to pay certain costs, such as a per-day maximum for costs actually incurred for housing and meals. Any such policy must be written and must be applied consistently.
- E) What should a relocation policy cover? – Relocation policies serve as a useful guide to staff and program participants and help ensure that all program participants are treated consistently. The policy should cover:

- 1) When relocation is required under the program and how long temporary relocation will typically last
 - 2) How much notice will be provided to move and return
 - 3) What constitutes an appropriate relocation unit
 - 4) Whose responsibility it is to identify a temporary unit
 - 5) How much, if any, will be allowed for a meal allowance per person if the temporary unit has no cooking facilities.
 - 6) How payment will be disbursed
 - 7) What relocation benefits are available to the resident during the relocation period
- F) How can relocation costs be minimized? - Minimize the relocation time. Stage work to minimize the time the residents need to be out of the unit. The worksite must be properly contained and the resident may not enter that area ever during the course of the work. Work areas must pass interim clearance before a resident can reoccupy them. A final clearance is still required at the end of the job, even after interim clearances have been done.
- G) Minimize associated costs. Negotiate favorable rates with motel or apartment owners for temporary relocation units. Obtain competitive bids from moving or storage companies and identify a mover and storage company that will provide services at the most favorable rate. However, costs should be based on actual expenses, not a per unit rate.

8.12 – Acquisition, Leasing, Support Services, or Operation

- A) The purpose of this subpart K is to establish procedures to eliminate as far as practicable lead-based paint hazards in a pre-1978 residential property that receives federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally owned housing, project-based or tenant-based rental assistance, or assistance to public housing.
- B) Notices and Pamphlets - In cases where evaluation or hazard reduction, including paint stabilization, is undertaken, each grantee shall provide a notice to residents in accordance with 24 CFR Part 35.125. A visual assessment is not considered an evaluation for purposes of this part. The grantee shall provide the lead hazard information pamphlet.
- C) If a dwelling unit receives federal assistance under a program covered by this Subpart, each grantee shall conduct the following activities for the dwelling unit and all common areas servicing the dwelling unit and the exterior surfaces of the building in which the dwelling unit is located:
- 1) A visual assessment of all painted surfaces in order to identify deteriorated paint;
 - 2) Paint stabilization of each deteriorated paint surface, before occupancy of a vacant dwelling unit or where a unit is occupied, immediately after the receipt of federal assistance; and
 - 3) The grantee shall incorporate ongoing lead-based paint maintenance activities into regular building operations.

- 4) The grantee shall provide a notice to occupants describing the results of the clearance examination in accordance with 24 CFR Part 35.125.

8.13 – Homeownership

- A) Homeownership activities fall into two categories in THDA’s HOME program. There is one category for acquisition, rehabilitation and sale to a qualified homebuyer (Subpart J), and another category for down payment assistance programs (Subpart K).
- B) In HOME projects structured as an acquisition, rehabilitation and sale to a qualified buyer, Subpart J of the regulation may apply in addition to the requirements of Subpart K. **If the Grantee does the rehabilitation prior to selling the unit to the prospective homebuyer, the Grantee must follow the guidelines for rehabilitation as well the guidelines for homeownership.** Reminder: Only CHDOs are eligible to conduct this type of homeownership program.
- C) In HOME projects structured as down payment assistance in the form of a soft second mortgage, only Subpart K of the regulation applies. The approach under this subpart is to identify and stabilize deteriorated paint.
 - 1) The required lead hazard evaluation is a laboratory analysis of dust samples, or laboratory analysis of paint chips as collected by a qualified risk assessor.
 - 2) Any deteriorated paint that is found must be stabilized.
 - 3) If the deteriorated paint area is greater than the de minimis levels:
 - a) The work must be performed by an approved worker using safe work practices; and
 - b) Clearance is required after paint stabilization is completed.
- D) The following is a more detailed overview of the requirements that need to be met in a homebuyer program and it applies to all pre-1978 units:
 - 1) The current homeowner must provide a disclosure form to the prospective buyer noting any known presence of Lead-based paint. (LBP-8 – Disclosure of information of Lead- Based Paint and/or Lead-Based Paint Hazards)
 - 2) Prospective homebuyers must receive the lead hazard information pamphlet *Protect Your Family From Lead in Your Home*. (LBP-1)
 - 3) The minimum required lead hazard evaluation is a laboratory analysis of dust samples or a laboratory analysis of paint chips as collected by a qualified risk assessor.
 - 4) Lead hazard reduction requires the following activities:
 - a) Paint stabilization to include: repair of deteriorated surfaces; removal of loose paint; and application of new paint.
 - b) The use of safe work practices by a qualified worker.
 - c) Clearance of the unit after completion of the work.

- 5) A Summary Notice of the Lead Hazard Reduction Activity must be provided to the prospective homebuyer within 15 days of completion of the reduction activities, along with a copy of the clearance report. (LBP-6 - Statement of Completion and Clearance)
- 6) One option to performing the lead hazard reduction activities is to have the deteriorated paint tested for lead. If no lead is present in the paint, paint stabilization and clearance are not required.

8.14 – Cost

- A) Costs for paint testing, risk assessments, and clearance testing will be paid as soft costs. There is an acceptable range for costs involving these activities, and the range has increased due to recent increases in transportation costs. Please contact your specialist for cost approval prior to contracting for these services
- B) Expenses incurred conducting lead activities such as costs of site preparation, occupant protection, relocation, interim controls, clearance, waste handling attributed to lead-based paint hazard reduction, standard treatments, and abatement will count towards the subsidy limit.

8.15 – Certification

- A) Lead-based paint Inspectors, Lead-based paint Risk Assessors, Lead-based paint Abatement Workers, and Lead-based paint Abatement Supervisors must be certified by the Tennessee Department of Environment and Conservation (TDEC).
- B) A listing of these certified Lead professionals is available from the TDEC office:

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Solid Waste Management Fifth Floor, L & C Tower
401 Church Street
402 Nashville, Tennessee 37243-1535
403 1-888-891-8332
- C) Attachment VII clarifies that HUD and EPA lead-based paint regulations are complementary.
- D) Websites for additional information and documentation:
 - 1) www.hud.gov/cpd
 - 2) www.hud.gov/offices/lead
 - 3) www.hud.gov/offices/cpd/affordablehousing/training/leadsafe
www.hud.gov/offices/cpd/affordablehousing/training/leadsafe/usefulforms/
 - 4) www.huduser.org
 - 5) <http://www2.epa.gov/lead>
 - 6) http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12525.pdf
 - 7) <https://www.onecpd.info/resources/documents/LSHROtherReqs.pdf>
- E) **HUDUSER offers a publication on a CD-ROM called “Residential Lead Desktop Reference”. It can be obtained at the above website or by calling 1-800-245-2691 and the publication # is: HUD-2033-OLITC**

CHART 1: REHABILITATION PROCESS

Application to Assistance Threshold

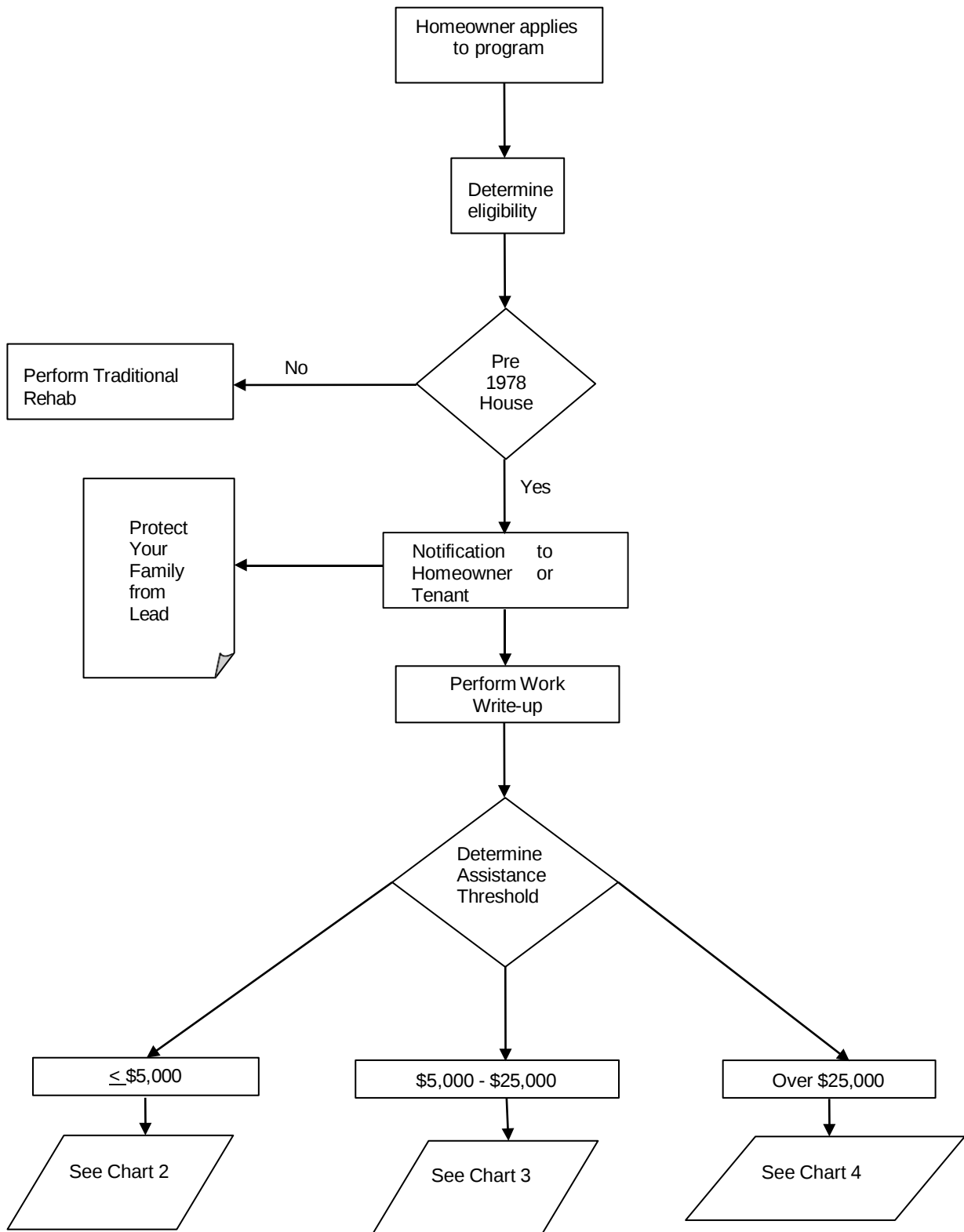


CHART 2: REHABILITATION

Assistance Under \$5,000

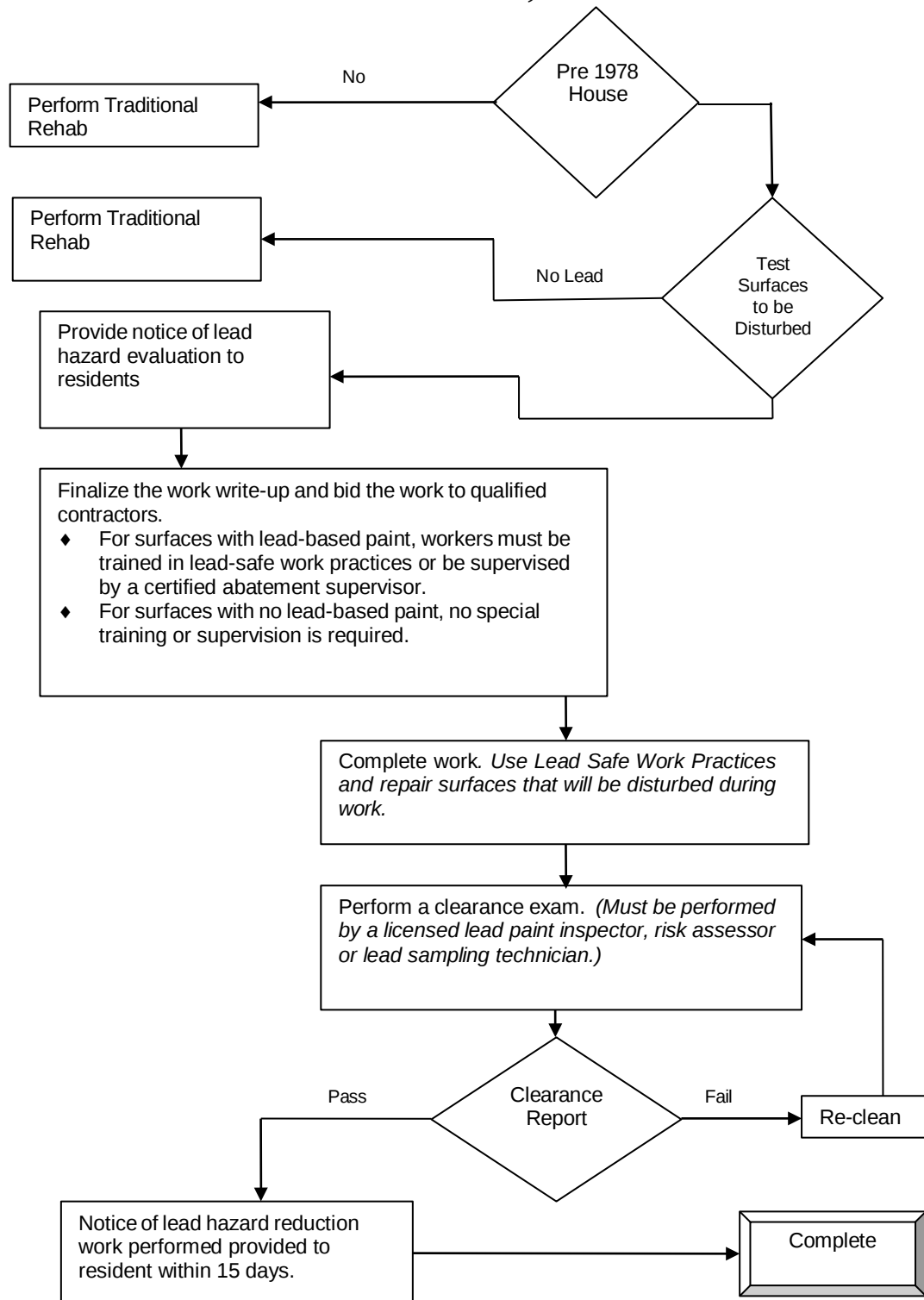


CHART 3: REHABILITATION

Assistance \$5,000 - \$25,000

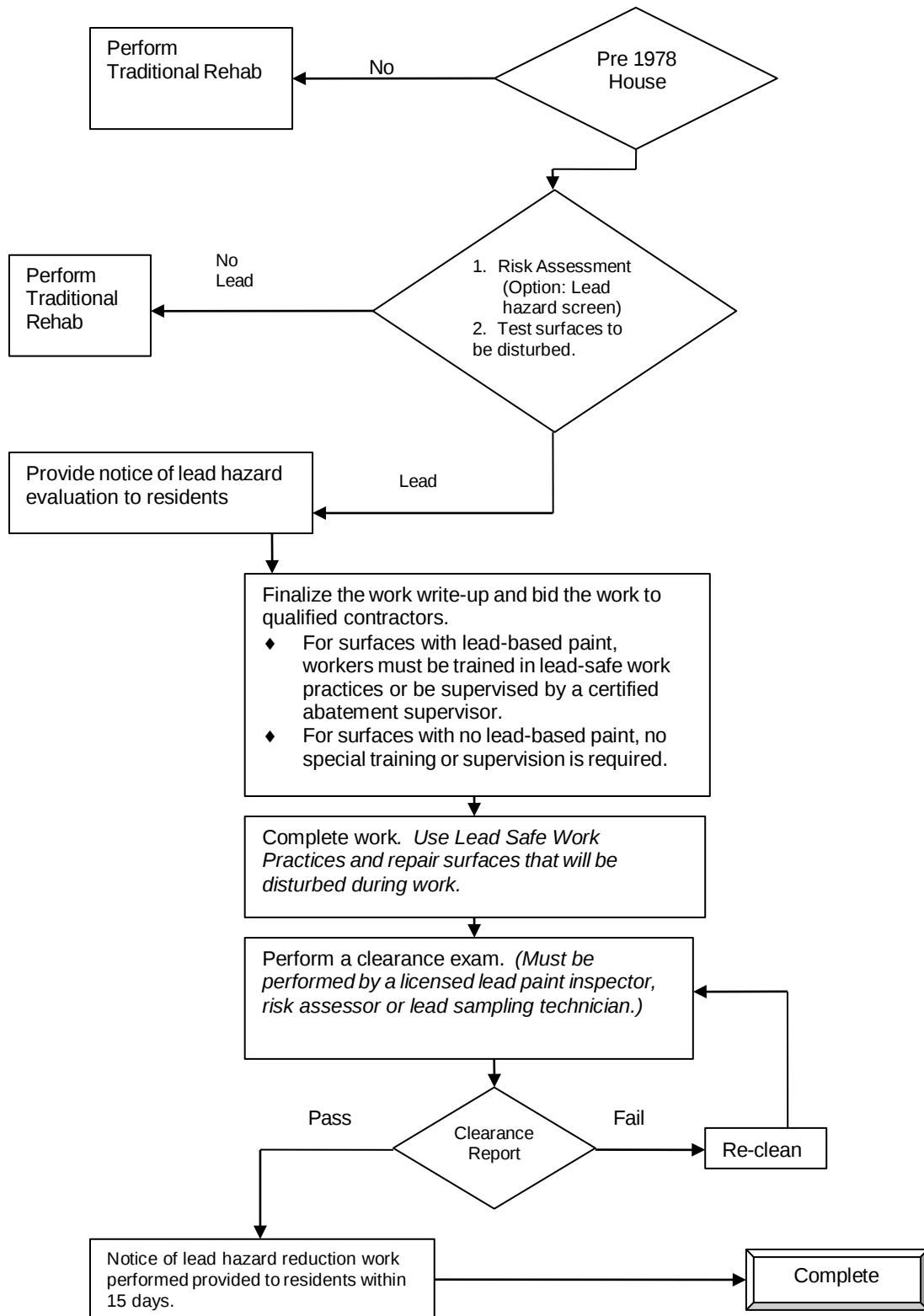
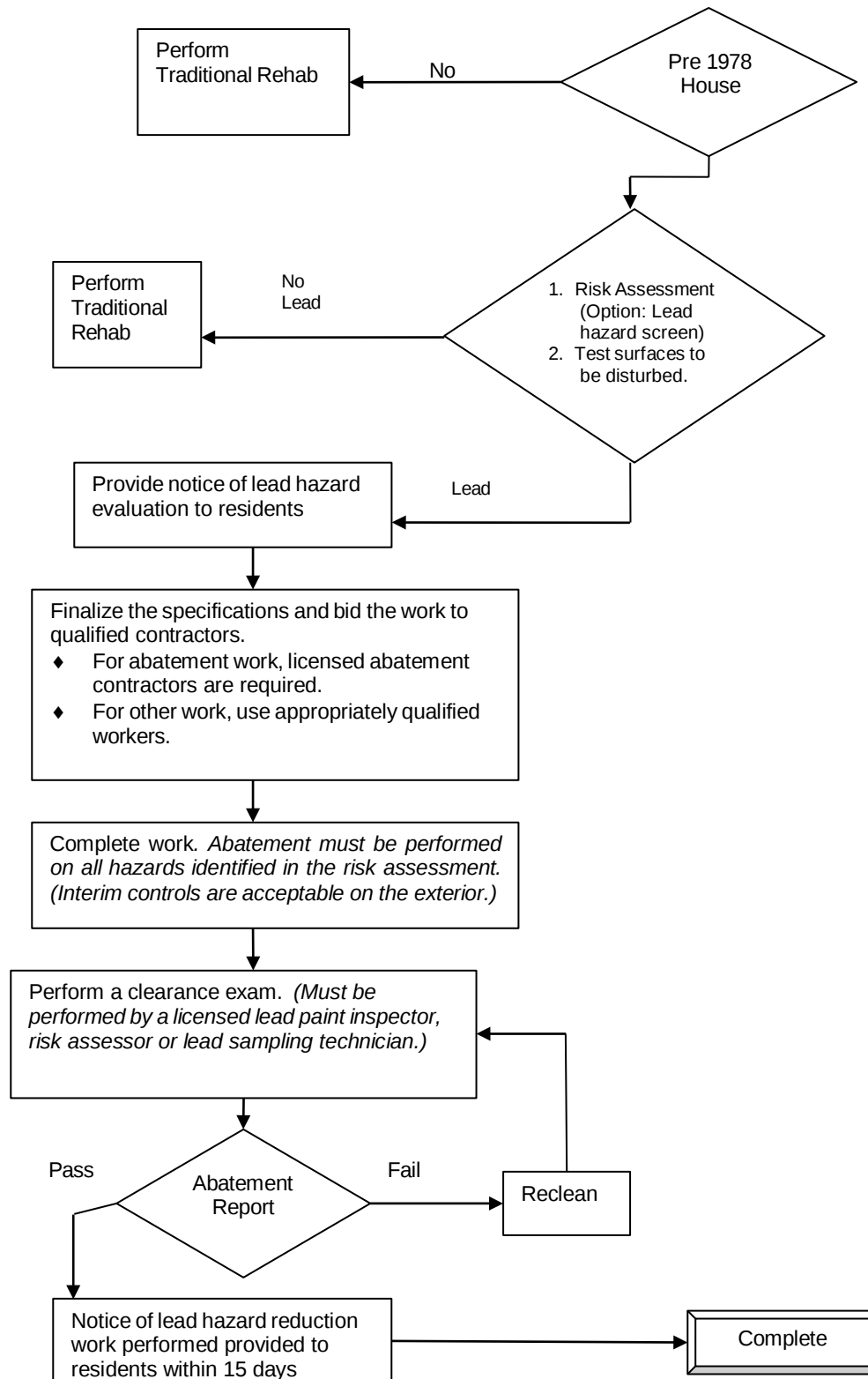


CHART 4: REHABILITATION

Assistance over \$25,000



ATTACHMENT V: QUICK REFERENCE GUIDE

1. Property receiving less than or equal to \$5,000 per unit	• Provision of pamphlet. • Paint testing of surfaces to be disturbed, laboratory analysis of dust samples, or laboratory analysis of paint chips • Safe work practices in rehab • Repair disturbed paint • Notice to occupants • Clearance testing of worksite
2. Property receiving more than \$5,000 and up to \$25,000 per unit	• Provision of pamphlet • Risk Assessment • Interim controls • Notice to occupants • Ongoing LBP maintenance if HOME or CILP • Clearance testing of entire unit and common areas
3. Property receiving more than \$25,000 per unit	• Provision of pamphlet • Risk assessment • Abatement of LBP hazards by a certified abatement contractor • Notice to occupants • Ongoing LBP maintenance • Clearance testing of entire unit and common areas

ATTACHMENT VI: HAZARD EVALUATION TOOLS AND METHODS

EVALUATION	DESCRIPTION	PERFORMED BY	RESULTS
Paint Testing	Testing specific surfaces by XRF or lab analysis, to determine the lead content of these surfaces.	Certified Lead-based Paint Inspector or Certified Risk Assessor.	Identifies lead-based paint on specific surfaces. (Note: Paint testing should not be confused with a lead-based paint inspection. A lead-based paint inspection is a more comprehensive survey that provides a complete list of lead-based surfaces in a unit.)
Risk Assessment	A comprehensive evaluation for lead-paint hazards that includes paint testing, dust and soil sampling and a visual evaluation.	Certified Risk Assessor	Identifies lead-based paint hazards. Report provides information on the presence, nature, severity, and location of hazards, and recommends hazard control measures. (Does not identify lead content of painted surfaces.)
Lead Hazard Screen	A limited risk assessment that can be performed in units that meet certain criteria (e.g. good condition).	Certified Risk Assessor	Identifies hazards. If Hazards are found, must do a full risk assessment.
Clearance Examination	A visual assessment, analysis of dust samples and preparation of report. It is performed after hazard reduction, rehabilitation or maintenance activities to determine if a unit is safe to occupy.	A Certified Risk Assessor, Paint Inspector or Lead Sampling Technician. (Must be independent from entity/individual conducting paint stabilization or hazard reduction.	Identifies dust hazards and deteriorated paint. Indicates if unit is safe for occupancy. A unit that fails clearance must be re-certified.

ATTACHMENT VII: EPA - HUD ABATEMENT LETTER

ATTACHMENT VIII: APPLYING THE POLICY IN THE EPA- HUD ABATEMENT LETTER

The following provides sample scenarios of some of the decisions that program administrators will face when determining if the work being done in a rehabilitation project is abatement.

The analysis of each scenario is based on two principles:

1. **Intent.** The HUD/EPA Abatement Letter of April 19, 2001 stresses the importance of intent in determining whether or not a specific activity constitutes abatement. Abatement is defined as an activity that is specifically intended to permanently eliminate lead-based paint or lead-base paint hazards.

The intention to permanently eliminate lead-based paint can be established in one of four ways:

- Abatement is required by a regulation such as the Lead Safe Housing Rule. (Example: Abatement of identified lead hazards conducted in the interior of a unit where the level of rehabilitation assistance is over \$25,000 per unit.)
- Abatement is required by a court or agency order. (Example: A cord orders abatement of a unit after a lead-poisoned child is identified in the unit.)
- Project work specifications call for abatement. (Example: The project work specifications specifically state that lead is being permanently removed.)
- A cost allocation document attributes the cost of an activity to lead hazard reduction **and** the activity in question is an abatement method. There are four abatement methods: component replacement, paint removal, enclosure, and encapsulation. (Example: For an \$18,000 HOME-funded rehabilitation project, a cost allocation document allocates the cost of window replacement to lead hazard reduction. Because the window replacement is classified as a lead hazard reduction cost **and** window replacement is “component replacement”, which is an abatement method, the window replacement is considered an abatement activity and must be performed by a certified abatement contractor.)

2. **Cost Allocation.** As explained above, the intent to abatement may be established in a cost allocation document. This means that the allocation of costs – between “hard costs of rehabilitation” and “lead hazard reduction” can have significant implications on the nature of the job and hence, the qualifications of the personnel who do this job. The following scenarios illustrate this point.

Scenarios – Cost Allocation and Implication for Job Planning

(Note: For the sake of simplicity, all scenarios below assume full federal funding for the rehabilitation.)

Scenario 1: A \$12,000 rehabilitation project (hard costs) does not include window replacement. The risk assessment identifies the windows as a hazard and provides a choice between window replacement (abatement) and friction treatments (interim controls). The rehabilitation specialist decides to change the scope of his rehabilitation project to include the replacement of the windows (it turns out they are really old and there are compelling energy as well as lead reasons to replace them).

What does this mean for cost allocation purposes? In this case, the rehabilitation specialist has two options:

Option 1: The specialist can allocate cost of window replacement as a rehabilitation hard cost. In this case, an abatement crew is not required but safe work practices must be followed because lead-based paint is known to be present. Workers must, therefore be trained in safe-work practices or supervised by a certified abatement supervisor.

Option 2: The specialist can allocate the cost of window replacement to lead hazard reduction. In this case an abatement contractor will be required because window replacement is an abatement method. (It is component replacement).

Note: State regulations may affect these options. If the state regulation requires abatement certification and training for workers who perform any kind of work on a surface known to contain lead, then state requirements regarding the training and certification of such workers applies, regardless of how the costs are allocated.

Scenario 2: A \$28,000 rehabilitation project (hard costs) includes window replacement (of \$8,000). The risk assessment identifies the windows as a hazard and provides a choice between window replacement (abatement) and friction treatments (non-abatement). The risk assessment also identifies various other small hazards. The rehabilitation specialist decides to go ahead with the window replacement. He then revises the work specifications to include work on all hazards identified and finalizes the cost allocation document.

What does this mean for cost allocation purposes? In this case, the rehabilitation specialist has two options:

Option 1: The specialist can allocate the cost of the window replacement to lead hazard reduction. This would reduce the rehabilitation hard cost to \$20,000 and allow them to perform interim controls as the method of lead hazard reduction (and use trained workers). However, because component replacement is an abatement method, the window replacement must be done by an abatement crew.

Option 2: The specialist can allocate the cost of the window replacement to rehabilitation. This would bring the per unit costs to \$28,000 (i.e. over \$25,000) so abatement of all hazards is required.

Scenario 3: A \$20,000 rehabilitation project (hard costs) includes the replacement of the 8 windows on the first floor because they are old and don't work well anymore. Windows on the second floor are not scheduled for work. The risk assessment identifies all the windows in the unit as hazards and provides a choice between window replacement and window treatments. The risk assessment also identifies a number of other hazards. The rehabilitation specialist decides to go forward with the replacement of the first floor windows. The specialist opts to perform friction treatments on the remaining windows and to perform interim controls on the remaining hazards.

In the cost allocation document, the specialist allocates the cost of the window replacement to rehabilitation costs. He allocates the cost of the friction treatments and all the reduction of the other hazards to lead hazard reduction. He uses workers trained in safe work practices to perform the work.

Is this a permissible approach? Yes. None of the work on this job is abatement. Because of the way the specialist allocated the costs, the window replacement is rehabilitation (not hazard reduction and therefore, not abatement). Further, the friction treatments on the remaining windows constitute interim controls, not abatement.

What if the specialist had chosen to allocate the cost of the window replacement to lead hazard reduction? Then, it would be considered abatement because component replacement is an abatement method. In that case, he would need abatement workers to perform the window replacement. However, trained workers would be permitted to perform the friction treatments since that is an interim controls method.

Note: If state law required work on anything known to contain lead-based paint to be worked on by a certified contractor, then an abatement contractor would be required for all the lead hazard reduction work.

Scenario 4: A \$28,000 rehabilitation project (hard costs) includes window replacement (of \$8,000). The risk assessment identifies hazards throughout the unit (including the windows) and identified acceptable interim controls and abatement methods for each hazard. The cost of the abatement methods recommended by the risk assessment will total \$15,000. This cost is too high for the program to bear so the specialist reconsiders the scope of the project. The specialist rewrites the scope of the work to exclude the window replacement (thereby reducing the project hard costs to \$20,000) and includes interim controls on all hazards, including the windows that were originally scheduled for replacement. This makes the project affordable for the rehabilitation program.

Is this a permissible approach? Yes.

http://www.hud.gov/offices/lead/library/enforcement/pyf_eng.pdf

I have received a copy of the notice entitled:

PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME

June, 2003

Print Full Name

Address

Signature

Date

HOMEOWNER RECEIPT OF LEAD-BASED PAINT RISK ASSESSMENT

Address/Location of Property or Structure(s) the risk assessment applies to:

The attached copy of the *complete* Lead-Based Paint Risk Assessment has been given to the homeowner.

Administrator: _____

Date: _____

I have received a copy of the *complete* Lead-Based Paint Risk Assessment:

Homeowner's Signature: _____

Date: _____

Printed Name: _____

REMOVED

STATUS OF COMPLIANCE WITH LEAD-BASED PAINT REGULATIONS

To be submitted with project set-up, contract, and work-write-up.

Project Name and Address: _____

1. Check applicable box(es)

- | | |
|--|--|
| ☐ Post 1977 Housing
☐ Lead based paint inspection | ☐ Lead Hazard Screening
☐ Risk Assessment |
|--|--|

2. If inspection/risk assessment performed:

Name of Inspector/Risk Assessor _____
 Organization _____

3. Were Lead Based Paint Hazards found?

- ☐ Yes
 ☐ No

4. If yes, were corrective measures added to the work-write-up?

- ☐ Yes
 ☐ No

5. Type of Lead-based Paint Hazard Reduction Activity:

- | | |
|--|--|
| ☐ Standard treatments
☐ Abatement | ☐ Interim controls
☐ None |
|--|--|

6. Is relocation necessary?

- ☐ Yes
 ☐ No

7. Did homeowner receive a copy of the Risk Assessment or Presumption of Lead?

- ☐ Yes
 ☐ No

8. Copy of Risk Assessment attached?

- ☐ Yes
 ☐ No
☐ N/A Copy already submitted

Administrator: _____

Signature: _____

Date: _____

HOMEOWNER RECEIPT OF LEAD-BASED PAINT CLEARANCE REPORT
--

Address/Location of Property or Structure(s) the clearance report applies to:

The attached copy of the *complete* Lead-Based Paint Clearance Report has been given to the homeowner.

Administrator: _____

Date: _____

I have received a copy of the *complete* Lead-Based Paint Clearance Report.

Homeowner's Signature: _____

Date: _____

Printed Name: _____

STATEMENT OF COMPLETION AND CLEARANCE

To be submitted with Certification of Completion and Final Inspection

Project Name and Address: _____

1. If inspection/risk assessment performed:

Name of Inspector/Risk Assessor _____

Organization _____

2. Were all lead-based paint hazards corrected during rehab?

☐ Yes ☐ No

3. Date Clearance achieved: _____

☐ Yes ☐ No

4. Date home reoccupied: _____

5. Did homeowner receive a copy of the Clearance Report?

☐ Yes ☐ No

If yes, date provided to homeowner: _____

6. Has a copy of the Clearance Report and the Risk Assessment been submitted to THDA?

☐ Yes ☐ No ☐ N/A Already submitted

Administrator: _____

Signature: _____

Date: _____

ELDERLY RELOCATION WAIVER

Must be completed and signed by each elderly resident of the household.

Address/Location of Property or Structure(s) this waiver applies to:

I, _____, the undersigned,

☐ choose to remain in my home while rehabilitation work by [insert Grantee name]
_____ is being performed.

☐ choose to relocate to another unit while the work is being performed.

I have made this choice having read and understood the following:

1. I am at least 62 years old.
2. My home was built before 1978.
3. I have received the pamphlet *Protect Your Family from Lead in Your Home*; and I am aware of the health hazards that are posed by lead-based paint.
4. I have been given a description of work that will be done in my home and understand that during the course of the work, lead hazards may be created in the work area. These hazards will be fixed before the job is considered complete.
5. I may stay in my home but I may not enter the work area while work is being performed.
6. I certify that no children under age six or women of childbearing age currently live in the unit or spend significant amounts of time in the unit.
7. I understand that allowing children under age six or women of childbearing age to visit my home while work is being done may pose a risk to their health.
8. I waive rights to all damages. I agree to hold harmless the [insert Grantee name]
_____ for any damages due to lead poisoning that occur on these premises during the course of the work.

Signed:

_____ Name	_____ Date	_____ Name	_____ Date
---------------	---------------	---------------	---------------

**Disclosure of Information of Lead-Based Paint and/or Lead-Based
Paint Hazards**

http://www.hud.gov/offices/lead/library/enforcement/self_eng.pdf

CHAPTER NINE – HOMEOWNERSHIP

9.1 – Overview

- A) This Chapter provides guidance in the operation of your Homeownership program. HOME funds can be used for acquisition (including soft second mortgages for down payment and closing costs), acquisition and rehabilitation or new construction of homes. THDA restricts a Grantee's HOME activity based on its classification as either a state recipient, a sub-recipient or a Community Housing Development Organization (CHDO).
- B) It is expected that the Grantee will not only shepherd the homebuyer through the home buying process, but also work toward fostering an on-going relationship with the homebuyer. This includes facilitating additional homeowner counseling, verifying homeowner occupancy requirements on an annual basis, and monitoring mortgage default issues.

9.2 – Eligible Activities (92.254)

A) **HOMEOWNERSHIP PROGRAMS BY CHDOS**

- 1) *Construction financing* - An up-front source of funds (without interest costs) to build affordable, new single family units for sale to low income households; or
- 2) *Acquisition and rehabilitation* - HOME funds are used to acquire existing units and to provide the necessary rehabilitation for resale to a low income household.
- 3) At the time of permanent financing, the CHDO must leave at least \$1,000 or up to
- 4) \$39,999 of HOME funds with the unit as a soft second mortgage. The soft second mortgage is limited to the lesser of \$39,999 in HOME funds or the amount of HOME funds necessary to qualify the household for the permanent financing.
- 5) The HOME funds used to construct or acquire and rehabilitate the unit must be repaid to the CHDO and are considered CHDO proceeds. The CHDO proceeds must then be used for a HOME-eligible housing activity as specified in the Special Conditions in the Working Agreement and *Chapter Two: Financial Management, Section 8.F. 1-3*.

B) **HOMEOWNERSHIP PROGRAMS BY CITIES, COUNTIES AND NON-PROFIT ORGANIZATIONS (non-CHDO)** - Homeownership programs are restricted to soft second mortgages as necessary to qualify the household for permanent financing.

- 1) **SOFT SECOND MORTGAGES** - In order to qualify a family in homeownership programs, HOME funds may be used for soft second mortgages. The soft second mortgages are limited to an amount equal to the lesser of \$14,999 or \$39,999 in HOME funds per household or the amount of HOME funds necessary to qualify the household for permanent financing. The soft second mortgages will have a five-year or ten-year

affordability period forgiven at the end of the five or ten years, respectively, if the unit maintains compliance. (i.e., if the property is not sold or deed transfer). If the unit is sold during the affordability period, the HOME funds would be due on sale to THDA, subject to the provisions outlined in Section 8. If the property is leased, the entire HOME investment is due back and these funds are handled as repayments.

9.3 – General Program Requirements

- A) **HOMEBUYER IDENTIFIED** - Before construction or acquisition/rehabilitation can begin under homeownership, there must be a THDA approved environmental review and a homebuyer pre-approved for a permanent loan identified with a specific property. Pre-sales of HOME units will ensure that the Grantee has a steady pipeline of homebuyers interested in their properties and may be participating in decisions related to a property (i.e., paint color selection, choices for flooring, etc.). Speculative construction or acquisition is permitted on a case-by-case bases.
- B) **INITIAL CONSTRUCTION REVIEW** – Before acquisition/ rehabilitation can begin under homeownership, the CHDO must contact the office of Community Programs to schedule a Quality Assurance review.
- C) **SALES PRICE LIMITS** - The purchase price for a unit must be less than or equal to the appraised value. The purchase price limits for homeownership programs are established by HUD for existing and newly constructed homes. The Homeownership Sales limits can be found at www.thda.org >Government and Nonprofit Partners >HOME Program>More Information for Applicants; Grantee and Grant Administrators>Program Limits at the bottom of the page
- D) **SALE DEADLINE** - Homeowner unit must be sold to income eligible homebuyers within 9 months of construction or rehabilitation completion. A ratified sales contract is sufficient to demonstrate the sale of a unit.
- E) **CONVERSION OF UNSOLD HOMEBUYER UNITS**
 - 1) Homeownership units that remain unsold 9 months after construction or rehabilitation is completed, must be converted to rental units. THDA will review the Grantee's experience with rental housing prior to allowing the conversion.
 - a) Unsold homeownership units must be converted to HOME rental units for the rental affordability period or HOME funds must be repaid.
 - b) THDA's underwriting will review the viability of the marketing plan and the risks for the project if the sale of units does not occur within the 9 month requirement.

9.4 – Homebuyer Eligibility Requirements (92.254)

- A) The prospective purchaser must be low income, that is, have a gross annual household income that does not exceed 80% of the area median, adjusted for family size, as defined by the Section

8 income requirements.

- B) The HOME program establishes the following timing for qualifying HOME-assisted homebuyers as income eligible:
- 1) In the case of a contract to purchase existing housing, the purchasing household must be low-income at the time of purchase;
 - 2) In the case of a contract to purchase housing to be constructed, the purchasing household must be low income at the time the contract is signed; and
 - 3) In the case of a lease-purchase agreement (for existing housing or housing to be constructed), the purchasing household must be low income at the time the lease-purchase agreement is signed.
- C) The homebuyer must obtain fee simple title to the property or a 99-year leasehold.
- D) The prospective homebuyer must occupy the property to be purchased as his/her principal residence.
- E) All homebuyers must complete a minimum of 8 hours of homeownership education program from a THDA qualified homebuyer education trainer prior to purchase. THDA qualified homebuyer education trainer must be HUD certified.
- F) The homebuyer must make a contribution from his or her own funds equal to one percent (1%) of the purchase price of the property.

9.5 – Permanent Mortgage Requirements

- A) Whenever possible, the permanent financing should be a THDA mortgage. If the permanent financing is not a THDA mortgage, then interest rate must not exceed the prevailing THDA Great Choice rate by more than one (1%) percentage point at the time of pre-approval.
- B) All loans must have a fixed interest rate fully amortizing over the term of the loan. There can be no pre-payment penalty for early payoffs.
- C) In underwriting the permanent mortgage, the new housing payment must not exceed 33% of gross monthly income (front end ratio). The total household debt, including the new housing payment, must not exceed 43% of the gross monthly income (back-end ratio).
- D) Liquid Assets: THDA-funded homebuyers are eligible for a subsidy limited to the amount needed to make the unit affordable. If a homebuyer has liquid assets which exceed the allowable Total Cash Value of \$20,000, the homebuyer is required to invest 10% of those funds rather than the standard 1% of the purchase price.
- 1) Liquid Assets include:
 - a) Cash;

- b) Savings accounts;
 - c) Checking accounts;
 - d) Any other bank accounts;
- E) Example 1: Mary requests THDA funds to assist in the purchase of a home which has an appraised value of \$90,000. She qualifies for a mortgage in the amount of \$75,000. Mary has \$25,000 in liquid assets and, therefore, must apply \$9,000 (10% of the purchase price) toward the purchase of her home and she can receive \$6,000 in a secondary HOME mortgage assistance along with closing costs.
 - 1) Total closing costs and prepaid items cannot exceed 6% of the purchase price of the home.
 - 2) Underwriting to determine the amount of eligible assistance must be determined using the THDA Single Family underwriting tool posted under www.thda.org >Government and Non-profit Partners>HOME Program>HOME Program Forms>Homebuyer Programs > Single Family Underwriting Tool

9.6 – Property Requirements

- A) The housing must be single-family (1-4 family residence, condominium unit, or combination manufactured home on a permanent foundation and lot). Properties must be owner occupied units or vacant units. Tenant occupied units will not be allowed unless the tenant is purchasing the unit in which they currently reside.
- B) The housing must be modest:
 - 1) ACQUISITION – In the case of property that does not require rehabilitation, the sales price of the HOME property to be acquired by a homebuyer may not have a value that exceeds 95% of the median purchase price for that type of housing. The Property Value Limits as Determined by HUD are posted at www.thda.org>Government and Non-Profit Partners> HOME Program>More Information for Applicants; Grantees; and Grant Administrators>Program Limits
 - 2) ACQUISITION AND REHABILITATION – If rehabilitation is required, the value of the property *after rehabilitation* may not exceed 95% of the median purchase price for that type of housing. The after-rehabilitation value estimate should be completed prior to the investment of HOME funds. Property Value limits are posted at www.thda.org >Government and Non-Profit Partners> HOME Program>More Information for Applicants; Grantees; and Grant Administrators>Program Limits
- C) The housing must meet certain written standards.
 - 1) APPLICABLE CODES – Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.

- 2) **WRITTEN STANDARDS** - Rehabilitation work undertaken with THDA HOME funds should use the THDA Design Standards for New Construction/Rehabilitation of Single Family and Multi-Family Attached Housing Units, this is found at www.thda.org -> **Business Partners -> Grant Administrators -> HOME Program -> Resource Links at the bottom of the page**. These written rehabilitation standards, when used in conjunction with applicable codes and the UPCS checklist will ensure the work fully complies with regulatory requirements.
- 3) **NEW CONSTRUCTION & RECONSTRUCTION** - HOME-assisted new construction projects must be HUD Energy Star certified by an independent HERS rater or achieve a HERS index of 85 or less when tested by a certified rater and must meet the current, State-adopted edition of the International Energy Conservation Code; and the current State-adopted edition of the International Residential Code for One- and Two-Family Dwellings.
- 4) All other HOME-assisted housing (e.g. acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are not such standards or code requirements, the housing must meet state adopted codes and the UPCS (24CFR 92.251 Property Standards).
- 5) **IN ABSENCE OF A LOCAL CODE** – In the absence of a local code, new construction and reconstruction of single- family units or duplexes must meet the current, State-adopted edition of the International Residential Code for One- and Two-Family Dwellings; and rehabilitation of existing homeowner units must meet the current, State-adopted edition of the International Existing Building Code. In addition, HOME funded units must also conform to the THDA Minimum Design Standards for New Construction and Rehabilitation of Single Family and Multi-family Attached Housing Units.

The International Code Books are available at: www.iccsafe.org

- 6) **VISITABILITY STANDARDS**. CHDOs developing units for homeownership are encouraged to include design features to make the units accessible to both the residents and their visitors. These options include a step-free entrance; free passage of 32-36" for interior/exterior doorways; and easy use by individuals confined to a wheelchair.
- 7) **ACCESSIBILITY** - 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) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
- 8) **LEAD-BASED PAINT AND ACQUISITION/REHABILITATION PROGRAMS**

a) Acquisition of pre-1978 housing for the purpose of rehabilitation and resale to a

prospective homebuyer is covered by Subpart J of the Residential Lead-based Paint Hazard Reduction Act of 1992 for the rehabilitation of the dwelling unit. See Chapter 8 Lead Based Paint.

b) Acquisition of pre-1978 housing by a prospective homebuyer after rehabilitation is covered by Subpart K of the Residential Lead-based paint Hazard Reduction Act of 1992. See *Chapter 8 Lead Based Paint*.

- D) The Grantee must provide a disclosure form to the prospective buyer noting any known presence of lead-based paint.
- E) The Grantee must provide the lead hazard information pamphlet (LBP-8 Disclosure of Information of Lead-Based Paint or Lead Based Paint Hazards) to the homebuyer.
- F) Each Grantee shall conduct the following activities for the dwelling unit and all common areas servicing the dwelling unit and the exterior surfaces of the building in which the dwelling unit is located:
 - 1) A visual assessment of all painted surfaces in order to identify deteriorated paint;
 - 2) Paint stabilization of each deteriorated paint surface, including removal of loose paint and application of new paint;
 - 3) The use of safe work practices by a qualified worker; and
 - 4) Clearance testing by a certified lead-paint inspector or risk assessor.
- G) A copy of the Clearance Report must be provided to the prospective homebuyer within 15 days of completion of the reduction activities. The Grantee must maintain documentation that the homebuyer has received the Clearance Report.

1) **LEAD BASED PAINT AND DOWNPAYMENT ASSISTANCE PROGRAMS**

- a) The current owner must provide a disclosure form to the prospective buyer noting any known presence of lead-based paint.
- b) The Grantee must provide the lead hazard information pamphlet (LBP-8 Disclosure of Information of Lead Based Paint or Lead Based Paint Hazards) to the homebuyer
- c) All homes built before 1978 must pass a visual lead-based paint assessment.
 - (1) There must be no deteriorated paint in the dwelling at the time of the visual lead- based paint assessment (i.e., chipping, cracking, chalking, damaged, separated from substrate).
 - (2) The property being purchased must receive a passing lead-based visual

assessment by a housing professional who has at a minimum completed HUD's Lead Based Paint Visual Assessment Training Course. This one-hour course may be completed on HUD's web-site: <http://www.hud.gov/offices/lead/training/visualassessment/h00200.htm>.

- (3) Should a home fail a visual assessment, it is the responsibility of a willing seller to bring the home into compliance with all HUD lead based paint regulations using safe work practices, qualified workers, and clearance testing if the transaction is to proceed utilizing HOME funds. HOME funds cannot be used to pay for any rehabilitation activities.
- (4) A copy of the Clearance Report must be provided to the prospective homebuyer within 15 days of completion of the reduction activities. The Grantee must maintain documentation that the homebuyer has received the Clearance Report.

H) All codes and standards must be met at the time of occupancy.

9.7 – Home Subsidy Limits

A) For current HOME Subsidy limits, please use the applicable program description

9.8 – Long-Term Affordability Requirements

A) Unlike affordability requirements in HOME rental programs which control the allowable rent and income of the tenants, affordability periods in homeownership programs relate to the subsequent sale of the property by the HOME-assisted homeowner.

The affordability period for projects assisted with HOME funds for rehabilitation or reconstruction is 5 years.

B) The HOME Rule allows two options for controlling the subsequent sale of the homebuyer property during the affordability period: the recapture option and the resale option. THDA has chosen to implement the less restrictive recapture option for its homeownership programs

under HOME.

- 1) **RECAPTURE** - The homeowner is required to repay all or a portion of the *direct HOME subsidy* if the property is sold, or transferred *during the affordability period*.
 - a) The homeowner may sell the property to any willing buyer at whatever price the market will bear as long as all or a portion of the HOME debt remaining on the property is repaid.
 - b) The Grantee may reduce the amount of the HOME subsidy to be recaptured on a prorated basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.
 - c) However, if the unit does not remain in compliance for the affordability period, i.e., the unit is leased or does not remain the principal residence of the homebuyer, then *the entire amount of direct HOME subsidy must be recaptured*.
- 2) When the sale of a HOME-assisted house during the affordability period results in repayment of some or all of the HOME subsidy, the State or its Grantee can use the proceeds for a HOME-eligible activity, as specified in the Working Agreement.
- 3) The recapture option may only be used with direct financial assistance to the homebuyer. Development subsidies are not subject to recapture but are subject to the more restrictive resale option.
- 4) The following are recapture requirements which must be specified in the Notes and Deeds of Trust:
 - a) *Repayment of the entire amount.* The Grantee must seek repayment of the entire amount of the HOME investment from the homeowner if the unit does not remain his/her principal residence throughout the period of affordability. The proration reference only applies when recapture is triggered by a sale or transfer. Violation of the principal residency provision triggers full repayment.
 - b) *Reduction during affordability period when the unit is sold.* The Grantee may reduce the HOME investment amount to be recaptured on a prorated basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.
 - c) *Shared net proceeds when the unit is sold.* If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount) plus enable the homeowner to recover the amount of the homeowner's down payment and any capital improvement investment made by the owner since purchase, the Grantee may share the net proceeds according to the following formula:

HOME Subsidy

$$\text{HOME Subsidy} + \text{Homeowner Investment} \times \text{Net Proceeds} = \text{HOME Recapture Amount}$$

Homeowner Investment

HOME Subsidy + Homeowner Investment x Net Proceeds = Homeowner Repayment

d) The net proceeds may be divided proportionately as set forth in the steps:

- (1) *Application of Forgiveness Feature.* Once the net proceeds are determined from the sale of the property, the Grantee may reduce the amount due based on the length of time the homebuyer has occupied the home in relation to the affordability period. Soft second mortgages up to \$14,999 have a five year affordability period and a forgiveness feature of 20% per year.
- (2) *Amount subject to recapture.* The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy).
- (3) After the full HOME investment has been repaid, any excess profits will belong to the homeowner.

9.9 – Enforcement

A) Legal documents, including a Deed of Trust and a Restrictive Covenant, are required by THDA to be recorded against the property. These documents enforce the affordability requirements of the HOME regulations.

1) CONSTRUCTION FINANCING BY CHDOS:

- a) Prior to drawing down HOME funds, the CHDO will execute a Restrictive Covenant and a Deed of Trust with THDA and record these documents as a lien on the property.
- b) Upon sale of the property to an eligible homebuyer, THDA will release its Restrictive Covenant and Deed of Trust. The CHDO will execute a Grant Note and Deed of Trust with the homebuyer as part of the closing to secure the soft second mortgage of up to \$14,999 under the recapture provisions of the HOME Rule.
- c) A copy of the Grant Note and recorded Deed of Trust is forwarded to THDA.

2) HOMEOWNERSHIP PROGRAMS BY CITIES, COUNTIES AND NON-CHDO NON- PROFITS:

- a) The Grantee will execute a Grant Note and Deed of Trust with the homebuyer as

part of the closing to secure the soft second mortgage of up to \$39,999 under the recapture provisions of the HOME Rule.

b) A copy of the Grant Note and recorded Deed of Trust is forwarded to THDA.

- 3) THDA will prepare legal documents to secure the affordability period of homeownership programs. Grantees should contact their program specialist for the appropriate documents whether it is to secure HOME funds being used for the development of housing.

9.10 – CHDO Proceeds

A) The CHDO will provide THDA with quarterly reports with respect to the following:

- 1) Receipt of CHDO proceeds specified in paragraph 8.F (1-3) in Chapter Two: Financial Management;
- 2) Use of all CHDO proceeds in accordance with the Working Agreement;
- 3) After CHDO proceeds have been used a second time to develop more housing, the HOME restrictions on the use of proceeds will be eliminated. CHDOs will be required to submit audited financial statements to demonstrate that the 25% cap has not been executed.

B) Repayment of Funds When HOME funds are recouped by the Grantee (City, County, Non-profit or CHDO) from HOME assisted homeownership housing that does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a)(5)(ii) these funds must be repaid to THDA. In accordance with 24 CFR 92.503(c), THDA requires these funds to be returned for deposit in the State's HOME Investment Trust Fund local account. Because the project did not complete the affordability term and does not trigger the recapture provisions the funds are considered not to have an eligible use and must be returned to the THDA HUD account.

9.11 – Affirmative Marketing

A) Affirmative Marketing is required for projects consisting of 5 or more HOME-assisted units. Grantees must have procedures in place 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, age or disability. (See EO-3 in Chapter Six: Fair Housing and Equal Opportunity.)

1) Affirmative marketing procedures include:

- a) Making this information known through advertisements and announcements in the local media which include the Equal Opportunity logotype or slogan; and

- b) Contacting lenders, community organizations, and places of worship, employment centers, fair housing groups or housing counseling agencies to solicit applications from persons in the housing market area who are not likely to apply for housing without special outreach (e.g., racial minorities and female head of household).

9.12 – Environmental Review

- A) (24 CFR 58.35(b)) HUD has determined that certain categorically excluded activities would not alter any conditions that would require an environmental review or compliance determination under Federal laws and authorities cited in §58.5. Examples of activities that are categorical exclusions not subject to §58.5 include the following:
 - 1) Activities to assist homebuyers to purchase existing dwelling units or dwelling units already under construction before the commitment of HOME funds, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title.
 - a) **Warning: homebuyer assistance for units not already under construction must be treated as a categorical exclusion requiring compliance with the authorities cited in §58.5 even if the HOME funds are only used to provide down payment assistance.**
 - 2) Housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact.
 - 3) These activities are treated like exempt activities. The Grantee is not required to undertake a NEPA level review or document that the activities comply with other Federal laws and authorities found at §58.5. Additionally, no public notices are published, and a Request for Release of Funds and Certification (ER-14) is not submitted to THDA. The Grantee must document its determination that the activity is a categorical exclusion not subject to §58.5 authorities, and place the document into the Environmental Review Record.
 - 4) Activities or projects that are determined to be categorical exclusions not subject to §58.5 must also comply with the provisions of §58.6 for special flood hazard area, and run way clear zones or clear zones (ER-16).
 - 5) For activities or projects that are determined to be subject to §58.5, the Grantee must undertake a NEPA level review or document that the activities comply with other Federal laws and authorities found at §58.5.
 - 6) For further information, see Chapter 3: Environmental Review Record.

9.13 – Definitions for Homeownership Programs

- A) **DIRECT SUBSIDY** – A direct subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise subsidizes the purchase.
- 1) Funds that *directly* benefit a homebuyer include down payment or closing cost assistance, reduction of the sales price of a property to below the appraised market value, and interest rate buy downs.
 - 2) The direct HOME subsidy amount determines the length of the affordability period based upon the amount of HOME funds that are of direct benefit to the homebuyer. HOME regulations require repayment of HOME funds that directly enable a homebuyer to purchase an eligible property. HOME subsidies that *indirectly* benefit a homebuyer are not subject to recapture.
- B) **DEVELOPMENT SUBSIDY** – A development subsidy is the difference between the cost to develop housing and the market price.
- 1) For example, a developer might receive a HOME grant of \$50,000 to construct a new house. The appraised value after construction is only \$45,000 due to the neighborhood and market conditions. The \$5,000 difference between the \$50,000 construction grant and the \$45,000 sales price is not repaid to THDA and represents a development subsidy to the developer.
 - 2) While the development subsidy does not directly benefit the homebuyer, it helps make development of affordable housing feasible.
- C) **HOMEBUYER INVESTMENT** – The homebuyer’s investment consists of the portion of the initial down payment paid by the homebuyer combined with the value of any capital improvements made with the homebuyer’s funds.
- D) **DOWNPAYMENT** - Down payment means the 1% of the purchase price provided solely by the homebuyer and is the amount reflected as down payment on the closing disclosure for the original purchase of the property. The down payment does not include the amount of a down payment paid by another on or on behalf of the homebuyer.
- E) **CAPITAL IMPROVEMENT INVESTMENT** - Capital improvement investment means the improvements to the property made at the homeowner’s expense (and not through some other form of subsidy), as evidenced by receipts or cancelled checks detailing the capital improvements made. Capital improvements do not include items of maintenance, deferred maintenance or cosmetic improvements.
- F) **NET PROCEEDS** – The net proceeds of a sale are the sales price minus closing costs minus any superior non-HOME loan repayments.

ATTACHMENT IX: SUMMARY OF KEY HOMEBUYER RULES AND DOCUMENTATION

KEY HOME REQUIREMENT		DOCUMENTATION
Eligible Participants		
Owner Income	- Gross income $\leq$ 80% of median income based on the upcoming 12 months. - Income is defined by Section 8 annual income determination.	- Complete application in project file. - Documentation from at least 2 months of source documents evidencing annual income (wage statements, interest statements in project file).
Owner Occupancy	Applicant must purchase property and maintain it as his/her principal residence.	Client must sign a clause on the application form certifying that the property is the principal residence.
Ownership Interest	- Applicant must obtain ownership of the property through: ⇒ Fee simple title; or ⇒ 99-year leasehold interest.	Copy of recorded deed or recorded 99-year lease in the project file.
Eligible Property		
Property Type	- Eligible property types include: ⇒ One-to-four family dwelling; ⇒ Condominium unit; or ⇒ Manufactured home and lot.	- If 2-4 units, indicate status of non-owner occupied units in the application. - If non-owner units were assisted with HOME funds, provide agreement with homeowner regarding HOME rental requirements and maintain rental records.
Property Value	- Sales price must not exceed 95% of area median purchase price. - If rehabilitating property, after rehabilitation value must not exceed 95% of area median purchase price.	- Copy of Contract for Sale of Real Estate - Documentation of method used to determine the after rehabilitation value.
Property Standards	- If acquisition only, property must meet local codes or standards, or in the absence of local codes, the most current edition of the International Property Maintenance Code. - If acquisition and rehabilitation, property must meet local codes and standards, or in the absence of local codes, the International Existing Building Code. - If new construction, property must meet local codes and standards, or in the absence of local codes, the current edition of the International Residential Code for One- and Two Family Dwellings and the International Energy Conservation Code.	- Document local code inspection - Include inspection reports or certification by inspector in project record. - Occupancy certificate from local code department.
Long-Term Affordability		

Affordability Period	• Property must be subject to recapture provisions for the period of affordability. ⇒ All or a portion of the direct HOME subsidy to the homebuyer must be recaptured if property is sold or transferred during affordability period ⇒ If the property does not remain the permanent residence of the homebuyer or the property is leased, the entire direct HOME subsidy must be repaid.	• Deed of Trust and Note showing the formula by which HOME funds will be recaptured.
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CHAPTER TEN – HOMEOWNER REHABILITATION

10.1 – Overview

- A) The following chapter provides you with guidance in the operation of your HOME housing rehabilitation program. Housing rehabilitation programs are staff intensive, and in an effort to reduce your need to develop policies and forms for your individual program, a series of guides and sample forms have been developed to help you implement your program.

10.2 – Typical Steps in Housing Rehabilitation Program

- A) **POLICIES AND PROCEDURES** - The Grantee develops Policies and Procedures and submits them to THDA for comment and approval. Please note that changes have been made in the sample *Policy and Procedures (HO-1)*. Upon approval by THDA, the Grantee's appropriate legislative body adopts the Policies and Procedures.
- B) **INFORM THE PUBLIC** – The Grantee informs the public and/or targeted members of the community about the program through public notices and advertisements, including a notice for a public meeting.
- C) **PUBLIC MEETING** - The Grantee holds a public meeting to explain the Policies and Procedures and the operation of the program.
- D) **APPLICATIONS** - Applications are taken from property owners, and income and ownership are verified. A copy of the pamphlet *Fair Housing Laws (EO-8)* is distributed to each applicant. Eligible applicants are ranked based on criteria contained within the adopted Policies and Procedures.
- E) **PRIORITY LIST** - The Grantee develops a Priority List, based on individual need and dwelling condition, which lists the order in which houses will be rehabilitated. As inspections and work write-ups are labor intensive, the priority list should be done before inspecting the houses and preparing the work write-up. If the condition of the dwelling is a scoring factor, a “windshield” type inspection could be used.
- F) **ENVIRONMENTAL REVIEW** - The Grantee completes the Environmental Review and submits the report to THDA. (See *Chapter 3, Environmental Review 4.3 and 4.5* concerning completing a tiered review for a local homeowner rehabilitation program. A tiered approach allows the program to get a release of funds for the program prior to identifying the specific units to be assisted. Once units are identified a Tier 2 review is completed for checklist items not covered under the Tier 1 release.)
- G) **PROPERTY REVIEWS** – The THDA approved Rehab Coordinator must conduct: (1) an initial review of the property to determine the deficiencies that must be addressed, (2) a progress review to monitor construction progress and (3) a final review to certify that work is completed in accordance with the approved work write up and any applicable change orders. The final inspection must be conducted by not only the Rehab Coordinator but also by a state certified residential building code official. A certificate of code compliance by the local codes official or representative of the State Fire Marshal's Office must be submitted to THDA with the Rehab Coordinator's final property review. Reviews must be conducted in compliance with section 24 CFR 92.251, supplemental HUD guidance and Public and

Indian Housing Notices related to UPCS, the Lead Safe Housing Regulations at 24 CFR Part 35, Subparts A, B, M and R, the THDA Design Standards for New Construction and Rehabilitation of Single Family & Multifamily Housing Units and industry best practices.

- 1) Property Review results must be recorded in a written narrative of findings attached to the original UPCS inspection checklist with review remarks, Definable Feature of Work (DFOW) checklists as applicable, and photos of the site.
- 2) The Rehab Coordinator must assess who is responsible for any repair, defects or failed items to be corrected or replaced. THDA Design Standards, Inspectors Guide for UPCS, and REAC dictionary of Deficiency Definitions, ICC codes and manufacturer's installation instructions are to be used for guidance decisions.
- 3) The Rehab Coordinator will provide an initial, progress and final review to THDA for approval. The narrative report for the progress and final reviews must include either a pass or fail designation for each inspectable item, and where those inspectable items fail, describe the failed item with sufficient detail and provide photographs of each individual deficiency. The report shall also include any recommendations based on the UPCS inspection report to bring the property up to minimum acceptable standards to safeguard the occupant's safety, health and general welfare.

H) **UNIFORM PHYSICAL CONDITIONS STANDARDS** - The standards of the participating jurisdiction must be such that, upon completion, the HOME-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 participating jurisdiction'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.

I) **WORK WRITE-UPS** - Following are the general steps necessary to complete the work write-up.

Note: If the home was constructed prior to 1978, the lead-based paint protocol in Section 2.10 below should be followed and the risk assessment completed prior to creating the work write-up.

- 1) The Rehab Coordinator schedules a site visit with the subject property owner to review the home and prepare the initial report.
- 2) Upon approval by THDA of the work write-up and line-item estimate, the Rehab Coordinator and the administrator meet with the homeowner to review the work. If the homeowner agrees with the scope of work, he/she will initial each page of the work write-up (HO-6B) and the Rehab Coordinator, administrator, and homeowner will sign the last page indicating final approval.

J) **LEAD-BASED PAINT** – THDA requires that all pre-1978 housing be tested for Lead-Based Paint (LBP) hazards regardless of the amount of federal funds involved and strongly recommends that this testing be performed using an X-Ray Fluorescence (XRF) instrument by a certified operator.

- 1) The risk assessment will identify any lead-based paint hazards that are present or that will be created as a result of rehabilitation work. The risk assessment should provide acceptable procedures for both interim controls and abatement. Only those procedures identified in the

risk assessment may be used for lead hazard reduction activities. Conduct the risk assessment to identify any lead-based paint hazards. ***(See Chapter 8, Lead-based Paint, for a more detailed explanation of the requirements for lead-based paint hazard reduction activities for pre-1978 housing.)***

- K) **Termite Inspection** – THDA requires that all rehab projects be tested for termite presence. Any termite inspection must be administered by an independent, qualified, and licensed termite inspector contracted by the Grantee.

In coordination with the Rehab Coordinator, a work write-up should be administered before any termite inspection is administered. The Rehab Coordinator should receive a copy of, both, Lead Based and Termite inspection reports.

If any project is found to need termite treatment, entities administering the termite treatment and termite inspection must be independent of one another and without association.

- L) **RELOCATION** – Determine if temporary relocation is necessary. (See *Chapter 4, Relocation and Displacement* for more details if applicable.)
- M) **PRE-BID CONFERENCE** - The Grantee may hold a pre-bid conference and goes over Policies and Procedures, required inspections and method of payment but may not make it required as a condition to offer a bid. The Rehab Coordinator who conducted the initial review and authored the work write-up should review contract items with the bidders at the site of the work, if possible, but may not make the site visit mandatory to bid.

Note: Lead-based paint activities should be included in the entire scope of the project and be bid as part of the rehabilitation work. A separate line item for “Lead” should be included in the work write-up.

- N) **BIDS** - Bids are received by the Grantee and the contract is generally awarded to the best value bidder after a review to determine if bids are responsive and responsible. Bids which are over or under 10% of the staff estimate of the cost of the rehabilitation may be rejected and the project re-bid at THDA’s discretion. Bidders with a history of performance issues or lack the capacity to complete the project along with their existing workload can be excluded as not being responsible bids. If the low bidder is not the most responsive and responsible bid, the Grant administrator should notify THDA in writing indicating the rationale used to reject to low bid.
- O) **PRE-CONSTRUCTION CONFERENCE** - A mandatory pre-construction conference is held with the owner and contractor. The rehabilitation contract is executed and a Notice to Proceed is signed. Grievance procedures for both homeowner and contractor are reviewed.
- P) A copy of the signed contract including the initialed and signed work write-up with line item costs from the contractor, the project set up form (FM-3), the compliance with lead-based paint regulations form (LBP-4), and a copy of the risk assessment report (if applicable) are sent to THDA at this time.
- 1) **CONSTRUCTION PHASE** – The Grantee makes periodic and documented inspections of the work in progress as deemed necessary by the Rehab Coordinator.

- a) When the work is 60% completed, and the progress review has been approved by

an agent of THDA, an interim draw for 50% of the contract may be requested. The project set-up form (FM-3) should already have been submitted to THDA to set up funds in the Information and Disbursement System (IDIS).

- b) The request for payment (FM-4) must include a certification (FM-5 Interim Draw Application) that 60% of the work has been completed.

(See Chapter 2 Financial Management Section 7: Requests for Payment for further guidance.)

- Q) **PROGRESS REVIEW** - A progress review is to be conducted by the Rehab Coordinator around 50% completion of the construction activities. The Rehab Coordinator is to inform the administrator to schedule the progress inspection with all required persons.
- R) **FINAL REVIEW** - A final review is conducted by the Grantee, Administrator, and the Rehab Coordinator with both the owner and contractor in attendance. A Certificate of Code Compliance or certification by the local codes official or representative of the SFMO that the rehabilitation work meets local requirements must be submitted to THDA with the Rehab Coordinators final inspection.
- S) **PROJECT COMPLETION** -
 - 1) Upon certification of code compliance, a final walk through is conducted by the homeowner, Grantee, Administrator and Rehab Coordinator to ensure all punch list items have been addressed and all original UPCS Checklist deficiencies have been satisfied and approved by an agent of THDA. Please include the certificate of code compliance or approval of rehabilitation by a local codes official or a representative of the SFMO Where applicable, clearance testing for lead-based paint hazard reduction activities is required as part of the final inspection after all work is completed, including items on the punch list. A *Certification of Completion and Final Inspection (FM-7)* is completed and signed.
 - 2) The contractor's *Final Invoice, Release of Liens and Warranty (HO-19)* is submitted to the Grantee.
 - 3) A *Certification of Completion and Final Inspection (FM-7)*, the *Project Completion Report (FM-8)*, and a copy of the recorded Deed of Trust is forwarded to THDA with the final pay request for the project. A certification of code compliance or certification by the local code department that the rehabilitation work meets local requirements must be submitted with the final draw request.

NOTE: The project will not be considered complete and the final pay request will not be approved without the above referenced documents attached.

- 4) If applicable, a copy of the *Lead Clearance Form (LBP-7)* must also be submitted with the final pay request, along with a copy of the clearance report for projects that included lead hazard reduction activities. Clearance testing for lead-based paint hazards is required as part of the final inspection after all work is completed, including items on the punch list. Documentation of clearance is required with the final pay request (LBP-6 Statement of Completion and Clearance).
- 5) The contractor is paid.

- T) **PROGRAM CONTINUATION** - The program continues until all houses are completed, or funds are exhausted.

10.3 – Developing Program Policies and Procedures

- A) **INTRODUCTION** - Your jurisdiction/organization must formally adopt a set of Policies and Procedures for the operation of the HOME program. These will serve as the guidelines for the day-to-day operation of the program. It is important for citizens, elected officials and program administrators to be involved in the establishment of the Policies and Procedures. If the whole community is aware of the goals of the program, its limitations and the way the program will be administered on a day-to-day basis, many potential problems and misunderstandings can be eliminated.
- 1) This manual includes a "*Sample Policies and Procedures*" (HO-1). You may wish to use these as a guide or adopt them in whole.
 - 2) *Your policies and procedures must be approved by THDA prior to being adopted by the Grantee's governing board.*
- B) **PURPOSE** - Describe the goals of the program and what activities will be undertaken to meet those goals.
- C) **AUTHORITY** - Indicate the legal authority - Federal, State and local – under which your program is operating.
- D) **PROGRAM RESOURCES** - Specify the funds available for the program, their source, and how long they will be available.
- E) **APPLICABLE LAWS** - The local governing body, contractors, subcontractors, vendors and potential applicants for assistance are required to abide by several Federal and State laws. THDA will assist you in ensuring compliance and will monitor your program to make sure that you are complying. The Grantee must follow the appropriate laws and document their efforts. Failure to do so can have serious repercussions for the program. The following is a list of the applicable laws:
- 1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128 and 24 CFR 92.358).
 - 2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4201-4655), 49 CFR Part 24, and 24 CFR 92.353).
 - 3) Debarment and Suspension provisions as required by 24 CFR Part 24 and 24 CFR 92.357.
 - 4) National Environment Policy Act of 1969 (NEPA), 24 CFR Parts 50 and 58, and 24 CFR 92.352.
 - 5) Equal Opportunity Provisions and Fair Housing, 24 CFR 92.350.
 - 6) Affirmative Marketing, 24 CFR 92.351.

- 7) Lead-based Paint Poisoning Prevention Act, 24 CFR 92.355.
- 8) Conflict of Interest Provisions, 24 CFR 85.36 or 24 CFR 84.42, as applicable, and 24 CFR 92.356.
- 9) Davis-Bacon Act and Contract Work Hours and Safety Standards Act, and 24 CFR 92.354.
- 10) Intergovernmental Review of Federal Programs, Executive Order 12372, and 24 CFR 92.357.
- 11) Drug-Free Workplace, 24 CFR Part 24, subpart F.
- 12) Standard Equal Opportunity Construction Contract Specifications.
- 13) Certification of Non-segregated Facilities for Contracts Over \$10,000.
- 14) Title VI of Civil Rights Act of 1964 Provisions.
- 15) Section 109 of Housing and Community Development Act of 1974 Provisions.
- 16) Section 3 Compliance Provisions.
- 17) Age Discrimination Act of 1975 Provisions.
- 18) Section 504 Affirmative Action for Handicapped Provisions.
- 19) And any other Federal requirements as set forth in 24 CFR Part 92, HOME Investment Partnerships Program

10.4 – Targeting Rehabilitation Assistance

- A) **ELIGIBILITY REQUIREMENTS** - The Grantee must very carefully determine the eligibility requirements for participation in the program, announce those requirements publicly, and then take applications for assistance. The whole process must be fair, impartial and open to public opinion. To do this, the Grantee should establish an effective rating system, based on need, which determines the order in which dwellings will be rehabilitated. Minimum eligibility requirements are as follows:

B) HOMEOWNER REQUIREMENTS

- 1) **INCOME** - In order to receive HOME funds, the gross income of the entire household cannot exceed 80% of the area's median income.
 - a) The HOME program uses the Section 8 definition of annual (gross) income. This definition contains a number of inclusions (wages and salaries, interest and dividends, alimony, and child support) and exclusions (food stamps, medical reimbursements, etc.). See Chapter One, Section 6. - Income Determinations for the complete listing of this criteria.

- b) Income is determined at the time the application is completed by the homeowner using the most recent information to verify income.
- c) Verification of income must be within six months of the date of the rehabilitation contract. Applications pending beyond six months should be updated to ensure all income sources are current.

NOTE - The passbook value of the equity in a home is not included as income. However, the value of other assets must be determined to see if imputed interest is considered as income.

Maximum HUD incomes for Tennessee are posted at www.thda.org -> Government and Non-Profit Partners.

- 2) **OWNERSHIP** - A homeowner must have been a resident of the property for a period of at least one (1) year and must also occupy the property as his or her principal residence. A family or individual owns the property if they:
 - a) Have fee simple title to the property; or
 - b) Have a 99-year leasehold; or
 - c) Have a life estate. The person with the life estate has the right to live in the housing for the remainder of his or her life and does not pay rent, must be low income, and must occupy the housing as her or her principal residence; or
 - d) Have inherited property with multiple owners not all residing in the housing. The owner- occupant must be low income, must occupy the housing as his or her principal residence, and pay all of the costs associated with ownership and maintenance of the housing; and
 - e) Do not have any restrictions or encumbrances that would unduly restrict the good and marketable nature of the ownership interest.

C) PROPERTY REQUIREMENTS

- 1) **LOCATION** - The property must be within the area designated in the application.
- 2) **PROPERTY TYPE** - HOME Grantees must also decide the types of properties to be assisted. HOME guidelines define eligible properties as:
 - a) A single family or multi-family building up to four units;
 - b) A condominium unit; or townhouse

- c) It is important to note that single-family, owner-occupied properties containing additional rental units are subject to the HOME rental requirements, if the rental units receive investments of HOME funds.
- 3) **PROPERTY CONDITION** - Units assisted with HOME funds must require at least \$1,000 of rehabilitation work to bring the unit into compliance with all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.
- 4) **PROPERTY VALUE** - The maximum after-rehabilitation value of the property cannot exceed 95% of the area median sales price. Maximum Property Value Limits at www.thda.org -> Government and- Non-Profit Partners. To establish project eligibility, the after-rehabilitation value must be determined prior to the start of any rehabilitation work. The after-rehabilitation value may be established by one or more of the following methods:
- a) **Estimates of value:** Estimates of value by the grantee may be used. Project files must contain the estimate of value and document the basis for the value estimates. These valuations need to be property specific. Adding the cost of the planned improvements to the value of the pre-rehabilitation property will not be accepted by HUD as an accurate statement of the actual value of the rehabilitated property. Many improvements although critical to the long-term function and safety of the occupants will not increase the value of the property on a dollar per dollar basis.
 - b) **Appraisals:** Appraisals, whether prepared by a licensed fee appraiser or by a staff appraiser of the grantee, may be used. Project files must document the appraised value and the appraisal approach used.
 - c) **Tax assessments:** Tax assessments for a comparable property located in the same neighborhood may be used to establish the after-rehabilitation value if the assessment is current and accurately reflects market value after rehabilitation.

NOTE: (See HO 22 form to provide file documentation.)

10.5 – HOME Investments Per Unit

Please consult current Maximum Subsidy limits per the applicable activity Program Description.

- A) **REHABILITATION:** The maximum allowable HOME funds per Homeowner Rehabilitation units are capped by the HOME subsidy limits, which are established by HUD and cannot be exceeded.

- 1) All units built prior to 1978 require a lead-based paint (LBP) inspection. If hazards are identified, a risk assessment by a qualified LBP risk assessor is required. If the risk assessment of a pre-1978 unit discloses no lead, then the cap for rehabilitation costs is capped by the HOME subsidy limit.
- 2) If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs are less than \$25,000, interim control/lead safe-work practices will apply and the maximum HOME subsidy for rehabilitation hard costs is limited to \$25,000.
- 3) If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs exceed \$25,000, then abatement using a qualified abatement contractor and will be required to provide assistance up to the HOME subsidy limits.
- 4) WALK AWAY POLICY – Grantees must clearly state the procedure for dealing with units that cannot be addressed within the budget available. Units that cannot be assisted due to the cost or for other reasons, are known as walk away units. Generally, this means that the scope of work required to bring the unit up to the required standards exceeds the funds available to assist the household. Unless other funds can be identified to cover the costs that exceed the program limits, the applicant should be issued a written denial of their application. Grantees cannot eliminate items within the scope of work if those items are required to bring the unit up to standards. The goal of the program is to ensure long- t e rm housing that provides safe and maintainable units for the community.

10.6 – Approaches to Financial Assistance

- A) **FORGIVABLE GRANTS** - Financial assistance for homeowner rehabilitation under the THDA HOME program must be provided as forgivable grants. THDA requires that these grants be repaid, in whole or in part, if the property is sold during the applicable compliance period of five or fifteen years.
 - 1) If the homeowner dies during the compliance period, the heirs may occupy the unit, rent it or let it sit empty, without triggering the repayment clause. However, if the heirs sell the property, or if the property is sold with monetary gain by any actions of a court to settle outstanding claims or settle the estate, the grant must be repaid to THDA, less any forgivable portion. (This policy may be applied retroactively to prior HOME projects as needed.) In general, financial assistance should be structured to benefit the homeowner and avoid real estate speculation. See *Chapter One, Section 4 - Forms of Assistance*.
- B) **AMOUNT OF ASSISTANCE** - The Grantee and Project Administrator must weigh the cost benefits of rehabilitation to determine the best use of limited public funds. The Grantee must determine the amount of assistance for which a homeowner is eligible. This should be the amount necessary to bring the dwelling up to the appropriate code requirements.
- C) **Subordination** – The forgivable grant is secured with a Grant Note and Deed of Trust between

the homeowner and Grantee. During the applicable compliance period, the homeowner may request the Grantee to subordinate to the HOME Deed of Trust. It is the responsibility of the Grantee to determine if they choose to subordinate to the HOME Deed of Trust.

THDA ***strongly*** discourages allowing subordination of the HOME Deed Trust for any reason except in the case where a refinance will improve the rate or term of the loan to benefit the homeowners by reducing the overall cost of their mortgage and the Deed of Trust does not go lower than 2nd position. The Grantee will still be responsible for the entire amount of the grant should the project fail at any time during the compliance period. Furthermore, THDA ***highly*** discourages any subordination of the HOME Deed of Trust where the homeowner is extracting cash as part of a refinance.

10.7 – Eligible Costs

A) **REHABILITATION COSTS** - In addition to the costs listed in *Chapter Two, Section 2 - Eligible Costs*, the following categories of costs are allowable under the program

- 1) LOCAL REHABILITATION STANDARDS - The Grantee must emphasize to potential applicants that the funds are to be used to repair housing deficiencies that prohibit the unit from being code compliant. These deficiencies will be identified using the applicable building code and the UPCS checklist. The homeowner cannot pick and choose what they want done.
- 2) REMOVING INCIPIENT DEFICIENCIES – Major systems that do not have a remaining useful life of five years or more must be replaced as a part of the rehabilitation.
- 3) OTHER - Costs associated with the following are also allowed:
 - a) Rehabilitating the property so that it conforms to environmental requirements;
 - b) Testing and interim controls or standard treatments of lead-based paint hazards for the property;
 - c) Providing improvements for the physically challenged to make the dwelling more convenient and accessible;
 - (1) Remedying structural problems caused by termite infestation;
 - (2) Demolition costs if they are part of the rehabilitation project; and
 - (3) Surveys to establish property lines.
- 4) GENERAL PROPERTY IMPROVEMENTS (GPI) - GPIs are improvements other than the required improvements listed above or incipient violations, but which are nonetheless necessary to put the property in safe, decent, sanitary condition, and in good repair. GPIs are eligible if all required improvements are complete and the GPIs are reasonable and customary for the area and are not considered luxurious. The Grantee must decide on an acceptable level of GPIs. Typically, communities have established a maximum cost for GPIs equal to 20% to 40% of all other items. Examples of eligible GPIs include, but are not limited to, the following:

- a) Work which will result in reduced maintenance and/or will extend the useful life of a part of the property;
 - b) Work to eliminate inefficient design, such as moving or removing walls;
 - c) Security lighting; and
- 5) Remodeling a kitchen, bathroom or currently underutilized space to improve efficiency, to modernize and/or to make aesthetically pleasing. This is usually limited to range, refrigerator, sink and cabinets, and only if the existing equipment is non-existent, unsafe or unsanitary.
- 6) **SOFT COSTS** - See *Chapter Two, Section 2 - Eligible Costs*.

10.8 – Ineligible Costs

- A) Ineligible costs include those items that are not "reasonable and customary" and are considered luxurious in nature. Typical examples of such types of ineligible costs may include skylights, hot tubs, the addition of carports, storage buildings, etc.
- B) The Grantee should keep in mind that the basic goal of the program is to bring up to standard the dwellings in need of repair. Programs which keep to the basics derive the maximum of benefit from the funds available.

10.9 – Rehabilitation Standards and Specifications

- A) **WRITTEN STANDARDS** - Rehabilitation work undertaken with THDA HOME funds should use the *THDA Design Standards for New Construction/Rehabilitation of Single Family and Multi-Family Attached Housing Units (Exhibit B)* as a guide. These written rehabilitation standards, when used in conjunction with applicable codes and the UPCS checklist will ensure the work fully complies with regulatory requirements.

10.10 – Rehabilitation Program Procedures

- A) **PREPARATION** - The rehabilitation of a dwelling under the HOME Program is a process requiring the close cooperation of the Grantee, the Homeowner, and the Contractor. There are typical inconveniences of rehabilitation work that should be explained to homeowners right away to avoid unpleasant surprises during the course of the job, such as:
 - 1) The family must expect to be inconvenienced by the work in progress and by the presence of the workers.
 - 2) Renovation projects may take longer than planned.
 - 3) The remodeling business is by nature inefficient and not tightly organized, so there will be days when nobody shows up or when a subcontractor will spend only an hour or two on the

job. The family should be assured that this is normal. Any scheduling concerns or conflicts should be addressed by the Administrator.

- 4) If there are any problems with the work during the project, the homeowner should not interfere directly, but must call the Administrator to work out the problem.
- 5) Rehabilitation blends new construction materials with older existing construction materials as is practically feasible. It can be imprecise art and will at times produce an imperfect marriage. High expectations and perfection are not realistic in certain conditions.
- 6) The program is based on correcting those deficiencies that are revealed by the initial inspection report conducted by the Rehab Coordinator. The homeowner needs to understand that the role of the contractor and that the program entails a written contract (HO-11).

B) PRE-APPLICATION AND PROGRAM PUBLICITY PHASE - The success of a housing rehabilitation program is contingent upon the acceptance of the program by the intended recipients of assistance. This critical component of the rehabilitation program can be accomplished by a concerted effort to meet with the homeowners and carefully explain the program.

- 1) PUBLIC MEETING - A public meeting is very important. The program guidelines and procedures should be clearly explained. The criteria for homeowner eligibility and the method of ranking should be explained in detail. The role and responsibilities of the Contractor, the Homeowner and the Grantee should be discussed. The grievance procedure should be explained. Questions should be dealt with in an honest, factual, open and straight forward fashion. A list of those attending should be kept in the project file.

C) APPLICATION PHASE - The first step in the application phase is taking applications from homeowners. The program publicity efforts previously outlined will have resulted in inquiries from some area homeowners.

- 1) APPLICATION PROCESSING - Upon initial contact by the applicant, the Grantee will briefly outline the program and determine basic eligibility through identification of the applicant's residence and estimated income.
 - a) If the applicant appears eligible following this informal screening, an interview at the Grantee office or at the home will be scheduled. Applicants will be advised to bring:
 - b) Proof of income for all members of the household.
 - c) Most recent pay stubs for all members of the household and last year's tax return;
 - d) If self-employed, last year's tax return and a current financial statement.
 - e) Proof of ownership of the property to be rehabilitated.
 - f) Determine existence of a first mortgage on the property.
 - g) Property Insurance Policy.
 - h) Most recent property tax receipts for the property to be rehabilitated.

- i) The Grantee will review the program in detail with the applicant and review the application form (HO-3). The Grantee will secure verification of income, property ownership and other requirements of financial assistance.

D) INITIAL REVIEW -

- 1) An initial property review is a critical component of the homeowner rehabilitation process. At this time, the Rehab Coordinator must determine whether the unit can be rehabilitated within the HOME subsidy limit set by HUD
- 2) If, in the opinion of the Rehab Coordinator and the Grant Administrator, the deficiencies cannot be corrected within the maximum allowance through either rehabilitation or reconstruction, the Grantee must notify the homeowner in writing that the project is infeasible and state the reasons why. The project file should contain documentation of the process.
- 3) If the project is deemed feasible and the unit was constructed prior to 1978, a lead based paint risk assessment by a certified lead-based paint inspector/risk assessor should be undertaken. (See Chapter 8, Lead-Based Paint to ensure all lead-based paint hazard reduction requirements are being met.)
- 4) Following the determination of feasibility and the lead-based paint assessment (if applicable), an initial inspection should then be conducted by the Rehab Coordinator. The initial review identifies all deficiencies, which when corrected, will bring the unit into code compliance; or, in the absence of a local code, the most current, State adopted edition published by the International Existing Building Code of the International Code Council. The review should also utilize the Uniform Physical Condition Standards checklist as a guide.

E) WORK WRITE-UP AND COST ESTIMATE - Properties found suitable for rehabilitation by the Rehab Coordinator and Grantee are now ready to have work write-ups and cost estimates prepared (HO-6B).

- 1) The work write-up is the detailed description of the housing rehabilitation work and any lead-based paint hazard reduction required. The write-up should list the lead-based paint hazard reduction activities separately from the rehabilitation work. Write-ups serve as the construction specifications and should be specific, clear and complete. A great deal of confusion and many problems between the homeowner and contractor are caused by vague, poorly written write-ups.
- 2) After the Rehab Coordinator completes the work write-up, he or she should estimate the cost for each item in the work write-up. The cost estimate aids the Grantee in evaluating bid prices but must not be shared with prospective bidders at any time. The work write-up and cost estimate must be submitted to THDA for approval.
- 3) Upon receipt of approval by THDA, the Grantee will review the write-up/cost estimate with the Owner so that the Owner understands all the repairs to be made and has an idea of the cost. It must be explained to the Homeowner that the estimate is not the final cost but that the actual cost of the rehabilitation will be determined by the bidding process.

- 4) The homeowner must then sign a statement accepting the repairs listed in the work write-up and initial each page of the document. The acceptance of the repairs to be completed at the pre-bid stage will eliminate misunderstandings later when work begins.
 - 5) A special effort should be made to explain to homeowners that the program is intended to solve housing code violations and reduce lead-based paint hazards first and then the incipient code violations. The Grantee may wish to add statements to the write-up to clarify certain items. For example, if the floors of the house cannot be made level but can be made stable, the work write-up should include this so that the homeowner will not expect level floors.
 - 6) Although temporary relocation assistance may be provided to households who are voluntarily displaced during rehabilitation, the Grantee must determine if the lead- hazard reduction work will require relocation for the safety of the household. If it is determined that temporary relocation for occupant safety is required, the Grantee must provide this assistance. The cost of relocation is a project soft cost and subject to the subsidy levels. See Chapter 8, Section 6 - Occupant Protection and Chapter 4, Section 6 - Optional Relocation Assistance.
- F) BID PHASE - The next step in the rehabilitation process is to initiate the bid phase. A bid package will be assembled consisting of the work write-up, without cost estimates, and related material. A copy of THDA's current Design Standards including Rehabilitation Standards, must be made available to all contractors. The Grantee will notify contractors on the contractors list of the property to be rehabilitated, the date bids must be received, and the location and time bid packages can be picked up.
- 1) BID SOLICITATION - Bid Solicitation must be a free, open competitive process. Every effort must be made to solicit minority and female businesses. The Grantee should not structure its procedures in order to keep business "in town." Absolute fairness must prevail in every aspect of the program, and any questions concerning conflict, or apparent conflict of interest should be discussed with THDA.
 - 2) BID SELECTION - A minimum of three (3) bids is preferred. Bids will be opened on the date and time previously established. A bid tabulation form will be prepared (HO- 10). The owner will select the best value qualified bid. THDA requires that the project be re-bid if there are fewer than two (2) valid bids in response to the invitation for bids. A no-bid is not considered a valid bid.
 - a) If the project is re-bid and 2 valid bids still are not obtained, contact THDA for an exception to the 2 bid requirement. THDA may consider your project as a sole source procurement and/or allow you to award the contract with less than 2 bidders. Written permission must be obtained from THDA before you may award a contract with less than two bids.
 - b) Should the homeowner decide to select a bid other than the lowest qualified bid, the homeowner should state his reasons/justification in writing to the Grantee. If the homeowner's justification is not acceptable, the homeowner will be required to finance any rehabilitation amount that exceeds the lowest qualified bid through his/her personal resources.
 - c) The Grantee will reject a bid in instances where the bid exceeds the cost estimate by a percentage determined by the Grantee in its Policies and Procedures, not to exceed

20%, unless a review of the cost estimate demonstrates an error. If a low bid is under the cost estimate, a meeting will be arranged with the contractor to assure that his cost is within reason and will allow him to satisfactorily complete the job. The homeowner will be advised if no acceptable bids are received on their house and the project will be re-bid.

- 3) RE-BID OR CHANGES IN SCOPE - If all bids exceed the amount of the construction budget, Grantees may not negotiate solely with the low bidder. The project can be re-bid or changed in scope. If the scope of the project is changed, then each bidder must be given the opportunity to bid again. Bidders must be informed that they have the right to change their original unit prices if they conform to the revised bid specifications. Grantees must maintain documentation to demonstrate that this process was followed.
 - 4) DEDUCTIBLE AND ADDITIVE ALTERNATES - Bid specifications for construction projects may contain deductible alternates. By definition, a deductible alternate is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. The deductible alternates must not change the scope of the project. Bid specifications for construction projects may also contain additive alternates.
 - 5) DISQUALIFIED CONTRACTORS – The Grantee must disqualify a contractor from bidding on projects when the contractor is listed on HUD’s Limited Denial of Participation and Voluntary Abstention List (the “Debarred List”). A Grantee may also disqualify a contractor from bidding on projects when:
 - a) there is documented proof that the contractor has not paid material suppliers; or
 - b) the contractor has not completed projects within the allotted time frame; or
 - c) there exist complaints by property owners about quality of work and performance; or
 - d) the contractor has not performed warranty work on previous contracts; or
 - e) a conflict of interest exists between the contractor candidate and project participants, location, or any financial ties
 - 6) Upon final selection, all bidders are notified of the bid selection.
 - 7) Applicants whose eligibility is marginal, either due to income or the cost of rehabilitation, will be submitted to the Grantee for review. Upon the application approval, the Owner will be given a Notice of Approval (HO-5) which will formally notify the Owner of his/her eligibility to receive financial assistance, the amount of assistance and any conditions under which the assistance is offered.
 - 8) At contract signing, the Owner must be given the Right of Rescission (HO-14). The Right of Rescission must be fully explained by the Grantee to the homeowner.
 - 9) A Grant Note and Deed of Trust must be signed by the homeowner prior to beginning the rehabilitation work.
- G) AFTER REHABILITATION VALUE - Each unit must have an after-rehabilitation value documented. The Grantee can establish this value utilizing one of the three HUD methodologies by completing form

HO-22. Maximum property value limits at www.thda.org -> Government and Nonprofits Partners.

H) CONTRACT AWARD - Following bid selection, a rehabilitation contract will be prepared (HO-11).

- 1) The contractor must have provided proof of liability insurance to the Grantee. Following receipt of satisfactory proof, a pre-construction conference will be held at the applicant's home.
- 2) The Grantee will bring the contract for the Owner's and the contractor's signatures and will again review in detail the work to be undertaken. The contractor will need to sign the Certification of Contractors Eligibility to Participate (HO-13).
- 3) The procedures to be utilized for inspection, change orders, grievance and close-out will also be reviewed with the owner and contractor.

I) CONSTRUCTION PHASE - The construction phase begins when the Grantee issues the Notice to Proceed (HO-15).

- 1) NOTICE TO PROCEED - The Notice instructs the contractor to begin work and establishes the project completion date. The Notice to Proceed will, in most cases, be issued at contract signing.
- 2) REVIEW OF CONSTRUCTION - As construction begins, the Grantee will make on-site reviews of the work. A Construction Progress Report (HO-17) will be prepared on the findings of each inspection. The frequency with which inspections are necessary will vary depending on the quality of the contractor and the nature and complexity of the work itself. Generally, the Grantee should be on-site the first day construction begins, and then on a regular basis until completion of the job.
- 3) CHANGE ORDERS - In many housing rehabilitation situations, it is not uncommon for a change in the scope of the work to occur due to unforeseen circumstances. For example, the work write-up may call for replacing the existing wall covering (drywall, paneling, etc.), and it is discovered that the wall studs have severe termite damage which must be replaced. This was not anticipated in the work write-up and a change is now required to correct the unanticipated problem. A change order (HO-16) would be initiated at this time.
 - a) Any change order(s), or cumulative change orders, that constitutes a significant change in the scope of work on the original work write-up and that exceeds 10% of the original bid must be approved by THDA prior to committing to the work.
 - b) THDA at its discretion may require work identified under a change order that represents a significant change in the scope of work or that exceeds 10% of the value of that line item from the original scope of work to be rebid.
 - c) Except under unusual circumstances with prior approval from THDA, the total of the change order(s) cannot exceed 10% of the original rehabilitation contract.
 - d) THDA at its discretion may require work identified under a change order, or cumulative change orders, that represents a significant change in the scope of work or exceeds 10% of the value of original contract to be rebid.

- e) Since a change order becomes a binding part of the contract, the owner and contractor must sign it. The Grantee should notify THDA of all change orders to facilitate project revisions in IDIS.
 - f) Any change order that constitutes the deletion of a previously approved line item or any component thereof must be approved by THDA and a change order (HO-16) initiated.
 - g) All change orders, or deviations from the contract documents must be reviewed and approved by the Grantee. Any work omitted or added outside of the construction documents are subject to be corrected at the expense to the owner and/ or contractor or the pay application can be rejected.
- J) CLOSE-OUT PHASE - The close-out phase begins when the contractor has completed all of the work.
- 1) FINAL REVIEW - After completion of all construction activities in the work write-up and change orders, a final inspection must be made by the Grantee. The Grantee, Rehab Coordinator and the homeowner and the contractor should make the final inspection together. A final inspection will be conducted by a local codes official or a SFMO certified inspector. The narrative report must include either a pass or fail designation of the SFMO, and where those features fail inspection, describe the items that failed with sufficient detail to allow appropriate repair. The final inspection will also include verification all deficiencies have been corrected that was identified in the initial review. A walk-through presentation to the owner will be conducted by the Grantee introducing the owner to the new components, operating instructions, maintenance responsibilities, and warranty procedures. Operations and Maintenance manuals will be given to the owner, model numbers, serial numbers, and contacts will be provided. As part of the owner orientation, the request for warranty and warranty period must be discussed emphasizing a pre-warranty expiration walk through 11 months from the date of completion.
 - 2) PUNCH LIST - In most instances, the "final review" does not turn out to be final. If additional work, clean-up, or corrections need to be accomplished, a written punch list (HO-17 & HO-18) is developed by the Grantee. This punch list is simply a detailed itemized list of all items remaining to be completed. The contractor is provided this list in writing with instructions that upon completion of all items and inspection of the same, final payment will be made.
 - 3) NOTICE OF COMPLETION - The contractor must also file a Notice of Completion for all contracts over \$25,000 with the Register of Deeds in the county where the work has been performed. The Notice of Completion must run a minimum of ten (10) days for one to four (4) units, and 30 days for five (5) or more units to comply with State law. When this has been done, and the statutory period has expired, the contractor may be paid.
 - 4) LEAD-BASED PAINT CLEARANCE TESTING - Immediately after the completion of all punch list items, clearance testing by a certified lead-based paint inspector/risk assessor must be conducted. Documentation of the clearance must be submitted with the final pay request.
 - 5) CERTIFICATE OF COMPLETION AND FINAL INSPECTION - Once the unit has been passed clearance testing, a Certificate of Final Inspection (FM-7) is prepared and signed by the Grantee and owner. This form indicates that all work is complete in accordance with the contract and change orders and further indicates the willingness of the Grantee to initiate close-out procedures.

- 6) CERTIFICATE OF CODE COMPLIANCE OR APPROVAL BY LOCAL CODES – In communities that have local codes, and where the local Code Department inspects rehabilitation projects, there must be documentation from the Code Department that the work meets the local code requirements. In the absence of local codes, this document will be provided by a SFMO certified codes inspector.
- 7) CONTRACT CLOSE-OUT - Upon completion of the Certificate of Final Inspection (FM- 7), the contractor must sign a Contractor's Final Invoice, Release of Liens, and Warranty (HO-19), and a Contractor's Non-Kickback Certification (HO-21). The Grantee will review all the documents for accuracy and completeness.
- 8) Particular attention will be focused on the Waiver of Lien to ensure that all suppliers and subcontractors have released the project from lien action. The homeowner will be supplied with a copy of these documents.
- 9) The delivery of the check and the contractor's acknowledgement of Receipt of the Final Payment (HO-20) constitutes the completion of the rehabilitation case.

ATTACHMENT X:

COMMONLY USED FORMS FOR HOMEOWNER REHABILITATION

Chapter 2 Financial Management

1. FM-1 Authorization Agreement for Automatic Deposits
2. FM-2 Signature Form
3. FM-3 Project Set-up Form
4. FM-4 Request for Payment
5. FM-5 Interim Payment Application
6. FM-7 Certification of Completion and Final Inspection
7. FM-8HR Homeowner Rehabilitation Project Completion Report

Chapter 6 Fair Housing and Equal Opportunity

1. EO-1 Policy and Procedures – Outreach to Minority and Women Business Enterprises
2. EO-2 Directory of Minority and Female Contractors and Suppliers
3. EO-4 Contractor and Subcontractor Activity Report
4. EO-5 Section 3 Questionnaire
5. EO-6 Policy of Nondiscrimination
6. EO-8 “Fair Housing – It’s Your Right”
7. EO-9 Housing Discrimination Complaint

Chapter 8 Lead-Based Paint

1. LBP-1 “Protect Your Family from Lead in Your Home”
2. LBP-2 Homeowner Receipt of Lead-based Paint Risk Assessment
3. LBP-4 Status of Compliance with Lead-based Paint Regulations
4. LBP-5 Homeowner Receipt of Lead-based Paint Clearance Report
5. LBP-6 Statement of Completion and Clearance
6. LBP-7 Elderly Relocation Waiver

Chapter 10 Homeowner Rehabilitation

1. HO-1 Sample Policies and Procedures
2. HO-2 HOME Main and Individual Case File Checklists
3. HO-3 HOME Rehabilitation Application/Family Survey
4. HO-4 Ineligible for Assistance
5. HO-4B Conflict of Interest Questionnaire
6. HO-5 Approval of Rehabilitation Assistance

8. HO-6B Rehabilitation Work Write Up & Cost Estimate
9. HO-10 Rehabilitation Bid Document
10. HO-11 Contract for Rehabilitation
11. HO-12 Contract Addendum for Lead Abatement
12. HO-13 Contractor's Certification of Eligibility to Participate
13. HO-14 Notice of Right of Rescission
14. HO-15 Notice to Proceed
15. HO-16 Change Order
16. HO-17 Inspection or Punch List Report
17. HO-18 Punch List Letter
18. HO-19 Final Invoice, Release of Liens, and Warranty
19. HO-20 Receipt of Final Payment
20. HO-21 Contractor's Non-Kickback Certification
21. HO-22 Calculation of After Rehabilitation Property Values
22. Grant Note HOME Program – Homeowner Rehabilitation
23. Deed of Trust HOME Program – Homeowner Rehabilitation – Government
24. Deed of Trust HOME Program – Homeowner Rehabilitation – Non-profit

See updated Policies and Procedures

HOME PROGRAM POLICIES AND PROCEDURES FOR

1. PURPOSE

This program will make available financial and/or technical assistance for the rehabilitation and reconstruction of eligible, substandard, owner-occupied housing units located in the community. Rehabilitation work will correct deficiencies in eligible homes and make them safe, sound, and sanitary.

2. AUTHORITY

The legal authority of this program comes from the working agreement with Tennessee Housing Development Agency, Public Law 101-625 (National Affordable Housing Act of 1990), as well as State and local laws.

3. PROGRAM RESOURCES

The source of funds for the undertaking of these activities is a grant in the amount of

\$ _____ which has been awarded by Tennessee Housing Development Agency (THDA) through the U.S. Department of Housing and Urban Development Home Investment Partnership Act.

4. APPLICABLE LAWS

- A. The local governing bodies, contractors, subcontractors, vendors and applicants for rehabilitation assistance are required to abide by a number of State and Federal laws, and may be required to sign documents certifying their compliance.
1. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128 and 24 CFR 92.358).
 2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4201-4655), 49 CFR Part 24, and 24 CFR 92.353)
 3. Debarment and Suspension provisions as required by 24 CFR Part 24 and 24 CFR 92.357 and State of Tennessee Procurement Procedures Manual of the Central Procurement Office
 4. National Environment Policy Act of 1969 (NEPA), 24 CFR Parts 50 and 58, and 24 CFR 92.352.
 5. Equal Opportunity Provisions and Fair Housing, 24 CFR 92.350.
 6. Affirmative Marketing, 24 CFR 92.351.
 7. Lead-based Paint Poisoning Prevention Act, 24 CFR 92.355.
 8. Conflict of Interest Provisions, 24 CFR 85.36 or 24 CFR 84.42, as applicable, and 24 CFR 92.356.
 9. Davis-Bacon Act and Contract Work Hours and Safety Standards Act, and 24 CFR 92.354.
 10. Intergovernmental Review of Federal Programs, Executive Order 12372 and 24 CFR 92.359.
 11. Drug-Free Workplace, 24 CFR part 24, subpart F.
 12. Standard Equal Opportunity Construction Contract Specifications.
 13. Certification of Non-segregated Facilities for Contracts over \$10,000.
 14. Title VI of Civil Rights Act of 1964 Provisions.
 15. Section 109 of Housing and Community Development Act of 1974 Provisions.
 16. Section 3 Compliance Provisions.
 17. Age Discrimination Act of 1975 Provisions.
 18. Section 504 Affirmative Action for Handicapped Provisions.

19. And any other Federal requirements as set forth in 24 CFR Part 92, HOME Investment Partnerships Program

5. DRUG-FREE WORKPLACE

- A. The _____ (HOME Grantee) will or will continue to provide a drug-free workplace by
1. Notifying employees in writing that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the action that will be taken against employees for violation of such prohibition.
 2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Grantee's policy of maintaining a drug-free workplace;
 - c. Any drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- B. Providing each employee engaged in the performance of the HOME contract a copy of the notification required in paragraph A(1) above;
- C. The written notification required in paragraph A (1) above will advise the employee that, as a condition of employment under the HOME grant, the employee will:
1. Abide by the terms of the notification; and
 2. Notify the employers in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- D. Notifying the State in writing, within ten (10) calendar days after receiving notice under D(2) above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal Agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
1. Taking one of the following actions, within thirty (30) calendar days of receiving notice under D(2) above, with respect to any employee who is so convicted:
 2. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 3. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health,

law enforcement, or other appropriate agency;

4. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs A, B, C, D, E and F above.

6. CONFLICT OF INTEREST

- A. No person listed in paragraph B may obtain a financial interest or benefit from a HOME-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.
- B. **PERSONS COVERED** – Immediate family members of any local elected official or of any employee or board member of a non-profit agency are ineligible to receive benefits through the HOME program. “Immediate family member” means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.

In addition, the conflict of interest provisions as apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of THDA, the local community or the non- profit agency (including CHDOs) receiving HOME funds, and who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision-making process or gain inside information with regard to these activities.

- C. **APPEARANCE OF A CONFLICT OF INTEREST** - Grantees must also make every effort to avoid the appearance of favoritism in the eligibility determination process. In those cases where the applicant is otherwise eligible, but there exists the appearance of a conflict of interest or the Appearance of favoritism, the Grantee must complete *HO-4A (Determination of a Conflict of Interest)* written documentation to THDA that the following procedures have been observed:
 1. The Grantee must publish an announcement in the local newspaper concerning the potential for a conflict of interest and request citizen comments.
 2. The Grantee’s attorney must render an opinion as to whether or not a conflict of interest exists and that no state or local laws will be violated should the applicant receive HOME assistance.
 3. The Grantee’s elected body must pass a resolution approving the applicant.

7 APPLICANT ELIGIBILITY

- A. **APPLICANT ELIGIBILITY CRITERIA:** The following criteria must be satisfied by all applicants in order to become eligible for a rehabilitation grant:
 1. The applicant must have a low income as defined by current published HOME Income Limit requirements as adjusted for household size i.e., below 80% of area median income.

2. The applicant must have been the resident of the property to be rehabilitated for a period of not less than one year and must occupy the property as his or her principle residence.
3. The applicant's ownership must be in the form of:
 - a. Stick built or qualified modular housing:
 - fee simple title; or
 - a 99-year leasehold; or
 - A life estate. The person with the life estate must have the right to live in the housing for the remainder of his or her life and not pay rent, must be low income, and must occupy the housing as his or her principal residence; or
 - Inherited property with multiple owners not all residing in the housing. The owner- occupant must be low income, must occupy the house as his or her principal residence, and must pay all the costs associated with ownership and maintenance of the housing.
 - b. Manufactured Housing:
 - A certificate of title for the manufactured home to be rehabilitated or reconstructed free of any encumbrance; and
 - Fee simple title for the lot of land where the mobile home is located.
4. The title must not have any restrictions or encumbrances that would unduly restrict the good and marketable nature of the ownership interest.
5. The applicant must voluntarily apply for assistance.
6. The applicant must obtain homeowners insurance.

8. INCOME ELIGIBILITY

- A. ANNUAL INCOME (GROSS INCOME)** - The State's HOME program uses the income definitions of the Section 8 program to determine the annual income (gross income) used to classify a *household* for purposes of eligibility. Annual income means all amounts, monetary or not, which:
1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
 2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date. In other words, it is the household's *future or expected* ability to pay rather than its past earnings that is used to determine program eligibility. If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period; and
 3. Which are not specifically excluded in paragraph 6.8 (Income Exclusions) below.

4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
5. **MONTHLY GROSS INCOME** - Monthly gross income is Annual Gross Income divided by 12 months.

B. ASSETS - In general terms, an asset is a cash or non-cash item that can be converted to cash. There is no asset limitation for participation in the HOME program. Income from assets is, however, recognized as part of Annual Gross Income. Assets have both a market value and a cash value.

1. **MARKET VALUE** - The market value of an asset is simply its dollar value on the open market. For example, a stock's market value is the price quoted on a stock exchange on a particular day, and a property's market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.
2. **CASH VALUE** - The cash value of an asset is the market value less reasonable expenses required to convert the asset to cash, including:
 - a. Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value (e.g., penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds, or broker fees for converting stocks to cash); and/or
 - b. Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in the real estate.
 - c. Under Section 8 rules, only the cash value (rather than market value) of an item is counted as an asset.
3. **INCOME FROM ASSETS** - The income counted is the actual income generated by the asset (e.g., interest on a savings or checking account.) The income is counted even if the household elects not to receive it. For example, although a household may elect to reinvest the interest or dividends from an asset, the interest or dividends is still counted as income
 - a. The income from assets included in Annual Gross Income is the income that is anticipated to be received during the coming 12 months.
 - To obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account; or if the value of the account is not anticipated to change in the near future and interest rates have been stable, a copy of the IRS 1099 form showing past interest earned can be used.
 - Checking account balances (as well as savings account balances) are considered an asset. This is a recognition that some households keep assets in their checking accounts and is not intended to count monthly

income as an asset. Grantees should use the average monthly balance over a 6-month period as the cash value of the checking account.

b. When an Asset Produces Little or No Income:

- If the family's assets are \$5,000 or less, actual income from assets (e.g., interest on a checking account) is not counted as annual income. For example, if a family has \$600 in a non-interest bearing checking account, no actual income would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.

c. If the family's assets are greater than \$5,000, income from assets is computed as the greater of:

- actual income from assets, or
- calculate income from assets based on a passbook rate applied to the cash value of all assets. For example, if a family has \$3,000 in a non-interest bearing checking account and \$5,500 in an interest-bearing savings account, the two amounts are added together. Use the standard passbook rate to determine the annual income from assets for this family.

d. Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an "arm's length" transaction) have, in essence, voluntarily reduced their ability to afford housing. Section 8 rules require, therefore, that any asset disposed of for less than fair market value during the 2 years preceding the income determination be counted as if the household still owned the asset.

e. The value to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset (less any fees associated with disposal of property, such as a brokerage fee).

f. Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce or separation is not included in this calculation.

g. These procedures are followed to eliminate the need for an assets limitation and to penalize people who give away assets for the purpose of receiving assistance or paying a lower rent.

4. ASSETS INCLUDE:

- a. Amounts in savings accounts and six-month average balance for checking accounts.
- b. Stocks, bonds, savings certificates, money market funds and other investment accounts.
- c. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured

by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset. *DO NOT INCLUDE EQUITY OF PRINCIPAL RESIDENCE AS AN ASSET FOR HOMEOWNER REHABILITATION PROGRAMS.*

- d. The cash value of trusts that are available to the household.
- e. IRA, Keogh, and similar retirement savings accounts, even though withdrawal would result in penalty.
 - The cash value of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:
 - Penalties for premature withdrawal;
 - Broker and legal fees; and
 - Settlement costs or real estate transaction
 - The current value of the assets (the value of the 401K or other IRA minus any penalty (usually 10% to 15%) they would incur for withdrawing early) at the time of verification and multiply that by the passbook.
 - Note: unrealized gains ARE included as part of the current asset value but are NOT themselves considered income.
- f. Contributions to company retirement/pension funds that can be withdrawn without retiring or terminating employment.
- g. Assets which, although owned by more than one person, allow unrestricted access by the applicant.
- h. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
- i. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
- j. Cash value of life insurance policies.
- k. Assets disposed of for less than fair market value during two years preceding certification or recertification.
 - ASSETS DO NOT INCLUDE:
 - Necessary personal property, except as noted under paragraph 6.5(9) (Assets Include) above
 - Interest in Indian Trust lands
 - Assets that are part of an active business or farming operation.

- NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant/tenant's main occupation.
- Assets not accessible to the family and which provide no income to the family.
- Vehicles especially equipped for the handicapped.
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives.

B. INCOME INCLUSIONS - The following are used to determine the annual income (gross income) of an applicant's household for purposes of eligibility:

1. The full amount, before any payroll deductions, of wages and salaries, over-time pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income for operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the family has net family assets in excess of \$5,000, Annual Income shall include the greater of the actual income derived from net family assets or a percentage of the value of such Assets based on the current passbook saving rate, as determined by HUD.
4. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except Supplemental Security Income (SSI) or Social Security).
5. Payments in lieu of earnings, such as unemployment, worker's compensation and severance pay (but see paragraph (3) under Income Exclusions).
6. Welfare Assistance. If the Welfare Assistance payment includes an amount

specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- a. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - b. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;
 8. All regular pay, special pay and allowances of a member of the Armed Forces. (See paragraph (8) under Income Exclusions).

C. INCOME EXCLUSIONS - The following are excluded from a household's income for purposes of determining eligibility:

1. Income from employment of children (including foster children) under the age of 18 years;
2. Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family), who are unable to live alone;
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
5. Income of a live-in aide;
6. Certain increases in income of a disabled member of the family residing in HOME assisted housing or receiving HOME tenant-based rental assistance (see 6.12 (7) under Determining Whose Income to Count).
7. The full amount of student financial assistance paid directly to the student or to the educational institution;
8. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
9. Temporary, nonrecurring or sporadic income (including gifts);
10. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

11. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
12. Adoption assistance payments in excess of \$480 per adopted child;
13. For public housing only, the earnings and benefits to any family member resulting from participation in a program providing employment training and supportive accordance with the Family Support Act of 1988, Section 22 of the 1937 Act, or any comparable federal, state or local law during the exclusion period.
14. Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Amounts received by the family in the form of refunds or rebates under state or local law from property taxes paid on the dwelling unit.
16. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions apply.
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
 - b. Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through VISTA; Retired Senior Volunteer Program, Foster Grandparents Program, youthful offenders incarceration alternatives, senior companions);
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));
 - d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 259e);
 - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
 - f. Payments received under programs funded in whole or in part under the Job Training Partnership Act;
 - g. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians;
 - h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117)
 - i. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

- j. Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).
- k. Any earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
- l. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other funds established pursuant to the settlement in the In Re Agent Orange product liability litigation MDL No. 381 (E.D.N.Y.)
- m. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- n. Payments received under the Maine Indian Claims Settlement Act of 1980.

D. INCOME EXCLUSIONS - The following are excluded from a household's income for purposes of determining eligibility:

- 1. Income from employment of children (including foster children) under the age of 18 years;
- 2. Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family), who are unable to live alone;
- 3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
- 4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- 5. For homeowner rehabilitation projects, the date assistance is provided is the date of the rehabilitation contract.
- 6. For homeownership programs, the income eligibility of the families is timed as follows:
- 7. In the case of a contract to purchase existing housing, it is the date of the purchase;
- 8. In the case of a lease-purchase agreement for existing housing or for housing to be constructed, it is the date the lease-purchase agreement is signed; and
- 9. In the case of a contract to purchase housing to be constructed, it is the date the contract is signed.

E. INCOME VERIFICATION - Grantees must verify and retain documentation of two (2) months of income information for each person in the household to determine the household's income. Under the Section 8 Program, there are three forms of verification which are acceptable: third-party, review of documents, and applicant certification.

- 1. **THIRD-PARTY VERIFICATION** - Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Although written requests and responses are generally preferred,

conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person and date of the call.

- a. To conduct third-party verifications, a Grantee must obtain a written release from the household that authorizes the third party to release required information.
 - b. Third-party verifications are helpful because they provide independent verification of information and permit Grantees to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.
2. REVIEW OF DOCUMENTS - Documents provided by the applicant (such as pay stubs, IRS returns, etc.) may be most appropriate for certain types of income and can be used as an alternative to third-party verifications. Copies of documents should be retained in project files.

Grantees should be aware that although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, a pay stub may not provide sufficient information about average number of hours worked, overtime, tips and bonuses.

3. APPLICANT CERTIFICATION - When no other form of verification is possible, a certification by the applicant may be used. For example, it may be necessary to use an applicant certification for an applicant whose income comes from "odd jobs" paid for in cash.

Applicant certification is the least reliable form of verification and may be subject to abuse. In some cases, the applicant certification can be supplemented by looking at the applicant's past history. The Grantee can review the previous year's income tax return to determine if the current year's income is consistent with activity for the previous year.

F. CALCULATION METHODOLOGIES - Grantees must establish methodologies that treat all households consistently and avoid confusion.

1. It is important to understand the basis on which applicants are paid (hourly, weekly or monthly, and with or without overtime). An applicant who is paid "twice a month" may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).
2. It is important to clarify whether overtime is sporadic or a predictable component of an applicant's income.
3. Annual salaries are counted as Annual Income regardless of the payment method. For instance, a teacher receives an annual salary whether paid on a 9- or 12-month period.

G. DETERMINING WHOSE INCOME TO COUNT - Knowing whose income to count is as important as knowing which income to count. Under the Section 8 definition of income, the following income *is not counted*:

1. INCOME OF LIVE-IN AIDES - If a household includes a paid live-in aide (whether paid by the family or a social service program), the income of the live-in aide, regardless of its source, is not counted. (Except under unusual circumstances, a related person can never be considered a live-in aide);

2. INCOME ATTRIBUTABLE TO THE CARE OF FOSTER CHILDREN - Foster children are not counted as family members when determining family size to compare with the Income Limits. Thus, the income a household receives for the care of foster children is not included; and
3. EARNED INCOME OF MINORS - Earned income of minors (age 18 and under) is not counted. However, unearned income attributable to a minor (e.g., child support, AFDC payments, and other benefits paid on behalf of a minor) is counted.
4. TEMPORARILY ABSENT FAMILY MEMBERS - The income of temporarily absent family members is counted in Annual Income - regardless of the amount the absent family member contributes to the household. For example, a construction worker earns
5. \$600/week at a temporary job on the other side of the state. He keeps \$200/week for expenses and sends \$400/week home to his family. The entire \$600/week is counted in the family's income;
6. ADULT STUDENTS LIVING AWAY FROM HOME - If the adult student is counted as a member of the household in determining the Income Limit used for eligibility of the family, the student's income must be counted in the family's income. Note, however, that the \$480 limit does not apply to a student who is head of household or spouse (their full income must be counted); and
7. PERMANENTLY ABSENT FAMILY MEMBER - If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.
8. PERSONS WITH DISABILITIES – During the annual recertification of a family's income, increases in the income of a disabled member of qualified families residing in HOME assisted housing or receiving HOME tenant- based rental assistance is excluded. 24 CFR 5.61(a) outlines the eligible increases in income. These exclusions from annual income are of limited duration. The full amount of increase to an eligible family's annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed, or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, 50 percent of the increase in income is excluded. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

9. ELIGIBILITY REQUIREMENTS OF PROPERTY TO BE REHABILITATED

- A. **DEFINITIONS** - The following are definitions of the various terms used with respect to eligibility requirements of the property to be rehabilitated.
 1. DWELLING UNIT - A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating,

cooking and sanitation.

2. SINGLE FAMILY - A housing unit consisting of living, sleeping, bathing, and food preparation designed for single-family use, although more than one family may be residing therein, if every occupant has access to all areas within the building envelope.
3. SUBSTANDARD - A housing unit failing to meet all applicable codes, rehabilitation standards ordinances, and zoning ordinances as set forth by the Community, UPCS as defined by HUD, or as defined by the HOME application.

B. ELIGIBILITY CRITERIA

1. The minimum HOME expenditure per unit must exceed \$1,000.
2. The dwelling must be located within the designated area as outlined in the application.
3. The maximum HOME expenditure may not exceed the current published maximum subsidy limit as established and published by HUD for the HOME program at the time the agreement with the grantee is entered.
4. The dwelling unit must be classified as substandard, based on a written, detailed inspection report by the THDA approved Rehab Coordinator.
5. The dwelling unit must not lie within a floodplain unless proper mitigation measures can be met. See Environmental Review Chapter for eight (8) step process and Federal Flood Risk Management Standard (FRMS) and consult with THDA.

10. RATING SYSTEM FOR RANKING OF APPLICANTS
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- A.** The awarding of rehabilitation and reconstruction grants to eligible applicants will be based on a priority list, according to which households are in greatest need for housing assistance. Houses will be rehabilitated or reconstructed in descending order, the household with the most need first, the next household second, and so on until the funds are expended.
- B.** The rating system is based on points. The most deprived households will have the highest number of points. Information for determination of points is taken from the application (HO-3) submitted by the homeowner. Each application shall be rated according to:

1. INCOME/FAMILY SIZE

FAMILY SIZE	80% INCOME LIMIT ¹
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1	\$
2	\$
3	\$
4	\$
5	\$
6	\$

7	\$
8	\$

If the income based on family size is less than the stated figure, the household will receive extra points.

If 80% to 99% less	Add 70 points
If 60% to 79% less	Add 60 points
If 40% to 59%	Add 50 Points
If 39% or less	Add 20 Points

¹ Annual Income Limit Figures available from HUD/THDA

2. NUMBER IN HOUSEHOLD

1 Person Household	5 Points
2 Person Household	10 Points
3 Person Household	20 Points
4 Person Household	25 Points
5 Person Household	30 Points
6 Person Household	35 Points
7 Person Household	40 Points
8 Person Household	45 Points

3. NUMBER OF ELDERLY 10 Points per person

For each household member at least 62 years old at the time of application

4. NUMBER OF HANDICAPPED/DISABLED 10 Points per person

Household member receiving disability benefits from Social Security, a pension program, life insurance program, or a total or partial physical impairment which renders the person unable to work. Where there exists reasonable question, a doctor's certification will be used.

5. HEAD OF HOUSEHOLD 10 Points

This is a single head of household (male or female) with children under 18, or a dependent with severe developmental disabilities or severe dementia. This does not apply to a widow/widower living alone.

6. NUMBER OF PERSONS 18 OR YOUNGER 10 Points per person

7. **CONDITION OF THE DWELLING STRUCTURE**

Standard Dwelling

No Points

- A standard dwelling is a home with very few or no cosmetic flaws. No structural or major systems that are damaged, deteriorated or non-functioning and a minimum of one of more code deficient items

Substandard Dwelling

15 to 29 Points

- A substandard dwelling is a home with a few cosmetic flaws, no structural flaws, and 1 or more major systems that are deteriorated or not functioning properly with a minimum of 1 or more code deficient items.

Dilapidated Structure

30 to 50 Points

- A Dilapidated Structure is a home with multiple cosmetic flaws, some structural flaws, but functioning and has multiple major systems that are non-functioning as designed with multiple code deficient items

Life Threatening

50 Points

- A Life-Threatening Structure is a home with multiple cosmetic flaws, structural flaws caused by deterioration, rotting, or wood destroying insects. There are multiple major systems that do not work, causing an unsafe structure for life, and health, such as no water, sewer or electric systems. This home could collapse or be destroyed by a major event of weather or man-made activity such as fire and is likely qualified for condemnation

11. TERMS, CONDITIONS AND CONSIDERATIONS FOR GRANTS

A. DETERMINATION OF THE AMOUNT OF THE GRANT - The amount of a rehabilitation or reconstruction grant that an applicant may receive will not exceed:

1. The actual and approved cost of the repairs and improvements necessary to make the dwelling conform to the housing standards adopted by the Grantee and THDA.
2. The amount and structure of the grant must be consistent with the application submitted to THDA.
3. When the applicant is furnishing supplementary funds from other sources, evidence that actual funds are available will consist of verification and documentation by the Grantee that the applicant has deposited the required amount in the appropriate escrow account. Such deposit must be made before the grant application and any construction work can begin.

B. STRUCTURE OF FINANCIAL ASSISTANCE - HOME funds are used to make forgivable grants to property owners to cover the full cost of the needed rehabilitation or reconstruction work.

1. To prevent homeowners from simply selling the property and profiting from the HOME funded improvements, the owners must repay the program if they sell the property within the compliance period. Part of the owner's obligation is forgiven each year they live in the rehabilitated unit.

2. Repayment of the REHABILITATION grant over a five-year affordability period shall be based on a twenty percent (20%) reduction of the amount to be repaid per full year with amounts of less than one year being prorated by days used, according to the following schedule:

Year One	100% Repayment
After one year	80% Repayment
After two years	60% Repayment
After three years	40% Repayment
After four years	20% Repayment
During Year five	0% Repayment

3. Repayment of the RECONSTRUCTION grant over a fifteen year affordability period shall be based on a six and 67/100 percent (6.67%) reduction of the amount to be repaid per full year with amounts of less than one year being prorated by days used, according to the following schedule:

Year One	100% Repayment
Year Two	93.3% Repayment
Year Three	83.63% Repayment
Year Four	79.96% Repayment
Year Five	73.29% Repayment
Year Six	66.62% Repayment
Year Seven	59.95% Repayment
Year Eight	53.28% Repayment
Year Nine	46.61% Repayment
Year Ten	39.94% Repayment
Year Eleven	33.27% Repayment
Year Twelve	26.60% Repayment
Year Thirteen	19.93% Repayment
Year Fourteen	13.26% Repayment
After fourteen years	6.59% Repayment
During Year Fifteen	Prorated Balance Repayment

4. Homeowner shall execute a Note and Deed of Trust in favor of Grant Recipient at Grant Recipient's request and is activated if the owner attempts to sell within the compliance period. Awaiting language from Wendy Weaver

- a. If ownership of the property is in the form of a life estate, the owners of the property as well as the person with the life estate must sign the Grant Note and the Deed of Trust.

- b. If the property has been inherited by multiple owners not of whom reside in the property, all of the owners must sign the Grant Note and Deed of Trust.
 - c. Grantees and administrators should consult their agency or community general counsel if there are questions.
5. In cases of death, THDA does not require repayment as long as the ownership of the property passes to the heirs. The heirs may occupy the unit, rent it or let it sit empty, without triggering the repayment clause. However, if the heirs sell the property, or if the property is sold with monetary gain by any actions of a court to settle outstanding claims or settle the estate, the grant must be repaid to THDA, less any forgivable portion.

C. OTHER GRANT CONDITIONS - Specific terms and conditions are incorporated in the grant application and the contract documents. The applicant agrees to:

- 1. Allow inspection by the Grantee and/or THDA of the property whenever the Grantee and/or THDA determines that such inspection is necessary.
- 2. Furnish complete, truthful and proper information as needed to determine eligibility for receipt of grant money.
- 3. Permit the contractor to use, at no cost, reasonable existing utilities such as gas, water and electricity which are necessary to the performance and completion of the work.
- 4. Cooperate fully with the Grantee and the contractor to ensure that the rehabilitation work will be carried out in a timely manner. Provide a safe, secure, and non-hostile environment.

12. ELIGIBLE REHABILITATION ACTIVITIES

A. INTRODUCTION - A rehabilitation grant may be made only to cover the cost of rehabilitation necessary to make a dwelling unit conform to the UPCS and applicable code adopted by the jurisdiction in which the property is located and consistent with the application submitted to THDA.

- 1. **REHABILITATION:** The maximum allowable HOME funds per Homeowner Rehabilitation unit are capped by the HOME subsidy limits, which are established by HUD and cannot be exceeded.
- 2. All units built prior to 1978 require a lead-based paint (LBP) inspection. If hazards are identified, a risk assessment by a qualified risk assessor is required. If the risk assessment of a pre-1978 unit discloses no lead, then the cap for rehabilitation costs is capped by the HOME subsidy limit.
- 3. If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs are less than \$25,000, interim control/lead safe-work practices will apply and the maximum HOME subsidy for rehabilitation hard costs is limited to \$25,000.
- 4. If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs exceed \$25,000, then abatement using a qualified

abatement contractor and will be required to provide assistance up to the HOME subsidy limits.

B. RECONSTRUCTION HOUSING – Prior to authorizing new dwellings under the “Reconstruction” provisions of the HOME program, the Grantee must determine if reconstruction is the more cost effective use of HOME funds. The offer by the Grantee to reconstruct a home is a voluntary offer.

1. When reconstruction is recommended, a completed HO-7, along with required supporting documentation and photographs must be submitted to THDA for review. If THDA concurs with the determination, written permission to proceed will be provided.

C. REPLACEMENT HOME GUIDELINES – The intent of a reconstruction activity is to provide assistance to homeowners who might not otherwise be helped due to the prohibitive cost of rehabilitating their existing home. A replacement home, if deemed the most cost-effective solution to the housing deficiencies, shall be prescribed by the grantee.

1. Rehabilitation spending beyond reasonable limits on an existing home is not authorized if a replacement home is refused by the homeowner.
2. A replacement home does not necessarily have to meet the same requirements as the existing home in terms of square footage, number of bedrooms/ bathrooms or other design/ amenity considerations.
3. The replacement home must provide all permanent residents of the home with safe, decent and sanitary housing within the terms of the 2009 International Residential Code for One- and Two-Family Dwellings, and/or local codes, as applicable.

D. ELIGIBLE COSTS

1. **EXISTING CODE VIOLATIONS** - Costs which can be included in rehabilitation grants are the costs of correcting existing housing code violations which have been determined by a qualified project inspector and formalized in an individualized housing report.
2. **INCIPIENT CODE VIOLATIONS** - An incipient violation exists if at the time of inspection an element in the structure which, due to age, deterioration, wear, or normal usage will deteriorate within the life of the grant period and thus become a code violation. Costs to correct these potential violations are eligible costs.
3. **PERMITS AND FEES** - Rehabilitation funds may be used to cover the cost of building permits and related fees required to carry out the proposed rehabilitation work. However, since the rehabilitation contract documents will require the contractor to pay them, these costs ordinarily would be included in the contract amount. Recording and filing fees are eligible costs.
4. **EQUIPMENT** - Rehabilitation funds may provide for the repair or purchase and installation of certain basic equipment necessary for the maintenance of the household in a safe, decent, sanitary condition, and in good repair. These include such items as a furnace, water heater, electrical and sanitary fixtures, kitchen range, refrigerator, cabinets and sinks. Purchase and installation is acceptable if there is no such equipment in the dwelling or if the existing equipment is unsafe, unsanitary or non-functional. There is a \$1,000 maximum expenditure (including taxes and delivery) for a kitchen range, and a

\$1,000 maximum expenditure (including taxes and delivery) for a refrigerator. These appliances must be Energy-Star rated where available.

5. **HANDICAPPED** - Special alterations or costs related to making the dwelling more convenient or accessible for physically challenged persons are eligible costs. All work performed in these units must comply with all applicable codes as well as all Federal and State regulations.
6. **LEAD-BASED PAINT** - All costs associated with the reduction of lead-based paint hazards must comply with 24 CFR 92.355.
7. **DEMOLITION OF EXISTING STRUCTURES AND UTILITY CONNECTIONS** All costs related to the demolition of existing structures and to provide utility connections are to comply with 24 CFR 92.206(a)(3). Demolition is only eligible if it is a part of a HOME project such as reconstruction or removal of an unsafe addition or outbuilding.
8. **EXTERIOR PAINTING** - Exterior painting is an eligible cost when it is necessary to maintain a weatherproof exterior on the dwelling.
9. **GUTTERS** – Gutters are an eligible cost when rehabilitating the exterior of a unit or when reconstructing a unit.
10. **OTHER COSTS** - Rehabilitation costs not specifically required by the housing rehabilitation standards found necessary to be decent, safe, sanitary, and in good repair for the general welfare of the occupants of the structure may be considered for eligibility, with prior consent of the Grantee's governing body and THDA, as well as any other cost as outlined in 24 CFR 92.206.

E. INELIGIBLE COSTS

1. Renovation of dilapidated out buildings.
2. Appliances not required by code standards.
3. Materials, fixtures, equipment, or landscaping of type or quality that exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated.
4. All items outlined in 24 CFR 92.214.

13. HOUSING REHABILITATION SPECIFICATIONS
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- A. INTRODUCTION** - This section sets forth the responsibilities of the Grantee for determining the rehabilitation work necessary to bring a dwelling into compliance with the UPCS and applicable code adopted by the State, county or city and with the objective of the program as proposed in the application submitted to THDA. The Grantee will:

1. Inspect the property and prepare an inspection list noting UPCS and code deficiencies.
2. Conduct lead-based paint testing/risk assessment to identify lead-based paint hazards.
3. Consult with and advise the owner of the work to be done and the availability

of a rehabilitation grant.

4. Prepare a work write-up and cost estimate as a basis for the rehabilitation grant and for the bid process in contracting for rehabilitation work and lead-paint hazard reduction activities.

B. PROPERTY REVIEWS – The THDA approved Rehab Coordinator must conduct: (1) an initial review of the property to determine the deficiencies that must be addressed, (2) a progress review to monitor construction progress and (3) a final review to certify that work is completed in accordance with the approved work write up and any applicable change orders. The final inspection must be conducted by not only the Rehab Coordinator but also by a state certified residential building code official. A certificate of compliance by the local codes official or representative of the State Fire Marshal’s Office must be submitted to THDA with the Rehab Coordinator’s final property review.

C. WORK WRITE-UP AND COST ESTIMATE - The work write-up and cost estimate is a statement based on the initial inspection and lead-based paint testing/risk assessment. It itemizes separately all the rehabilitation work and the lead hazard reduction activities to be done on the dwelling and includes an estimate of the cost of each item. The cost estimate will be reasonable, reflect prevailing labor and material costs, and reflect a reasonable profit & overhead costs for the contractor. The work write-up and estimate must be reviewed and approved by THDA before presenting it to the homeowner/ applicant.

1. DUAL-USE OF WORK WRITE-UP & COST ESTIMATE (HO-6B) - The work write-up will be detailed and specific in style. Each item will be identified as correcting a UPCS and code violation, meeting a code requirement, reducing lead-based paint hazards, or as an eligible cost under the grant. This same work write-up without the cost estimate will serve as part of the scope of work and specifications for the construction contract documents.
2. ITEMIZING COSTS - Each item, definable feature of work and its estimated cost will be identified in the work write-up as either correcting a UPCS and code violation, meeting a code requirement, reducing lead-based paint hazards, or eligible under the grant. This will be done on the work write-up by entering the cost estimates in a columnar arrangement.
3. OWNER PREFERENCE - A work write-up need not contain details that have no significant effect on cost. The term “to be selected by owner” may be used appropriately.

D. CONSULTATION WITH HOMEOWNER/APPLICANT - The Grantee will consult with the prospective applicant on the work write-up and cost estimate. The Grantee will advise the applicant that only work that is directed toward correcting a UPCS and code violation, meeting a code requirement, or that is an eligible activity can be funded by the grant. The homeowner must understand that “cosmetic improvements” are not eligible for funding. The final work write-up (without costs) will be used by contractors for determining their bids and incorporated into the rehabilitation contract documents which the homeowner and contractor will sign. The homeowner should initial each page and sign the last page of the write-up.

E. CLEARLY WRITTEN SPECIFICATIONS - The work write-up will be written so that it provides a clear detailed understanding of the nature and scope of the work to be done and a basis for carefully determined bids and proposals from contractors. The homeowner shall have a clear understanding of the nature and scope of the work to be done and any limitations that

may exist.

1. Each specification will show the nature and location of the work and the quantity and type of material required. The specifications are to comply with THDA's Minimum Design Standards for New Construction, Reconstruction & Rehabilitation of Single Family & Multifamily Housing Units.
2. The specifications will refer to manufacturer's brand names or association standards to identify quality of material and equipment and may make provision for acceptable substitutes of equal or greater value or quality and brand name requirements may be included in the "General Conditions and Specifications" and indicated by reference in the work write-up.

14. CONTRACTING FOR REHABILITATION WORK

A. INTRODUCTION - This section sets forth requirements and procedures with respect to the construction contracts for housing rehabilitation financed through a rehabilitation grant. Rehabilitation work will be undertaken only through a written contract between the contractor and the property owner receiving the grant.

1. FORM OF CONTRACT - The construction contract will consist of a single document signed by the contractor and the property owner, following approval of the grant application. It will contain a bid, the Grantee's General Conditions and Specifications by reference, the work write-up which specifies the work to be done, and the existing UPCS and code violations.
2. USE OF ALTERNATES - The document prepared by the Grantee may contain alternates by which each bidder may increase or decrease the lump sum contract price, if the alternates are later accepted as part of the work to be performed.
3. PROCUREMENT OF BIDS - The Grantee will solicit openly and publicly for bids and encourage minority and female owned firms to bid on its projects.

B. GENERAL CONDITIONS - The bid package will contain the following:

1. The address, time and date by which the bid should be submitted by the contractor.
2. A provision that the bid be accepted by the homeowner within a specified length of time.
3. A provision that the contractor start work within a specified length of time.
4. A statement concerning the acceptability of progress payments.
5. A provision that final payment on the contract amount will be made only after final inspection, acceptance of all work by the Grantee and the homeowner, and after the Grantee receives the contractor's final invoice release of liens and warranty, and claims for liens by subcontractors, laborers and material suppliers for completed work or supplied materials.
6. Provisions that the contractor will be required to:

- a. Obtain and pay for all permits and licenses necessary for the completion and execution of the work and labor to be performed.
- b. Perform all work in conformance with UPCS, and applicable codes, as well as lead-based paint regulations and requirements, whether or not covered by specification and drawings for the work.
- c. Keep the premises clean and orderly during the course of the work and remove all debris at the completion of the work. Materials and equipment that have been removed and replaced as part of the work shall belong to the contractor, unless specifically stated otherwise within the work write-up.
- d. Not assign the contract without written consent of the Grantee and homeowner.
- e. Guarantee the work performed for a period of one year from the date of final acceptance of all work required by the contract. Furthermore, furnish the homeowner, in care of the Grantee, with all operations and maintenance manuals, manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under the contract.
- f. Include a statement as to whether the premises are to be either occupied or vacant during the course of construction work.
- g. A provision that the contractor may reasonably use existing utilities without payment during the course of the work.

C. INSURANCE

1. The contractor shall carry or require that there be carried Workman's Compensation Insurance for all his employees and those of his subcontractors engaged in work at the site in accordance with Tennessee State Workman's Compensation Laws.
2. The contractor shall carry or require that there be carried Manufacturer's and Contractor's Public Liability Insurance. This insurance will be in an amount not less than \$100,000 for injuries including accidental death to any one person for one accident, and to protect the contractor and subcontractors against claims for injury or death of one or more persons because of accidents which may occur or result from operations under the contract. Such insurance shall cover the use of all equipment, including but not limited to, excavating machinery, trenching machines, cranes, hoists, rollers, concrete mixers, and motor vehicles in the construction of the rehabilitation embraced in their contract.
3. The contractor shall carry during the life of the contract Property Damage Insurance in an amount of not less than \$100,000 to protect him and his subcontractors from claims for property damage which might arise from operations under their contract.
4. Before commencing work, the contractor shall submit evidence of coverage required to the Grantee. A certificate of insurance shall be presented as the evidence.

NOTE – The Grantee is advised to consult with its attorney to ensure that the extent, limit and amount of contractor's insurance is consistent with the scope of the project and current State law.

D. WORK WRITE-UPS, SPECIFICATIONS AND DRAWINGS – The work write up must include photographs of each inspectable deficiency as well as all sides of the exterior. The

specifications, based on the code inspection, and work write-up and illustrative sketches, if any, covering the specific rehabilitation work for each property to be rehabilitated will be prepared by the Grantee's qualified and approved Rehab Coordinator. The specifications will:

1. Clearly identify the code violation and lead-based paint hazard;
2. Specify work to correct those violations or hazards;
3. Note any unusual features or limitations;
4. Include the Grantee's estimated cost for rehabilitation; and
5. Will be initialed on each page by the homeowner and signed on the signature page by the homeowner.

E. INELIGIBLE CONTRACTORS - The Grantee may determine a contractor ineligible to bid on projects when:

1. The contractor is listed on the Federal Debarred list; The grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at www.SAM.gov). The grantee will print out the system search results and place in file to document that the contractors and subcontractors are not on this list.
2. There is documented proof that the contractor has not paid material suppliers;
3. There is documented proof that the contractor has not completed projects within the allotted time frame;
4. There exist substantial complaints by homeowners about quality of work and performance.
5. There is documented proof that the contractor has not performed warranty work on previous contracts.
6. Conflict of interest exist between the contractor candidate and project participants, location, or any financial ties

F. INVITATION TO CONTRACTORS FOR BID AND PROPOSAL

1. The Grantee will announce the program and advertise for contractors in local and/or regional newspapers at the beginning of the program and at least once each year thereafter.
2. The Grantee will accept applications from contractors throughout the life of the program.
3. The Grantee will develop and maintain a list of contractors, including minority and female headed firms within the region.
4. The Grantee will notify in writing and in a timely fashion all contractors on the Contractors List when bid packages are available.
5. The Grantee will document when and to whom invitations to bid are sent out and packages picked up.

G. SELECTION OF A SUCCESSFUL BIDDER - The opening of the sealed bids must meet

these conditions.

1. The opening must be public.
2. The best value responsive and responsible bid will prevail. Bids that fall 10% under or 10% over the Grantee's cost estimate may be rejected as not responsible bids.
3. There must be **at least two (2) competitive bids** by eligible contractors.
4. Minutes of the award and bid tabulations should be appropriately filed.
5. Questions concerning contractor eligibility shall be decided prior to opening the bids.
6. The Grantee will verify with THDA that contractors are not debarred.
7. The Grantee may limit the number of bids awarded to any one contractor at any one bid letting to three (3).
8. If all bids exceed the amount of the construction budget, the Grantee may not negotiate solely with the low bidder. The project can be re-bid or changed in scope. If the project is changed, then each bidder must be given the opportunity to bid again. Bidders must be informed that they have the right to change their original unit prices as long as they conform to the revised bid specifications. Grantees must maintain documentation to demonstrate that this process was followed.
9. If there are not at least three (3) competitive bids from eligible contractors, the project must be re-bid. If there are still not three bids after the project has been re-bid, the Grantee will seek written approval from THDA before selecting the winning bid.

H. AWARD OF THE CONSTRUCTION CONTRACT - The contract will become effective upon the signatures of the homeowner and contractor and with the Grantee's endorsement. The Grantee will distribute the executed contract documents as follows: original to Grantee, copy to homeowner, copy to contractor.

15. INSPECTION, CLOSE-OUT AND PAYMENT FOR REHABILITATION WORK

A. RESPONSIBILITY FOR MAKING INSPECTIONS - Inspection of construction will be performed by the Grantee or its designate as follows:

1. Compliance inspections will be made as often as necessary to assure that the work is being completed in accordance with the community's building, electrical, mechanical and plumbing codes, zoning regulations, and any other related State or local laws and ordinances.
2. Inspections will be made as often as necessary to assure that the work being performed is in accordance with the terms of the construction contract, conducting a minimum of three
3. Written notices of inspections (HO-17) shall be filed appropriately.
4. The Grantee's Rehab Coordinator will perform a minimum of 3 inspections throughout the project. An initial inspection, a progress inspection, and a final inspection will be

conducted in accordance with THDA's Policy and Procedures and HUD 24CFR 92.251 of the 2013 HOME Final rule. An agent of THDA will be performing Construction Progress Reviews and random Quality Assurance inspections in accordance with THDA's Policy and Procedures and HUD 24CFR 92.251 of the 2013 HOME Final rule.

PROGRESS PAYMENTS – up to four (5) progress payments will be allowed during the construction phase to include a draw for initial demolition of the original structure for reconstructions not to exceed 10% of the total hard cost of the project, at 20% completion based on complete installation of the foundation, a 50% completion draw based on the project being “dried in” to include installation of doors and windows and have passed all required interim “rough in” codes inspections, a 75% draw based on all interior dry wall or other wall coatings, flooring, cabinets and other fixtures being in place.

B. FINAL PAYMENTS

1. FINAL REVIEW - Upon completion of the rehabilitation or reconstruction work, a final inspection is conducted by the Grantee's Rehab Coordinator. Any uncompleted work or work that is unsatisfactory is noted on a final “punch list” and sent to the contractor in writing (HO-17 and HO-18). When these items are completed, clearance testing for lead-based paint hazards is conducted on the unit. When the unit passes clearance testing, and a certificate of code compliance from a local codes official is issued, and the project has been issued a certificate of occupancy or completion the project is complete.
2. CERTIFICATION - After the Grantee determines that the rehabilitation work has been fully and satisfactorily completed and the unit has passed clearance testing, the Certification of Completion and Final Inspection form (FM-7) is prepared. The homeowner signs the certification indicating that he/she accepts the rehabilitation work as meeting the terms and conditions of the contract. The contractor signs the certification indicating that the work has been completed in accordance with the contract and that there are no unpaid claims for labor, materials supplies or equipment. The Rehab Coordinator and the Administrator sign the Certification indicating that work has been completed in accordance with the contract and authorizing final payment. PLEASE NOTE: Final payment will not be authorized without a signed Certificate of Code Compliance OR approval of rehabilitation by a local codes official or a state certified codes official.
3. NOTICE OF COMPLETION - The contractor shall file a Notice of Completion with the Register of Deeds in the county where the work is performed and return a certified copy to the Grantee.
4. MAKING FINAL PAYMENT - When the final inspection determines that the work is completed in accordance with the contract and the homeowner has accepted the work, the Grantee will obtain from the contractor a release of liens, including all subcontractors and suppliers, and a copy of each warranty due the owner for the work. The Grantee will request final payment from THDA at that time.
5. If the homeowner refuses to sign the final acceptance, the Grantee may authorize full payment for those items which are undisputed and acceptable to all parties.

16. GRIEVANCE PROCEDURE

- A. The Grievance Procedure shall be made a part of the contract between the homeowner and the contractor. Disputes between the homeowner, Grantee and contractor may arise from time to time during the life of the rehabilitation project. In those instances where a mutually satisfactory agreement cannot be reached between the parties, the grievance procedure will be followed.
1. The grievance by the homeowner or contractor is to be filed with the program administrator in writing.
 2. The program administrator will meet with the homeowner/contractor and attempt to negotiate a solution.
 3. Contact the THDA Community Programs Division at (615) 815-2030 should the program administrator fail to negotiate a solution.
- B. **GRIEVANCE PROCEDURE** - If this fails, the program administrator will follow the grievance procedure as outlined below:
1. All claims or disputes between the owner and contractor arising out of or related to the work shall be decided by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association unless the parties mutually agree otherwise.
 2. The owner and contractor shall submit all disputes or claims, regardless of the extent of the works progress, to _____ unless the parties mutually agree otherwise.
 3. Notice of the demand for arbitration shall be filed in writing with the other party to this rehabilitation agreement and shall be made within a reasonable time after the dispute has arisen.
 4. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
 5. If the arbitrator's award is in a sum which is less than that which was offered in settlement by the contractor, the arbitrator may award costs and attorney fees in favor of the contractor. If the arbitrator's award is in a sum which is less than that which was offered in settlement by the owners, the arbitrator may award costs and attorney fees in favor of the owner.
- C. **THE WRITTEN CONTRACT** - The contract and the rehabilitation specifications, along with the initial inspection report provide the basic documentation by which the relative merits of any dispute will be judged.
- D. **CONFLICT OF INTEREST OF PUBLIC OFFICIALS** - No elected or appointed Federal, State or local official, member of the local governing body, or any other public official or employee who exercises any functions or responsibilities in conjunction with the administration of the housing rehabilitation shall have any interest, direct or indirect, in the proceeds or benefits of the rehabilitation grant program. In those cases where the interest may not be direct or indirect, and the conflict of interest is only "apparent", the Grantee must contact THDA for clarification before proceeding. THDA will not routinely consider requesting an exception to the conflict-of-interest

provisions from HUD.

- E. **KICKBACKS AND DISCOUNTS** - No member of the governing body of the Grantee or any Grantee employee shall receive kickbacks or discounts from either contractors or property owners in return for special favors in regard to housing rehabilitation.

CHAPTER ELEVEN – RENTAL HOUSING

11.1 – Agreement

A) **ACQUISITION** - If your project involves acquisition, you will need to review Chapter Five - Acquisition. The acquisition files for the project must contain, at a minimum, the following documentation:

- 1) An independent appraisal of the property;
- 2) A signed sales contract with addendum;
- 3) A copy of the final settlement statement; and
- 4) A copy of the recorded deed.

B) **REHABILITATION** - If rehabilitation is involved, review the procedures for a rehabilitation program in Chapter Ten - Homeowner Rehabilitation. At a minimum, the rehabilitation files for the project must contain the following documentation:

- 1) Rehabilitation work write-up and cost estimate (HO-6A and 6B);
- 2) Lead based paint risk assessment, if applicable;
- 3) Rehabilitation bid tabulations (HO-10);
- 4) Contract for Rehabilitation (HO-11);
- 5) Contractor's certification of eligibility to participate (HO-13);
- 6) Contractor's non-kickback certification (HO-21);
- 7) Lead based paint notices (signed by tenants) (RH-5);
- 8) Notice to proceed (HO-15);
- 9) Change order(s) (HO-16);
- 10) Inspection reports (HO-17);
- 11) Final Invoice, Release of Liens, and Warranty (HO-19);
- 12) Receipt of final payment (HO-20);
- 13) Certification of completion and final inspection (FM-7); and

14) Lead based paint clearance report, if applicable.

C) **NEW CONSTRUCTION** – If the HOME project involves the construction of new units of rental housing, review the procedures for a rehabilitation program in Chapter Ten - Homeowner Rehabilitation. At a minimum, the rehabilitation files for the project must contain the following documentation:

- 1) Work write-up and cost estimate (HO-6A and 6B);
- 2) Bid tabulations (HO-10);
- 3) Contract for Construction (HO-11);
- 4) Contractor's certification of eligibility to participate (HO-13);
- 5) Contractor's non-kickback certification (HO-21);
- 6) Notice to proceed (HO-15);
- 7) Change order(s) (HO-16);
- 8) Inspection reports (HO-17);
- 9) Final invoice, Release of Liens, and Warranty (HO-19);
- 10) Receipt of final payment (HO-20);
- 11) Certification of completion and final inspection (FM-7);
- 12) Notice of Completion;
- 13) Certificate of Use and Occupancy by local authority; and
- 14) Lead based paint notices (signed by tenants) (RH-5);

D) **PROJECT WITH 12 OR MORE UNITS (DAVIS-BACON)** - If 12 or more units are involved in the project, review Chapter Seven - Labor Standards for an explanation of the requirements for rehabilitating or constructing 12 or more units. The project record must contain the following:

- 1) Copy of Wage Rate Request (LB-1);
- 2) Copy of the Wage Rate;
- 3) Bid/Contract Documents with Federal Labor Standards Provisions (LB-2);
- 4) Ten-day call verification (LB -4);
- 5) Pre-construction conference minutes/sign-in sheet (LB-5);
- 6) Payrolls, with evidence of their review (LB-6);

- 7) Employee interviews (LB-7); and
- 8) If any violations, evidence of the steps taken to resolve them.

11.2 – Developing Program Policies and Procedures

- A) **INTRODUCTION** - Your jurisdiction or organization must formally adopt a set of Policies and Procedures for the operation of the HOME program. These will serve as the guidelines for the day-to-day operation of the program. If applicants are aware of the goals of the program, its limitations and the way the program will be handled on a day-to-day basis, many potential problems and misunderstandings can be eliminated.
- B) The Policies and Procedures should contain a methodology for marketing any units that are still not occupied by eligible tenants within 6 months following the date of project completion. If the housing is not occupied by an eligible tenant 18 months after the completion, the HOME funds must be repaid.
- C) This manual includes a "Sample Set of Policies and Procedures" (RH-1). Grantees may wish to use these as a guide, adopt them in whole or in part. Grantees must address in some fashion all of the essential topics, and the policies and procedures must be approved by THDA before adoption by the Grantee's governing board.
- D) **PURPOSE** - Describe the goals of the program and what activities will be undertaken to meet those goals.
- E) **AUTHORITY** - Indicate what legal authority - Federal, State and local - your program is operating under.
- F) **PROGRAM RESOURCES** - Specify the funds available for the program, their source, and how long they will be available.
- G) **APPLICABLE LAWS** - The local governing body, contractors, subcontractors, vendors and potential applicants for assistance are required to abide by a number of Federal and State laws. THDA will assist you in ensuring compliance and will monitor your program to make sure that you are in compliance. The Grantee must follow the appropriate laws and document their efforts. Failure to do so can have serious repercussions for the program. The following is a list of the applicable laws:
 - 1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128 and 24 CFR 92.358
 - 2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4201-4655), 49 CFR Part 24, and 24 CFR 92.353)
 - 3) Debarment and Suspension provisions as required by 24 CFR Part 24 and 24 CFR 92.357.
 - 4) National Environment Policy Act of 1969 (NEPA), 24 CFR Parts 50 and 58, and 24 CFR 92.352.
 - 5) Equal Opportunity Provisions and Fair Housing, 24 CFR 92.350.

- 6) Affirmative Marketing, 24 CFR 92.351.
- 7) Lead-based Paint Poisoning Prevention Act, 24 CFR 92.355.
- 8) Conflict of Interest Provisions, 24 CFR 85.36 or 24 CFR 84.424, as applicable, and 24 CFR 92.356.
- 9) Davis-Bacon Act and Contract Work Hours and Safety Standards Act, and 24 CFR 92.354.
- 10) Intergovernmental Review of Federal Programs, Executive Order 12372 and 24 CFR 92.359.
- 11) Drug-Free Workplace, 24 CFR part 24, subpart F.
- 12) Standard Equal Opportunity Construction Contract Specifications.
- 13) Certification of Non-segregated Facilities for Contracts Over \$10,000.
- 14) Title VI of Civil Rights Act of 1964 Provisions.
- 15) Section 109 of Housing and Community Development Act of 1974 Provisions.
- 16) Section 3 Compliance Provisions.
- 17) Age Discrimination Act of 1975 Provisions.
- 18) Section 504 Affirmative Action for Handicapped Provisions.
- 19) And any other Federal requirements as set forth in 24 CFR Part 92, HOME Investment Partnerships Program

H) **TENANT SELECTION** – The Policies and Procedures governing the operation of your rental housing program must include written tenant selection policies and criteria that:

- 1) Are in compliance with applicable fair housing laws which prohibit discrimination in housing based on race, color, religion, sex, familial status, national origin, age and disability;
- 2) Are based on objective criteria related solely to program qualifications and the tenant's ability to pay the rent and abide by the terms of the lease, such as household income, housing history, credit history and/or lack of a criminal record;
- 3) Apply the selection criteria consistently to all applicants and expressly prohibit bias in the selection process, including prohibiting discrimination and favoritism toward friends or relatives or other situations in which there might be a conflict of interest;
- 4) Provide for the selection of tenants from the written waiting list in the chronological order of their application, insofar as practical; and
- 5) Give prompt written notification to any rejected applicant of the grounds for any rejection.

I) **TENANT SELECTION FOR SPECIAL NEEDS** – Grantees funded under the Special Needs Set-Aside in the State HOME program cannot discriminate based on the nature of the disability. HOME-assisted

housing for persons with disabilities must be equally available to *all* persons with disabilities. Owners may offer and advertise non-mandatory services that may be appropriate for persons with a particular special need or disability.

- 1) There is an exception for housing for persons with a specific type of disability who could not reside in housing that is available to the general public. This exception would apply to persons whose disabilities require them to have on-site supportive services (such as 24-hour supervision), because without the on-site services, these persons would be unable to maintain themselves in housing.

11.3 – Eligible Activities

A) As outlined and defined in Chapter One, Section 2 - Eligible Activities, HOME monies may be used for the following:

- 1) Rehabilitation of existing units;
- 2) Conversion of non-residential units to residential units;
- 3) Acquisition and rehabilitation of existing units;
- 4) Reconstruction; and
- 5) New Construction.

11.4 – Ineligible Properties (92.214)

A) HOME funds may not be used to assist any of the following types of housing:

- 1) Public housing units
- 2) Properties financed through a HUD-funded Rental Rehabilitation Program
- 3) Projects assisted under Title VI of NAHA (Prepayment of Mortgages insured by HUD)
- 4) Commercial properties
- 5) Provide assistance to a project previously assisted with HOME funds during the period of affordability established under 92.252.
 - a) Additional HOME funds may be committed to a project up to one year after project completion (see 92.502), but the amount of HOME funds in the project may not exceed the maximum per unit subsidy amount established under 92.250.
- 6) Projects which assist properties owned by third-parties. The project must be owned by the Grantee.
- 7) Student housing in any configuration and dormitories, including those for farm workers.

11.5 – Property Standards and Specifications

- A) Rental housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code, HOME-assisted new construction of multi-family rental units of 3 or more apartments must meet the International Building Code; new construction or reconstruction of single-family rental units must meet the International Residential Code for One- and Two-Family Dwellings; and HOME-assisted rehabilitation of rental units must meet the International Property Maintenance Code.

1) New construction projects must also meet the International Energy Conservation Code and must also be Energy Star qualified and certified by an independent HERS rater.

2) Copies of the International Codes may be obtained from:

International Code Council
4051 West Flossmoor Rd
Country Club Hill, IL 60478
(708) 799-2300, ext. 48

- B) All other HOME-assisted rental housing (e.g., acquisition) must meet all applicable state and local housing quality standards and code requirements and if there are no such standards, or code requirements, the housing must meet the ongoing property standards as specified by HUD based on the HUD Physical Inspection procedures (Uniform Physical Conditions Standards (UPCS)). Prescribed by HUD pursuant to 24CFR5.705.
- C) 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) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
- D) Site and Neighborhood standards of 24 CFR 983.6(b) apply only to the new construction of rental housing.
- E) 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.
- F) Grantees must submit detailed written specifications and cost estimates for construction to THDA for prior approval. The submission should be of adequate detail to enable an inspection to be made by THDA or its designee.
- G) THDA or its designee will be required to conduct progress and final inspections of construction to ensure that work is done in accordance with applicable codes, the construction contract, and construction documents.
- H) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards of 5.1 above as applicable. THDA 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 days before the commitment of HOME assistance.

11.6 – Group Homes and Single Room Occupancy Units

- A) **GROUP HOME** – Housing that is occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one bedroom units) separate private space for each household. Supportive services may be provided. A group home is generally a large single-family unit and is considered a one-unit project.
- 1) The subsidy level for a group home is based on the number of bedrooms in the unit. Bedrooms occupied by resident supportive service providers are counted as eligible bedrooms for subsidy purposes.
- B) **SINGLE ROOM OCCUPANCY (SRO)** – Housing consisting of clearly identifiable separate dwelling units that is the primary residence of its occupant or occupants.
- 1) If the project consists of new construction, conversion of non-residential space, or reconstruction, the unit must contain either food preparation or sanitary facilities (and may contain both).
 - 2) For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by the tenants.
 - 3) The subsidy level is based on the maximum per units subsidy limit for a zero-bedroom (efficiency) unit. The maximum subsidy is calculated based on the number of HOME- assisted units in the structure times the allowable per unit subsidy. However, the maximum subsidy may never exceed the actual development cost of the HOME-assisted unit based on their proportionate share of the total development cost.
 - 4) The designation as an SRO must be consistent with local zoning and building code classifications.

11.7 – Home Investments Per Unit

MINIMUM HOME DOLLARS	See applicable Program Description
MAXIMUM HOME DOLLARS	See applicable Program Description

- A) The maximum amount of HOME funds per project shall be only the amount necessary to make the project financially feasible. Grantees must underwrite each project and determine the amount of HOME funds needed to make the project feasible.
- B) THDA will review the Rental Housing Feasibility Worksheet (RH-2) to determine that the formula is being applied correctly. THDA may request that the grantee require the applicant seek development funds from a private lender or other source to leverage HOME funds.
- C) The maximum limit applies only to the investment of HOME funds in a property, and neither the use of Federal Low Income Housing Tax Credits nor the provision of HOME-funded tenant- based rental assistance affects these limits.

11.8 – Mixed Income Developments (92.255)

- A) All HOME funds used in conjunction with a mixed income development must be used solely for the

benefit of the affordable units in the development.

- B) Housing that accounts for less than 100 percent of the dwelling units in a development qualifies as an affordable unit if the HOME assisted units meet the rent and occupancy requirements of the preceding sections. Each building in a development must contain housing that meets these requirements. Common area costs will be prorated based upon the number of affordable housing units and other units.

11.9 – Affordability Terms

- A) HOME-assisted units must remain affordable for varying terms, depending on the amount of HOME funds invested per unit:

ACTIVITY	HOME FUNDS	AFFORDABILITY
Acquisition or rehabilitation of existing housing	Under \$15,000	5 Years
Acquisition or rehabilitation of existing housing	\$15,000 - \$40,000	10 Years
Acquisition or rehabilitation of existing housing	Over \$40,000	15 Years
New construction or acquisition of newly constructed housing		20 Years

EXCEPTION: If FHA mortgage insurance is provided to a HOME project, the term of affordability must equal the length of the FHA-insured mortgage.

- B) THDA will require a Grant Note, Restrictive Covenant and Deed of Trust be recorded as a lien against the HOME project to secure the terms of the affordability period. HOME funds will not be disbursed for the project until the legal documents are in place.
- C) HUD considers the date an activity completed in IDIS to be the starting date of the affordability period.

Newly constructed housing is a unit completed within 12 months of the commitment of HOME funds to the project.

11.10 – Income Requirements for Home Tenants (92.252)

- A) The HOME program-wide income targeting requirement at 24 CFR 92.216 states that 90% of the HOME-assisted rental housing must be occupied by households whose income does not exceed 60% of area median income.
- B) HOME Program requirements with respect to the occupancy and affordability of the units apply at the time HOME assistance is *initially* provided *AND* over an extended period of time.
- C) **INITIAL OCCUPANCY** - During initial occupancy, income requirements of the tenants differ from those in place during the long-term affordability period. Initial occupancy means the first tenants residing in the unit when the project is complete, i.e., the acquisition and rehabilitation are done and the project is rented. Income composition for initial occupancy is as follows:
 - 1) In the case of projects with five or more rental units, or in the case of an owner of multiple one- or two-unit projects with a total of five or more rental units:
 - a) 20% of the tenants must have annual incomes at or below 50% of median, adjusted for family size, and must pay the low HOME rents;
 - b) 70% of the tenants must have annual incomes at or below 60% of median, adjusted for family size, and may pay the high HOME rents. (60% of median income is computed by multiplying the family income at 50% of the median, adjusted for family size, by 120%); and
 - c) the remaining 10% of the tenants must have annual incomes at or below 80% of median, adjusted for family size, and may pay the high HOME rents.
 - 2) If the 5 or more unit rule does not apply to your project then the tenants may pay the high HOME rents and the income composition *at initial occupancy* is:
 - a) 10% of the tenants must have annual incomes at or below 80% of median, adjusted for family size; and
 - b) 90% of the tenants must have annual incomes at or below 60% of median, adjusted for family size.
 - 3) Grantees must complete and submit to THDA an Initial Occupancy Profile (RH-7) as soon as all the units are occupied. Although there may be a significant time-lag between the renting of the first and last units, this Profile should only reflect the income and rents of the very first tenant in each unit. In cases where HOME assistance has been provided to third-party owners, one form should be completed for each owner.
 - 4) The Rental Housing Completion Reports (FM-9) should reflect the income composition of the very first tenant in the unit and agree with the Initial Occupancy Profile.
- D) **LONG TERM OCCUPANCY REQUIREMENTS** - After initial occupancy requirements have been met, long term occupancy requirements become effective for the duration of the

affordability period, ranging from 5 to 20 years.

- 1) If the 5-unit rule applies to the project, this long term income targeting is:
 - a) 20% of the tenants must have annual incomes at or below 50% of median, adjusted for family size, and pay the low HOME rents; and
 - b) 80% of the tenants must have annual incomes at or below 80% of median income, adjusted for family size, and may pay the high HOME rents.
- 2) After initial occupancy, if the 5-unit rule does not apply to the project, all tenants must have annual incomes at or below 80% of median, adjusted for family size, and may pay the high HOME rents for the duration of the affordability period.

SUMMARY OF INITIAL AND LONG-TERM OCCUPANCY REQUIREMENTS				
% OF AREA MEDIAN INCOME (AMI)	INITIAL OCCUPANCY (4 OR FEWER UNITS)	INITIAL OCCUPANCY (5 OR MORE UNITS)	LONG TERM OCCUPANCY (4 OR FEWER UNITS)	LONG TERM OCCUPANCY (5 OR MORE UNITS)
AT OR BELOW 50% AMI	---	20% (Must pay Low HOME Rents)	---	20% (Must pay Low HOME Rents)
AT OR BELOW 60% AMI	90% (May pay High HOME Rents)	70% (May pay High HOME Rents)	---	---
AT OR BELOW 80% AMI	10% (May pay High HOME Rents)	10% (May pay High HOME Rents)	100% (May pay High HOME Rents)	80% (May pay High HOME Rents)
ABOVE 80% AMI	Ineligible for initial occupancy	Ineligible for initial occupancy	Must pay 30% of adjusted monthly income	Must pay 30% of adjusted monthly income

- E) HOME-assisted units retain their HOME designation for the entire period of affordability. However, units that are designated as Low HOME rent units and High HOME rent units can, but are not required to, "float" within the HOME-assisted units to maintain compliance with long- term occupancy requirement.
- F) The owner should make every effort to keep the project in compliance during the affordability period by leasing the next available unit to an individual at the income level needed for compliance.
- G) Each year during the period of affordability the owner must re-examine each tenant's annual income to make sure the tenant household remains income eligible for the project.
- H) Tenants who no longer qualify as low-income families must pay as rent 30 percent of the family's *adjusted* gross monthly income, as re-certified annually.

- I) THDA will annually review the financial condition of rental projects with 10 or more units and if problems are identified, (i.e. the operating costs substantially exceed revenue) may require corrective actions such as more frequent reporting, technical assistance or transfer of the property to another more appropriate owner.

11.11 – Income Levels for Group Homes and SRO Units

- A) It is expected that most, if not all tenants of group homes or single room occupancy units would have incomes at or below 60% of area median income.
- B) **GROUP HOMES** – All tenants, except live-in service providers, must have incomes at or below 80% of area median income.
- C) **SINGLE ROOM OCCUPANCY UNITS** – In SRO projects with 3 or more units, 20% of the units must be occupied by tenants with incomes at or below 50% of area median income.

11.12 – Rent Levels

- A) The HOME rent limits are the *maximum* rents that can be charged to an income-eligible tenant residing in a HOME-assisted unit. Rents are controlled for the length of the applicable affordability period. These rents are determined on an annual basis by HUD. The HOME rents are based on the current Fair Market Rents (FMRs) and the current Income Limits published by HUD. THDA is now required to annually review and approve rents for each HOME-assisted rental project to ensure ongoing compliance with the HOME rent limits and to prohibit undue rent increases.
 - 1) *Please note that HOME rent limits are not simply the FMRs used to determine rents for Section 8 certificates or vouchers.*
 - 2) *In some instances, the Section 8 rents may be higher than the allowable HOME rents. However, if HOME funds have been invested in the unit, the HOME rents must be used.*
 - 3) *Section 8 rules specifically prohibit an owner from charging a higher rent for a unit that is occupied by a voucher holder than the rent charged for a comparable unit not occupied by a voucher holder.*
- B) **HOME RENTS** – The HOME Program has two rent limits: the High HOME rent limits and the Low HOME rent limits. The published HOME rents include all utilities. *The utilities paid by tenants must be subtracted from the rents provided to determine the maximum allowable rents. See Attachment V: HOME Program Rents.*
 - 1) **HIGH HOME RENTS** - The lesser of Fair Market Rents for existing units as determined by HUD or 30% of 65% of median income, adjusted for family size. This rent is used for 80% of the HOME units (if the 5-unit rule applies).
 - 2) **LOW HOME RENTS** - This rent is equal to 30% or 50% of median income, adjusted for family size. This rent is used for 20% of the HOME units (if the 5-unit rule applies).
 - a) If the project has less than 5 rental units, all of the units may rent at the High

HOME rent.

- C) THDA will post the new HOME rents to its website (www.thda.org) when they are issued by HUD each year.
- 1) Rents may increase or decrease from year to year. Where rents have increased, an owner may not raise rents in occupied units immediately. Any increase in rent is subject to the existing lease provisions, and the owner must provide the tenants 30 day prior written notice before increasing any rents.
 - 2) Where rents have decreased, an owner is not required to reduce the rents in occupied units immediately. Compliance with the decreased limits may be done at the point in time specified in the lease, or if not specified, customary for periodic (usually annual) adjustments in rent.
 - 3) Regardless of changes in Fair Market Rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment, i.e., the date the project is entered into the Integrated Disbursement Information System (IDIS).
- D) UTILITY ALLOWANCES – THDA will now be required to establish maximum monthly allowances for utilities and services (excluding telephone) for each project.
- E) **MARKET CONDITIONS** - Each Grantee should be aware of the market conditions of the area in which the project is located. Each project should show market feasibility not based upon the High and Low HOME rents, but rather upon area housing markets and HOME occupancy requirements which demand occupancy by low and very low-income persons.
- F) Rents shall not exceed the published High and Low HOME rents, adjusted for utility arrangements and bedroom size. *However, because these rents must also be attractive to lower income tenants, actual rents may be lower than the High and Low HOME rents.* Programs should be designed so they take into consideration the market feasibility of projects funded.

11.13 – HOME Rent Limits for Group Homes and SRO Units

- A) **GROUP HOMES** – A group home is housing that is occupied by two or more single persons or families. It consists of common space and/or facilities for group use by the occupants of the units (except in the case of shared one-bedroom units), and separate private space for each individual/family. Group homes often house the elderly or persons with disabilities.
- 1) A HOME-assisted group home is treated as a *single* HOME-assisted housing unit with multiple bedrooms. The HOME rent limits for a group home is the HUD-published Fair Market Rent (FMR) rent limit for the total number of bedrooms in the group home.
 - 2) The bedrooms of live-in supportive service providers or other non-client staff are not included when calculating the total number of bedrooms for the purpose of establishing the rent. For example, if one bedroom in a four-bedroom group home is occupied by a service provider, the maximum rent for the group home is the HUD-published FMR Limit for a three-bedroom unit.
 - 3) The HUD-published FMR limit is the *maximum combined* rent that can be charged to all

income eligible tenants residing in the group home. Each tenant pays a pro-rata share of the total rent.

- 4) When group home tenants pay directly for utilities, the utility allowance must be subtracted from the HUD-published FMR limit in order to determine the maximum combined rent that can be charged to all tenants.
- 5) **RENT AND ADDITIONAL SERVICES IN GROUP HOMES** – Group homes frequently include food and/or other supportive services to its residents. *Group home rents may not include food costs or the costs of any supportive services.* Costs for such services must be billed as separate charges. For group home units that are developed for persons with disabilities, disability-related services must be *non-mandatory*.
- 6) The lease must also state whether the fee-based services are optional or mandatory and must identify the amount of the additional fees or surcharges separately from the basic HOME rent for each tenant. The State must approve, in writing, the costs of food and supportive services.
- 7) **SINGLE ROOM OCCUPANCY (SRO) HOUSING** – A single room occupancy (SRO) housing unit consists of a single room dwelling unit that is the primary residence of its occupant(s). It may or may not have food preparation and sanitary facilities.
- 8) The rent limit for an SRO unit is based on either the HUD Fair Market Rent (FMR) or the High and Low HOME rent limits, depending upon the characteristics of the unit:

IF THE SRO HOUSING HAS....	THEN...
A unit with <i>neither</i> food preparation nor sanitary facilities, or with one (food preparation or sanitary facilities)	The rent may not exceed 75% of the HUD-published FMR limit for a 0-bedroom (efficiency) unit. This limit is used for High HOME Rent units and Low HOME Rent units. Even though the rent limits are the same for High and Low HOME Rent units, in projects with 5 or more HOME-assisted units, at least 20% of the units must be occupied by very low- i n c o m e tenants.
A unit with <i>both</i> food preparation and sanitary facilities	The High HOME Rent cannot exceed the HUD-published High HOME rent limit or Low HOME rent limit for a 0-bedroom (efficiency) unit. The Low HOME Rents for these units cannot exceed either: The HUD-published Low HOME rent limit for a 0- bedroom unit; or 30% of the monthly adjusted family income of the very low-income tenant. In projects with 5 or more HOME-assisted units, at least 20% of the units must be occupied by very low-income tenants.
A Low HOME Rent unit that receives state or Federal <i>project-based</i> rental assistance and is occupied by a very low- i n c o m e	The rent can be the applicable state or Federal project-based rent, as long as it is occupied by a very low-income tenant who does not pay more than 30% of the family's monthly adjusted income for rent.

- 9) Unlike group homes, in SRO housing with 5 or more HOME-assisted rental units, at least

20% of the units must be set aside as Low HOME Rent units for occupancy by very low-income tenants.

- 10) Utility costs are included in the maximum HOME SRO rents. If SRO tenants pay directly for utilities, the utility allowance must be subtracted from the HUD-published HOME rent limit or FMR limit in order to determine the maximum rent that can be charged for the SRO unit.
- 11) SRO unit rents may not include food costs or the costs of any supportive services. Costs for such services must be billed as separate charges. For SRO units that are developed for persons with disabilities, disability-related services must be *non-mandatory*.
- 12) Each SRO tenant's lease must clearly state whether the fee-based services are optional or required and must also identify the amount of additional fees or surcharges separately from the basic HOME rent for each tenant. The State must approve in writing the costs of food and supportive services.

11.14 – Marketing

- A) Owners of HOME-assisted rental housing must conduct marketing and advertising activities in accordance with applicable fair housing laws, as well as specific HOME requirements that relate to affirmative marketing. These fair housing and affirmative marketing requirements ensure that owners and managers provide the opportunity to rent HOME-assisted units to *all* eligible applicants. Owners and managers must also take certain additional steps to make accessible units available to persons with disabilities.
- B) Fair housing laws prohibit discrimination in all housing, housing-related activities and housing programs, regardless of whether or not the housing receives Federal financial assistance. Owners and managers cannot discriminate in the rental of units, in establishing terms and conditions of property rentals, or in advertising the availability of rental housing units.
- C) In addition, Grantees with projects of 5 or more HOME-assisted units develop affirmative marketing procedures to ensure special outreach and advertising efforts are made to communicate the availability of HOME-assisted housing to those groups or individuals that might otherwise be unlikely to apply.
- D) **MARKETING ACCESSIBLE UNITS** – Owners of properties with accessible units must develop procedures to ensure that information regarding the availability of those units reaches eligible individuals with disabilities. Reasonable, nondiscriminatory steps must be taken to make sure that available, accessible units are offered first to persons with disabilities who require the unit's accessible features. Owners or managers must take the following steps when an accessible unit becomes vacant, regardless of the status of the waiting list:
 - 1) First, offer the unit to a current occupant of the project who might require or benefit from the accessibility feature(s) of the unit;
 - 2) Second, offer the unit to an eligible qualified applicant on the waiting list who requires the accessibility feature(s) of the unit; and
 - 3) Last, offer the unit to a non-disabled person on the waiting list. A non-disabled tenant

may only rent an accessible unit after the owner has made all reasonable efforts to attract a tenant with a disability according to the above steps.

- E) **TN HOUSING SEARCH** - Owners of HOME-assisted rental property are required to list their properties on TNHousingSearch.org as part of their marketing procedures.

11.15 – Tenant Relations and Lease Protections (92.253)

- A) The written lease between a tenant and an owner of rental housing assisted with HOME funds must be for at least ONE year, unless, by mutual consent, the tenant and the owner agree to a lesser term. The lease term may never be for less than 30 days.
- B) An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms of the lease; for violation of applicable federal, state or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause.
- C) Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing.
- D) Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.
- E) An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet all applicable state and local housing quality standards and code requirements and if there are no such standards, or code requirements, the housing must meet the ongoing property standards as specified by HUD based on the HUD Physical Inspection procedures (Uniform Physical Conditions Standards (UPCS)). Prescribed by HUD pursuant to 24CFR5.705.
- F) Owners may not refuse to lease a HOME-assisted unit to a family which holds a rental certificate (Rental Certificate Program) or a rental voucher (Rental Voucher Program) or a comparable document under the HOME program.
- G) **REASONABLE ACCOMODATIONS FOR PERSONS WITH DISABILITIES** – The Fair Housing Act requires that all applicants and tenants of rental housing be given equal treatment and prohibits discrimination against anyone with respect to race, color, religion, sex, disability, familial status, or national origin. However, there are limited circumstances when the Act requires a housing provider to treat persons with disabilities differently, to enable them to have equal access to, or enjoyment of, housing and other housing-related programs. The Fair Housing Act requires owners to provide "reasonable accommodation" to persons with disabilities. This means that an owner may have to modify rules, policies, practices, procedures, and/or services to afford a person with a disability an equal opportunity to use and enjoy the housing.
- H) Owners of HOME-assisted rental properties should have written procedures in place that address disputes between individual tenants or households and tenant grievances against management.

- 1) Generally, it is an acceptable business practice for the Grantee, as owner, property manager to act as first intermediary in a conflict under limited circumstances, such as when one tenant complains about noise from another tenant's unit.
 - 2) Owners or managers should establish an impartial way to address complaints about property management staff or the way in which the property is being operated which generally requires the involvement of a neutral third party.
- I) **PROHIBITED LEASE TERMS** - Certain Lease Terms are prohibited. These include:
- 1) **AGREEMENT TO BE SUED.** Agreement by the tenant to be sued, 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 the state law.
 - 3) **EXCUSING THE OWNER FROM RESPONSIBILITY.** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
 - 4) **WAIVER OF NOTICE** - Agreement by 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 jury trial.
 - 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 decision in connection with the lease.
 - 8) **TENANT CHARGEABLE WITH COST OF LEGAL ACTION REGARDLESS OF OUTCOME.** Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- J) Grantees shall comply with all applicable state statutes, including the Uniform Landlord Tenant Law. The Grantee's attorney, or the area Legal Aid Office, can provide assistance.
- K) Grantees shall also comply with all applicable local ordinances and keep informed about the existence of or changes in such ordinances.
- L) **TENANT RELATIONS IN CHDO PROJECTS** - HOME-assisted rental housing that is owned,

sponsored or developed by a CHDO must establish and implement a plan for tenant participation in management decisions *and* establish a fair lease and grievance procedure that is approved by the State.

- 1) Tenant participation in management decisions can be achieved through a tenant association that acts as a formal body to provide input for project management or through a tenant-elected representative who acts as liaison with management.
- 2) Fair Lease and grievance procedures should be objective and clearly state to whom the tenant should direct a complaint; who will investigate and/or respond to the complaint; and by when the tenant should expect to receive a response.

11.16 – Rental Housing Record Keeping

A) **PROGRAM RECORDS** - Grantees are responsible for maintaining records that demonstrate that they are operating a rental housing program in compliance with HOME regulations. At a minimum, the program records must include the following:

- 1) Policies and Procedures for the operation of the rental program which have been adopted by the Grantee's governing board and which are available to all applicants.
- 2) Adequate documentation to demonstrate that the tenant selection process was accomplished as stated in the adopted Policies and Procedures.
- 3) A current waiting list which includes the application date, eligibility, and date accepted or rejected for a rental unit.
- 4) Documentation of the Grantee's efforts to ensure that the composition of the units meets income guidelines.
- 5) Documentation that all of the units meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code, HOME-assisted new construction of multi-family rental units of
- 6) 3 or more apartments must meet the most recently state adopted edition of the International Building Code; new construction or reconstruction of single-family rental units must meet the most recently state adopted edition of the International Residential Code for One- and Two-Family Dwellings; and HOME-assisted rehabilitation of rental units must meet the most recently state adopted edition of the International Property Maintenance Code. New construction projects must also meet the 2006 International Energy Conservation Code, published by the International Code Council.
- 7) Documentation that the Grantee has adopted an Affirmative Marketing Plan and is marketing the rental units according to the plan.
- 8) Documentation that the rents for all the units are in compliance with HOME regulations.

B) **TENANT RECORDS** - In addition to program records which establish a Grantee's compliance with HOME regulations, there must also be individual tenant records. These files should contain, at a minimum, the following:

- 1) The tenant's application for a rental unit.
 - 2) Verification of the tenant's income and eligibility within the HOME income limits.
 - 3) Copies of required notices signed by the tenant, i.e., lead-based paint notices and fair housing.
 - 4) A signed 12-month lease for the unit with the required tenant protections.
- C) **GRANTEE'S ON-GOING OBLIGATIONS FOR RENTAL PROPERTY** – After the project is officially closed out by letter to the Grantee, the Community Programs Division of THDA will be responsible for HOME Long-Term Compliance monitoring. Each Grantee will be monitored in accordance with HUD guidelines to determine each project's compliance with the HOME Rules and Regulations. Each Grantee will also be monitored for adherence to its contract with THDA. Each Grantee will receive a letter explaining the details of the long-term monitoring process and annual reporting requirements.
- 1) The rental housing long term monitoring requirements are the responsibility of the Grantee. They are responsible for:
 - a) Annual income certification of tenants;
 - b) Adherence to the HOME rent and income composition guidelines;
 - c) Compliance with the Standard Housing Codes or the Uniform Physical Conditions Standards;
 - d) Reporting to THDA.

ATTACHMENT XI
HOME PROGRAM RENTS

**Find the HOME Program Rents at www.thda.org under the
Community Programs tab.**

SAMPLE**RENTAL HOUSING POLICIES AND PROCEDURES FOR**

I. PURPOSE

This program will provide good quality affordable rental housing to low and very low income families; will assist tenant families acquire the skills and resources needed to become homeowners; and will assist qualified tenant families purchase their homes at the end of the required affordability period. The program will operate in _____.

II. AUTHORITY

The legal authority of this program comes from the working agreement with Tennessee Housing Development Agency, Public Law 101-625 (National Affordable Housing Act of 1990), as well as State and local laws.

III. PROGRAM RESOURCES

The source of funds for the undertaking of these activities is a grant in the amount of \$_____, which has been awarded by Tennessee Housing Development Agency (THDA) through the U.S. Department of Housing and Urban Development Home Investment Partnership Act.

IV. APPLICABLE LAWS

_____ and its tenants are required to abide by a number of State and Federal laws, and may be required to sign documents certifying their compliance.

1. Equal Opportunity Provisions for Contracts \$10,000 and Under, E. O. 11246 clause for contracts over \$10,000
2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity
3. Standard Equal Opportunity Construction Contract specifications
4. Certification of Non-segregated Facilities for Contracts Over \$10,000
5. Title VI of Civil Rights Act of 1964 Provisions
6. Section 109 of Housing and Community Development Act of 1974 Provisions

7. Section 3 Compliance Provisions of the HUD Act of 1968
8. Age Discrimination Act of 1975 Provisions
9. Section 504 Affirmative Action for Handicapped Provisions
10. Lead-based Paint Hazard Provisions
11. Access to Records/Maintenance of Records Provisions
12. Conflict of Interest Provisions
13. Certification of Bidder Regarding Equal Employment Opportunity
14. Certification of Bidder Regarding Section 3 and Segregated Facilities
15. Contractor Section 3 Plan Format
16. Subcontractor Certification Regarding Equal Employment Opportunity
17. Subcontractor Certification Regarding Section 3 and Segregated Facilities
18. National Environmental Policy Act of 1969 (NEPA), 24 CFR parts 50 and 58
19. Conflict of Interest provisions in 24 CFR 85.36 and OMB Circular A-110
20. Debarment and Suspension provisions as required by 24 CFR part 24
21. Drug Free Workplace policy

V. AFFIRMATIVE MARKETING PROCEDURES

_____ is committed to non-discrimination and equal opportunity in housing, and will seek to attract eligible tenants without regard to race, color, religion, sex, familial status, national origin, age or disability. In order to inform the public and potential tenants of available housing units, _____ will:

1. Make this information known through advertisements and announcements in the local media which include the Equal Opportunity logotype or slogan; and
2. Notify the local PHA or THDA's satellite office to request that applicants on their waiting lists be informed of upcoming vacancies; and
3. Contact community organizations, places of worship, employment centers, fair housing groups or housing counseling agencies to solicit applications from persons in the housing market area who are not likely to apply for housing without special outreach (e.g., racial minorities and female head of households).

VI. TENANT SELECTION - INCOME DETERMINATION

- A. **INCOME LIMITS** - HOME funds can only be used to benefit low and very low-income households. The income limits applicable are the current "Income Limits for Low-Income and Very Low-Income Families" (adjusted for family size) produced by the Department of Housing and Urban Development. Tennessee figures are list at www.thda.org under the Community Programs tab.
- B. **ANNUAL INCOME (GROSS INCOME)** The State's HOME program uses the income definitions of the Section 8 program to determine the annual income (gross income) used to classify a household for purposes of eligibility. Annual income means all amounts, monetary or not, which:
1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
 2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date. In other words, it is the household's *future or expected* ability to pay rather than its past earnings that is used to determine program eligibility. If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period; and
 3. Which are not specifically excluded in paragraph 6.8 (Income Exclusions) below.
 4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
 5. **MONTHLY GROSS INCOME** - Monthly gross income is Annual Gross Income divided by 12 months.
- C. **ASSETS** - In general terms, an asset is a cash or noncash item that can be converted to cash. There is no asset limitation for participation in the HOME program. Income from assets is, however, recognized as part of Annual Gross Income. Assets have both a market value and a cash value.
1. **MARKET VALUE** - The market value of an asset is simply its dollar value on the open market. For example, a stock's market value is the price quoted on a stock exchange on a particular day, and a property's market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.
 2. **CASH VALUE** - The cash value of an asset is the market value less reasonable expenses required to convert the asset to cash, including:
 - a. Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value (e.g., penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds, or broker fees for converting stocks to cash); and/or
 - b. Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in the real estate.
 - c. Under Section 8 rules, only the cash value (rather than market value) of an item is counted as an asset.

- D. **INCOME FROM ASSETS** - The income counted is the actual income generated by the asset (e.g., interest on a savings or checking account.) The income is counted even if the household elects not to receive it. For example, although a household may elect to reinvest the interest or dividends from an asset, the interest or dividends is still counted as income.
1. The income from assets included in Annual Gross Income is the income that is anticipated to be received during the coming 12 months.
 - a. To obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account; or
 - b. If the value of the account is not anticipated to change in the near future and interest rates have been stable, a copy of the IRS 1099 form showing past interest earned can be used.
 - c. Checking account balances (as well as savings account balances) are considered an asset. This is a recognition that some households keep assets in their checking accounts, and is not intended to count monthly income as an asset. Grantees should use the average monthly balance over a 6-month period as the cash value of the checking account.
 2. When an Asset Produces Little or No Income:
 - a. If the family's assets are \$5,000 or less, actual income from assets (e.g., interest on a checking account) is not counted as annual income. For example, if a family has \$600 in a non-interest bearing checking account, no actual income would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.
 - b. If the family's assets are greater than \$5,000, income from assets is computed as the greater of:
 - i. actual income from assets, or
 - ii. imputed income from assets based on a passbook rate applied to the cash value of all assets. For example, if a family has \$3,000 in a non-interest bearing checking account and \$5,500 in an interest-bearing savings account, the two amounts are added together. Use the standard passbook rate to determine the annual income from assets for this family.
 3. Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an "arm's length" transaction) have, in essence, voluntarily reduced their ability to afford housing. Section 8 rules require, therefore, that any asset disposed of for less than fair market value during the 2 years preceding the income determination be counted as if the household still owned the asset.
 - a. The value to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset (less any fees associated with disposal of property, such as a brokerage fee).
 - b. Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce or separation is not included in this calculation.

- c. These procedures are followed to eliminate the need for an assets limitation and to penalize people who give away assets for the purpose of receiving assistance or paying a lower rent.

E. ASSETS INCLUDE:

1. Amounts in savings accounts and six-month average balance for checking accounts.
2. Stocks, bonds, savings certificates, money market funds and other investment accounts.
3. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset. *DO NOT INCLUDE EQUITY OF PRINCIPAL RESIDENCE AS AN ASSET FOR HOMEOWNER REHABILITATION PROGRAMS.*
4. The cash value of trusts that are available to the household.
5. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in penalty.
6. Contributions to company retirement/pension funds that can be withdrawn without retiring or terminating employment.
7. Assets which, although owned by more than one person, allow unrestricted access by the applicant.
8. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
9. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
10. Cash value of life insurance policies.
11. Assets disposed of for less than fair market value during two years preceding certification or recertification.

F. ASSETS DO NOT INCLUDE:

- a. Necessary personal property, except as noted under paragraph 6.5(9) (Assets Include) above
- b. Interest in Indian Trust lands
- c. Assets that are part of an active business or farming operation.

NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant/tenant's main occupation.

- d. Assets not accessible to the family and which provide no income to the family.
- e. Vehicles especially equipped for the handicapped.
- f. Equity in owner-occupied cooperatives and manufactured homes in which the family lives.

- G. **INCOME INCLUSIONS** - The following are used to determine the annual income (gross income) of an applicant's household for purposes of eligibility:
1. The full amount, before any payroll deductions, of wages and salaries, over-time pay, commissions, fees, tips and bonuses, and other compensation for personal services.
 2. The net income for the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness cannot be used as deductions in determining net income; however, an allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession is included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
 3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness cannot be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income includes the greater of the actual income derived from net family assets or a percentage of the value of such assets based on the current passbook saving rate, as determined by HUD.
 4. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except Supplemental Security Income (SSI) or Social Security).
 5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (3) under Income Exclusions).
 6. Welfare Assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income consists of:
 - a. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; **plus**
 - b. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph is the amount resulting from one application of the percentage.
 7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.
 8. All regular pay, special pay and allowances of a member of the Armed Forces (see paragraph (8) under Income Exclusions).

H. **INCOME EXCLUSIONS** - The following are excluded from a household's income for purposes of determining eligibility:

1. Income from employment of children (including foster children) under the age of 18 years.
2. Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of a live-in aide.
6. Certain increases in income of a disabled member of the family residing in HOME assisted housing or receiving HOME tenant-based rental assistance (see 7. under L: Determining Whose Income to Count).
7. The full amount of student financial assistance paid directly to the student or to the educational institution;
8. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
9.
 - a. Amounts received under training programs funded by HUD.
 - b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).
 - c. Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care etc.) which are made solely to allow participation in a specific program.
 - d. Amount received under a resident's service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner or manager on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination and serving as a member of the governing board. No resident may receive more than one such stipend during the same period of time.
 - e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded must be received under employment training programs with clearly defined goals and objectives, are excluded only for the period during which the family member participates in the employment training program.

10. Temporary, nonrecurring or sporadic income (including gifts).
11. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse).
13. Adoption assistance payments in excess of \$480 per adopted child.
14. For public housing only, the earnings and benefits to any family member resulting from participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, Section 22 of the 1937 Act, or any comparable federal, state or local law during the exclusion period.
15. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
16. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
17. Amounts paid by a state agency to a family with member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
18. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which exclusions set forth in 24 CFR 5.609(c) apply. The following is a list of types of income that qualify for that exclusion (9/27/89 regulations):
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
 - b. Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through VISTA; Retired Senior Volunteer Program, Foster Grandparents Program, youthful offenders incarceration alternatives, senior companions);
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));
 - d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 259e);
 - e. Payments or allowances made under the department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
 - f. Payments received under programs funded in whole or in part under the Job Training Partnership Act;
 - g. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians;
 - h. The first \$2,000 of per capita shares received from judgement funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117);

- i. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- j. Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f));
- k. Any earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
- l. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other funds established pursuant to the settlement in the In Re Agent Orange product liability litigation MDL No. 381 (E.D.N.Y.)
- m. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- n. Payments received under the Maine Indian Claims Settlement Act of 1980.
- o. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);
- p. Payments made by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- q. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
- r. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- s. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance); and
- t. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998.

I. TIMING OF INCOME CERTIFICATIONS - All households that receive HOME assistance must be income eligible. At a minimum, income certification must be completed before assistance begins. A preliminary determination of eligibility may be made much earlier in the process.

- 1. Application processing is labor intensive. Early screening for income eligibility can eliminate excessive work in processing an ineligible applicant.
- 2. Establishing a deadline for formal eligibility determinations is a challenging part of the planning process. Generally, the HOME Program permits verification dated no earlier than 6 months prior to eligibility.
- 3. The Grantee must calculate the annual income of the household by projecting the prevailing rate of income of the family at the time the Grantee determines that the family is income eligible. The

eligibility of a household must be re-determined if more than six months elapses between the date the Grantee determines that a household is income-eligible and the date HOME assistance is provided.

- a. For homeowner rehabilitation projects, the date assistance is provided is the date of the rehabilitation contract.
- b. For homeownership programs, the income eligibility of the families is timed as follows:
 - i. In the case of a contract to purchase existing housing, it is the date of the purchase;
 - ii. In the case of a lease-purchase agreement for existing housing or for housing to be constructed, it is the date the lease-purchase agreement is signed; and
 - iii. In the case of a contract to purchase housing to be constructed, it is the date the contract is signed.

J. **INCOME VERIFICATION** - Grantees must examine at least 2 months of source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation statement) for each member of the family. Grantees must verify and retain documentation of all information collected to determine a household's income. Under the Section 8 Program, there are three forms of verification which are acceptable: third-party, review of documents, and applicant certification.

1. **THIRD-PARTY VERIFICATION** - Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person and date of the call.
 - a. To conduct third party verifications, a Grantee must obtain a written release from the household that authorizes the third party to release required information.
 - b. Third-party verifications are helpful because they provide independent verification of information and permit Grantees to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.
2. **REVIEW OF DOCUMENTS** - Documents provided by the applicant (such as pay stubs, IRS returns, etc.) may be most appropriate for certain types of income and can be used as an alternative to third-party verifications. Copies of documents should be retained in project files.

Grantees should be aware that although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, a pay stub may not provide sufficient information about average number of hours worked, over-time, tips and bonuses.

3. **APPLICANT CERTIFICATION** - When no other form of verification is possible, a certification by the applicant may be used. For example, it may be necessary to use an applicant certification for an applicant whose income comes from "odd jobs" paid for in cash.

Applicant certification is the least reliable form of verification and may be subject to abuse. In some cases, the applicant certification can be supplemented by looking at the applicant's past history. The Grantee can review the previous year's income tax return to determine if the current year's income is consistent with activity for the previous year.

- K. **CALCULATION METHODOLOGIES** - Grantees must establish methodologies that treat all households consistently and avoid confusion.
1. It is important to understand the basis on which applicants are paid (hourly, weekly or monthly, and with or without over-time). An applicant who is paid "twice a month" may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).
 2. It is important to clarify whether over-time is sporadic or a predictable component of an applicant's income.
 3. Annual salaries are counted as Annual Income regardless of the payment method. For instance, a teacher receives an annual salary whether paid on a 9- or 12-month period.
- L. **DETERMINING WHOSE INCOME TO COUNT** - Knowing whose income to count is as important as knowing which income to count. Under the Section 8 definition of income, the following income *is not counted*:
1. **INCOME OF LIVE-IN AIDES** - If a household includes a paid live-in aide (whether paid by the family or a social service program), the income of the live-in aide, regardless of its source, is not counted. (Except under unusual circumstances, a related person can never be considered a live-in aide);
 2. **INCOME ATTRIBUTABLE TO THE CARE OF FOSTER CHILDREN** - Foster children are not counted as family members when determining family size to compare with the Income Limits. Thus, the income a household receives for the care of foster children is not included; and
 3. **EARNED INCOME OF MINORS** - Earned income of minors (age 18 and under) is not counted. However, unearned income attributable to a minor (e.g., child support, AFDC payments, and other benefits paid on behalf of a minor) is counted.
 4. **TEMPORARILY ABSENT FAMILY MEMBERS** - The income of temporarily absent family members is counted in Annual Income - regardless of the amount the absent family member contributes to the household. For example, a construction worker earns \$600/week at a temporary job on the other side of the State. He keeps \$200/week for expenses and sends \$400/week home to his family. The entire \$600/week is counted in the family's income;
 5. **ADULT STUDENTS LIVING AWAY FROM HOME** - If the adult student is counted as a member of the household in determining the Income Limit used for eligibility of the family, the first \$480 of the student's income must be counted in the family's income. Note, however, that the \$480 limit does not apply to a student who is head of household or spouse (their full income must be counted); and
 6. **PERMANENTLY ABSENT FAMILY MEMBER** - If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.
 7. **PERSONS WITH DISABILITIES** - During the annual recertification of a family's income, increases in the income of a disabled member of qualified families residing in HOME assisted housing or receiving HOME tenant- based rental assistance is excluded. 24 CFR 5.61(a) outlines the eligible increases in income. These exclusions from annual income are of limited duration. The full amount of increase to an eligible family's annual income is excluded for the cumulative

12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, 50 percent of the increase in income is excluded. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

M. **USING ADJUSTED GROSS INCOME** – Adjusted Gross Income is not used for HOME homeowner rehabilitation programs, homeownership programs, or for determining tenant eligibility for rental housing programs. Adjusted Gross Income is needed only to calculate:

1. The rent for a tenant in a HOME assisted rental unit whose rent must be adjusted because the household income increases above 80 percent of the area median; and
2. A household's eligibility for and the amount of assistance to be provided under the Uniform Relocation Act or Section 104(d) relocations and tenant assistance requirements

N. **CALCULATING ADJUSTED GROSS INCOME** - Adjusted gross income is the annual gross income minus any of the five following deductions (also called allowances) that apply to the household. The household's eligibility for deductions depends, in part, on the type of household that it is. Monthly adjusted income is Annual Adjusted Income divided by 12 months.

1. **FOR ALL HOUSEHOLDS:**

- a. \$480 for each dependent. (A dependent is a person, other than the head or spouse, who is under 18, or handicapped or disabled, or a full-time student of any age)
- b. Reasonable childcare expenses (for children 12 and under) that enable a family member to work or go to school and are not reimbursed. The allowable expenses cannot exceed the income generated by that household member during the period the care is being provided. To document that the anticipated childcare expenses can be deducted, the household must (1) identify the child(ren) who will be cared for; (2) identify the family member who is enabled to work or attend school because of childcare (generally the person with the lowest income – the person who would quit work to take care of the children if no child care were available – is considered the family member enabled to work). This family member must provide documentation that he or she is employed, actively looking for work or is currently enrolled in a vocational program or degree-granting institution. The family member does not need to be a full-time student. (3) demonstrate that no other adult household member is available to care for the child; (4) identify the childcare provider; and (5) provide documentation of costs.
- c. Expenses (in excess of 3% annual gross income) for the care of a handicapped or disabled family member that enable that person or another person to work (includes care attendant and necessary equipment and apparatus). Expenses may be deducted only if (1) they are reasonable; (2) they are not reimbursed from another source, such as insurance; (3) they do not exceed the amount of income generated by the person enabled to work; and (4) they are in excess of three percent of annual income.

2. **FOR ELDERLY OR DISABLED HOUSEHOLDS ONLY:**

- a. An elderly household is any household in which the head, spouse, or sole member is 62 years of age or older. For example, a husband, age 59, and wife, age 62, would be considered an elderly household.

- b. A disabled household is any household in which the head, spouse or sole member is a person with disabilities. For example, a husband, age 42, and wife, age 38 and disabled, would be considered a disabled household.
- c. Living with an elderly or disabled relative does not qualify a household for this deduction unless the relative is the head or spouse of the family. For example, if a non-elderly, non-disabled couple take in an elderly parent; this is not a qualified elderly or disabled household. But if the couple moves in with the elderly or disabled parent, the parent is the head of household and the family is qualified for the deduction.
- d. Medical expenses in excess of 3% of annual income that are not reimbursed by insurance or other sources.
- e. Any household that meets the definition of an elderly or disabled household is entitled to a deduction of \$400 per household.

VII. TENANT APPLICATION

- a. An applicant must have on file with _____ a completed Application for Rental Housing Assistance (RH-3), including all information and documentation in support of the application. This information and documentation must be submitted to _____ at least ten (10) days after the request for these documents is mailed or hand-delivered to the applicant.
- B. The applicant must be income eligible. An applicant's reported gross annual income shall be verified by written evidence which may include, but is not limited to:
 - 1. Pay stubs;
 - 2. Certified statements from employers;
 - 3. Self-employment accounting records certified by an independent accountant;
 - 4. Income tax returns;
 - 5. Bank statements; and
 - 6. Eligibility letters from the Social Security Administration and/or the Department of Human Services.
- C. Applicants shall present evidence of their ability to pay the required rents. Acceptable evidence shall include:
 - 1. A valid Section 8 Voucher or Certificate;
 - 2. A gross income at least three and one-third (3.33) times greater than the applicable gross rent (e.g., an income of \$1,320/month for a rent of \$396/month);
 - 3. A successful history of paying rent higher than the applicable HOME rent for the immediate prior twelve months. This is only acceptable in cases where an applicant's living conditions or circumstances would be substantially improved by moving into a HOME unit; or

- 4. Other verifiable evidence acceptable to_____.
- E. A credit report may be used to verify a reported credit history.
- F. A criminal background check may be used in the application process.

VII. TENANT SELECTION/OCCUPANCY REQUIREMENTS

- A. HOME rental units must achieve initial occupancy within 18 months of project completion. For units not leased within 6 months, the grantee must provide a plan for enhanced marketing of the project. If there is no initial occupancy within 18 months, the HOME funds must be repaid to THDA.
- B. Qualified applicants with completed applications will be selected for available rental units on a first come, first served basis. To be considered *complete*, the application and all requested documentation must be received by_____.
- C. All qualified applicants will be placed on a waiting list according to chronological order, based on the date _____ received the completed application. All applicants who are placed on a waiting list will be so notified.
- D. All applicants who are rejected for any cause shall be notified of the reason(s) for their rejection. Said notification shall be hand-delivered or mailed to the applicant at his/her/their last known address within ten (10) days after rejection of the application.

VIII. TENANT LEASE PROTECTIONS

- A. Tenants will be required to sign a lease. If the tenant is a Section 8 Voucher or Certificate user, the lease will be the same Section 8 lease that would be signed with any landlord. If the tenant does not have a Section 8 Voucher or Certificate, the lease will be the HOME lease (RH-6). In either case, the lease protects both the tenant and_____, and sets forth the tenant's responsibilities as well as_____responsibilities and obligations as a landlord. The lease, between the tenant and_____will be for at least ONE year, unless by mutual consent the tenant and_____agree to a lesser term.
- B. _____ may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms of the lease; for violation of applicable federal, state or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.
- C. _____ must maintain the total development in compliance

with all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code, HOME-assisted rental new construction must meet the Standard Building Code and HOME-assisted rental rehabilitation must meet the Standard Housing Code. All other HOME-assisted rental housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet all applicable state and local housing quality standards and code requirements and if there are no such standards, or code requirements, the housing must meet the ongoing property standards as specified by HUD based on the HUD Physical Inspection procedures (Uniform Physical Conditions Standards (UPCS)). Prescribed by HUD pursuant to 24CFR5.705.

D. _____ may not refuse to lease a HOME-assisted unit to a family which holds a rental certificate (Rental Certificate Program) or a rental voucher (Rental Voucher Program) or a comparable document under the HOME program.

E. _____ is required by the Fair Housing Act to give all applicants and tenants equal treatment and is prohibited from discriminating against anyone with respect to race, color, religion, sex, disability, familial status, or national origin. However, there are limited circumstances when the Act requires a housing provider to treat persons with disabilities differently, to enable them to have equal access to, or enjoyment of, housing and other housing-related programs. The Fair Housing Act requires owners to provide “reasonable accommodation” to persons with disabilities. This means that _____ may have to modify rules, policies, practices, procedures,

and/or services to afford a person with a disability an equal opportunity to use and enjoy the housing.

F. Certain Lease Terms are prohibited. These include:

1. *AGREEMENT TO BE SUED* - Agreement by the tenant to be sued, 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.
 - a. 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 the state law.
3. *EXCUSING THE OWNER FROM RESPONSIBILITY* - Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
4. *WAIVER OF NOTICE* - Agreement by 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 jury trial.
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 decision in connection with the lease.
8. *TENANT CHARGEABLE WITH COST OF LEGAL ACTIONS REGARDLESS OF OUTCOME* - Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

IX. SECURITY DEPOSITS

- A. Tenants will be required to make a reasonable security deposit. You will be permitted to make said deposit in equal monthly installments of the first six (6) months of your lease term. The specific amount and manner for handling the security deposit will be set forth in the lease. A security deposit shall not exceed the lower of one month's rent or 30% of the tenant's gross monthly income.

X. RENT LEVELS

- A. Rents are controlled for the length of the applicable affordability period. These rents are determined on an annual basis by HUD. _____ will be provided with these rents,

which include all utilities. The utilities paid by tenants must be subtracted from the rents provided to determine the maximum allowable rents. The applicable utility allowance is provided by the local PHA or THDA. HOME rent limits are on file and open for public inspection in _____'s office.

- B. HOME rents may increase or decrease from year to year. If rents are increased, tenants will be notified in writing at least 30 days in advance. HOME rents may not rise above the limits set by HUD.
- C. Rents for each HOME-assisted rental project must be submitted to THDA annually for review and approval.
- D. Grantees with rental projects of 10 or more units must submit an annual report of the project's financial condition to THDA. In the event that a problem is identified (i.e. the project expenses significantly exceed the revenues), THDA may implement corrective action(s) to restore the financial viability of the project. Such actions may include more frequent reporting, technical assistance or the institution of a substitute owner or manager.

XI. INCOME RECERTIFICATION

- A. As long as the rental unit is governed by the HOME "affordability period" of 5 to 20 years, tenant income must be rechecked and re-certified on an annual basis. The annual re-certification is required by the HOME regulations and helps to ensure that the program continues to serve low or very low income households.
- B. Should the income of a household rise above the HOME income limits, adjusted by family size, the household *will not* be evicted or be required to move. The household would, however, be required to pay higher rent. In such a case, HOME regulations require that these tenants pay 30% of their *adjusted* gross monthly income for rent and utilities

XII. DEFINITIONS

FULL-TIME EMPLOYMENT

A job at which a person regularly spends 31 or more hours per week.

HANDICAPPED OR DISABLED

A person who has been declared disabled for the purposes of Social Security or who has been certified as disabled or handicapped by a qualified public or private agency.

HOMELESS

A family is homeless if they lack a fixed, regular, adequate night-time, and has a primary night-time residence for individuals that is either a supervised public or private shelter; an institution that provides temporary residence for individuals intended to be institutionalized; or a public or private place not designed for or ordinarily used for sleeping.

HOUSEHOLD

All persons who regularly reside together in a single housing unit.

INVOLUNTARILY DISPLACED

An individual or a family is involuntarily displaced if they are displaced from the home they have been occupying or if they will be displaced within six months from the date of certification because of fires, disasters, government

action, or action by a private owner that the tenant could not control or prevent (not to include eviction for cause or a reasonable increase in rent); or actual or threatened physical violence that has occurred recently or is of a continuous nature.

MORE THAN 50% OF INCOME FOR HOUSING

A family paying more than 50% of their gross monthly income for rent and utilities combined. Utilities include electricity, water, heating fuel, and sewer, if available. A family may document actual utility bills or use the lowest applicable utility allowance published by THDA or the local PHA.

OVERCROWDED CONDITIONS

A household is overcrowded if there is an average of three or more persons per bedroom; or if there is no bedroom space for any member(s) of the household.

PART-TIME EMPLOYMENT

A job at which a person regularly works at least 10 but no more than 30 hours per week.

SUBSTANDARD HOUSING

A housing unit is substandard if it does not have operable indoor plumbing; does not have a useable flush toilet, bathtub or shower inside the unit for the exclusive use of the family; does not have electricity, or has inadequate or unsafe electrical service; does not have a safe and adequate source of heat; does not have a kitchen; has been declared unfit for habitation by any agency of government; or is dilapidated to the point that it does not provide decent, safe and sanitary shelter or has one or more critical defects in sufficient number to require considerable repair or rebuilding. Any one of these conditions qualify a unit as substandard.

RENTAL HOUSING FEASIBILITY WORKSHEET

Complete the following calculations to determine the "gap", i.e. the minimum amount of HOME funds needed to carry out the proposed rental housing activity.

If the proposed project consists of scattered site rental housing, this form must be completed for each unit. A project may include more than one site only if the sites are within a four-block area of each other.

PART I: PROJECT INFORMATION

A. PROJECT NAME _____

Project Address _____ County _____

City _____ State _____ Zip Code _____

Project Owner _____

B. PROJECT DETAILS

1. Type of Project

_____	Multifamily Rental Residential
_____	Single Room Occupancy Housing
_____	Elderly Housing
_____	Single Family Dwelling
_____	Congregate Care Facility
_____	Other

2. Type of Activity

	New Acquisition	Construction
_____	Acquisition	
_____	Acquisition/Rehabilitation	
_____	Rehabilitation only	

3.	_____ Total number of units	Number of HOME-assisted units	_____
		Number of HOUSE-assisted units	_____

4. Are or will all low-income units be of a least equal comparability in terms of construction quality and amenities when compared to non-HOME assisted units of the project?

7

YES

11

NO

C. SITE INFORMATION

1. Is the site currently under control of the applicant? ☐ YES ☐ NO
If YES, control is in the form of: ☐ Deed ☐ Option ☐ Sales Contract
Expiration date of contract or option _____
2. Is site properly zoned for the development? ☐ YES ☐ NO
If NO, is site currently in the process of re-zoning? ☐ YES ☐ NO
When is the zoning issue to be resolved? _____ (month/year)
3. Are all necessary utilities presently available at the site? ☐ YES ☐ NO
If NO, which utilities need to be brought to the site? _____

D. RELOCATION INFORMATION

Does this project propose any relocation of tenants? ☐ YES ☐ NO

If YES, STOP. You must notify THDA PRIOR to submitting the application.

E. MAXIMUM HOME SUBSIDY

1. Maximum HOME subsidy possible:
- | | | | | | | |
|--------------------|-----------|---|-------|-------|---|---------|
| 0 BR | \$ 55,339 | x | _____ | units | = | \$_____ |
| 1 BR | \$ 63,438 | x | _____ | units | = | \$_____ |
| 2 BR | \$ 77,140 | x | _____ | units | = | \$_____ |
| 3 BR | \$ 99,794 | x | _____ | units | = | \$_____ |
| 4 BR | \$109,543 | x | _____ | units | = | \$_____ |
| Total HOME subsidy | | | | | | \$_____ |
2. Total HOME subsidy or maximum of \$500,000: \$_____

F. SOURCE OF FUNDS *(Commitment letters must be attached)*

1. Amount of contribution
- | | | |
|----|------------------------|---------|
| a. | Mortgage Proceeds | \$_____ |
| b. | Syndication Proceeds | \$_____ |
| c. | Equity Contributions | \$_____ |
| d. | Federal Funds | \$_____ |
| e. | State Funds | \$_____ |
| f. | Local Government Funds | \$_____ |
| g. | TOTAL FUNDS | \$_____ |

PART II: PROJECT FEASIBILITY WORKSHEET

A.	PROJECT COSTS	HOME COSTS	TOTAL COSTS
1.	To Purchase Land & Buildings	\$ _____	\$ _____
2.	Site Work	\$ _____	\$ _____
3.	Rehabilitation & New Construction		
	New Building Hard Costs	\$ _____	\$ _____
	Rehabilitation Hard Costs	\$ _____	\$ _____
	Contractor Overhead	\$ _____	\$ _____
	Contractor Profit	\$ _____	\$ _____
	Subtotal	\$ _____	\$ _____
4.	Contingency		
	Construction Contingency	\$ XXXXXXXXXXXX	\$ _____
	Subtotal	\$ XXXXXXXXXXXX	\$ _____
5*.	Architectural & Engineering Fees		
	Architect Fee-Design	\$ _____	\$ _____
	Architect Fee-Supervision	\$ _____	\$ _____
	Subtotal	\$ _____	\$ _____
6.*	Interim Costs		
	Construction Insurance	\$ XXXXXXXXXXXX	\$ _____
	Construction Interest	\$ XXXXXXXXXXXX	\$ _____
	Construction Loan Origin	\$ _____	\$ _____
	Construction Loan Credit		
	Enhancement	\$ _____	\$ _____
	Taxes	\$ _____	\$ _____
	Subtotal	\$ _____	\$ _____
7.*	Financing Fees and Expenses		
	Bond Premium	\$ _____	\$ _____
	Credit Report	\$ _____	\$ _____
	Permanent Loan Origin fee	\$ _____	\$ _____
	Perm Loan Credit Enhance	\$ _____	\$ _____
	Cost of Issue/Underwriter	\$ _____	\$ _____
	Title and Recording	\$ _____	\$ _____
	Counsel's Fee	\$ _____	\$ _____
	Subtotal	\$ _____	\$ _____
8.*	Soft Costs		
	Property Appraisal	\$ _____	\$ _____
	Market Study	\$ _____	\$ _____
	Environmental Study	\$ XXXXXXXXXXXX	\$ _____
	Rent-Up	\$ XXXXXXXXXXXX	\$ _____
	Relocation Costs	\$ _____	\$ _____
	Affirmative Marketing Activities	\$ XXXXXXXXXXXX	\$ _____
	Subtotal	\$ _____	\$ _____
9.	Initial Operating Reserves	\$ XXXXXXXXXXXX	\$ _____
10.	TOTAL DEVELOPMENT COSTS	\$ _____	\$ _____

**If the total of project costs from Sections A5, A6, A7 and A8 exceed 12% of Total Development Costs (A10), you must provide written justification.*

B. MONTHLY UTILITY ALLOWANCE CALCULATIONS*(If utilities are paid by tenants)*

UTILITY TYPE	ALLOWANCE AMOUNT				
	0 BR	1 BR	2 BR	3 BR	4 BR
Heating					
Air Conditioning					
Cooking					
Lighting					
Water					
Sewer					
Trash					
TOTAL ALLOWANCE					

SOURCE OF UTILITY AMOUNTS: ☐ THDA ☐ Local PHA ☐ Other _____

C. MAXIMUM HOME RENTS *(See Attachment V: HOME Program Rents)*

RENT	0 BR	1 BR	2 BR	3 BR	4 BR
High HOME Rent					
Low HOME Rent					
Utility Allowance (UA)					
Net High HOME Rent (High Rent less UA)					
Net Low HOME Rent (Low Rent less UA)					

D. PROPERTY INCOME CALCULATIONS

If charging less than allowable net rents, you must attach a written justification.

- | | | | | |
|----|---|---|--|----------|
| 1. | 0 Bedroom | — | # units x _____ monthly high rent | \$ _____ |
| | 0 Bedroom | — | # units x _____ monthly low rent | \$ _____ |
| 2. | 1 Bedroom | — | # units x _____ monthly high rent | \$ _____ |
| | 1 Bedroom | — | # units x _____ monthly low rent | \$ _____ |
| 3. | 2 Bedroom | — | # units x _____ monthly high rent | \$ _____ |
| | 2 Bedroom | — | # units x _____ monthly low rent | \$ _____ |
| 4. | 3 Bedroom | — | # units x _____ monthly high rent | \$ _____ |
| | 3 Bedroom | — | # units x _____ monthly low rent | \$ _____ |
| 5. | 4 Bedroom | — | # units x _____ monthly high rent | \$ _____ |
| | 4 bedroom | — | # units x _____ monthly low rent | \$ _____ |
| 6. | Total monthly income (E1 + E2 + E3 + E4 + E5) | | | \$ _____ |
| 7. | Less vacancy allowance _____% | | | \$ _____ |

If the estimated vacancy allowance exceeds 10%, attach a written justification.

- | | | |
|-----|---------------------------------------|----------|
| 8. | Other income (List) _____ | \$ _____ |
| 9. | Net monthly income (E6 - E7 + E8) | \$ _____ |
| 10. | Total annual project income (E9 x 12) | \$ _____ |

E. PROJECT OPERATING EXPENSES

- | | | |
|-----|---|----------|
| 1. | Management | \$ _____ |
| 2. | Utility | \$ _____ |
| 3. | Water/Sewer | \$ _____ |
| 4. | Trash Removal | \$ _____ |
| 5. | Payroll/Payroll Taxes | \$ _____ |
| 6. | Insurance | \$ _____ |
| 7. | Real Estate Taxes | \$ _____ |
| 8. | Maintenance | \$ _____ |
| 9. | Compliance Reporting | \$ _____ |
| 10. | Other | \$ _____ |
| 11. | Total Annual Operating Expenses
(F1 + F2 + F3 + F4 + F5 + F6 + F7 + F8 + F9 + F10) | \$ _____ |

If "Annual Operating Expenses" (F11) exceeds 50% of "Total Annual Income" (E10), you must attach a written justification.

F. REPLACEMENT RESERVES FOR UNITS**ANNUAL**

\$ _____

At a minimum, Annual Reserves for Replacement should be at least \$750 per unit per year.

G. TOTAL AVAILABLE FOR DEBT SERVICE

1. Annual Project Income (E10) \$ _____
2. Less Annual Operating Expenses (F11) \$ _____
3. Less Annual Replacement Reserves (G) \$ _____
4. Total available for debt service (H1 - H2 - H3) \$ _____

H. DEBT PROJECT WILL SUPPORT *(This section should be completed with your Lender)*

1. Total available for debt service (H4) \$ _____
2. Debt Service Coverage Ratio Required from Lender _____ %
(Percentage of net income from the project the lender will consider available to pay debt) If this ratio exceeds 125%, your lender must attach a written justification.
3. Actual Amount Available for Debt Service \$ _____
(Total available for debt service divided by debt service ratio)
4. Specifics of Debt
 - a. Interest Rate _____ %
If the interest rate exceeds 10%, your lender must attach a written justification.
 - b. Amortization Term _____ Years
If the amortization term is less than 15 years, your lender must attach a written justification.
5. Debt project will support (should agree with TOTAL SOURCE OF FUNDS (Part I: F1g) on page 2) \$ _____

I. FEASIBILITY SUMMARY

1. **Total Development Costs** (Part II: A10) \$ _____
2. **Total Funding Sources**
 - a. Debt Project will Support (I4) \$ _____
 - b. Owner's Equity Contribution (including syndication proceeds) \$ _____
 - c. Other Grants \$ _____
 - d. Total Funding \$ _____
3. **The Gap**
 - a. Total Development Costs less Total Funding (I(1) – I(2)(d)) \$ _____
 - b. HOME/HOUSE Award \$ _____
 - c. Balance to be funded by Owner (I(3)(a) – I(3)(b)) \$ _____

J. MANAGEMENT AND MARKETING.

1. For single developments of over 10 units, you agree that should your proposal be accepted by THDA that you will produce a market analysis to determine the marketability of the development in a form acceptable to THDA.
2. For single developments of over 10 units, you agree that should your proposal be accepted by THDA that you will formulate a plan for the management of the development once completed in a form acceptable to THDA.

The undersigned hereby certifies that the information set forth in this form, and in any attachment in support thereof, is true, correct and complete. If additional sources of federal funds become available, THDA will be notified immediately. The undersigned also certifies that they are aware that providing false information can subject the individual signing to criminal sanctions up to and including a Class B Felony.

APPLICANT: _____

BY: _____

DATE: _____

RENTAL HOUSING APPLICATION

This is a preliminary application for apartment at _____. It holds no lease or rent obligations. All information will be verified by the management prior to an applicant being placed on our waiting list for consideration. All applicants must meet established selection criteria.

Date: _____

A. PERSONAL INFORMATION

Head of Household: _____ Age: _____

Address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widow/Widower

All persons living with you	Relationship	Age	Sex

Are either you or your spouse handicapped or disabled? ☐ YES ☐ NO

If YES, what is the nature of the condition? _____

Have you ever been convicted of a misdemeanor or felony? ☐ YES ☐ NO

If YES, please explain _____

EMERGENCY CONTACT:

Name: _____ Phone: _____

B. PRESENT HOUSING INFORMATION

How long have you lived at your present address? _____

If you presently rent, how much is your rent? \$_____ per _____

Landlord's Name: _____ Phone: _____

Address: _____

C. DEBTS

List all current debts, including loans, credit purchases, credit cards, hospital/doctor bills, etc.
Attach a separate sheet if necessary.

COMPANY/LENDER	AMOUNT OWED	PAYMENT	FREQUENCY
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If you have ever failed to pay a debt, had a foreclosure, taken bankruptcy, or had a judgment against you for debt, attach a separate sheet of paper explaining the details.

D. REFERENCES

List three (3) people not related to you by blood or marriage whom we may contact as references

NAME	ADDRESS	TELEPHONE
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. INDIVIDUAL INCOME CALCULATION

Use one sheet for each family member, including those without income. Mark N/A for areas which are not applicable to the individual. Signature of family member (or guardian for those under 18) is required.

Name _____ Age _____ Sex _____

Last 4 digits Social Security # _____ Do you receive Food Stamps? Yes _____ No _____

1. DO YOU WORK? LIST ALL EMPLOYERS AND WAGES. Attach 60 days most recent pay stubs:

EMPLOYER	TYPE OF WORK	HOW OFTEN PAID	GROSS PAY FROM CHECK STUB

2. DO YOU RECEIVE A BENEFIT CHECK (SOCIAL SECURITY, SSI, VA, AFDC, UNEMPLOYMENT, RETIREMENT, ETC.)? Attach current benefits statements or copies of 2 recent checks & check stubs.

WHO IS CHECK FROM?	TYPE OF CHECK	HOW OFTEN PAID	GROSS PAY

3. ARE YOU SUPPOSED TO RECEIVE CHILD SUPPORT, ALIMONY, OR REGULAR GIFTS OF MONEY? Attach of TN Child Support Enforcement System printout, bank statements.

TYPE OF SUPPORT	AMOUNT	HOW OFTEN PAID	FOR WHICH FAMILY MEMBER?

4. DO YOU HAVE SAVINGS, CHECKING ACCOUNTS, STOCKS, RETIREMENT, ADDITIONAL PROPERTY, OR OTHER ASSETS (DO NOT LIST YOUR CAR OR HOUSE) Attach IRS 1099 forms, bank statements, deeds.

TYPE OF ASSET	NAME OF COMPANY OR BANK	CURRENT VALUE	INTEREST EARNED FROM ASSET

5. IF YOU RECEIVE NO INCOME, FILL IN THE BOX BELOW:

NAME	ARE YOU A MINOR?	IF OVER 18, HOW LONG UNEMPLOYED?

I certify that the information about me in this application for housing assistance is true and correct and that the address listed is my principal residence. If assistance is approved, I will comply with all HOME rules and regulations. I am aware that providing false information on this application can subject me to criminal sanctions up to and including a Class B Felony.

Signature: _____

Date: _____

F. FAMILY INCOME CALCULATION

All information should come from Individual Income Calculation Sheets

1. Number in Household _____

Number with Income _____

Number without Income _____

2. Income Limits for _____ County. Dated _____

Show totals from Individual Income Calculations pages and convert to annual gross income.

If there are assets, compare the current value of the asset to the actual income from the asset.

If the current value is greater than \$5,000, multiply the current value by the passbook rate to determine the income from the asset.

Family Members with Income):

Totals from Individual Income
Calculation sheets

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

3. Calculate Total Household Gross Annual Income:

H. CERTIFICATION AND AGREEMENT

I certify that all the information above is complete, correct and true to the best of my knowledge. I understand that false or misleading information may result in the rejection of my application. I also understand that completion of this application in no way guarantees me that I receive rental housing. Further, I give permission to check any and all information and/or references contained herein, including but not limited to employers and landlords; and further, I also give permission to check my credit rating and the credit information contained herein either directly or through a credit reporting agency.

Applicant

Date: _____

Co-Applicant

Date: _____

RETURN COMPLETED APPLICATION AND ATTACHMENTS TO:

Manager's Comments:

Prior Residence Check: _____
Credit Check _____
Reference Check: _____
Police Check: _____

Disposition: Approved/Date: _____ Disapproved/Date: _____

Notified Date: _____

Date: _____

Manager's Signature

APPLICANT CHECKLIST

PLEASE BRING:

1. Copies of the pay check stubs from the past two months or eligibility letters from social security or the Department of Human Services, or other verification of income.
2. A copy of your income tax form (1040, 1040EZ, etc.) for_____year.
3. Copies of social security cards for all households members.
4. Copies of birth certificates for children, or written explanation of why birth certificates are unavailable.
5. Bank statements for the past three months.
6. Rent receipts or other verification of rent.
7. Other information or documents listed below:

HOME Program Eligibility Release Form

Organization requesting release of information
(Name, Address, Telephone and Date)

Purpose: Your signature on this HOME Program Eligibility Form, and the signatures of each member of your household who is 18 years of age or older, authorizes the above-named organization to obtain information from a third party relative to your eligibility and continued participation in the:

HOME Homeownership Program
HOME Rental Rehabilitation Program
HOME Homeowner Rehabilitation Program
HOME Rental New Construction Program

Privacy Act Notice Statement: The Department of Housing and Urban Development (HUD) is requiring the collection of the information derived from this form to determine an applicant's eligibility in a HOME Program and the amount of assistance necessary using HOME funds. This information will be used to establish level of benefit on the HOME Program; to protect the Government's financial interest; and to verify the accuracy of the information furnished. It may be released to appropriate Federal, State, and local agencies when relevant, to civil, criminal, or regulatory investigators, and to prosecutors. Failure to provide any information may result in a delay or rejection of your eligibility approval. The Department is authorized to ask for this information by the National Affordable Housing Act of 1990.

Instructions: Each adult member of the household must sign a HOME Program Eligibility Release Form prior to the receipt of benefit and on an annual basis to establish continued eligibility. Additional signatures must be obtained from new adult members whenever they join the household or whenever members of the household become 18 years of age.

NOTE: THIS GENERAL CONSENT MAY NOT BE USED TO REQUEST A COPY OF A TAX RETURN. IF A COPY OF A TAX RETURN IS NEEDED, IRS FORM 4506, "REQUEST FOR COPY OF TAX FORM" MUST BE PREPARED AND SIGNED SEPARATELY.

Head of Household – Signature, Printed Name and Date Family Member HEAD
X
Other Adult Member of the Household – Signature, Printed Name and Date Family Member #3
X

Information Covered: Inquiries may be made about items initiated by applicant/tenant.

	Verification Required	Initials
Income (all sources)		
Assets (all sources)		
Child Care Expense		
Handicap Assistance Expense (if applicable)		
Medical Expense (if applicable)		
Federal Preferences		
Other Preferences		
Other (list)		
Dependent Deduction ☐ Full-Time Student ☐ Handicap/Disabled ☐ Family Member ☐ Minor Children		

Authorization: I authorize the above-named HOME Grantee and HUD to obtain information about me and my household that is pertinent to eligibility for participation in the HOME Program.

I acknowledge that:

- (1) A photocopy of this form is as valid as the original
- (2) I have the right to review the file and the information received using this form (with a person of my choosing to accompany me).
- (3) I have the right to copy information from this file and to request correction of information I believe inaccurate.
- (4) All adult household members will sign this form and cooperate with the owner in this process.

Other Adult Member of Household – Signature, Printed Name and Date Family Member #2
X
Other Adult Member of the Household – Signature, Printed Name and Date Family Member #4
X

VERIFICATION OF ASSETS ON DEPOSIT

(Name of HOME Participating Jurisdiction) _____	Checking Account #	Average Monthly Balance for Last 6 Months	Current Interest Rate	
AUTHORIZATION: Federal Regulations require us to verify income from Assets of all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.	Savings Accounts #	Current Balance	Current Interest Rate	
	Certificate of Deposit Account #	Amount	Withdrawal Penalty	Current Interest Rate
	IRA, Keogh, Retirement Accounts			
Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed	Account #	Amount	Withdrawal Penalty	Current Interest Rate
	Money Market Funds	Amount (Average 6 month Balance)	Interest Rate	
Release: I hereby authorize the release of the requested information _____ (Signature of Applicant)	Signature of _____ or Authorized Representative _____ Title: Date: Telephone			
WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.				

VERIFICATION OF EMPLOYMENT

(Name of HOME Participating Jurisdiction) _____	Employed since: _____ Occupation: _____ Salary: _____ Effective date of last increase: _____ Base pay rate: \$ _____/hour or \$ _____/week or \$ _____/month Average hours/week at base pay rate: _____ Hours No. Weeks _____ or No. Weeks _____ worked per year Overtime pay rate: \$ _____/hour Expected average number of hours overtime worked per week during next 12 months: _____ Any other compensation not included above (specify for commissions, bonuses, tips, etc.): For: _____ \$ per _____ Is _____ pay received for vacation? _____ No. of days/year _____ Total base pay earnings for past 12 mos. \$ _____ Total overtime earnings for past 12 mos. \$ _____ Probability and expected date of any pay increase: _____ Does employee have access to a retirement account? Yes _____ No _____ If Yes, what amount can they get access to \$ _____
Release: I hereby authorize the release of the requested information _____ (Signature of Applicant) Telephone	Signature of _____ or Authorized Representative _____. Title: Date:
WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.	

SECURITY DEPOSIT INSTALLMENT PAYMENT AGREEMENT

Tenant: _____

Unit: _____

THIS AGREEMENT entered into on the _____ day of _____, 19____, between
_____ hereinafter called the LANDLORD and
_____ hereinafter called the TENANT.

Pursuant to the terms and conditions of the lease agreement executed between the LANDLORD and TENANT, it is hereby understood between the LANDLORD and TENANT that the Security Deposit for the above stated dwelling unit, as stated in the Lease Agreement executed by the LANDLORD and TENANT on shall be paid by the TENANT to the LANDLORD as stated below:

Total Security Deposit \$ _____

Amount to be paid upon
Signing of the Lease \$ _____

Balance to be paid in _____ installments of \$ _____ each, beginning on
_____ and each _____ thereafter until paid in full.

Landlord Date: _____

Tenant Date: _____

**DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT
AND/OR LEAD-BASED PAINT HAZARDS**
LEAD WARNING STATEMENT:

Housing build before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure:

- a. Presence of lead-based paint and/or lead-based paint hazards (Check (i) or (ii) below):
- i. ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing. Explain.
- _____
- ii. ☐ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- b. Records and reports available to Lessor (Check (i) or (ii) below):
- i. ☐ Lessor has provided the Lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing. (List documents below.)
- _____
- ii. ☐ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgement: (Initial)

- c. _____ Lessee has received copies of all information listed above.
- d. _____ Lessee has received the pamphlet Protect Your Family From Lead In Your HOME.

Certification of Accuracy:

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor

Date

Lessee

Date

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this ____ day of _____, 20____, by and between _____(LANDLORD), whose business address is _____, and _____(TENANT) for the ____ bedroom dwelling located at _____.

THE HOUSEHOLD consists of the following members:

Name_____	Age_____	Relationship_____
Name_____	Age_____	Relationship_____
Name_____	Age_____	Relationship_____
Name_____	Age_____	Relationship_____
Name_____	Age_____	Relationship_____

1. TENANT ELIGIBILITY

The acquisition and/or rehabilitation of this rental property was financed in part by a federal grant from the U.S. Department of Housing and Urban Development (HUD) under the HOME Investment Partnerships Program (HOME) administered by the Tennessee Housing Development Agency (THDA). Pursuant to LANDLORD's Working Agreement with THDA, the LANDLORD has agreed to limit occupancy to eligible low-income tenants as defined by HUD. Such income limitations are based on a percentage of area median income adjusted for household size and are adjusted annually by HUD.

The TENANT hereby certifies that household size has been accurately represented above and that all household income has been disclosed to LANDLORD in the Rental Application, which is part of this lease, for purposes of determining tenant eligibility under HOME.

2. TERM OF LEASE

The term of this lease shall be for one year and shall begin on the _____ day of _____, 20____, and shall continue until (1) a termination of this lease by the LANDLORD in accordance with provisions herein; (2) a termination of this lease by the TENANT in accordance with provisions herein; (3) termination of this lease by mutual agreement of the parties hereto; or (4) the _____ day of _____ of 20____.

3. RENTS

The TENANT shall pay a monthly rent of \$_____ per month for the twelve-month rental period under this lease. Upon annual renewal of this lease, rents may be adjusted in accordance with the federal and state regulations of the HOME Program

The first month's rent (or prorated partial month's rent) in the amount of \$____ is payable upon entering into this lease. Thereafter, full monthly rent is due on the first day of each month. Rent is considered LATE if payment is not received on or before the 5th day of the month (or the first regular business day following the 5th), at which time an additional LATE FEE of \$10.00 will be payable, plus an additional charge of \$1.00 per day will be added thereafter. Provided, however, that such LATE FEE shall not exceed ten percent (10%) of the amount of rent past due. A check returned for any reason shall be considered non-payment of rent and the late fee provision shall apply.

4. LEASE RENEWAL

The TENANT shall give the LANDLORD thirty (30) days written notice of their desire to extend the term of this lease. TENANT understands that annual renewal of this lease will require recertification of TENANT's household income for the purpose of determining TENANT's continuing eligibility. The TENANT will timely supply all required information on household income and composition, or other eligibility factors of the tenant household.

Should TENANT remain eligible under the HOME guidelines, if mutually agreeable to both parties, TENANT and LANDLORD will enter into a new Lease Agreement for a term of one year.

Should the Tenant's household income change during their occupancy resulting in income which is higher than the HOME income limitations, the TENANT will not be required to vacate the dwelling unit. However, the TENANT will be required to enter into a new Lease Agreement for a term of one year and will be required to pay a higher monthly rent which may be equal to the lesser of (a) 30% of their Gross Income less the appropriate Utility Allowance as determined by the local Public Housing Authority or (b) the maximum rent allowable under state and local law. Such rent will be set forth in the new Lease Agreement.

5. SECURITY DEPOSIT

The TENANT has deposited with the LANDLORD an initial security deposit of \$_____ and agrees to deposit an additional \$_____ in equal monthly installments of \$_____ beginning on _____ and continuing until a total Security Deposit of \$_____ has been deposited with the LANDLORD.

The LANDLORD will hold the Security Deposit during the period the TENANT occupies the dwelling unit under this lease, and shall comply with state and local laws regarding interest payments on Security Deposits.

After the TENANT has moved from the dwelling unit, the LANDLORD may (subject to state and local laws) use the Security Deposit, including any interest on the Deposit, as reimbursement for any unpaid rent or any repairs necessitated by action or neglect of the TENANT or for any other amounts with the TENANT owes under this lease. After the TENANT has vacated the unit, the LANDLORD shall inspect the unit and complete a Move-Out Inspection Report, which shall be the basis for any charge against the Security Deposit. The LANDLORD will give the TENANT a copy of the Move-Out Inspection Report listing all items charged against the Security Deposit and the amount of each item. After deducting the amount used as reimbursement to the LANDLORD, the LANDLORD shall promptly refund the full amount of the balance, if any, to the TENANT.

6. UTILITIES

The LANDLORD shall provide the utilities checked in Column A below without any additional cost to the TENANT. The utilities checked in Column B are not included in the Contract Rent, and are to be paid by the TENANT, including any required deposits.

TYPE OF UTILITY	COLUMN A PAID BY LANDLORD	COLUMN B PAID BY TENANT
Electricity	☐	☐
Natural Gas	☐	☐
Propane or other Heating Fuel	☐	☐
Hot Water	☐	☐
Cold Water	☐	☐
Sewer	☐	☐
Garbage Collection	☐	☐
Telephone	☐	☐
Cable Television	☐	☐
Other (Specify)	☐	☐
_____	☐	☐

The TENANT agrees not to waste utilities furnished by the LANDLORD; not to use utilities or equipment for any improper or unauthorized purpose.

7. APPLIANCES/EQUIPMENT

The LANDLORD shall provide the following appliances and equipment:

Range	☐	Other (Specify)	
Refrigerator	___	_____	☐
Dishwasher	___	_____	☐
Washer/Dryer	___	_____	☐
Garbage Disposal	☐	_____	☐

TENANT may not install additional appliances and equipment without the prior written consent of the LANDLORD.

8. MAINTENANCE

TENANT RESPONSIBILITIES:

The TENANT shall be responsible for the ordinary care and cleaning of the dwelling unit and any appliances provided, and shall keep the dwelling and appliances in a clean and sanitary condition and otherwise comply with all state and local laws requiring TENANTS to maintain rented premises. TENANT shall use all appliances, fixtures, and equipment in a safe manner and only for the purposes for which they are intended. If damage to the dwelling unit or appliances (other than normal wear and tear) is caused by acts of or neglect by the

TENANT or other occupying the premises with the TENANT's permission, TENANT, upon agreement with the LANDLORD, shall repair such damage at the TENANT's own expense. If (a) TENANT fails to make agreed upon repairs, or (b) LANDLORD agrees to make repairs, the LANDLORD may cause such repairs to be made and TENANT shall be liable to LANDLORD for any reasonable expense thereby incurred by the LANDLORD.

The TENANT shall not permit any trash or junk to accumulate in the dwelling unit or on the grounds thereof. No inoperable automobiles, or other junk, shall be permitted to remain on the grounds of the dwelling unit except with the written permission of the LANDLORD.

The TENANT shall not make any alterations to the dwelling unit, appliances, fixtures and equipment without the prior written consent of the LANDLORD.

The TENANT shall not install additional or different locks on any doors or windows of the dwelling unit without the prior written consent of the LANDLORD. If the LANDLORD approves the TENANT's request to install such locks, the TENANT agrees to provide the LANDLORD with a key for each lock.

The TENANT shall give the LANDLORD prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities.

LANDLORD RESPONSIBILITIES:

The LANDLORD shall provide for the general preventive maintenance and repair of the dwelling unit and of all appliances owned by the LANDLORD. The LANDLORD shall maintain the dwelling unit to provide decent, safe and sanitary housing in accordance with Section 8 Housing Quality Standards and all relevant local building codes.

The LANDLORD shall provide pest extermination services, as conditions require.

The LANDLORD shall arrange for collection and removal of trash and garbage. The

LANDLORD shall provide repainting, as conditions require.

The LANDLORD shall mow the lawn and provide general maintenance and upkeep of the common area grounds.

9. TERMINATION OF TENANCY

The LANDLORD may not terminate this lease except for (a) serious and repeated violations of the terms and conditions of this lease; (b) violation of federal, state or local law which imposes obligations on a Tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or (c) Other Good Cause.

Any termination of this lease by the LANDLORD shall be preceded by thirty (30) days advance written notice to the TENANT specifying the grounds for said termination.

The LANDLORD may evict the TENANT only by due legal process as provided in state or local law.

10. TERMINATION OF LEASE BY TENANT

The TENANT may terminate this lease without cause at any time after the first year of occupancy of the HOME-assisted dwelling unit upon sixty (60) days written notice by the TENANT to the LANDLORD.

11. NOTICES

Any notice or notices required under this lease may be combined with and run concurrently with any notice or notices required under state and local law.

Any notice by LANDLORD to TENANT or by TENANT to LANDLORD will be delivered to the respective address of each as stated in the first paragraph of this lease.

12. DISCRIMINATION

The LANDLORD shall not discriminate against the TENANT in the provision of services, or in any other manner, on the grounds of age, race, color, creed, religion, sex, handicap, or national origin.

13. INSPECTION OF THE DWELLING UNIT

The LANDLORD's AGENT may enter the dwelling unit only for the following purposes: (1) to inspect to see that the TENANT is complying with this lease; (2) to make repairs; (3) to exhibit the unit to prospective purchasers, mortgagees, tenants, and/or workmen; or (4) to respond to an emergency such as a fire. The TENANT shall not unreasonably withhold consent to the LANDLORD to enter for such purposes. However, the LANDLORD shall, except in an emergency such as a fire, give the TENANT at least twenty-four (24) hours notice of intent to enter the dwelling, and may then enter only at a reasonable time. The TENANT may, solely at his/her discretion, permit the LANDLORD to enter the dwelling unit without said notice. In the case of an emergency, the LANDLORD shall, within two (2) days thereafter, notify the TENANT of the date, time, purpose and result of such entry.

14. INSURANCE

The LANDLORD is not responsible for, and will not provide, fire or casualty insurance for the TENANT's personal property.

15. OCCUPANCY OF THE DWELLING UNIT

The TENANT must live in the dwelling unit and the unit must be the TENANT's only place of residence. The TENANT shall use the premises only as a private dwelling for himself/herself and the individuals listed above.

The TENANT will notify the LANDLORD of the time period and purpose on any extended absences from the dwelling unit (more than thirty (30) days). Should it be determined by LANDLORD that the dwelling unit is no longer a primary residence, tenancy may be terminated so that other eligible households with greater need may be provided affordable housing.

The TENANT agrees not to assign this lease, not to sublet or transfer possession of the premises, nor to give accommodation to boarders or lodgers without the written consent of the LANDLORD. The TENANT further agrees not to use or permit the use of the dwelling unit for any purpose other than as a private dwelling unit solely for the TENANT and his/her family and/or dependents. This provision does not apply to reasonable accommodations of the TENANT's guests or visitors whose stay is less than thirty (30) days.

The dwelling unit may not be used on a regular basis for licensed or unlicensed/paid or unpaid care for children who are not members of the TENANT's household.

16. NOISE

The TENANT agrees not to allow on the premises any excessive noise or other activity which materially disturbs the peace and quiet of other residents in the neighborhood.

17. PETS (☐ APPLICABLE ☐ NOT APPLICABLE)

The TENANT shall be permitted to keep common household pets in his/her dwelling unit, subject to, and upon the terms and conditions set forth in the Pet Rules which is a part of this lease.

The TENANT hereby agrees to comply with all Pet Rules and any subsequent amendments or additions thereto.

The TENANT acknowledges and agrees that a violation of the Pet Rules may be grounds for removal of the pet or termination of tenancy, or both, in accordance with the lease and all applicable federal, state and local laws and regulations.

In addition to any other right of inspection permitted under this lease, the LANDLORD may, after reasonable notice to TENANT, and during reasonable hours, enter and inspect the dwelling unit if the LANDLORD has reasonable grounds to believe or has received a signed, written complaint alleging that the conduct or condition of a pet in TENANT's dwelling unit constitutes, under applicable state or federal law, a nuisance or a threat to the health or safety of the other residents or other persons in the community.

18. CONDITION OF THE DWELLING UNIT

By signing this lease, the TENANT acknowledges that the dwelling unit is safe, clean and in good condition. The TENANT agrees that all appliances and equipment in the unit are in good working order, except as described in the Move-In Inspection Report which is part of this lease. The TENANT also agrees that the LANDLORD has made no promises to decorate, alter, repair or improve the dwelling unit, except as listed on the Move-In Inspection Report. The TENANT further agrees that at the end of occupancy to surrender the dwelling unit in as good condition as when received, reasonable wear and tear excepted.

19. HAZARDS

The TENANT shall not undertake, or permit his/her family or guests to undertake any hazardous acts or do anything that will increase the project's insurance premiums.

If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the TENANT, the TENANT will be responsible for rent payments only up to the date of destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

20. PROHIBITED LEASE PROVISIONS

Notwithstanding anything to the contrary contained in this lease, any provision of this lease which falls within the classification below shall be inapplicable:

- A. AGREEMENT TO BE SUED. Agreement by the TENANT to be sued, to admit guilt, or a judgment in favor of the LANDLORD in a lawsuit brought in connection with this lease.
- B. TREATMENT OF PROPERTY. Agreement by the TENANT that the LANDLORD 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 dwelling unit after the tenant has moved out of the unit. The LANDLORD may dispose of this personal property in accordance with state law.

- C. EXCUSING LANDLORD FROM RESPONSIBILITY. Agreement by the TENANT not to hold the LANDLORD or LANDLORD'S AGENTS legally responsible for any action or failure to act, whether intentional or negligent.
- D. WAIVER OF NOTICE. Agreement of the TENANT that the LANDLORD may institute a lawsuit without notice to the TENANT.
- E. WAIVER OF LEGAL PROCEEDINGS. Agreement by the TENANT that the LANDLORD may evict the TENANT (1) without instituting a civil court proceeding in which the TENANT has the opportunity to present a defense, or (2) before a decision by a court on the rights of the parties.
- F. WAIVER OF JURY TRIAL. Agreement by the TENANT to waive any right to a trial by jury.
- G. 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 this lease.
- H. 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.

21. LANDLORD TENANT ACT

This lease is in conformance with the Uniform Residential Landlord and Tenant Act, Tennessee Code Annotated 66-28-011 through 66-28-517.

22. CHANGES

This lease, together with any future adjustments of rent, evidences the entire agreement between the LANDLORD and TENANT. No change herein shall be made except in writing, signed and dated by both parties hereto.

TENANT acknowledges that he/she has read and understands this lease, the Rental Application, and all other agreements, which are a part of this lease.

IN WITNESS WHEREOF, the parties hereto have, by their duly appointed representatives set forth their signatures:

TENANT:

LANDLORD:

Signature

Date _____

Signature

Signature _____

Date _____

Print/Type Name and Title

Signature

Date _____

Date _____

INITIAL OCCUPANCY PROFILE *(RH-7)

GRANTEE: _____

OWNER: _____

DATE PREPARED: _____

PROPERTY ADDRESS	# OF BDRM	TENANT	INTIAL INCOME CERTIFICATIO N DATE	INITIAL ANNUAL GROSS INCOME	SIZE OF HHOLD	LOWER INCOME PERCENTAGE				UTILITY ALLOW (UA)	MAXIMUM MONTHLY HOME RENTS LESS UA		ACTUAL RENTS
						<30% AMI	<50% AMI	<60% AMI	<80% AMI		HIGH	LOW	

- Initial Occupancy Profile of the first tenants in the unit when the acquisition and/or rehabilitation is completed.

UNIT SUMMARY DATA
(FOR FRONT OF UNIT FILE FOLDER)

Property	Apartment No.
----------	---------------

UNIT INFORMATION

Rent for unit	Type of HOME unit	Is Rent less than or equal to HOME Rent Limit for this unit?	Lease Term
Year 1: \$ _____	High Low	Yes No	Year 1: ____ / ____ / ____ - ____ / ____ / ____
Year 2: \$ _____	High Low	Yes No	Year 2: ____ / ____ / ____ - ____ / ____ / ____
Year 3: \$ _____	High Low	Yes No	Year 3: ____ / ____ / ____ - ____ / ____ / ____

TENANT INFORMATION

1. Tenant Name	Day Phone
Email Address	Night Phone
Notes	
2. Tenant Name	Day Phone
Email Address	Night Phone
Notes	

MAINTENANCE INFORMATION

Date of Request	Description of Problem	Priority Code	Assigned To	Date Resolved	Follow-up Required?

SAMPLE

RENT AND OCCUPANCY REPORT FOR LONG TERM COMPLIANCE

RH-9

Property:

Address:

Date:

Reporting Period:

Total Units: _____

Total

HOME

Units: _____

_____ Low HOME

Rent

Units:

High HOME Rent Units:

A	B	C	D	E	F	G	H	I	J	K	L	M
Unit #	# of Bedrooms	Low or High HOME Rent Unit Designation	Tenant Name	Household Size	Annual (Gross) Income	Low or Very Low Income (LI or VLI)	Date of Last Income Re-Examination	Published Low or High HOME Rent	Utility Allowance	Maximum Actual Rent (I-J)	Unit in Compliance? (Y or N)	Comments
Example	2	L	J. Doe	3	\$14,000	VL	3/2009	\$450	\$75	\$375	Y	

CHAPTER TWELVE – TENANT-BASED RENTAL ASSISTANCE (TBRA) BRIGHT FUTURES BRIDGE SUBSIDY

12.1 – Overview

The BFBS Program offers TBRA to youth who are aging out of the Tennessee foster care system in order to assist eligible youths as they move from dependency to self-sufficiency. The BFBS Pilot Program, executed in partnership with the Sub-recipient, will provide Tenant Based Rental Assistance vouchers to eligible youth.

The Sub-recipient will qualify tenants, assist with housing navigation, approve leases, qualify units, administer housing vouchers and provide ongoing case management and supportive services to eligible youth participating in the BFBS program (Eligible Tenants). The Sub-recipient will be required to adopt an Administrative Plan of the management of the vouchers that has been approved by THDA. THDA will provide program oversight, provide monthly program payments based on qualified draw requests, and provide technical assistance to the Sub-recipient as needed.

12.2 – Administrative Plan

- A. The purpose of the Administrative Plan is to establish the sub-recipient's policies for carrying out THDA's BFBS TBRA program in a manner consistent with federal requirements. All sub-recipients must develop written policies and procedures (Administration Plan) describing how they will administer their HOME TBRA program. Administration Plans must be in accordance with the policies included herein, 24 CFR 92, and all other policies and regulations relevant to the administration of the HOME TBRA program.
- B. Changes to the Administrative Plan
 - 1. The sub-recipient is responsible for complying with all changes in U.S. Department of Housing and Urban Development (HUD) regulations and THDA's HOME Policy pertaining to HOME TBRA. If such changes conflict with this plan, HUD regulations and/or THDA policy will have precedence, and the sub-recipient will revise this plan accordingly.
 - 2. On an ongoing basis the sub-recipient may make minor, non-substantive modifications to the Administrative Plan in order to clarify existing policies and procedures and/or to correct editing errors.
 - 3. The original plan and any proposed changes must be approved by THDA.

12.3 – Eligible Activities

- A) BFBS program funds may be used to assist Eligible Tenants in the following ways:

- 1) To provide a rental assistance voucher to help pay the cost of monthly rent and utility costs for up to 24 months for an eligible unit;
- 2) To pay security and/or utility deposits;
 - a) A Security Deposit may not exceed an amount equal to (2) two months' rent.
 - b) Utility Deposits, as determined necessary by the utility provider, but may not exceed the normal and reasonable amount customary for the area.
- 3) To cover related soft costs for a TBRA project, including unit HQS inspections if performed by a third party. A full list of allowable soft costs can be found in §92.206(d).

B) TBRA administrative funds may be used:

- 1) To pay for reasonable planning and administrative expenses associated with operating a TBRA program. Administration of TBRA is eligible only under general management oversight and coordination under §92.207(a).

12.4 – Prohibited Activities

A) BFBS program funds may NOT be used in the following ways:

- 1) Application fees for housing units.
- 2) Applicant background checks.
- 3) Telephone and cable deposits.
- 4) To make commitments to specific owners for specific projects. Tenants must be free to use the assistance in any eligible unit.
- 5) To provide TBRA to homeless persons for overnight or temporary shelter. Any BFBS subsidy must be sufficient to enable a homeless person to rent a transitional or permanent housing unit that meets Housing Quality Standards (HQS), as defined in §982.401.
- 6) To provide assistance for more than 24 months. The term of rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds.
- 7) To duplicate existing rental assistance programs that already reduce the tenant's rent payment to 30 percent of income. For example, if the household is already receiving assistance under the Section 8 Housing Choice Voucher Program (Section 8) or the Continuum of Care Program, the household may not also receive assistance under the BFBS program.
- 8) To provide assistance outside of the agency's defined service area.
- 9) Other prohibited costs as defined at §92.214.

12.5 – Income Limits

A) INCOME LIMITS

- 1) Eligible Tenants must have an initial total housing income at or below 60 percent of the area median income for the county as adjusted for household size at time of application. Current limits are posted on the THDA web site at <https://thda.org/business-partners/home>
- 2) The income of the household to be reported for purposes of eligibility is the sum of the annual gross income of the beneficiary, the beneficiary's spouse, and any other household member residing in the unit. Annual gross income is "anticipated" for the next 12 months, based upon current circumstances or known upcoming changes, minus certain income exclusions.
- 3) The Sub-recipient must examine the household's income within six months of the time the BFBS assistance is provided.
- 4) If a household is receiving an Independent Living Stipend through the Department of Children's Services, the stipend will be considered as income and included in a household's income determination.

12.6 – Tenant Eligibility

A) Youth are eligible for the BFBS program if they meet the following criteria:

- 1) Were emancipated to adulthood from state custody at or after their 18th birthday OR are currently participating in Extension of Foster Care Services OR have exited Extension of Foster Care Services;
- 2) Were in Department of Children's Services (DCS) custody for at least 1 year;
- 3) Were emancipated or left Extension of Foster Care Services within 12 months of application;
- 4) Are not receiving other housing assistance including, but not limited to:
 - a) Housing placement through DCS
 - b) Long-term housing provided by a social service organization for a free or reduced rate
 - c) Housing Choice Voucher, Continuum of Care Rental Assistance, Veterans Affairs Supportive Housing (VASH) Rental Assistance
- 5) Are a citizen and have a valid social security number
- 6) Have an income at or below 60% of Area Median Income as adjusted for household size.
- 7) Individuals convicted of sex offenses or of manufacturing methamphetamine on the premises of federally-assisted housing are not eligible

- B) Individuals convicted of sex offenses or of manufacturing methamphetamine on the premises of federally-assisted housing are not eligible.

12.7 – Application Process

- A) Interested, qualified applicants should submit an application to the Sub-recipient.
- 1) The Sub-recipient should help interested youth to complete the application if they are unsure about the instructions or the requirements.
 - 2) Sub-recipient will screen the applications and refer those youth who are most qualified for the program based on a reasonable scoring criteria for evaluating the application.
 - 3) The application should take into account factors like income and employment, as well as whether or not the individual has supportive adults in their life and what steps they have already taken to be prepared to live independently.
 - 4) The application tool and scoring criteria to be used by the Sub-recipient must be approved by THDA.
 - 5) The applicant must provide any information requested by THDA or the Sub-recipient as part of the certification process within timelines outlined.

12.8 – Income

A) Income Eligibility for TBRA Beneficiaries (Tenants)

There are two key rules regarding the income eligibility of households under a HOME TBRA program— initial income and income at annual recertification:

- 1) **Initial Income Eligibility:** Income of participating households must be verified before assistance is provided. Income limits are established by household size and revised annually by HUD. For initial income eligibility, a household qualifies for TBRA assistance if its **annual gross income does not exceed 60 percent of Area Median Income (AMI)** indicated on the HOME Income Limits. Programs must ensure that 20 percent of all households served have an income that does not exceed 50 percent AMI.
- 2) **Annual Recertification Income Eligibility:** The subrecipient must recertify family income, size and composition at least annually. Income limits are established by household size and revised annually by HUD. A household may still be served with HOME TBRA so long as its income does not exceed 80 percent AMI (HUD's Low-Income Limit) **after** project entry. If at annual recertification a household's income exceeds 80 percent AMI, the household is no longer eligible for HOME TBRA and assistance can no longer be provided. The subrecipient must give reasonable (minimum of 30 days) notice to the tenant and the owner.

B) Calculating Household Income

Household income: Household income under HOME-funded TBRA program must be calculated using the definition of annual income at 24 CFR Part 5 (Section 8).

The subrecipient must determine annual income by reviewing source documents for at least two months, evidencing annual income (for example, wage statement, interest statement, unemployment compensation) for the TBRA-assisted household.

- 1) Income and asset source documentation for new TBRA recipients is good for a six-month period. If TBRA assistance is not provided before the six months has expired, the household's

income eligibility must be reviewed again before assistance may be provided.

- 2) Income eligibility criteria must be met regardless of the type of TBRA program operated by the subrecipient (e.g., rental assistance, utility deposits, security deposits, etc.).

C) Tenant Selection Requirements

Subrecipients administering HOME-funded TBRA programs **must have a written tenant selection policy** that clearly specifies how households will be selected for participation in its TBRA program. There are two major components of tenant selection –income eligibility (as referenced above) and preferences established by the subrecipient. Preferences: Subrecipients can use HOME-funded TBRA programs to support a variety of local goals and initiatives, including the establishment of preferences.

- 1) Residency preference: The subrecipient may opt to establish a residency preference as part of its community-wide program. A residency preference requires TBRA participants to be residents of the subrecipient service area, but must adhere to the following:
- 2) Subrecipients may establish a residency preference as long as the application of the preference does not have the effect of discriminating on the basis of race, color, religion, sex, nation origin, disability, familial status, age, sexual orientation, gender identity, or marital status.
- 3) The subrecipient's definition of "resident" must include persons who currently reside in the service area, and those who are currently working or have a verified job offer in the service area
- 4) Subrecipients may **not** establish a requirement for minimum length of residency.

D) Preferences for targeted populations: Subrecipients are permitted to design local selection criteria that meet the housing needs of specific populations.

- 1) Preferences for persons with disabilities: Subrecipients may establish a preference for individuals with mental or physical disabilities.

Generally, TBRA and related services may be made available to **all** persons with disabilities that can benefit from such services.

- E) Subrecipients may also provide a preference for a specific category of individuals with disabilities (e.g., persons with AIDS or severe mental illness) if the specific category is identified in the Consolidated Plan as having unmet needs and the preference is needed to narrow the gap in benefits and services available to such persons. In addition, the provision of assistance must be necessary to provide housing, aid, benefit, or services that are as effective as those provided to others.
- F) Preferences for persons with other special needs: Subrecipients may establish a preference for individuals with special needs (seniors, homeless persons, etc.).

- 1) TBRA may be provided exclusively to persons with a particular type of special need, if the specific category of need is identified in the Consolidated Plan as having unmet need and the preference is necessary to bridge the gap in benefits and services received by such persons.
 - 2) As with the general TBRA program, appropriate **non-mandatory** social services may be provided in conjunction with the TBRA.
- G) Selection for TBRA assistance may be conditioned on successful participation in a self-sufficiency program. The family's failure to continue participation in the self-sufficiency program is not a basis for terminating the assistance; however, renewal of the assistance may be conditioned on participation in the program.
- 1) Eligibility may NOT be contingent upon participation in medical- or disability-related services, and cannot be administered in a manner that limits opportunities for persons with disabilities.

12.9 – Eligible TBRA Units and Rent Reasonableness

- A) The HOME TBRA program offers households great flexibility in selecting a housing unit. Households must be free to select the unit of their choice.
- 1) **Public or private:** Units under the TBRA program may be publicly- or privately- owned. Publicly- owned units include public housing, Section 811, Section 202, HOPE 6, Continuum of Care, and HOPWA.
 - 2) **Combining rental assistance with another rental assistance program:** HOME TBRA rental assistance **cannot** be provided to a program participant who is receiving tenant-based rental assistance (e.g. Section 8 or Continuum of Care rental assistance) or living in a housing unit receiving project-based rental assistance or operating assistance through other public sources.
 - 3) **Combining security and utility deposit assistance with another security or utility deposit program:** HOME TBRA security and utility deposit assistance **cannot** be provided to a program participant who is receiving security deposit or utility deposit assistance through other public sources.
 - 4) **Rents must be reasonable:** Subrecipients must disapprove a lease if the subrecipient determines the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.
 - 5) **HOME-funded units are OK:** Households may select units developed or rehabilitated with HOME assistance. However, the subrecipient may not require the household to select a HOME unit as a condition of receiving TBRA. Households must be permitted to move out at the end of the HOME lease term, taking their TBRA assistance with them.
- B) **Portability is an option:** Subrecipients may allow eligible TBRA participants to use their TBRA assistance in units within their service area. THDA does not allow TBRA assistance to be used outside of the subrecipient's service area.

12.10 – Property and Occupancy Standards

- A) The Section 8 Housing Quality Standards (HQS) must be used for HOME TBRA activities. Inspection to verify compliance with HQS and occupancy standards are made both at initial move-in and annually during the term of the TBRA assistance.
- B) The subrecipient must develop local occupancy standards that specify the number of bedrooms needed by households of various sizes and composition.
- C) **Eligible unit size:** The occupancy standards are used to provide consistent criteria for determining the unit size for which the household is eligible.
- D) When the household is selected for the HOME TBRA program, the subrecipient should counsel the household about the unit size for which the household is eligible.
 - 1) If the household will be permitted to select a unit that is larger or smaller than the eligible unit size, the subrecipient should explain the impact of this choice on the tenant's payment.
 - 2) The subrecipient may refer the household to appropriate units, but may not require the household to select the referral unit.
- E) Subrecipient must ensure that the property complies with standards and requirements for as long as the unit is occupied by a TBRA recipient.
 - 1) The subrecipient must conduct an annual inspection to ensure that the unit still meets HQS.
 - 2) The subrecipient must also ensure that the unit is the appropriate size for the household in order to meet the occupancy standard.

12.11 – Lease Requirements

- A) TBRA may be provided through an assistance contract with an owner that leases a unit to an assisted household or directly to the household. In either case, THDA requires subrecipient to approve the lease between the household and the owner.
- B) The tenant's lease must comply with the requirements in §92.253(a) and (b).
- C) **Written lease:** The lease between the owner and the TBRA recipient must be in writing and signed by both parties. A written lease is required regardless of what the state considers as a legal lease. The subrecipient must review the lease.
- D) **Term:** The term of the lease between the tenant and the owner must be **at least one year**, unless both agree otherwise.

E) **What the lease may not say:** The lease **may not** contain the following provisions:

- 1) Agreement by the tenant to be sued or to admit guilt, or a judgment in favor of the owner in a law suit brought in connection with the lease;
- 2) Agreement by the tenant that the owner may take, hold, or sell the personal property of household members without notice to the tenant and a court decision on the rights of the parties (this does not apply to personal property left by the tenant after move-out);
- 3) Agreement by the tenant not to hold the owner or its agents legally responsible for any action or failure to act, whether intentional or negligent;
- 4) Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant;
- 5) Agreement that the owner may evict the tenant (or other household members) without a civil court proceeding where the tenant has the right to present a defense, or before a court decision on the rights of the tenant and the owner;
- 6) Agreement by the tenant to waive a trial by jury;
- 7) Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge a court decision;
- 8) Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in court; or
- 9) Agreement by the tenant to participate in any specific supportive services as a term or condition of the lease. Services may not be mandatory.

F) **Termination:** The subrecipient must establish standards it will use to approve or reject a lease relating to when a landlord may elect to terminate or refuse to renew the lease of a TBRA household. These standards must be in writing. They must also be included within the lease and/or in the contract between the subrecipient and the tenant.

G) **Rent increases:** The subrecipient must review and approve rent increases by the landlord renting to tenants participating in the TBRA program. Owners may adjust rents as leases are renewed (generally annually). The subrecipient must disapprove a lease if the rent is not reasonable.

12.12 – Calculating Rental Subsidy

A) THDA has elected to utilize the Section 8 Housing Choice Voucher method (24 CFR Part 982) to calculate subsidy amounts. Subrecipients must utilize the THDA HOME TBRA Subsidy

- 1) **Maximum TBRA payment (subsidy):** The maximum amount that the HOME TBRA **program** may pay to assist any given household is the difference between 30 percent of the household's **adjusted** monthly income using the requirements in 24 CFR Part 5.611 and the

rent limit established by the subrecipient, known as the payment (rent) standard. This gap is then the constant amount of the monthly TBRA assistance. The household is free to select an actual unit that costs more or less than the subrecipient's payment (rent) standard. **NOTE: THDA typically refers to the rent limit as the payment standard. However, the term *payment standard* means the same thing as the term *rent standard*, which is used in 24 CFR Part 92.**

- B) Regardless of whether the unit cost of the actual unit selected is more or less than the payment (rent) standard, the monthly TBRA to the household remains fixed at the gap between what the household can afford and the subrecipient's payment (rent) standard.
- 1) **Unit costing more:** If the household selects a unit costing more than the payment (rent) standard, the household's monthly payment will exceed 30 percent of its monthly adjusted income. Should a household elect a unit that exceeds the subrecipient's payment (rent) standard, the subrecipient should obtain documentation signed by the household that it understands the unit is considered unaffordable to their income level.
 - 2) **Unit costing less:** If the household selects a unit costing less than the payment (rent) standard, the household's monthly payment will be less than 30 percent of its monthly adjusted income.

12.13 – Minimum Tenant Rent

- A) The HOME Program rules require the subrecipient to establish a minimum tenant payment. **Minimum tenant payment:** The subrecipient may use its discretion in setting this minimum payment level. The minimum payment may be established at a dollar figure (such as \$50) or at a percentage of income (such as 10 percent of monthly income). THDA allows the minimum tenant payment to be as low as \$0.

12.14 – Payment Standard

- A) In establishing a payment (rent) standard, subrecipients may either use the current HUD Fair Market Rent (FMR) (updated and published annually by HUD) or they may set the standard at 110% of the FMR¹. Whichever method is selected, it must be clearly stated in the agency's HOME TBRA Administration Plan and must be applied consistently with all assisted households.

12.15 – Length of Assistance

- A) HOME TBRA rental assistance contracts with individual households may not exceed 24 months. However, contracts **can** be renewed for up to an additional 24 months and every 24 months thereafter, subject to availability of HOME funds.
- B) In circumstances where the payment is made directly to the **landlord**, the 24 month period begins on the first day of the lease and ends upon termination of the lease.

- C) In circumstances where the payment is made directly to the **tenant**, the TBRA payment ends when a lease is terminated. However, payments can begin again once the household enters into a new lease.
- D) Rental assistance contracts may be shorter than two years. For example, if TBRA is used in conjunction with a self-sufficiency program, a subrecipient may want to have a shorter contract term, such as 18 months.

12.16 – Deposit Assistance

- A) HOME regulations allow the security deposit payment to be made to the tenant or the owner and the utility deposit payment to be made to the tenant or the appropriate utility company. THDA requires that deposit payments be made directly to an owner or utility company.
- B) The amount of security deposit paid should be based upon local market practice. However, the maximum amount of HOME funds that may be provided for a security deposit is the equivalent of two months' rent for the unit. Only the prospective tenant, not the owner or landlord, may apply for HOME security deposit assistance.
- C) Utility deposits may be made only in conjunction with the provision of rental assistance or security deposit programs, and cannot be operated separately as a "stand alone" program. Utility deposits may be paid for any of the tenant-paid utility services included on the utility allowance chart provided by the local public housing authority. Telephone and cable deposits are ineligible.

Note: Funds for assistance for security deposits or utilities must be in the form of a grant on behalf of, the tenant.

12.17 – Affirmative Marketing

- A) Each subrecipient of HOME- funded programs must adopt and follow affirmative marketing procedures and requirements.
 - 1) Affirmative marketing requirements and procedures.
 - 2) 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.
 - 3) Since the subrecipient's written agreement with THDA permits the rental housing project to limit tenant eligibility to persons aging out of foster care in accordance with §92.253(d)(3), the subrecipient must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

12.18 – Structure and Repayment

There is no repayment of HOME assistance for HOME TBRA activities by the individual households to the sponsoring agency. All HOME TBRA to individual households will be in the form of a grant. In the

event of non-compliance by a sponsoring agency, repayment of HOME TBRA funds to THDA will be required.

A) THDA reserves the right to:

- 1) Withdraw its conditional funding commitment if items are not submitted by the applicant by the date referenced in the commitment letter.
- 2) Recapture funds if funds are not committed and/or expended by the dates referenced in the funding agreement, or if the project substantially changes after the funding commitment.
- 3) Periodically review the applicant's progress toward timely commitment and expenditure of the HOME allocation. If THDA determines that the project is no longer feasible or is not progressing timely so that the imposed deadlines will be met, funds may be recaptured.

B) THDA will recapture funds for any subrecipient who becomes suspended or debarred in accordance with the THDA Suspension and Debarment Policy.

C) Other examples of situations that constitute recapture are included in the funding agreement. Subrecipients are advised to read those requirements carefully to avoid recapture of HOME funds.

12.19 – Grant Completion

A) If the project does not meet the commitment and/or expenditure deadlines as noted in the HOME TBRA grant agreement, any uncommitted or unexpended HOME project funds are subject to recapture.

12.20 – Record Keeping

A) Recordkeeping and Record Retention requirements must be in compliance with 24 CFR 92.508. For TBRA projects, records must be retained for five years after the period of rental assistance ends or from the time the project is closed, whichever is longer.

B) Documentation of these requirements must be available for review by THDA's compliance monitoring staff or program staff. Subrecipients are responsible for ensuring that all records are maintained for the appropriate period of time for all HOME TBRA projects.

12.21 – Additional Program Administration

A) Additional requirements include but are not limited to:

- 1) Each applicant must develop and utilize a standard program application form. Each household must complete the standard application form. If necessary, the agency will provide assistance in preparing the form; especially to the elderly, handicapped, non-English speaking persons, and persons who are unable to read and/or write.

- 2) All households deemed ineligible for assistance must be notified in writing of such determination and the reasons for such determination. The household should also be notified of other potential resources.
- 3) Applicants should document their efforts to ensure clients are complying with the requirements.
- 4) Applicants must disclose all real, potential, or perceived conflicts of interest to THDA as outlined in 2 CFR Part 200, as applicable, regarding the receipt of, assistance provided with, or expenditure of THDA funds. All conflicts of interest must be disclosed and resolved prior to providing HOME TBRA assistance to the household. For additional guidance on Conflict of Interest requirements, refer to the program description
- 5) HOME applicants must comply with the requirements of the Uniform Relocation Act.
- 6) The subrecipient is responsible for adhering to Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs. Additional information can be found at 24 CFR §5.2001- thru §5.2011.

12.22 – Draw Requests

- A) Procedure HERE TBD

12.23 – Compliance Monitoring

- A) THDA is responsible for conducting monitoring reviews for all projects. THDA will utilize a risk assessment tool to determine the relative risk among funded entities and projects. Subrecipients will receive on- site, desk, or remote monitoring reviews based on the risk assessment. Each subrecipient of HOME funds is required to make available, in a timely manner, all documentation required by THDA's HOME Staff.

Additional Resources

HOME Final Rule 24 CFR Part 92

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr92_main_02.tpl

HUD Exchange

<https://www.hudexchange.info/>

HOME Tenant-Based Rental Assistance Guidance

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2 CFR Part 200 Uniform Administrative Requirements

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

SAMPLE

HOME PROGRAM POLICIES AND PROCEDURES FOR

1. PURPOSE

This program will make available financial and/or technical assistance for the rehabilitation and reconstruction of eligible, substandard, owner-occupied housing units located in the community. Rehabilitation work will correct deficiencies in eligible homes and make them safe, sound, and sanitary.

2. AUTHORITY

The legal authority of this program comes from the working agreement with Tennessee Housing Development Agency, Public Law 101-625 (National Affordable Housing Act of 1990), as well as State and local laws.

3. PROGRAM RESOURCES

The source of funds for the undertaking of these activities is a grant in the amount of \$_____ which has been awarded by Tennessee Housing Development Agency (THDA) through the U.S. Department of Housing and Urban Development Home Investment Partnership Act.

4. APPLICABLE LAWS

- A. The local governing bodies, contractors, subcontractors, vendors and applicants for rehabilitation assistance are required to abide by a number of State and Federal laws, and may be required to sign documents certifying their compliance.
1. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128 and 24 CFR 92.358).
 2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4201-4655), 49 CFR Part 24, and 24 CFR 92.353)
 3. Debarment and Suspension provisions as required by 24 CFR Part 24 and 24 CFR 92.357 and State of Tennessee Procurement Procedures Manual of the Central Procurement Office.
 4. National Environment Policy Act of 1969 (NEPA), 24 CFR Parts 50 and 58, and 24 CFR 92.352.
 5. Equal Opportunity Provisions and Fair Housing, 24 CFR 92.350.
 6. Affirmative Marketing, 24 CFR 92.351.

7. Lead-based Paint Poisoning Prevention Act, 24 CFR 92.355.
8. Conflict of Interest Provisions, 24 CFR 85.36 or 24 CFR 84.42, as applicable, and 24 CFR 92.356.
9. Davis-Bacon Act and Contract Work Hours and Safety Standards Act, and 24 CFR 92.354.
10. Intergovernmental Review of Federal Programs, Executive Order 12372 and 24 CFR 92.359.
11. Drug-Free Workplace, 24 CFR part 24, subpart F.
12. Standard Equal Opportunity Construction Contract Specifications.
13. Certification of Non-segregated Facilities for Contracts over \$10,000.
14. Title VI of Civil Rights Act of 1964 Provisions.
15. Section 109 of Housing and Community Development Act of 1974 Provisions.
16. Section 3 Compliance Provisions.
17. Age Discrimination Act of 1975 Provisions.
18. Section 504 Affirmative Action for Handicapped Provisions.
19. 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
20. And any other Federal requirements as set forth in 24 CFR Part 92, HOME Investment Partnerships Program

5. DRUG-FREE WORKPLACE

- A. The _____ (HOME Grantee) will or will continue to provide a drug-free workplace by
1. Notifying employees in writing that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the action that will be taken against employees for violation of such prohibition.
 2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Grantee's policy of maintaining a drug-free workplace;
 - c. Any drug counseling, rehabilitation, and employee assistance programs; and

- d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- B. Providing each employee engaged in the performance of the HOME contract a copy of the notification required in paragraph A(1) above;
- C. The written notification required in paragraph A (1) above will advise the employee that, as a condition of employment under the HOME grant, the employee will:
 - 1. Abide by the terms of the notification; and
 - 2. Notify the employers in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- D. Notifying the State in writing, within ten (10) calendar days after receiving notice under D(2) above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal Agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 - 1. Taking one of the following actions, within thirty (30) calendar days of receiving notice under D(2) above, with respect to any employee who is so convicted:
 - 2. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 - 3. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - 4. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs A, B, C, D, E and F above.

6. CONFLICT OF INTEREST

- A. No person listed in paragraph B may obtain a financial interest or benefit from a HOME-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.
- B. **PERSONS COVERED** – Immediate family members of any local elected official or of any employee or board member of a non-profit agency are ineligible to receive benefits through the HOME program. “Immediate family member” means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.

In addition, the conflict of interest provisions as apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of THDA, the local community or the non-profit agency (including CHDOs) receiving HOME funds, and who exercises or has exercised

any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision-making process or gain inside information with regard to these activities.

C. APPEARANCE OF A CONFLICT OF INTEREST - Grantees must also make every effort to avoid the appearance of favoritism in the eligibility determination process. In those cases where the applicant is otherwise eligible, but there exists the appearance of a conflict of interest or the Appearance of favoritism, the Grantee must complete HO-4A or equivalent in THDA's GMS system (Determination of a Conflict of Interest). If the answer to any of the four questions on the HO-4A form is (Yes) the grantee must submit the HO- 4A form and written documentation to THDA that the following procedures have been observed:

1. The Grantee must publish an announcement in the local newspaper concerning the potential for a conflict of interest and request citizen comments.
2. The Grantee's attorney must render an opinion as to whether or not a conflict of interest exists and that no state or local laws will be violated should the applicant receive HOME assistance.
3. The Grantee's elected body must pass a resolution approving the applicant.

7 APPLICANT ELIGIBILITY

A. APPLICANT ELIGIBILITY CRITERIA: The following criteria must be satisfied by all applicants in order to become eligible for a rehabilitation grant:

1. The applicant must be low income as defined by current published HOME Income Limit requirements as adjusted for household size, i.e., below 80% of area median income.
2. The applicant must have been the resident of the property to be rehabilitated for a period of not less than one year and must occupy the property as their principle residence.
3. The applicant's ownership must be in the form of:
 - a. Stick built or qualified modular housing;
 - fee simple title; or
 - a 99-year leasehold; or
 - A life estate. The person with the life estate must have the right to live in the housing for the remainder of his or her life and not pay rent, must be low income, and must occupy the housing as his or her principal residence; or
 - Inherited property with multiple owners not all residing in the housing. The owner- occupant must be low income, must occupy the house as his or her principal residence, and must pay all the costs associated with ownership and maintenance of the housing.
 - b. Manufactured Housing;

- A certificate of title for the manufactured home to be rehabilitated or reconstructed free of any encumbrances; and.
 - fee simple title for the lot of land where the mobile home is located
4. The title must not have any restrictions or encumbrances that would unduly restrict the good and marketable nature of the ownership interest.
 5. The applicant must voluntarily apply for assistance.
 6. The applicant is encouraged to obtain or maintain a homeowner's insurance policy appropriate for the type and value of the home and adequate to cover the rehabilitated value of the home to be rehabilitated or reconstructed.
 - a. In the event there is no Homeowners policy with an appropriate construction rider in effect during the time of the rehabilitation or reconstruction of the property the Homeowner or General Contractor must obtain a builders risk (or other acceptable risk policy assigning the grantee as an additional insured) for a minimum of the amount needed to cover the full cost of the rehabilitation or reconstruction. This policy must be in effect prior to the beginning of construction and remain in effect until the certificate of occupancy or equivalent has been delivered to the Grantee.
 - If the Builders Risk Policy is obtained by the homeowner for the purpose of complying with the HOME grant the full cost of the policy will be an eligible soft cost billable to the grant. The eligible costs are limited to the period of construction of the project.

8 INCOME ELIGIBILITY

- A. ANNUAL INCOME (GROSS INCOME)** - The State's HOME program uses the income definitions of the Section 8 program to determine the annual income (gross income) used to classify a *household* for purposes of eligibility. Annual income means all amounts, monetary or not, which:
1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
 2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date. In other words, it is the household's *future or expected* ability to pay rather than its past earnings that is used to determine program eligibility. If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period; and
 3. Which are not specifically excluded in paragraph 6.8 (Income Exclusions) below.
 4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
 5. **MONTHLY GROSS INCOME** - Monthly gross income is Annual Gross Income divided by 12 months.

B. ASSETS - In general terms, an asset is a cash or non-cash item that can be converted to cash. There is no asset limitation for participation in the HOME program. Income from assets is, however, recognized as part of Annual Gross Income. Assets have both a market value and a cash value.

1. **MARKET VALUE** - The market value of an asset is simply its dollar value on the open market. For example, a stock's market value is the price quoted on a stock exchange on a particular day, and a property's market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.
2. **CASH VALUE** - The cash value of an asset is the market value less reasonable expenses required to convert the asset to cash, including:
 - a. Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value (e.g., penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds, or broker fees for converting stocks to cash); and/or
 - b. Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in the real estate.
 - c. Under Section 8 rules, only the cash value (rather than market value) of an item is counted as an asset.
3. **INCOME FROM ASSETS** - The income counted is the actual income generated by the asset (e.g., interest on a savings or checking account.) The income is counted even if the household elects not to receive it. For example, although a household may elect to reinvest the interest of dividends from an asset, the interest or dividends is still counted as income
 - a. The income from assets included in Annual Gross Income is the income that is anticipated to be received during the coming 12 months.
 - To obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account; or if the value of the account is not anticipated to change in the near future and interest rates have been stable, a copy of the IRS 1099 form showing past interest earned can be used.
 - Checking account balances (as well as savings account balances) are considered an asset. This is a recognition that some households keep assets in their checking accounts, and is not intended to count monthly income as an asset. Grantees should use the average monthly balance over a 6-month period as the cash value of the checking account.
 - b. When an Asset Produces Little or No Income:
 - If the family's assets are \$5,000 or less, actual income from assets (e.g., interest on a checking account) is not counted as annual income. For example, if a family has \$600 in a non-interest-bearing checking account, no actual income would be counted because the family has

no actual income from assets and the total amount of all assets is less than \$5,000.

- c. If the family's assets are greater than \$5,000, income from assets is computed as the greater of:
- actual income from assets, or
 - calculate income from assets based on a passbook rate applied to the cash value of all assets. For example, if a family has \$3,000 in a non-interest bearing checking account and \$5,500 in an interest-bearing savings account, the two amounts are added together. Use the standard passbook rate to determine the annual income from assets for this family.
- d. Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an "arm's length" transaction) have, in essence, voluntarily reduced their ability to afford housing. Section 8 rules require, therefore, that any asset disposed of for less than fair market value during the 2 years preceding the income determination be counted as if the household still owned the asset.
- e. The value to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset (less any fees associated with disposal of property, such as a brokerage fee).
- f. Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce or separation is not included in this calculation.
- g. These procedures are followed to eliminate the need for an assets limitation and to penalize people who give away assets for the purpose of receiving assistance or paying a lower rent.

4. ASSETS INCLUDE:

- a. Amounts in savings accounts and six month average balance for checking accounts.
- b. Stocks, bonds, savings certificates, money market funds and other investment accounts.
- c. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset. *DO NOT INCLUDE EQUITY OF PRINCIPAL RESIDENCE AS AN ASSET FOR HOMEOWNER REHABILITATION PROGRAMS.*
- d. The cash value of trusts that are available to the household.
- e. IRA, Keogh, and similar retirement savings accounts, even though withdrawal would result in penalty.
- The "cash value" of an asset is the market value less reasonable

expenses that would be incurred in selling or converting the asset to cash, such as the following:

- Penalties for premature withdrawal;
 - Broker and legal fees; and
 - Settlement costs for real estate transactions
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- The current value of the asset (the value of the 401K or other Individual retirement account minus any penalty (usually 10% to 15%) they would incur for drawing early from it) at the time of verification and multiply that by the passbook.
 - NOTE: unrealized gains ARE included as part of the current asset value but are NOT themselves considered income.
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- f. Contributions to company retirement/pension funds that can be withdrawn without retiring or terminating employment.
 - g. Assets which, although owned by more than one person, allow unrestricted access by the applicant.
 - h. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
 - i. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
 - j. Cash value of life insurance policies.
 - k. Assets disposed of for less than fair market value during two years preceding certification or recertification.

- ASSETS DO NOT INCLUDE:
- Necessary personal property, except as noted under paragraph 6.5(9) (Assets Include) above
- Interest in Indian Trust lands
- Assets that are part of an active business or farming operation.
- NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant/tenant's main occupation.
- Assets not accessible to the family and which provide no income to the family.
- Vehicles especially equipped for the handicapped.

- Equity in owner-occupied cooperatives and manufactured homes in which the family lives.

B. INCOME INCLUSIONS - The following are used to determine the annual income (gross income) of an applicant's household for purposes of eligibility:

1. The full amount, before any payroll deductions, of wages and salaries, over-time pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income for operation of a business or profession including rental property. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the family has net family assets in excess of \$5,000, Annual Income shall include the greater of the actual income derived from net family assets or a percentage of the value of such Assets based on the current passbook saving rate, as determined by HUD.
4. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except Supplemental Security Income (SSI) or Social Security).
5. Payments in lieu of earnings, such as unemployment, workers' compensation and severance pay (but see paragraph (3) under Income Exclusions).
6. Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 - a. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - b. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one

application of the percentage.

7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;
8. All regular pay, special pay and allowances of a member of the Armed Forces. (See paragraph (8) under Income Exclusions).

C. INCOME EXCLUSIONS - The following are excluded from a household's income for purposes of determining eligibility:

1. Income from the employment of children (including foster children) under the age of 18 years;
2. Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family), who are unable to live alone;
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
5. Income of a live-in aide;
6. Certain increases in income of a disabled member of the family residing in HOME assisted housing or receiving HOME tenant-based rental assistance (see 6.12 (7) under Determining Whose Income to Count).
7. The full amount of student financial assistance paid directly to the student or to the educational institution;
8. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
9. Temporary, nonrecurring or sporadic income (including gifts);
10. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
11. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
12. Adoption assistance payments in excess of \$480 per adopted child;
13. For public housing only, the earnings and benefits to any family member resulting from participation in a program providing employment training and supportive accordance with the Family Support Act of 1988, Section 22 of the 1937 Act, or any comparable federal, state or local law during the exclusion period.
14. Deferred periodic amounts from SSI and Social Security benefits that are received in a

lump sum amount or in prospective monthly amounts.

15. Amounts received by the family in the form of refunds or rebates under state or local law from property taxes paid on the dwelling unit.
16. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions apply.
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
 - b. Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through VISTA; Retired Senior Volunteer Program, Foster Grandparents Program, youthful offenders incarceration alternatives, senior companions);
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));
 - d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 259e);
 - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
 - f. Payments received under programs funded in whole or in part under the Job Training Partnership Act;
 - g. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians;
 - h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117)
 - i. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
 - j. Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).
 - k. Any earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
 - l. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other funds established pursuant to the settlement in the In Re Agent Orange product liability litigation MDL No. 381 (E.D.N.Y.)
 - m. The value of any childcare provided or arranged (or any amount received as

payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)

n. Payments received under the Maine Indian Claims Settlement Act of 1980.

D. INCOME EXCLUSIONS - The following are excluded from a household's income for purposes of determining eligibility:

1. Income from employment of children (including foster children) under the age of 18 years;
2. Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family), who are unable to live alone;
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except for payments in lieu of earnings – see paragraph (5) of Income Inclusions).
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
5. For homeowner rehabilitation projects, the date assistance is provided is the date of the rehabilitation contract.
6. For homeownership programs, the income eligibility of the families is timed as follows:
7. In the case of a contract to purchase existing housing, it is the date of the purchase;
8. In the case of a lease-purchase agreement for existing housing or for housing to be constructed, it is the date the lease-purchase agreement is signed; and
9. In the case of a contract to purchase housing to be constructed, it is the date the contract is signed.

E. INCOME VERIFICATION - Grantees must verify and retain documentation of two (2) months of income information for each person in the household to determine the household's income. Under the Section 8 Program, there are three forms of verification which are acceptable: third-party, review of documents, and applicant certification.

1. **THIRD-PARTY VERIFICATION** - Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person and date of the call.
 - a. To conduct third-party verifications, a Grantee must obtain a written release from the household that authorizes the third party to release required information.
 - b. Third-party verifications are helpful because they provide independent verification of information and permit Grantees to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.

2. REVIEW OF DOCUMENTS - Documents provided by the applicant (such as pay stubs, IRS returns, etc.) may be most appropriate for certain types of income and can be used as an alternative to third-party verifications. Copies of documents should be retained in project files.

Grantees should be aware that although easier to obtain than third-party verifications, a review of documents often does not provide needed information. For instance, a pay stub may not provide sufficient information about average number of hours worked, overtime, tips and bonuses.

3. APPLICANT CERTIFICATION - When no other form of verification is possible, a certification by the applicant may be used. For example, it may be necessary to use an applicant certification for an applicant whose income comes from "odd jobs" paid for in cash.

Applicant certification is the least reliable form of verification and may be subject to abuse. In some cases, the applicant certification can be supplemented by looking at the applicant's past history. The Grantee can review the previous year's income tax return to determine if the current year's income is consistent with activity for the previous year.

F. CALCULATION METHODOLOGIES - Grantees must establish methodologies that treat all households consistently and avoid confusion.

1. It is important to understand the basis on which applicants are paid (hourly, weekly or monthly, and with or without overtime). An applicant who is paid "twice a month" may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).
2. It is important to clarify whether overtime is sporadic or a predictable component of an applicant's income.
3. Annual salaries are counted as Annual Income regardless of the payment method. For instance, a teacher receives an annual salary whether paid on a 9- or 12-month period.

G. DETERMINING WHOSE INCOME TO COUNT - Knowing whose income to count is as important as knowing which income to count. Under the Section 8 definition of income, the following income *is not counted*:

1. INCOME OF LIVE-IN AIDES - If a household includes a paid live-in aide (whether paid by the family or a social service program), the income of the live-in aide, regardless of its source, is not counted. (Except under unusual circumstances, a related person can never be considered a live-in aide);
2. INCOME ATTRIBUTABLE TO THE CARE OF FOSTER CHILDREN - Foster children are not counted as family members when determining family size to compare with the Income Limits. Thus, the income a household receives for the care of foster children is not included; and
3. EARNED INCOME OF MINORS - Earned income of minors (age 18 and under) is not counted. However, unearned income attributable to a minor (e.g., child support, AFDC payments, and other benefits paid on behalf of a minor) is counted.
4. TEMPORARILY ABSENT FAMILY MEMBERS - The income of temporarily absent family members is counted in Annual Income - regardless of the amount the absent family

member contributes to the household. For example, a construction worker earns

5. \$600/week at a temporary job on the other side of the state. He keeps \$200/week for expenses and sends \$400/week home to his family. The entire \$600/week is counted in the family's income;
6. ADULT STUDENTS LIVING AWAY FROM HOME - If the adult student is counted as a member of the household in determining the Income Limit used for eligibility of the family, the student's income must be counted in the family's income. Note, however, that the \$480 limit does not apply to a student who is head of household or spouse (their full income must be counted); and
7. PERMANENTLY ABSENT FAMILY MEMBER - If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.
8. PERSONS WITH DISABILITIES – During the annual recertification of a family's income, increases in the income of a disabled member of qualified families residing in HOME assisted housing or receiving HOME tenant- based rental assistance is excluded. 24 CFR 5.61(a) outlines the eligible increases in income. These exclusions from annual income are of limited duration. The full amount of increase to an eligible family's annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, 50 percent of the increase in income is excluded. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

9 ELIGIBILITY REQUIREMENTS OF PROPERTY TO BE REHABILITATED

A. DEFINITIONS - The following are definitions of the various terms used with respect to eligibility requirements of the property to be rehabilitated.

1. DWELLING UNIT - A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
2. SINGLE FAMILY - A housing unit consisting of living, sleeping, bathing, and food preparation designed for single-family use, although more than one family may be residing therein, if every occupant has access to all areas within the building envelope.
3. SUBSTANDARD - A housing unit failing to meet all applicable codes, rehabilitation standards ordinances, and zoning ordinances as set forth by the Community, UPCS as defined by HUD, or as defined by the HOME application.

B. ELIGIBILITY CRITERIA

1. The minimum HOME expenditure per unit must exceed \$1,000.

- ## 10. RATING SYSTEM FOR RANKING OF APPLICANTS

- ## 1. INCOME/FAMILY SIZE

If the income based on family size is less than the stated figure, the household will receive extra points.

REV 1.2025

2. NUMBER IN HOUSEHOLD

1 Person Household	5 Points
2 Person Household	10 Points
3 Person Household	20 Points
4 Person Household	25 Points
5 Person Household	30 Points
6 Person Household	35 Points
7 Person Household	40 Points
8 Person Household	45 Points

3. NUMBER OF ELDERLY 10 Points per person

For each household member at least 62 years old at the time of application

4. NUMBER OF HANDICAPPED/DISABLED 10 Points per person

Household member receiving disability benefits from Social Security, a pension program, life insurance program, or a total or partial physical impairment which renders the person unable to work. Where there exists reasonable question, a doctor's certification will be used.

5. HEAD OF HOUSEHOLD 10 Points

This is a single head of household (male or female) with children under 18, or a dependent with severe developmental disabilities or severe dementia. This does not apply to a widow/widower living alone.

6. NUMBER OF PERSONS 18 OR YOUNGER 10 Points per person

7. CONDITION OF THE DWELLING STRUCTURE

Standard Dwelling No Points

- A standard dwelling is a home with very few or no cosmetic flaws. No structural or major systems that are damaged, deteriorated or non-functioning and a minimum of one of more code deficient items.

Substandard Dwelling 15 to 29 Points

- A substandard dwelling is a home with a few cosmetic flaws, no structural flaws, and 1 or more major systems that are deteriorated or not functioning properly with a minimum of 1 or more code deficient items.

Dilapidated Structure 30 to 50 Points

- A Dilapidated Structure is a home with multiple cosmetic flaws, some structural

flaws, but functioning and has multiple major systems that are non-functioning as designed with multiple code deficient items.

Life Threatening

50 Points

- A Life-Threatening Structure is a home with multiple cosmetic flaws, structural flaws caused by deterioration, rotting, or wood destroying insects. There are multiple major systems that do not work, causing an unsafe structure for life, and health, such as no water, sewer or electric systems. This home could collapse or be destroyed by a major event of weather or man-made activity such as fire and is likely qualified for condemnation.

11. TERMS, CONDITIONS AND CONSIDERATIONS FOR GRANTS

A. DETERMINATION OF THE AMOUNT OF THE GRANT - The amount of a rehabilitation or reconstruction grant that an applicant may receive will not exceed:

1. The actual and approved cost of the repairs and improvements necessary to make the dwelling conform to the housing standards adopted by the Grantee and THDA.
2. The amount and structure of the grant must be consistent with the application submitted to THDA.
3. When the applicant is furnishing supplementary funds from other sources, evidence that actual funds are available will consist of verification and documentation by the Grantee that the applicant has deposited the required amount in the appropriate escrow account. Such deposit must be made before the grant application and any construction work can begin.

B. STRUCTURE OF FINANCIAL ASSISTANCE - HOME funds are used to make forgivable grants to property owners to cover the full cost of the needed rehabilitation or reconstruction work.

1. To prevent homeowners from simply selling the property and profiting from the HOME funded improvements, the owners must repay the program if they sell the property within the compliance period. Part of the owner's obligation is forgiven each year they live in the rehabilitated unit.
2. Repayment of the REHABILITATION grant over a five year affordability period shall be based on a twenty percent (20%) reduction of the amount to be repaid per full year with amounts of less than one year being prorated by days used, according to the following schedule:

Year One	100% Repayment
After one year	80% Repayment
After two years	60% Repayment
After three years	40% Repayment
After four years	20% Repayment
During Year five	0% Repayment

3. Repayment of the RECONSTRUCTION grant over a fifteen-year affordability period shall be based on a six and 67/100 percent (6.67%) reduction of the amount to be repaid per full year with amounts of less than one year being prorated by days used, according to the following schedule:

Year One	100% Repayment
Year Two	93.3% Repayment
Year Three	83.63% Repayment
Year Four	79.96% Repayment
Year Five	73.29% Repayment
Year Six	66.62% Repayment
Year Seven	59.95% Repayment
Year Eight	53.28% Repayment
Year Nine	46.61% Repayment
Year Ten	39.94% Repayment
Year Eleven	33.27% Repayment
Year Twelve	26.60% Repayment
Year Thirteen	19.93% Repayment
Year Fourteen	13.26% Repayment
After fourteen years	6.59% Repayment
During Year Fifteen	Prorated Balance Repayment

4. The property owner must sign a Grant Agreement, Grant Note and a Deed of Trust. The Deed of Trust secures the Grant Note by placing a lien against the property and is activated if the owner attempts to sell within the compliance period.
- If ownership of the property is in the form of a life estate, all owners of the property as well as the person with the life estate must sign the Grant Note and the Deed of Trust.
 - If the property has been inherited by multiple owners not of whom reside in the property, all of the owners must sign the Grant Note and Deed of Trust.
 - Grantees and administrators should consult their agency or community general counsel if there are questions.
5. In cases of death, THDA does not require repayment as long as the ownership of the property passes to the heirs. The heirs may occupy the unit, rent it or let it sit empty, without triggering the repayment clause. However, if the heirs sell the property, or if the property is sold with monetary gain by any actions of a court to settle outstanding claims or settle the estate, the grant must be repaid to THDA, less any forgivable portion.

C. OTHER GRANT CONDITIONS - Specific terms and conditions are incorporated in the grant application and the contract documents. The applicant agrees to:

- Allow inspection by the Grantee and/or THDA of the property whenever the Grantee

and/or THDA determines that such inspection is necessary.

2. Furnish complete, truthful and proper information as needed to determine eligibility for receipt of grant money.
3. Permit the contractor to use, at no cost, reasonable existing utilities such as gas, water and electricity which are necessary to the performance and completion of the work.
4. Cooperate fully with the Grantee and the contractor to insure that the rehabilitation work will be carried out in a timely manner. Provide a safe, secure, and non-hostile environment.

12. ELIGIBLE REHABILITATION ACTIVITIES

A. INTRODUCTION - A rehabilitation grant may be made only to cover the cost of rehabilitation necessary to make a dwelling unit conform to the UPCS and applicable code adopted by the jurisdiction in which the property is located and consistent with the application submitted to THDA.

1. **REHABILITATION:** The maximum allowable HOME funds per Homeowner Rehabilitation unit are capped by the HOME subsidy limits, which are established by HUD and cannot be exceeded.
2. All units built prior to 1978 require a lead-based paint (LBP) inspection. If hazards are identified, a risk assessment by a qualified risk assessor is required. If the risk assessment of a pre-1978 unit discloses no lead, then the cap for rehabilitation costs is capped by the HOME subsidy limit.
3. If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs are less than \$25,000, interim control/lead safe-work practices will apply and the maximum HOME subsidy for rehabilitation hard costs is limited to \$25,000.
4. If the risk assessment for a pre-1978 unit reveals the presence of lead-based paint and the estimated rehabilitation costs exceed \$25,000, then abatement using a qualified abatement contractor and will be required to provide assistance up to the HOME subsidy limits.
5. Manufactured units are eligible for HOME-funded rehabilitation including reconstruction.

B. RECONSTRUCTION HOUSING – Prior to authorizing new dwellings under the “Reconstruction” provisions of the HOME program, the Grantee must determine if reconstruction is the more cost-effective use of HOME funds. The offer by the Grantee to reconstruct a home is a voluntary offer.

1. When reconstruction is recommended, a completed HO-7 or entry of equivalent information in THDA’s GMS management system, along with required supporting documentation and photographs, must be submitted to THDA for review. If THDA concurs with the determination, written permission to proceed will be provided.

C. REPLACEMENT HOME GUIDELINES – The intent of a reconstruction activity is to provide assistance to homeowners who might not otherwise be helped due to the prohibitive cost of rehabilitating their existing home. A replacement home, if deemed the most cost-effective solution to the housing deficiencies, shall be prescribed by the grantee.

1. Rehabilitation spending beyond seventy-five percent of the pre-determined after Rehabilitation Value on an existing home is not authorized if a replacement home is refused by the homeowner without prior written approval. THDA may grant a waiver of this provision on a case-by-case basis where removal of the existing structure would cause undue emotional hardship to the homeowner, negatively impact the architectural character of the neighborhood or have a negative impact on the historic designation of the structure or neighborhood.
2. A replacement home does not necessarily have to meet the same requirements as the existing home in terms of square footage, number of bedrooms/ bathrooms or other design/ amenity considerations.
3. The replacement home must provide all permanent residents of the home with safe, decent and sanitary housing within the terms of the 2018 International Residential Code for One- and Two-Family Dwellings, and/or local codes, as applicable.

D. ELIGIBLE COSTS

1. **EXISTING CODE VIOLATIONS** - Costs which can be included in rehabilitation grants are the costs of correcting existing housing code violations which have been determined by a qualified project inspector and formalized in an individualized housing report.
2. **INCIPIENT CODE VIOLATIONS** - An incipient violation exists if at the time of inspection an element in the structure which, due to age, deterioration, wear, or normal usage will deteriorate within the life of the grant period and thus become a code violation. Costs to correct these potential violations are eligible costs.
3. **PERMITS AND FEES** - Rehabilitation funds may be used to cover the cost of building permits and related fees required to carry out the proposed rehabilitation work. However, since the rehabilitation contract documents will require the contractor to pay them, these costs ordinarily would be included in the contract amount. Recording and filing fees are eligible costs.
4. **EQUIPMENT** - Rehabilitation funds may provide for the repair or purchase and installation of certain basic equipment necessary for the maintenance of the household in a safe, decent, sanitary condition, and in good repair. These include such items as a furnace, water heater, electrical and sanitary fixtures, kitchen range, refrigerator, dishwasher, cabinets and sinks. Purchase and installation is acceptable if there is no such equipment in the dwelling or if the existing equipment is unsafe, unsanitary or non-functional. There is a \$1,000 maximum expenditure (including taxes and delivery) for a kitchen range, a \$650 maximum expenditure (including taxes and delivery) for a dishwasher, a \$1000 maximum expenditure (including taxes and delivery) for a refrigerator. These appliances must be Energy-Star rated where available.
5. **HANDICAPPED** - Special alterations or costs related to making the dwelling more convenient or accessible for physically challenged persons are eligible costs. All work performed in these units must comply with all applicable codes as well as all Federal and State regulations.
6. **LEAD-BASED PAINT** - All costs associated with the reduction of lead-based paint hazards must comply with 24 CFR 92.355.
7. **DEMOLITION OF EXISTING STRUCTURES AND UTILITY CONNECTIONS** All

costs related to the demolition of existing structures and to provide utility connections are to comply with 24 CFR 92.206(a)(3). Demolition is only eligible if it is a part of a HOME reconstruction project or for the removal of an unsafe addition or outbuilding, on the same lot, associated with either a HOME reconstruction or rehabilitation project.

8. EXTERIOR PAINTING - Exterior painting is an eligible cost when it is necessary to maintain a weatherproof exterior on the dwelling.
9. GUTTERS – Gutters are an eligible cost when rehabilitating the exterior of a unit or when reconstructing a unit.
10. OTHER COSTS - Rehabilitation costs not specifically required by the housing rehabilitation standards found necessary to be decent, safe, sanitary, and in good repair-for the general welfare of the occupants of the structure may be considered for eligibility, with prior consent of the Grantee's governing body and THDA, as well as any other cost as outlined in 24 CFR 92.206.

E. INELIGIBLE COSTS

1. Renovation of dilapidated out buildings.
2. Appliances not specifically listed in eligible costs or required by code standards.
3. Materials, fixtures, equipment, or landscaping of type or quality that exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated.
4. All items outlined in 24 CFR 92.214.

13. HOUSING REHABILITATION SPECIFICATIONS
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- A. INTRODUCTION** - This section sets forth the responsibilities of the Grantee for determining the rehabilitation work necessary to bring a dwelling into compliance with the UPCS and applicable code adopted by the State, county or city and with the objective of the program as proposed in the application submitted to THDA. The Grantee will:

1. Inspect the property and prepare an inspection list noting UPCS and code deficiencies.
2. Conduct lead-based paint testing/risk assessment to identify lead-based paint hazards.
3. Conduct Termite Testing, except on houses that will be reconstructed, and identify any termite presence, damage or risk.
4. Consult with and advise the owner of the work to be done and the availability of a rehabilitation grant.
5. Prepare a work write-up and cost estimate as a basis for the rehabilitation grant and for the bid process in contracting for rehabilitation work and lead-paint hazard reduction activities.

- B. PROPERTY REVIEWS** – The THDA approved Rehab Coordinator must conduct: (1) an initial review of the property to determine the deficiencies that must be addressed, (2) a minimum

of a 50% progress review to monitor construction progress and (3) a final review to certify that work is completed in accordance with the approved work write up and any applicable change orders. In addition, a final codes inspection must be conducted by a state certified residential building code official. A certificate of compliance by the local codes official or representative of the State Fire Marshal's Office must be submitted to THDA with the Rehab Coordinator's final property review.

C. WORK WRITE-UP AND COST ESTIMATE - The work write-up and cost estimate is a statement based on the initial inspection, termite inspection and lead-based paint testing/risk assessment. It itemizes separately all the rehabilitation work and the lead hazard reduction activities to be done on the dwelling and includes an estimate of the cost of each item. The cost estimate will be reasonable, reflect prevailing labor and material costs, and reflect a reasonable profit & overhead costs for the contractor. The work write-up and estimate must be reviewed and approved by THDA before presenting it to the homeowner/ applicant.

1. DUAL-USE OF WORK WRITE-UP & COST ESTIMATE (HO-6A) or HO-6B) or equivalent in THDA's GMS system - The work write-up will be detailed and specific in style. Each item will be identified as correcting a UPCS and/or code violation, meeting a code requirement, reducing lead-based paint hazards, or as an eligible cost under the grant. This same work write-up with the cost estimate removed will serve as part of the scope of work and specifications for the construction bidding and contract documents.
2. ITEMIZING COSTS - Each item, definable feature of work and its estimated cost will be identified in the work write-up as either correcting a UPCS deficiency, meeting a code requirement, reducing lead-based paint hazards, or another eligible cost under the grant. This will be done on the work write-up by entering the cost estimates in a columnar arrangement.
3. OWNER PREFERENCE - A work write-up need not contain details that have no significant effect on cost. The term "to be selected by owner" may be used appropriately.

D. CONSULTATION WITH HOMEOWNER/APPLICANT - The Grantee will consult with the prospective applicant on the work write-up and cost estimate. The Grantee will advise the applicant that only work that is directed toward correcting a UPCS and code violation, meeting a code requirement, or that is an eligible activity can be funded by the grant. The homeowner must understand that "cosmetic only improvements" are not eligible for funding. The final work write-up (without costs) will be used by contractors for determining their bids and incorporated into the rehabilitation contract documents which the homeowner and contractor will sign. The homeowner should initial each page and sign the last page of the write-up.

E. CLEARLY WRITTEN SPECIFICATIONS - The work write-up will be written so that it provides a clear detailed understanding of the nature and scope of the work to be done and a basis for carefully determined bids and proposals from contractors. The homeowner shall have a clear understanding of the nature and scope of the work to be done and any limitations that may exist.

1. Each specification will show the nature and location of the work and the quantity and type of material required. The specifications are to comply with THDA's Minimum Design Standards for New Construction, Reconstruction & Rehabilitation of Single Family, Manufactured & Multifamily Housing Units.
2. The specifications will refer to manufacturer's brand names or association standards to identify quality of material and equipment and may make provision for

acceptable substitutes of equal or greater value or quality and brand name requirements may be included in the “General Conditions and Specifications” and indicated by reference in the work write-up.

14. CONTRACTING FOR REHABILITATION WORK

A. INTRODUCTION - This section sets forth requirements and procedures with respect to the construction contracts for housing rehabilitation financed through a rehabilitation grant. Rehabilitation work will be undertaken only through a written contract between the contractor and the property owner receiving the grant.

1. FORM OF CONTRACT - The construction contract will consist of a single document signed by the contractor and the property owner, following approval of the grant application. It will contain a bid, the Grantee’s General Conditions and Specifications by reference, the work write-up which specifies the work to be done, and the existing UPCS and code violations.
2. USE OF ALTERNATES - The document prepared by the Grantee may contain alternates by which each bidder may increase or decrease the lump sum contract price, if the alternates are later accepted as part of the work to be performed.
3. PROCUREMENT OF BIDS - The Grantee will adhere to all federal, state and local procurement requirements including advertising openly and publicly for bids and encouraging minority and female owned firms to bid on its projects.

B. GENERAL CONDITIONS - The bid package will contain the following:

1. The address, time and date by which the bid should be submitted by the contractor.
2. A provision that the bid be accepted by the homeowner within a specified length of time.
3. A provision that the contractor start work within a specified length of time.
4. A statement concerning the acceptability of progress payments.
5. A provision that final payment on the contract amount will be made only after final inspection, acceptance of all work by the Grantee and the homeowner, and after the Grantee receives the contractor’s final invoice release of liens and warranty, and claims for liens by subcontractors, laborers and material suppliers for completed work or supplied materials.
6. Provisions that the contractor will be required to:
 - a. Obtain and pay for all permits and licenses necessary for the completion and execution of the work and labor to be performed.
 - b. Perform all work in conformance with UPCS, and applicable codes, as well as lead-based paint regulations and requirements, whether or not covered by specification and drawings for the work.
 - c. Keep the premises clean and orderly during the course of the work and remove all debris at the completion of the work. Materials and equipment that have been

removed and replaced as part of the work shall belong to the contractor, unless specifically stated otherwise within the work write-up.

- d. Not assign the contract without written consent of the Grantee and homeowner.
- e. Guarantee the work performed for a period of one year from the date of final acceptance of all work required by the contract. Furthermore, furnish the homeowner, in care of the Grantee, with all operations and maintenance manuals, manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under the contract.
- f. Include a statement as to whether the premises are to be either occupied or vacant during the course of construction work.
- g. A provision that the contractor may reasonably use existing utilities without payment during the course of the work.

C. INSURANCE

- 1. The contractor shall carry or require that there be carried Workman's Compensation Insurance for all his employees and those of his subcontractors engaged in work at the site in accordance with Tennessee State Workman's Compensation Laws.
- 2. The contractor shall carry or require that there be carried Manufacturer's and Contractor's Public Liability Insurance. This insurance will be in an amount not less than \$100,000 for injuries including accidental death to any one person for one accident, and to protect the contractor and subcontractors against claims for injury or death of one or more persons because of accidents which may occur or result from operations under the contract. Such insurance shall cover the use of all equipment, including but not limited to, excavating machinery, trenching machines, cranes, hoists, rollers, concrete mixers, and motor vehicles in the construction of the rehabilitation embraced in their contract.
- 3. The contractor shall carry during the life of the contract Property Damage Insurance in an amount of not less than \$100,000 to protect him and his subcontractors from claims for property damage which might arise from operations under their contract.
- 4. Before commencing work, the contractor shall submit evidence of coverage required to the Grantee. A certificate of insurance shall be presented as the evidence.

NOTE – The Grantee is advised to consult with its attorney to ensure that the extent, limit and amount of contractor's insurance is consistent with the scope of the project and current State law.

D. WORK WRITE-UPS, SPECIFICATIONS AND DRAWINGS – The work write up (Independent Cost Estimate) must include photographs of each deficiency to be addressed as well as all sides of the exterior of the house, crawl space and accessible attic space. The specifications, based on THDA's Design Standards and the applicable building code covering the specific rehabilitation work for each property to be rehabilitated will be prepared by the Grantee's qualified and approved Rehab Coordinator. The specifications will:

- 1. Clearly identify all code deficiencies and any lead-based paint hazard;
- 2. Specify work to correct those deficiencies or hazards;

3. Note any unusual features or limitations;
4. Include the Grantee's estimated cost for rehabilitation; and
5. Will be initialed on each page by the homeowner and signed on the signature page by the homeowner.

E. INELIGIBLE CONTRACTORS - The Grantee may determine a contractor ineligible to bid on projects when:

1. The contractor is listed on the Federal Debarred list; the grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at <https://www.sam.gov/portal/public/SAM/>). The grantee will print out the system search results and place in file to document that the contractors and subcontractors are not on this list.
2. The Contractor is listed on the State of Tennessee list of Debarred Vendors. (available at: tn.gov/content/dam/tn/generalservices/documents/cpo/other/Debarred_Vendors.pdf)
3. There is documented proof that the contractor has not paid material suppliers;
4. There is documented proof that the contractor has not completed projects within the allotted time frame;
5. There exist substantial complaints by homeowners about quality of work and performance.
6. There is documented proof that the contractor has not performed warranty work on previous contracts.
7. Conflict of interest exist between the contractor candidate and project participants, location, or any financial ties

F. INVITATION TO CONTRACTORS FOR SUBMISSION OF QUALIFICATIONS -

1. The Grantee will announce the program and solicit for submission of qualifications and interest from licensed general contractors including minority and women owned firms at the beginning of the program and at least once each year thereafter.
 - a. Solicitations for qualifications may be mailed, emailed, posted at locations such as city halls; county courthouses; plan rooms; professional building associations; architectural firms or other places likely to be observed by qualified contractors and/or posted on social medial sites, advertised through traditional media and through word of mouth.
2. The Grantee will accept submissions of qualifications from general contractors throughout the life of the program.
3. The Grantee will develop and maintain a list of qualified general contractors, including minority and women owned firms.

G. SOLICITATION OF BIDS FOR PROJECTS - Bid Solicitation must be a free, open competitive process. Every effort must be made to solicit minority and female businesses. The Grantee should **not** structure its procedures in order to keep business "in town". Absolute fairness must prevail in every aspect of the program, and any questions concerning conflict, or apparent conflict of interest should be discussed with THDA.

1. **ADVERTISEMENT REQUIREMENTS** – The invitation to bid must be published in a newspaper of general circulation at least 14 days prior to the public bid opening. To avoid delays, a Grantee may wish to publish the invitation for bids in the newspaper of the closest metropolitan area to gain wider circulation and thereby increase chances of receiving at least 3 bids. The cost of publication is an administrative expense and not billable to the project.
2. The Grantee will also notify in writing and in a timely fashion all contractors on the Contractors List when bid packages are available.
3. The Grantee will document when and to whom invitations to bid are sent out and packages picked up.

H. BID SELECTION – A minimum of three (3) bids must be received. Bids will be opened on the date and time previously established. A bid tabulation form will be prepared. The grantee will select the lowest qualified bid. THDA may require that the project be re-bid if there are not at least three (3) valid bids in response to the invitation for bids.

1. If the project is re-bid and 3 bids still are not obtained, contact THDA for an exception to the 3-bid requirement. THDA may consider your project as a sole source procurement and/or allow you to award the contract with less than 3 bidders. Written permission must be obtained from THDA before you may award a contract with less than three bids.
2. Should the Grantee/owner decide to select a bid other than the lowest qualified bid, the Grantee/owner should state the reasons/justification in writing. If the owner's justification is not acceptable, the owner will be required to finance any rehabilitation amount that exceeds the lowest qualified bid through his/her personal resources.
3. The Grantee will reject a bid in instances where the bid exceeds the cost estimate by a percentage determined by the Grantee in its policies and procedures, unless a review of the cost estimate demonstrates an error. If a low bid is under the cost estimate, a meeting will be arranged with the contractor to assure that his cost is within reason and will allow him to satisfactorily complete the job. The homeowner will be advised if no acceptable bids are received on their house and the project will be re-bid.
4. **REBID OR CHANGES IN SCOPE** – If all bids exceed the amount of the construction budget, Grantees may not negotiate solely with the low bidder. The project can be re-bid or changed in scope. If the scope of the project is changed, then each bidder must be given the opportunity to bid again. Bidders must be informed that they have the right to change their original unit prices as long as they conform to the revised bid specifications. Grantees must maintain documentation to demonstrate that this process was followed.
5. **DEDUCTIBLE AND ADDITIVE ALTERNATES** – Bid specifications for construction projects may contain deductible alternates. By definition, a deductible alternate is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. The deductible alternates must not change the scope of the project. Bid specifications for construction projects may also contain additive alternates.
6. **DISQUALIFIED CONTRACTORS** – The Grantee must disqualify a contractor from bidding on projects when the contractor is listed on HUD's Limited Denial of Participation and Voluntary Abstention List (the "Debarred List"). A Grantee may also disqualify a contractor from bidding on projects when:

- a. There is documented proof that the contractor has not paid material suppliers; or
- b. The contractor has not completed projects within the allotted time frame; or
- c. There exist substantial complaints by homeowners about quality of work and performance.
- d. There is documented proof that the contractor has not performed warranty work on previous contracts.
- e. Conflict of interest exist between the contractor candidate and project participants, location, or any financial ties
- f. The Grantee will place an advertisement in a local newspaper or the nearest metropolitan newspaper advertising the availability of bid packages.

I. SELECTION OF A SUCCESSFUL BIDDER - The opening of the sealed bids must meet these conditions.

- 1. The opening must be public.
- 2. The best value responsive and responsible bid will prevail. Bids that fall 15% under or 15% over the Grantee's cost estimate (written work write-up) may be rejected as not responsible bids.
- 3. There should be **at least three (3) competitive bids** by eligible contractors.
- 4. Minutes of the award and bid tabulations should be appropriately filed.
- 5. Questions concerning contractor eligibility shall be decided prior to opening the bids.
- 6. The Grantee will verify with THDA that contractors are not debarred.
- 7. The Grantee may limit the number of bids awarded to any one contractor at any one bid letting to three (3).

J. AWARD OF THE CONSTRUCTION CONTRACT - The contract will become effective upon the signatures of the homeowner and contractor and with the Grantee's endorsement. The Grantee will distribute the executed contract documents as follows: original to Grantee, copy to homeowner, copy to contractor.

15. INSPECTION, CLOSE-OUT AND PAYMENT FOR REHABILITATION WORK
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A. RESPONSIBILITY FOR MAKING INSPECTIONS - Inspection of construction will be performed by the Grantee or its designee as follows:

- 1. Compliance inspections will be made as often as necessary to assure that the work is being completed in accordance with the community's building, electrical, mechanical and plumbing codes, zoning regulations, and any other related State or local laws and

ordinances.

2. Inspections will be made as often as necessary to assure that the work being performed is in accordance with the terms of the construction contract, conducting a minimum of three
3. Written notices of inspections (HO-17) or equivalent in THDA's GMS system shall be filed appropriately.
4. The Grantee's Rehab Coordinator will perform a minimum of 3 inspections throughout the project. An initial inspection, a progress inspection, and a final inspection will be conducted in accordance with THDA's Policy and Procedures and HUD 24CFR 92.251 of the 2013 HOME Final rule. An agent of THDA will be selecting projects at random and performing Quality Assurance inspections in accordance with THDA's Policy and Procedures and HUD 24CFR 92.251 of the 2013 HOME Final rule.

PROGRESS PAYMENTS - If progress payments are allowed by the Grantee, no more than four progress payments can be made including the final payment. Progress draws may be requested for the demolition of the structure, at 25% completion, 50% completion and at the finalization of the project. Requests for additional draws must be in writing, reasonable and approved in advance by THDA on a per project basis. The 50% payment must also have an approved progress review and certificate of passed rough-in inspections.

B. FINAL PAYMENTS

1. FINAL REVIEW - Upon completion of the rehabilitation work, a final inspection is conducted by the Grantee's authorized rehab coordinator. Any uncompleted work or work that is unsatisfactory is noted on a final "punch list" and sent to the contractor in writing (HO-17 and HO-18) or equivalent in THDA's GMS system. When these items are completed, clearance testing for lead-based paint hazards is conducted on the unit. When the unit passes clearance testing, and a certificate of code compliance from a local codes official is issued, the project is complete.
2. CERTIFICATION - After the Grantee determines that the rehabilitation work has been fully and satisfactorily completed and the unit has passed clearance testing, the Certification of Completion and Final Inspection form (FM-7) or submission of the same information into THDA's GMS management system when applicable is prepared. The homeowner signs the certification indicating that he/she accepts the rehabilitation work as meeting the terms and conditions of the contract. The contractor signs the certification indicating that the work has been completed in accordance with the contract and that there are no unpaid claims for labor, materials supplies or equipment. The Rehab Coordinator signs the Certification indicating that work has been completed in accordance with the contract and authorizing final payment. PLEASE NOTE: Final payment will not be authorized without a signed Certificate of Code Compliance OR approval of rehabilitation by a local codes official or a state certified codes official.
3. NOTICE OF COMPLETION - The contractor shall file a Notice of Completion with the Register of Deeds in the county where the work is performed and return a certified copy to the Grantee.
4. MAKING FINAL PAYMENT - When the final inspection determines that the work is completed in accordance with the contract and the homeowner has accepted the work, the Grantee will obtain from the contractor a release of liens, including all subcontractors and suppliers, and a copy of each warranty due the owner for the work. The Grantee

will request final payment from THDA at that time.

5. If the homeowner refuses to sign the final acceptance, the Grantee may authorize full payment for those items which are undisputed and acceptable to all parties.

16. GRIEVANCE PROCEDURE

- A.** The Grievance Procedure shall be made a part of the contract between the homeowner and the contractor. Disputes between the homeowner, Grantee and contractor may arise from time to time during the life of the rehabilitation project. In those instances where a mutually satisfactory agreement cannot be reached between the parties, the grievance procedure will be followed.

1. The grievance by the homeowner or contractor is to be filed with the program administrator in writing.
2. The program administrator will meet with the homeowner/contractor and attempt to negotiate a solution.
3. Contact the THDA Community Programs Division at (615) 815-2030 should the program administrator fail to negotiate a solution.

- B. GRIEVANCE PROCEDURE** - If this fails, the program administrator will follow the grievance procedure as outlined below:

1. All claims or disputes between the owner and contractor arising out of or related to the work shall be decided by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association unless the parties mutually agree otherwise.
2. The owner and contractor shall submit all disputes or claims, regardless of the extent of the works progress, to _____ unless the parties mutually agree otherwise.
3. Notice of the demand for arbitration shall be filed in writing with the other party to this rehabilitation agreement and shall be made within a reasonable time after the dispute has arisen.
4. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
5. If the arbitrator's award is in a sum which is less than that which was offered in settlement by the contractor, the arbitrator may award costs and attorney fees in favor of the contractor. If the arbitrator's award is in a sum which is less than that which was offered in settlement by the owners, the arbitrator may award costs and attorney fees in favor of the owner.

- C. THE WRITTEN CONTRACT** - The contract and the rehabilitation specifications, along with the initial inspection report provide the basic documentation by which the relative merits of any dispute will be judged.

- D. CONFLICT OF INTEREST OF PUBLIC OFFICIALS** - No elected or appointed Federal, State

or local official, member of the local governing body, or any other public official or employee who exercises any functions or responsibilities in conjunction with the administration of the housing rehabilitation shall have any interest, direct or indirect, in the proceeds or benefits of the rehabilitation grant program. In those cases where the interest may not be direct or indirect, and the conflict of interest is only “apparent”, the Grantee must contact THDA for clarification before proceeding. THDA will not routinely consider requesting an exception to the conflict of interest provisions from HUD.

- E. **KICKBACKS AND DISCOUNTS** - No member of the governing body of the Grantee or any Grantee employee shall receive kickbacks or discounts from either contractors or property owners in return for special favors in regard to housing rehabilitation.



Minimum Design Standards
Rehabilitation and New Construction
Single Family and Multi-Family Housing Units

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Addendum A: Rehabilitation Standards for Federally Funded Projects

THDA Minimum Design Standards

The following are the Minimum Design Standards for projects funded by or through the Tennessee Housing Development Agency (THDA) using Grants, Tax Credit allocations or bonds, unless a program exception is noted for a specific program. Additional requirements other than those listed within may apply when agreed to in the funding application or contract.

At a minimum all projects funded by or through THDA must comply with all current zoning and building codes adopted by the State of Tennessee or applicable local zoning and/or building codes as adopted by the responsible jurisdiction where the project is being constructed or rehabilitated.

These same standards also apply to accessibility improvements, when required or incorporated into the Development project. Refer to ADA Accessibility Guidelines Latest Edition, or the ICC A117.1 Accessibility Code for technical requirements and standards when applicable.

Division I: General Requirements for All New Construction and Rehabilitation

Minimum Design Standards:

These Minimum Design Standards shall apply when Grant Funding, Tax Credit Allocations or Bonds provided by or through THDA are used for construction or rehabilitation of single family and multifamily housing.

State and local codes, ordinances, and zoning requirements. Housing that is newly constructed or rehabilitated must at a minimum meet all current state adopted building codes and/or where applicable, in exempt jurisdictions, must meet all local and/or county codes, ordinances, and zoning requirements.

All housing developed must meet all applicable building code and zoning requirements upon project completion and satisfy all applicable State and Local Authorities rule and regulations for New Construction or Rehabilitation of housing.

In the absence of local codes, the most current Tennessee State adopted codes and the Existing Building Code as published by the International Code Congress (ICC) shall apply.

All projects provided a Tax Credit Allocation under THDA's Qualified Allocation Plan (QAP) must also meet any requirements included in the QAP.

In addition, all new construction or rehabilitation projects shall comply with all applicable State and local authorities' rules and regulations.

Opt Out areas of Tennessee. In counties or municipalities of Tennessee that have opted out of the applicability of state minimum standards for one and two family dwellings and desire to use funding provided by or through THDA must meet the most current Tennessee State adopted codes and the Existing Building Code as published by the International Code Congress (ICC).

Division 2: Projects or Units Funded Using Federal Grants or Loans

Federally Funded Projects Only: In addition to THDA Minimum Design Standards, all projects using Federal funds provided through THDA, including funding under the HOME Investment Partnership (HOME), National Housing Trust Fund (NHTF), or other federally funded programs are provided in conformance with the Property Standard requirements as sited at 24 CFR 92.251, and are to be used as a guideline to meet and/ or exceed all applicable federal, State, county, and local codes and THDA's current rehabilitation standards noted in Addendum A.

These standards also serve as a vehicle to promote and enforce modern construction and design practices for builders, contractors, and design professionals who wish to utilize federal funding provided through THDA.

Other methods of construction and design may be acceptable on a case by case basis when not in conflict with the required THDA Minimum Design Standards or THDA Rehabilitation Standards for Federally Funded Projects. All housing developed using federal funds must meet the applicable requirements upon project completion.



**Rehabilitation Standards for Federally Funded Rehabilitation
Single Family and Multi-Family Housing Units**

1. State and local codes, ordinances, and zoning requirements:

Housing that is newly constructed or rehabilitated must at a minimum meet all current state adopted building codes and/or where applicable, in exempt jurisdictions, must meet all local and/or county codes, ordinances, and zoning requirements.

2. Health and Safety:

If the housing is occupied at the time of rehabilitation all identified life-threatening deficiencies must be addressed within 72 hours.

3. Quality Assurance:

General Contractors and/or subcontractors shall furnish a written material and labor warranty on all units, materials, and construction for a period not less than one full year after the date of issuance of a certificate of occupancy or owner's final inspection acceptance. All construction workmanship and materials must comply with good and accepted Construction Practices.

- Good and Accepted Construction Practices means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as a good workman-like manner in the construction industry as practiced in Tennessee and the United States.

4. Units for Elderly Residents:

All new and rehabilitated multi-family constructed units for elderly residents, age 62 or older, shall be located at the grade level or on an elevator accessible floor in compliance with ICC A117.1 Section 1005 Type C VISIBLE Units

5. Universal Design:

Projects that receive funding from THDA for the purpose of rehabilitating single family or multi-family housing are **encouraged** to use Universal Design principles to ensure the unit's

Addendum A.

viability for a range of future users. Information regarding Universal Design principles can be found at:

https://www.hud.gov/program_offices/fair_housing_equal_opportunity/accessibility_design

Universal Design features generally promote equitable use, flexibility, simple and intuitive use, perceptible information, tolerance for error, low physical effort and size and space for approach and use.

Some Universal Design features THDA encourages include:

1. At least one “No-step” entry exterior door with a minimum width of 36”.
2. All doors must have a lever-type opening device.
3. All doors within the structure must be a minimum width of 32”.
4. All plumbing features must have lever-type faucets.
5. There should be no steps or slopes, other than to move from floor to floor.
6. All electrical receptacles shall be located no less than 15” above the floor.
7. All electrical switches shall be located between 42” and 46” above the floor.
8. Tall ADA Style water closet.

6. Accessibility:

All projects using funds from federally funded programs must comply with the current HUD required Accessibility Standards.

- a. 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).

7. Energy Efficiency:

All rehabilitated residential building designs shall strive to meet or exceed minimum energy efficiency requirements as currently adopted by the State of Tennessee. All new or reconstructed designs shall meet or exceed minimum energy efficiency requirements as currently adopted by the State of Tennessee. All projects must comply with the current HUD required Energy Standards. 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).

8. Lead Based Paint:

Addendum A.

All Project sites shall be certified free of Lead Based Paint Hazards upon completion of the project. If the home was built prior to 1978, the home must be tested for LBP prior to the approval of the work. All LBP Hazards must be abated or corrected per the Tennessee Department of Environment and Conservation, and cleared prior to a final approval. At a minimum housing must meet applicable provisions of [24 CFR part 35](#).

8. **Major Systems –**

Including structural support, roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

a. Requirements for Rental Housing

- i. An estimate (based on age and condition) of the remaining useful life of each major system must be provided upon project completion
- ii. For multifamily housing with 26 or more total units, the useful life of systems must be determined through a capital needs assessment that determines the work to be performed and identifies the long-term physical needs of the project.
- iii. If the remaining useful life of one or more major system is less than the applicable period of affordability, the standards must require the grantee to ensure a replacement reserve is established and adequate monthly payments are made to repair or replace the systems as needed.

b. Requirements for Homebuyer Housing

- i. Upon completion, each of the major systems must have a minimum useful life of 5 years, or the period of compliance whichever is longer, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

9. **Uniform Physical Condition Standards (UPCS):**

Standards must ensure that the housing will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. While States are not required to adopt the standards of criticality or use the HUD's Real Estate Assessment Center's (REAC) scoring protocol, each State's standards must include the UPCS inspectable items and observable deficiencies for the Site, Building Exterior, Building Systems (multifamily housing only), Common Areas (multifamily housing only), and Units identified on the following charts. The rehabilitation standards must identify the type and degree of deficiency that must be addressed. View the HTF FAQ Appendices: Uniform Physical Condition Standards for Multifamily and Single Family Housing Rehabilitation. Appendix A applies to HTF-funded multifamily housing undergoing rehabilitation. Appendix B applies to HTF-funded single family housing undergoing rehabilitation.

10. **Disaster Mitigation:**

All projects must comply with the current HUD required Disaster Mitigation Standards.

- a. Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with

Addendum A.

State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

11. Entries:

All main entries shall have a roof or awning over the entry area. The roof shall cover the entire entry area, depending on the unit type, sufficient to provide adequate protection from the weather.

12. Mailboxes:

All units shall have a USPS approved mailbox either at each individual unit, common area, or a designated location per USPS post master.

13. Kitchen Appliances:

- a. A refrigerator shall be minimum 18 cubic foot frost free provided in all dwelling units to match color with the dishwasher and range on all projects where identified in the PCNA (physical/capital needs assessment). All refrigerators must be Energy Star qualified. The Energy Star mark must be clearly marked on the front/top of the product, clearly displayed in product literature and listed on the manufacturer's Internet site.
- b. A dishwasher, when installed, shall be 24" under counter mount unit to match manufacturer and model line with the refrigerator and range including new construction and rehabilitation projects where identified in the PCNA (physical/capital needs assessment). Standard dishwashers shall use less than 4.25 gallons per cycle and 295 kWh per year. All dishwashers must be Energy Star qualified. The Energy Star mark must be clearly marked on the front/top of the product, clearly displayed in product literature and listed on the manufacturer's Internet site.
- c. An electric or gas range shall be minimum 30" 4 burner with self-cleaning oven provided in all dwelling units to match color with the refrigerator and dishwasher on all rehabilitation projects where identified in the PCNA (physical/capital needs assessment). They must also have an Energy Star Rating and Label on the equipment at the final inspection.

14. Laundry:

All clothes washers supplied in individual units of multi-family dwellings shall have an MEF equal to or greater than 2.0 and a WF equal to or less than 6.0.

All laundry facilities located inside any habitable space shall be equipped with a properly installed washer overflow pan indirectly discharging to an overflow waste receptor, floor drain, or to the exterior of the building. Water supply shut off valve to be single throw cutoff. All washer / dryer areas are required to have a washer box installed into the wall, where possible, at the location of the washer / dryer. If Washer Box cannot be installed into the wall

Addendum A.

due to the construction of the existing wall it must be mounted on the wall at the location of the washer / dryer.

15. Trash Collection:

In Multi-Family Dwellings provisions for dumpsters or trash cans are required. Screening of trash cans and/or dumpsters shall be provided.

16. Office/ Laundry/ Maintenance Building:

Unless individual units are supplied with laundry facilities, all projects consisting of four (4) or more units shall provide common laundry facilities including a minimum of one (1) washer and one (1) dryer per every twelve units up to a maximum total of four (4) washers and four (4) dryers.

17. Radon Reduction:

Active Radon reduction ventilation systems are required in all new construction homes and rehabilitated homes affective as of May 7, 2024. Radon mitigation systems are to be installed by an individual or entity who has been certified by the National Radon Proficiency Program (NRPP), the National Radon Safety Board (NRSB) or other certifying organization or entity recognized and approved by the Environmental Protection Agency (EPA).

18. Landscaping:

Adequate landscaping is required on all multifamily projects. The developer shall submit a landscape plan as part of final plans and specifications. Each building shall include a minimum landscaping package.

19. Turf:

All lawn areas shall be seeded with the seed variety, lime, and fertilizer application rate, which is appropriate to establish a good lawn cover. All slopes in excess of 3:1 within 10 feet of the building, driveway and/or walkway shall receive sod or other approved erosion control materials which will enhance the establishment of a permanent ground cover.

20. Parking/Driveways:

All multifamily projects shall have adequate parking as determined by the local zoning or building. Unless prohibited by local code, jurisdiction or structural constraints all projects shall have a minimum of one parking space per unit. Single Family Dwellings shall have a minimum parking space for 2 vehicles.

21. Parking Lots:

All on-site parking lots and access drives are to be paved and parking spaces shall have bumper stops or curbs. If walkways are used as bumper stops, the walkway shall be 6' wide.

22. Soil Treatment-Termite Protection:

A proper and complete termite inspection of all properties is required. The inspection must be completed by a licensed exterminator who shall report any activity located and treatment applied. A warranty for a period of a minimum one year on all inspections is required. *For new and reconstructed units treatment is all that is required.

23. Electric:

Electrical service shall be installed underground except in cases where deemed structurally infeasible. Overhead service is allowed for infill sites.

24. Manufactured Housing:

The Manufactured Housing Requirements incorporated in the Rehabilitation Standards for federally funded project contain the requirements, rules, and regulations concerning the rehabilitation, replacement, manufacturing, and installation of manufactured housing within the State of Tennessee to assure safe, healthy and affording housing for the occupants of these homes.

a. **Rehabilitation: THDA does not currently allow renovation of manufactured housing. All units of manufactured housing rehabilitated under THDA's HOME program must be reconstructed. In the event THDA allows renovation of manufactured housing at any time the following renovation standards would apply.**

- i. Manufactured housing to be renovated must be located on a lot of land owned by the qualifying beneficiary by means of a fee simple title. Manufactured Housing located on leased land or lots is not eligible.
- ii. When a unit of manufactured housing is rehabilitated it must be placed on or renovated to a permanent foundation as required in the HUD Model Manufactured Home Installation Standards at 24 CFR Part 3285. A *Permanent Foundation* means the manufactured home must have an approved foundation per the HUD Manufactured Housing Permanent Foundation handbook. (Per HUD Handbook 4930 – Permanent Foundations for Manufactured Homes)
- iii. If utility connection is substandard and does not meet the current code then upgrading to meet the current requirements must be an element of the rehabilitation.
- iv. All repairs must meet all state codes for Manufactured Housing, THDA Design Standards for Manufactured Housing and the HUD requirements for manufactured housing as detailed at 24 CFR Part 3280.

b. **Reconstruction:**

Addendum A.

- i. Manufactured housing to be reconstructed must be located on a lot of land owned by the qualifying beneficiary by means of a fee simple title.
- ii. In cases where the renovation of the unit of manufactured housing would exceed exceeds 75% of the after rehabilitated value of the manufactured housing unit, not including land, then the housing unit must be replaced through reconstruction with a new unit of similar square footage and bedroom configuration.
 - 1. The determination of the size and configuration of the manufactured unit will be based on the original manufactured unit and not include and additions or outbuildings.
- iii. HUD and THDA are requiring permanent foundations for replacement of manufactured housing units under § 92.251(e). HUD clarifies that the definition of “permanent foundation” means a foundation system of supports that is capable of transferring all design loads to the ground and meets the requirements of 24 CFR 203.43f(c)(i).
- iv. When a unit is approved for reconstruction the existing unit must be consider condemned and be removed from the property and disposed of according to the state and local codes and requirements. The “existing” unit may not be sold, occupied or used intact in any manner by anyone after the disposal. Disposal may include properly documented disassembly for scrap. Documentation for the disposal of the unit must be provided before final draw is rendered.