HOME and National Housing Trust Fund Rental Program Guidelines

Rev. February 2022

Contents

1. Summary

The Arkansas Development Finance Authority (ADFA) supports the rehabilitation and new construction of affordable rental housing for low-income, very low-income, and extremely low-income households with its annual funding allocation from the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME) and National Housing Trust Fund Program (NHTF). HOME was created under Title 11 of the Cranston-Gonzalez National Affordable Housing Act of 1990 with implementing regulations at 24 CFR Part 92; NHTF was established under Title I of the Housing and Economic Recovery Act of 2008 with regulations at 24 CFR Part 93.

In general, both HOME and NHTF are intended to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention on rental housing. Both programs include income targeting. NHTF is primarily focused on extremely low-income households with incomes at or below 30% of the area median income (AMI) while HOME is focused on very low-income households (at 50% AMI) and low-income households (at 60% AMI).

ADFA's HOME and NHTF funds will be used to provide financing and gap financing to housing projects located in Arkansas. Each program will target housing in eligible areas that is affordable to people who are at or below the specific program's applicable income limits. In exchange for low-cost permanent financing, property owners will agree to income, rent, and other restrictions for an affordability period of at least 15 to 30 years (depending on funding source and level) [1]. Projects are monitored for compliance during the affordability period. Project developers, owners, and sponsors must coordinate funders' requirements when there are multiple funding sources.

This document sets forth the requirements for ADFA's awards of HOME and/or NHTF funds for rental projects. In most cases, the requirement for HOME and NHTF funds are the same and ADFA's goal is to operate the two programs in a unified fashion, but there are important distinctions between the programs which are identified herein. This guidebook is supplemental to the 2018 HOME Program Operations Manual.

2. Application and Evaluation Procedure

ADFA may issue a Rental Housing Request for Proposals (RFP) on a periodic basis based, in part, on the availability of funds. The RFP will outline specific application deadlines, any funding focus (e.g., by project type, population served, etc.), and other special considerations applied to a given funding round.

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[1] HOME regulations allow for an affordability period of 5 years (less than $15,000/assisted unit) or 10 years (less than $40,000/assisted unit) for rehab projects, but in practice most HOME rehab projects trigger a 15-year affordability period.

A. Funding Availability

Upon submission of a proposal for HOME and/or NHTF funds, ADFA staff will conduct a review and analysis of the project and developer(s) as presented in the proposal. Proposals may be scored based on criteria in the RFP, if issued. Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or commitment of HOME and/or NHTF funds. ADFA will, in all instances, commit HOME and/or NHTF funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking HOME and/or NHTF funds prior to the receipt of all other funding sources, including federal tax credit reservations, may be provided with non-binding Letters of Intent. Further, the Letter of Intent may be contingent upon the 1) approval of the State's Annual Action Plan (including its NHTF Allocation Plan); 2) ADFA's receipt of HOME and/or NHTF funds from HUD; 3) applicant's award from ADFA for Low Income Housing Tax Credits (LIHTC), if applicable; 4) ADFA's receipt of the HUD Authority to Use Grant Funds following completion of the Environmental Review process (as applicable); and other items noted in the Letter of Intent.

B. Submission of Materials

All HOME and/or NHTF Rental Housing Program applicants must comply with the submission criteria set forth in ADFA's Rental Program Guidelines and application materials. ADFA reserves the right to require the submission of additional information as needed to complete project underwriting.

3. Project Funding Requirements

A. Eligibility Criteria

I. Eligible Applicants

Developers and owners of affordable rental housing – including for-profit developers, nonprofit developers, public housing authorities, and ADFA-designated community housing development organizations (CHDOs) – are eligible to apply for HOME/NHTF funding subject to the program-specific limitations noted below:

HOME

- While public housing authorities are eligible to apply, public housing units supported by Public Housing Capital or Operating Funds authorized by the 1937 US Housing Act are not eligible for HOME funding. Non-public housing units owned and developed by a public housing authority are eligible.
- CHDOs are a specific type of community-based nonprofit organization defined by section 92.2 of the HOME Final Rule. The HOME program includes an annual set-aside of funds for projects owned, developed, or sponsored by CHDOs. Prior

to committing funds, ADFA will review the status of any organization seeking funds from the CHDO set-aside to ensure that it meets all HOME requirements, that it has sufficient staff capacity to carry out the project, and that the CHDO meets the requirements of "owner," "developer," or "sponsor" as required by 24 CFR 92.300(a).

NHTF

- Unlike HOME, NHTF can be awarded to assist in the development of public housing units under limited circumstances as outlined in 24 CFR 93.203. This includes:
  - NHTF funds may be used for new construction or rehabilitation of public housing as part of the Choice Neighborhoods (Choice) program under a HUD appropriation act or for new public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42);
  - NHTF funds may be used for the rehabilitation of existing public housing units in which the public housing assistance will be converted and used at the properties under the Rental Assistance Demonstration (RAD) program under HUD's 2012 Appropriations Act (Pub. L. 112-55, 125 Stat. 552, approved November 18, 2011) or subsequent statutes;
  - The public housing units constructed using NHTF funds must replace units that were removed from a public housing agency's public housing inventory as part of a Choice program grant, or as part of a mixed-financed development under section 35 of the 1937 Act. The number of replacement units cannot be more than the number of units removed from the public housing agency's inventory. The public housing units constructed or rehabilitated using NHTF funds must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. These units cannot receive operating cost assistance or operating cost assistance reserves from NHTF.

II. Project Location

Projects must be located in the State of Arkansas.

III. Project Types

Funds will be provided for acquisition/rehabilitation and new construction of multifamily residential rental projects. While ADFA will entertain any proposals meeting its criteria, in practice most projects will also require other public investment to be economically feasible. This may include projects also funded with other federally regulated affordable housing programs such as, but not limited to, LIHTC, HUD Section 202, Section 811, Rental Assistance Demonstration (RAD), Choice Neighborhoods, or United States Department of Agriculture Rural Development (USDA-RD).

IV. Parameters of HOME and NHTF Funding

Typically, ADFA will also establish a maximum cap on its investment in a single development. Such a limit will be based on the availability of funding and other ADFA priorities. The maximum cap as established by the ADFA Board of Directors is currently $2,000,000 for HOME and $1,000,000 for NHTF. To qualify for HOME/NHTF funding, a project must demonstrate the need for an investment of no less than $1,000 in HOME/NHTF funding per HOME/NHTF-assisted unit.

HOME

- In no case will the ADFA investment exceed the maximum HOME investment allowed under 24 CFR 92.250. The maximum per unit subsidy in HOME is published each year by HUD. ADFA has set per unit subsidy limits for HOME as follows: 0-1 BR- $105,000, 2 BR- $120,000, 3 BR- $135,000 and 4 BR- $150,000.

NHTF

- NHTF regulations at 24 CFR 93.300 require ADFA to establish a maximum subsidy limit for units assisted with NHTF funding as part of ADFA's annual NHTF Allocation Plan. In no case will the ADFA investment exceed the limits established in the NHTF Allocation Plan as approved by HUD. The applicable limits are 0-1 BR- $105,000, 2 BR-$120,000, 3 BR- $135,000, 4 BR- $150,000.
- If awarded, investment in NHTF-funded operating cost assistance or operating deficit reserves is not counted against the maximum per unit subsidy required by 24 CFR 93.300.

B. Eligible Costs

I. General

Costs funded with HOME funds must be eligible according to 24 CFR 92.206; costs funded with NHTF funds must be eligible according to 24 CFR 93.201. The following additional limitations also apply:

- HOME and/or NHTF funds shall not be used for luxury improvements according to 24 CFR 92.205 and 24 CFR 93.200, respectively.
- HOME and/or NHTF funds may not be used to pay operating costs or to capitalize reserves with the following exceptions:
  - HOME and NHTF may be used, subject to ADFA's approval, to establish a rent-up reserve to cover initial operating deficits allowed under 24 CFR 92.206(d)(5) and 24 CFR 93.201(d)(5; and
  - For projects without project based rental assistance, NHTF may, subject to ADFA's approval and the requirements of 24 CFR 93.201(e), be used to establish operating cost reserves specifically for anticipated deficits related to the NHTF-assisted units in a project.

- HOME and/or NHTF funds shall not be used for free-standing non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures.[2] HOME funds may be used for community space or common laundry facilities included in residential buildings.
- HOME and/or NHTF funds shall not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of connecting to public infrastructure located in an adjacent right-of-way (e.g. a water or sewer tap) is an eligible cost.
- HOME and/or NHTF funds shall not be used for organizational costs such as partnership formation or syndication costs associated with transactions using equity from LIHTC, historic tax credits, or other similar tax incentives.

II. ADFA Project-Related Soft Costs (Informational)

The HOME and NHTF programs allow ADFA to include, as project costs, its internal soft costs specifically attributable to a HOME and/or NHTF project, as applicable. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. In its RFP, ADFA will provide a budget allowance for "ADFA Due Diligence & Legal Costs" to be included in the project's total development costs. The project's estimated annual expense information will include a monitoring fee as specified by ADFA in its RFP.

III. Cost Reasonableness

Per the requirements of 92.250(b) for HOME, and 92.300(b) for NHTF, all project costs must be reasonable, whether or not paid directly with HOME and/or NHTF funds. ADFA will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs. ADFA may also require an applicant, at its own cost, to obtain a third-party cost review from a professional provider acceptable to ADFA. ADFA's staff, or its agents, must be allowed access to the property as necessary to evaluate the cost projections associated with a project's plans and specifications. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

Acquisition costs shall be supported by an independent appraisal of the property. Acquisition costs exceeding the appraised value of the property will be ineligible for HOME and/or NHTF funding reimbursement. When a project's sources include USDA-RD or other HUD funding, the USDA-RD or HUD appraisal methodology will apply.

[2] Note that attached garages or carports (e.g., those structurally attached to and integrated into a residential structure) are eligible.

IV. Identity of Interest

Applicants must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project.

C. Property Standards

To meet both HOME and NHTF regulations and ADFA goals, all projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

- Construction must meet all applicable local building and fire codes (including related electrical, mechanical, and plumbing codes).
- All projects must meet applicable Section 504/UFAS requirements. New construction or substantial rehabilitation projects with five or more total units must provide 5% of the project's units (but not less than one) for physically disabled occupants and another 2% of units (but not less than one) designed to be accessible to those with visual or hearing impairments. Other rehabilitation projects will be required, to the maximum extent feasible, to provide physically and sensory accessible units in the same percentage. Additionally, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.
- All buildings in new construction or substantial rehabilitation using HOME/NHTF funds must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100. In limited circumstances, the regulations allow ADFA to waive this requirement if the project's location makes such installation infeasible or creates an undue financial burden. In practice, this requires the developer to provide the wiring for high-speed internet but does not require the project to provide the internet service itself. *ADFA does not anticipate circumstances under which it would waive this requirement.*
- All projects must also comply with ADFA's Multifamily Housing Minimum Design Standards, including the Universal Design Standards cited therein.

Managing a Project Subject to Other Federal Requirements

Requirement	Impact on Project
Environmental review of Activities	A recipient cannot commit funds to a project until the appropriate level of environmental review is complete, and a Release of Funds is received.
Section 3	Construction contracts of $200,000 or more must include language regarding best efforts to include businesses and low-income residents in the project area. This applies to hiring of additional workers and training them and using project-area suppliers for materials. ADFA may

	set specific goals for Recipients based on additional requirements set by HUD that may impact how quickly the project can get under construction.
Women/Minority Business Enterprise (WBE/MBE)	All competitive bidding must include Women and Minority Businesses, including subcontracts. Recipients must ensure that these firms have a fair opportunity to participate and current list of WBE/MBE must be maintained.
Contractor Selection	Recipients must check the website at www.sam.gov to determine if a contractor has been suspended before awarding HOME funds to any firm. Additionally, state law (A.C.A. §22-9-101) all building projects in excess of $100,000 must be designed by a state-licensed architect and all infrastructure projects in excess of $25,000 must be designed by a state-licensed engineer.
Procurement	ADFA's procurement policies specify bidding requirement for construction, including competitive and formal bidding.
Conflict of Interest	Recipients need to be fully aware of parties involved in a contract and seek legal counsel if there is the potential for real or perceived COI.
Lead Safe Housing Requirements (rehab of pre-1978 units)	When there is HOME assistance involving pre-1978 properties, Recipients must have qualified staff (or hire them for the project) to notify occupants of the hazards of LBP and take the appropriate approach for various activities; qualified staff must be involved in inspections and clearance actions and report preparation.
Cost Reasonableness	Recipients must have qualified cost estimators available to assist in bid preparation and contract awards, as well as reviewing payment requests.
Americans With Disabilities Act (ADA)	Recipients must make an internal review of its programs and communications to ensure they are accessible to and usable by persons with disabilities. This may include working with advocacy groups to achieve compliance.
Affirmative Marketing	Recipients must determine if there are under-served populations who are eligible for HOME assistance, and if they are non-English speaking or have literacy challenges, the agency may work with advocacy groups to translate or otherwise reach these households.
Section 504	Recipients must ensure that specifications for new construction of multi-family dwellings meet the design and construction standard of the Fair Housing Act to make units accessible and the requirements were included in contracts for substantial rehabilitation of buildings with 15 or

	more units when rehab exceeds 75% of replacement costs. In other projects, the Recipient should work with the developer/owner to make units adaptable and/or accessible as is financially feasible. Additionally, all ADFA funded projects must comply with ADFA's MDS Standards.
Energy Conversation	Recipients must become familiar with the International Energy Conservation Code and include its requirements in all contracts for residential new construction.
Labor Requirements	Before beginning construction or rehab of projects with 12 or more HOME-assisted units, Recipients must obtain the prevailing wages for various building trades to be obtained from the Dept. of Lavor; someone must designate to monitor work on site and payrolls; report as required by Davis Bacon related acts.
Uniform Relocation Act and Section 104 (d)	Recipients are responsible for ensuring that tenants in properties that may be acquired or rehabilitated receive correct and timely notices and protections; owners of units to be acquired through a Homebuyer assistance program must receive the "Notice to Owner" for voluntarily acquisitions, and tenant living in units purchased with HOME funds are protected by the URA. If units are demolished or converted with HOME funds, 104 (d) may be triggered and appropriate notices and assistance must be provided. Since no one can be forced to move (displaced) without at least 30 days' notice, a project may not meet a developer's schedule.

D. Unit Allocation

In general, HOME and/or NHTF units will be "floating units" and evenly distributed among the unit types in the development based upon a cost allocation review. If the project's units are not comparable, "fixed units" must be designated. In the case of projects with comparable units, ADFA will designate units as HOME or NHTF-assisted in proportion to the percentage of HOME or NHTF investment in the transaction. For example, if HOME represents 10% of the project's total HOME-eligible cost, at least 10% of each unit type will be designated as HOME-assisted units.

HOME-assisted units shall be designated as either "High HOME units" or "Low HOME units". In projects with five or more HOME-assisted units, at least 20% of the HOME-units, rounded up to a whole number, must be designated as Low HOME units. Generally, ADFA will only designate the minimum number of Low-HOME units required unless the applicant requests that additional Low-HOME units be designated to coordinate income and rent restrictions with other project requirements.

E. Income and Rent Restrictions

To qualify as affordable housing, HOME and/or NHTF units must be rented only to households with certain incomes at rents regulated by each program to be affordable to low income households.

Note that HUD releases updated specific income and rent limits annually for both the HOME and NHTF programs. The "HUD Income Limits" used for Section 8 and other HUD multifamily programs, and upon which LIHTC income and rent limits are based, are released each year on a different schedule, usually about two months before the HOME limits. Until HUD releases the program-specific income limits, owners must continue to use the current HOME or NHTF limits as applicable.

I. Income Limits

- High-HOME units must be rented exclusively to tenants with household incomes, at the time of move-in, at or below 60% of AMI for the county, as adjusted by family size, thereafter;[3] and
- Low-HOME units must be rented exclusively to tenants with household incomes at or below 50% AMI for the county both at initial occupancy and thereafter.
- NHTF-assisted units must be rented exclusively to tenants with household incomes at or below HUD-published limits for extremely-low income families both at initial occupancy and thereafter. While calculated by HUD, the limit is 30% AMI for the county in which the project is located or the poverty rate, whichever is higher.

II. Rent Limits

For all projects, ADFA must specifically approve the project's rent schedule annually, including utility allowances and any tenant fees as described in the sections below.

HOME

- High-HOME units must be rented at or below the High-HOME rent as published by HUD.
- Low-HOME units must be rented at or below the Low-HOME rent as published by HUD. The only exception is for those units receiving Federal or State project-based rental subsidy, and the very low-income family pays as a contribution toward rent not more than 30% of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental

[3] In the future, ADFA may consider allowing High-HOME units, after turnover from the initial tenant, to accept applicants up to 80% AMI for LIHTC projects using the "income averaging" option.

subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

NHTF

- NHTF-assisted units must be rented at or below the HUD-published Housing Trust Fund rent for extremely low-income units.
- If the NHTF unit receives Federal or State project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30% of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

III. Utility Allowances

The HOME and NHTF rent limits are gross rent limits. The actual rent collected from a tenant must be adjusted taking into account an allowance for tenant paid utilities. ADFA must approve the project's utility allowance (UA) annually.

HOME regulations at 24 CFR 92.252(d) require that the UA for the project be based on the type of utilities used at the project and updated annually. HOME further specifies that the UA is to be established using a project-specific methodology and based on actual utility usage at the property or estimates an allowance based on project-specific factors such as size, orientation, building materials, mechanical systems, and construction quality, as well as local climate conditions.

For HOME projects funded on or after Aug. 23, 2013, the Public Housing Authority area-wide UAs prepared for the housing choice voucher program are no longer an acceptable method of calculating UAs.

The following methodologies, used in other Federal housing programs, will meet HOME and NHTF regulatory requirements and are generally acceptable to ADFA. ADFA's HOME/NHTF Department must approve the methodology selected by an applicant. The same methodology must be used for all HOME and/or NHTF units within a single project, thereafter approved by the Compliance Department.

- HUD Utility Schedule Model (HUSM): The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D). The HUSM and use instructions can be accessed on HUD User at https://www.huduser.gov/portal/resources/utilallowance.html. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at https://www.huduser.gov/portal/datasets/husm/uam.html.

- Multifamily Housing Utility Analysis: In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). This method is applicable for the following programs: Project-based Section 8, Section 101, Section 202/162, Section 811, Section 236, and Section 221(d)(3).
- Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(E)) –UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.
- ***For NHTF projects only***, the utility allowance used by the local public housing authority for its Section 8 Housing Choice Voucher program.

IV. Prohibition on Certain Fees to Tenants

Pursuant to 24 CFR 92.214 for HOME and 24 CFR 93.204 for NHTF, program participants may not charge fees to program beneficiaries to cover administrative costs related to the cost of administering the HOME and/or NHTF program. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owners may charge fees approved by ADFA for the following:

- Reasonable application fees to prospective tenants[4];
- Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by ADFA to be customary for rental housing projects in the area and not excessive;
- Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and
- Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, as long as the services are voluntary, and fees are charged only for services provided.

As part of reviewing the rent schedule each year, ADFA will review and approve fee schedules annually to ensure that any fees charged in addition to rent are permissible under the applicable HOME and/or NHTF requirements and whether proposed fees are reasonable and customary based on market comparisons. (See Section 4, D. for more information on the reporting portal used by ADFA.)

[4] HOME and NHTF allow “nominal” application fees only for the purpose of discouraging frivolous applications. Application fees are not intended to cover the cost of processing an application and should not be set with that in mind.

V. Portal Reporting- N/A at this time.

VI. Income Verification

All projects shall use the HUD Part 5 definition of income for determining income eligibility. Prior to signing a lease, income must be verified for all new tenants using at least two months of source documentation (e.g. pay stubs, account statements, etc.) in accordance with 24 CFR 92.203(a)(1)(i) for HOME and 24 CFR 93.151(d) for NHTF. When available, in addition to collecting source documentation, ADFA expects the use of third-party verification as the primary means of documenting income.

During the period of affordability, the income of in-place tenants must be recertified using source documentation at least every sixth year of the project's affordability period (e.g., in the sixth year, all in-place tenants must be recertified using source documentation even if a given tenant is only in his/her second year of occupancy). In other years, owners must recertify the income of existing tenants annually but may use one of the options in 24 CFR 92.203 and 24 CFR 93.151, as applicable, unless ADFA requires that a project use one of these methods exclusively:

- Re-verifying income annually through source documentation;
- Obtaining a written statement from the household regarding annual household income; or
- Obtaining a written statement from the administrator of a government program under which the households receive benefits and which examines each year the annual income of the household.

However, even when using the self-certification or certification from another government program, source documentation for all in-place tenants must be reviewed at least every 6th year of the Project's affordability period.

VII. Rent Adjustments

HUD provides HOME and NHTF income and rent limits on an annual basis. Utility allowances will also be reviewed and adjusted, as needed, annually. Owners must obtain approval before implementing HOME and NHTF rent increases. Owners shall also provide not less than 30 days' written notice to tenants upon receiving ADFA approval for HOME and NHTF unit rent increases.

HOME

HOME-assisted units are considered to be compliant despite a temporary increase in income exceeding HOME requirements for existing tenants. However, in such cases there are detailed requirements about how to adjust the rent of such tenants and how to restore overall project compliance. These are outlined in the HOME Model Guide "Compliance in HOME Rental Projects: A Guide for Property Owners," which is available online at:

[Compliance in HOME Rental Projects: A Guide for Property Owners - HUD Exchange]

For projects with floating units, when an existing tenant's income increases beyond 80% AMI adjusted for household size, the tenant's gross rent will be increased to the lesser of the unassisted market rent for the unit or 30% of the tenant's adjusted household income. The next comparable (or larger) unassisted unit must then be rented to a tenant eligible to occupy a High-HOME unit. When the income of an existing tenant of a Low-HOME unit increases above 50% AMI but is below 80% AMI, the next available High-HOME unit must be rented to a tenant at or below 50% AMI at the Low-HOME rent. Following the replacement of the Low-HOME unit, rent for the tenant will be increased to the High-HOME rent.

Notwithstanding, over-income tenants of HOME-assisted units that have been allocated low-income housing tax credits must pay rent according to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

NHTF

In the event a tenant occupying an NHTF unit becomes over-income, the NHTF-assisted unit continues to qualify as affordable housing despite a temporary noncompliance caused by increases in the existing tenant's income if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with 24 CFR 93.302 until the noncompliance is corrected.

Note, HUD has not yet issued guidance about what specific actions will be required with respect to adjustments in the rent level for tenants who are over-income at recertification. Once such guidance is issued, ADFA will require that all NHTF-assisted projects comply, even if originally funded prior to the issuance of detailed HUD guidance. Please contact the ADFA compliance department for guidance: tammy.white@arkansas.gov

F. Environmental Review Requirements

Federally assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with ADFA staff ***prior to*** entering into a purchase agreement or submitting an application.

HOME

- All HOME-assisted projects shall be implemented in accordance with environmental review regulations as defined in 24 CFR Part 58.
- ADFA shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF), as applicable, from HUD. The applicant is responsible for cooperating with ADFA in the environmental review process and providing information

necessary for ADFA to fulfill its responsibilities under Part 58 and other applicable regulations.

- Submitting an application for HOME funds triggers environmental review requirements under 24 CFR Part 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a project proposal is now subject to the environmental review requirements and requires an environmental clearance and issuance of a Release of Funds (ROF), as applicable, by the U. S. Department of Housing and Urban Development.
- Developers are prohibited from undertaking or committing or expending any funds (including non-federal funds) to any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used, and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from ADFA.

Other State and Local Requirements for HOME/NHTF

- This section addresses State and local requirements and policies that must be adhered to as part of the project planning and developments. Only asbestos abatement removal, which falls under the Clean Air Act, is part of the Part 58 environmental review compliance process. Lead based paint is addressed in the HOME/NHTF program regulations.

Solid Waste Disposal

Legislation	Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901-6987
Citations	40 CFR 240-265
Applicability	Any Activity generation solid waste that will require a disposal permit
Contact Agency	ADEQ: https://www.adeq.state.ar.us Solid Waste Management Division 8017 Interstate 30 5301 Northshore Drive, North Little Rock, 72118-5317, 501-682-0600

Lead Based Paint

Legislation	Lead Based Paint Hazard Elimination
Citations	24 CFR 35 and Sections 1012 and 1013 of the Residential Lead-based Paint Hazard Reduction Act of 1992; Arkansas Pollution Control and Ecology Commission http://www.sos.arkansas.gov/rulesRegs/Arkansas%20Register/2011/Oct11Reg/007.04.11-001.pdf
Applicability	Units before 1978
Contact Agency	ADEQ Air Division- Asbestos/Lead Branch 5301 Northshore Drive, North Little Rock, AR 72118-5317, 501-682-0717

Asbestos Identification and Abatement

Legislation	Asbestos Identification and Abatement
Citations	The Clean Air Act of of 1972, as amended; 40 CFR 61 dated November 20, 1990, as amended; Arkansas Asbestos Abatement Regulation (Section 3 of Act 531 of 1987); Arkansas Pollution Control and Ecology Commission https://www.adeq.state.ar.us/regs/#reg21 (the Arkansas Asbestos Abatement Regulation
Applicability	All projects involving rehabilitation of buildings
Online Resource	https://www.adeq.state.ar.us/regs/#reg21.
Contact Agency	ADEQ Air Division-Asbestos/Lead Branch 5301 Northshore Drive, North Little Rock, AR 72118-5317, 501-682-0718

NHTF

NHTF funding is not specifically subject to NEPA or to HUD's environmental review regulations at 24 CFR 58. However, the NHTF regulations at 24 CFR 93.301 impose substantially similar provisions to the detailed requirements under NEPA and Part 58. The difference between the two regulatory approaches is largely administrative. NHTF funds are not subject to publication requirements, nor is ADFA required to seek a formal release of funds from HUD prior to committing funds to a project. Notwithstanding the technical differences in the regulatory requirements, in practice ADFA does not intend to enter into project-specific funding commitments until it has satisfactory evidence that all appropriate requirements have been met.

Applicants are strongly encouraged to review the requirements in 24 CFR 93.301 and HUD CPD Notice 16-14: Requirements for Housing Trust Fund Environmental Provisions.

G. Other Federal Requirements

I. Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all Rental Housing projects and affect both development and operation of assisted housing:

- The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C.

2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146,;

- The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

- The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

- The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting subrecipients, owners, developers, or their agents from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

II. Uniform Relocation Act (URA)

All Rental Housing projects fall under requirements of the URA. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain.

Additionally, for properties occupied by commercial or residential tenants at the time of application, URA requires certain notices to tenants in place as of the application for federal funds. Failure to provide such notices may result in substantial compliance costs or render a project ineligible. To ensure compliance with URA, applicants should ***consult ADFA staff prior to the submission of any application involving an occupied property*** to understand the requirements of URA. Information regarding URA can be found here: [CPD Handbook 1378.0 | HUD.gov / U.S. Department of Housing and Urban Development (HUD)]

III. Labor Standards

HOME
Labor standards, including Davis-Bacon federal prevailing wage requirements, shall apply to all Rental Housing projects with 12 or more HOME-assisted units. Information regarding Davis Bacon can be found here: 4812-LRGUIDE.PDF (hud.gov)

NHTF
NHTF funding does not trigger federal labor standards.

IV. Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Plan

Developers must maintain a MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction or rehabilitation of the project. Information regarding MBE/WBE can be found here: Guidance on Minority Business Enterprise/Women's Business Enterprise Outreach (hudexchange.info)

V. Section 3

Developers must maintain a Section 3 plan that demonstrates a marketing plan to include Section 3 contractors and all tiers of subcontractors in the construction or rehabilitation of the project. Information regarding Section 3 can be found here: Section 3 - HUD Exchange

VI. Excluded Parties

ADFA will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Nor may the owner contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

The System for Award Management (SAM) database should be used by applicants to confirm that development team members are not excluded. The SAM database is available at www.sam.gov.

4. Ongoing Project Requirements

HOME and NHTF projects must, at all times during the term of the HOME/NHTF Loan or the applicable affordability period, whichever is longer, be operated in compliance with ADFA's Rental Management Handbook, or successor publications, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. In the HOME/NHTF Agreement for each project, the owner must agree to be bound by such updates which may include, but not be limited to, procedures for obtaining annual rent or utility allowance approvals, reporting and document submission requirements, use of updated form documents provided by ADFA, and the like.

A. Project Completion Deadline and Period of Affordability

HOME

The period of affordability will be based on the date of project completion as defined by 24 CFR 92.2 which, among other things, requires that all construction activity be complete, all HOME funds drawn from the U.S. Treasury, and project completion information be entered into the HUD Integrated Disbursement and Information System (IDIS). For rental projects, project completion occurs upon completion of construction and before occupancy, and units may be marked vacant in IDIS until complete beneficiary data is received. ADFA and HUD require that project completion must occur within 2 years of the date of commitment of funds to the project and a draw must occur within 12 months of the agreement execution date. If the Owner fails to meet the 12 month and 2-year deadline, it must repay to ADFA any HOME funds disbursed for the project. In accordance with the minimum requirements of 24 CFR 92.252(e), rehabilitated and new construction rental projects funded with HOME shall maintain HOME affordability requirements for a period of up to 15 years for rehabilitation projects and at least 20 years for new construction projects.

NHTF

The period of affordability will be based on the date of project completion as defined by 24 CFR 93.2, which, among other things, requires that all construction activity be complete, all NHTF funds drawn from the U.S. Treasury, and project completion information be entered into HUD's IDIS reporting system. For rental projects, project completion occurs upon completion of construction and before occupancy, and units may be marked vacant in IDIS until complete beneficiary data is received. ADFA requires that project completion must occur within 2 years of the date of commitment of funds to the project and draw must occur within 12 months of the agreement execution date. If the Owner fails to meet the 12 month and 2-year deadline, it must repay to ADFA any NHTF funds disbursed for the project. In accordance with the minimum requirements of 24 CFR 93.302(d), rehabilitated and new construction rental projects funded with NHTF shall maintain NHTF affordability requirements for a period of 30 years as regulated by 24 CFR 93.302.

B. Initial Occupancy Deadlines

HOME

In accordance with 24 CFR 92.252, HOME-funded rental projects must comply with the following deadlines and requirements as evidenced by occupancy of tenants with a written lease that complies with the requirements of 24 CFR 92.253:

- Within 6 months from the date of project completion, if a rental unit remains unoccupied, the Owner will provide to ADFA information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
- Within 18 months from the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an eligible tenant, ADFA will require repayment of all HOME funds invested in each vacant unit. A unit that has not served a low- or very low-income household, as applicable, has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

NHTF

HUD does not currently impose specific lease-up deadlines on NHTF-funded projects, but ADFA will require that projects which are not complete within the HOME timelines noted above repay NHTF funds.

C. Marketing and Leasing

The owner/developer must establish a written tenant selection plan consistent with the requirements of 24 CFR 92.253(d) for HOME and 24 CFR 93.303 for NHTF. Among other requirements, the tenant selection plan must, insofar as is practical, provide for the selection of tenants from a project's waiting list in chronological order of their applications and provide written notification to any rejected applicant of the reason for their rejection. The tenant selection plan can be found on the ADFA website: Home | Arkansas Development Finance Authority- Forms

An owner/developer, as part of the application for funding, may propose to restrict units to or provide preferences for identifiable portions of the income-eligible population, e.g. elderly/senior only projects, preferences for homeless and/or special needs populations, etc. Any such restriction or preference must be authorized in the Consolidated Plan and may not be in violation of any Fair Housing or similar requirements. ADFA may, as part of any periodic RFP, provide scoring incentives or further priority for particular populations.

All HOME- and/or NHTF-funded projects must establish an Affirmative Fair Housing Marketing Plan (AFHMP) detailing procedures to attract eligible occupants without regard to race, color, national origin, sex, religion, familial status, disability, or sexual orientation. AFHMPs shall include all required aspects as stated in 24 CFR 92.351(a)(2) for HOME and 24 CFR 93.350 for NHTF. More detail on ADFA's affirmative marketing requirements, including instructions on completing the AFHMP using form HUD-935.2A can be found in ADFA's Rental Management Handbook and on the ADFA website: Home | Arkansas Development Finance Authority -Forms

Leases between the tenant and owner shall be for one year, unless by mutual agreement between the tenant and the owner. Owners are required to provide at least

30 days written notice prior to terminating or refusing to renew the lease with occupants of HOME-assisted units. In NHTF projects, the notice period for lease terminations must be consistent with Arkansas state law.

Owners are prohibited from including unfair provisions in HOME/NHTF project leases. In accordance with the provisions of 24 CFR 92.253 for HOME and 24 CFR 93.303 for NHTF, the following terms are prohibited from HOME and/or NHTF project leases:

- Agreement to be sued;
- Treatment of property;
- Excusing owner from responsibility;
- Waiver of notice;
- Waiver of legal proceedings;
- Waiver of a jury trial;
- Waiver of right to appeal court decision;
- Tenant chargeable with cost of legal actions regardless of outcome; and
- Mandatory supportive services (note, transitional housing projects funded with HOME may be permitted to require service participation under limited circumstances; contact ADFA staff for more detail).

Finally, projects must comply with the requirements of the Violence Against Women Act (VAWA) as required by 24 CFR 92.357 for HOME and 24 CFR 93.356 for NHTF. VAWA provides certain additional tenant protections to applicants and tenants who are victims of domestic violence, sexual assault, and/or stalking. In general, among other requirements owners must provide notices to all tenants of the VAWA provisions, may not deny an application or terminate or refuse to renew a lease as a result of a person's status as a victim or on the basis of criminal activity related to such status, and must allow for the bifurcation of a lease in order to evict the perpetrator of such criminal activity while allowing the victim to maintain occupancy.

In general, ADFA may provide a standard form lease-addendum for use by owners of HOME/NHTF-assisted housing that will provide required tenant protections and eliminate any prohibited provisions from leases otherwise used by owners.

D. Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable HOME and/or HTF requirements, all projects must submit periodic reports to ADFA. While this section outlines standard reporting requirements, ADFA reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME and/or HTF requirements or ADFA policy. Additionally, ADFA reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

In general, reports are submitted electronically through ADFA's Property Management Portal for projects that have been completed and placed in service. This reporting is directed to the ADFA Compliance Department and is ongoing affordability monthly and annual reporting requirements.

ADFA will have available the ADFA's Programs Portal that will require submission of all Multi-Family Applications and required reporting thru the application approval process until a project has been completed. ADFA will provide reporting guidance during the development stages of the portal.

Listed below are reporting and recordkeeping requirements for approved multi-family projects thru the placed in service and project completion phase.

- Owners are required to report monthly during the development phase and lease-up phase. Monthly reports will be due on the 15th of the month following the end of the prior month.
    - During the construction phase, owners must provide monthly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.
    - During the initial phase of lease-up, ADFA may request owners to provide monthly or quarterly reports detailing the number of additional leases, total project leases, marketing activity, and monthly income and expenses. Once the owner has leased100% of units, leasing and marketing reporting will be required monthly and annually.

Listed below are reporting and recordkeeping requirements for completed projects thru the ADFA's Property Management Portal.

- Annual Reports shall be required for all HOME and/or HTF projects, and shall include a Certification of Program Compliance for each source of ADFA funding in the project, updated utility allowance documentation, rent changes/rent specials, all marketing and outreach advertisements and other.
- Tenant data changes must be reported and updated monthly in the portal as changes occur by the 15th of the following month.
- ADFA may require more frequent reporting due to findings identified during annual monitoring, or findings identified during reviews of reports submitted during the development and lease-up phases.
- All HOME and/or HTF projects shall be required to submit annual budgets to ADFA for review and approval. Additionally, all projects will be required to submit an audit prepared by an independent Certified Public Accountant within 180 days of the end of its fiscal year. For small HOME-funded projects (generally defined to be projects with fewer than 10 total units not involving LIHTC) where the cost of a project-specific audit is deemed by ADFA to be burdensome, ADFA may accept a statement of financial condition with prior approval by the Director of Compliance.

- Owners and developers shall allow ADFA, HUD, State of Arkansas, the Comptroller General of the United States (aka the GAO), and all other pertinent federal or State agencies or their designated representative the right to inspect records and property.
- Owners must annually (if applicable) submit any updates to their Tenant Selection Policy and AFHMP and must maintain records of annual efforts to affirmatively further fair housing in accordance with 24 CFR 92.351 for HOME and 24 CFR 93.350 for HTF. Updates must clearly detail all changes.
- Owners must annually report to ADFA on compliance with the provisions of the Violence Against Women Act (VAWA) as applied through 24 CFR 92.359 (HOME) and 24 CFR 93.356 (HTF) including records related to any emergency transfer requests and their disposition.
- ADFA may periodically require owners to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by ADFA. Alternatively, ADFA may conduct a capital needs assessment using its own staff or contractors. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project.

  If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the Affordability Period, the owner must, at ADFA's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by ADFA, the owner (or the Guarantors) must replenish the Replacement Reserve Account within six months.

E. Conflict of Interest

To comply with HOME and NHTF requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided.

- Owners shall maintain compliance with all HUD conflict of interest provisions as stated in 24 CFR 92.356(f) for HOME and 93.353(f) for NHTF.
- Developers and owners with employees, family members, consultants, or agents that are otherwise eligible to occupy HOME/NHTF-funded units must receive approval from ADFA before entering into a lease of such a unit with HOME and/or NHTF eligible employees, family members, consultants, or agents.

5. Structure of Transaction

A. Loan Types and Terms

ADFA will provide HOME and/or NHTF funds in the form of a loan to the entity that owns the property. No grants will be awarded, and funding commitments are not transferable without prior written ADFA approval.

HOME:

- ADFA has the following standard loan terms and conditions for repayment of HOME Rental Housing Program, including:
- All loans must be evidenced by full executed promissory note payable at a one percent (1%) interest rate with a term of twenty (20) years and amortized over twenty (20) years or a one percent (1%) interest rate with a term and amortization that will match an extended affordability period.
- Applications must have a minimum debt coverage ratio of 1.15 including the debt service on the HOME loan.
- Monthly payments that are due and payable will be deferred for one (1) year from the placed in-service date or construction completion date (when tenants are not displaced), as evidenced by a permanent certificate of occupancy for all the units comprising the property. ADFA may defer loan payments for up to two (2) years depending upon the type of development, number of units and established need.
- Any amounts not paid, both principal and interest shall accrue and be payable on the Maturity Date of the loan.
- For projects utilizing HOME Program funds and U.S. Department of Agriculture (USDA) Rural Development (RD) funds and/or any form of HUD Financing, the HOME loan will match the terms and amortization of the USDA RD loan and HUD Financing.

NHTF:

- ADFA will award NHTF funds as zero (0%) percent loans to recipients whose proposed developments are approved for funding. The NHTF loan will be amortized over 30 years with a loan term of 30 years. ADFA Board may consider waivers requesting an extension of the loan terms. ADFA will not underwrite or consider NNHTF applications for funding that do not include an annual debt service.

ADFA's HOME and/or NHTF Loan is intended as construction/permanent financing. Proceeds of the HOME loan will only be released in conjunction with approved monthly construction draws and/or submission of invoices for approved soft costs and satisfaction of all requirements outlined below.

In all cases, the HOME and/or NHTF loan will:

- Have a term equal to the project's Affordability Period (usually 15 to 30 years)[5];
- Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, whichever occurs first;
- Be secured with a mortgage, promissory note, and deed restriction. Mortgages will be recorded in the appropriate county and generally may be subordinate only to an amortizing permanent first mortgage and a temporary bank construction loan, all of which must be approved by ADFA, if applicable; and
- Be additionally secured by an irrevocable letter of credit in the amount of the HOME/NHTF loan to be released by ADFA upon achievement of stabilized occupancy and approval of the final cost certification.

B. Reserves and Surplus Cash Distributions

To preserve the ongoing viability of projects, ADFA will require the establishment and maintenance of various reserves. In general, reserves must be held at financial institutions licensed to do business in the State of Arkansas in accounts that may require the signature of ADFA and the owner for all withdrawals and transfers. Owners must also authorize the financial institutions in which reserves are held to provide ADFA, when requested, verified statements reflecting account balances and transactions. Reserves must remain in place so long as the project's HOME/NHTF loan is outstanding or for the duration of the affordability period, whichever is longer, and information on each account must be reported annually through ADFA's Property Management Portal. Reserves will include:

- An operating reserve intended to protect against unexpected operating deficits;
- For projects where ADFA's underwriting anticipates operating deficits during the affordability period, an additional operating deficit reserve must be capitalized.
- A replacement reserve intended to fund future capital and rehabilitation needs. Initial reserve deposit requirements are noted in the underwriting standards below, and ADFA may modify reserve requirements during the affordability period based on periodic capital needs assessments.
- At ADFA's option, a preservation reserve account may be created and funded with annual deposits from surplus cash (i.e. cash flow). In general, deposits equal to 50% of surplus cash will be required. The preservation reserve is intended to assist in the future preservation, refinancing, or repayment of the transaction.
- As may be required based on specific or unique project features, additional specialty reserves may be required, such as for tenant services, abnormal security costs, etc.

[5] When necessary for tax analysis purposes, ADFA may consider a loan term *longer* than the project's Affordability Period.

ADFA must also approve any distributions of surplus cash (if applicable), which among other items, will require that all reserves be fully funded, the project be in compliance with all federal requirements, the project not be in default, and that the project retain sufficient liquidity following the distribution.

C. Guarantees

Excluding the investor/syndicator partners or members of the ownership entity, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project's ownership entity may be required to provide the following performance guarantees:

- Completion Guarantee including provisions guaranteeing construction completion of the project.
- Recovery Guarantee including provisions guaranteeing ongoing compliance with HUD HOME and/or NHTF guidelines and indemnifying ADFA against any liability to HUD resulting from the project's non-compliance.
- Replacement Reserve Guarantee to ensure annual deposits to a Replacement Reserve for the project in an amount consistent with the loan documents and/or covenant running with the land.

Guarantees shall be joint and several and must remain in effect throughout the applicable affordability period.

D. Declaration of Restrictive Covenants

Each HOME- and/or NHTF-funded project must maintain restrictions and covenants running with the land enforcing HOME, NHTF, and ADFA guidelines, as applicable. The Declaration of Restrictive Covenants will be separately recorded and will remain in place for the affordability period even if the HOME and/or NHTF loan is prepaid. Among other items, the Declaration of Restrictive Covenants will address:

- Restrictions on the transfer of title to the property or underlying ownership interest of the property owner;
- Restrictions on further encumbrances on the Property without ADFA's prior permission;
- Operational and performance requirements, including maintenance of various reserves, restrictions on the distributions of surplus cash (if applicable), and property management and insurance expectations;
- Provisions to enforce ongoing requirements for project compliance through the HOME and/or NHTF Affordability period, including:
    - The length of the period of affordability;
    - Income and rent restrictions on HOME-assisted and/or NHTF-assisted units;
    - Property standards to be enforced;
    - Marketing and leasing requirements; and

- o Recordkeeping and reporting requirements.

While ADFA's HOME/NHTF loan(s) will generally be subordinate to conventional debt, the HOME/NHTF covenant(s) must be recorded senior to all liens and encumbrances associated with the project financing, including any loans senior to ADFA's HOME/NHTF loan, and must be structured to survive any foreclosure by a senior lien.

If a project receives both HOME and NHTF funding, separate covenants will be recorded. The HOME/NHTF covenants will be separate from any required LIHTC covenant(s).

E. HOME/NHTF Agreement

In addition to any financing documents, owners of HOME/NHTF-financed projects must sign a HOME or NHTF Agreement with ADFA. The Agreement will identify requirements for compliance with the HOME or NHTF regulations and ADFA's Rental Housing Program requirements and will remain in effect, during the affordability period, in the event of any prepayment of the HOME or NHTF loan. In the event a project is receiving both HOME and NHTF funding, separate Agreements are required for each funding source.

6. Underwriting & Subsidy Layering Reviews

A. Project Underwriting

For all HOME and/or NHTF project applications a professionally prepared market study from a provider on ADFA's list of approved market analysts, must be provided. If the market study is more than 12 months old at the time of commitment, ADFA may require an updated market study. Proposed rent levels must be supported by the market study and within HOME and/or NHTF regulatory limits, as applicable.

All HOME and/or NHTF applications must include personal financial statements (audited if available) and the two most recent tax returns from all underlying developers, owners, and guarantors and will be subject to ADFA's evaluation of fiscal soundness as required by 24 CFR 92.250(b)(2) (HOME) and 24 CFR 93.300(b)(2) (NHTF).

Project Underwriting will also include:

- Vacancy factor of at least 7% for family and elderly developments unless the market study indicates a higher vacancy factor is needed.
- ADFA staff will use a maximum 2% inflation factor for all sources of income.
- All operating expenses will be underwritten with an inflation factor of at least 3%.

- All HOME and/or NHTF projects must maintain a total project Debt Coverage Ratio (DCR) of at least 1.15 for the affordability period. Properties with a DCR that exceeds 1.25 may have rent increases reduced or denied.
- Proposals must include justification of operating costs that includes a comparison to similar projects in the local market. Whenever possible, comparable properties should be operated by the proposed management company. ADFA may establish minimum annual per unit operating costs as part of its annual QAP or RFP.
- At a minimum, projects must make a minimum replacement reserve deposits of $250 per unit per year for family and elderly projects. The Replacement Reserve must be funded and maintained for the full affordability period and reflected in the operating expenses for the full 15-to-30-year projection of expenses, as applicable. Replacement Reserve deposits will be inflated at 3% annually.
- Projects must include a capitalized operating reserve equal to 6 months of underwritten operating expenses, amortizing debt service, and required reserve deposits. If drawn, the operating reserve must be replenished prior to distributions of cash flow. The operating reserve is intended to protect against unplanned operating deficits. If ADFA's underwriting projections anticipate deficits within the applicable affordability period, a separate operating deficit reserve must be capitalized as well.
- To substantiate LIHTC equity pricing, if applicable, applicants must submit documentation indicating that a syndicator or investor has reviewed the proposal and indicated preliminary pricing along with their interest in the project.
- Applicant must provide the amounts and terms for the construction financing, permanent financing, and if applicable, owner equity information. ***Amortizing permanent financing that will be senior to ADFA's HOME/NHTF loan may not mature prior to the expiration of the HOME/NHTF affordability period.***

B. Proforma Requirements

ADFA requires submission of a project proforma in a format provided by ADFA as part of application instructions.

If not otherwise itemized, applicants must be able to separate the hard costs of any stand-alone accessory buildings, including leasing offices, community buildings, laundry facilities, free-standing garages or carports, or maintenance buildings so that ADFA can complete preliminary HOME and/or NHTF cost allocation calculations.

Costs and fees may be paid to ADFA as permitted by the HOME and/or NHTF program(s). The HOME and/or NHTF program(s) allow(s) ADFA to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. Applicants must include allowances for ADFA's project-related soft costs in their development budget, if specified in the RFP.

Similarly, applicants must include, as part of the operating budget, an allowance for ADFA's ongoing monitoring fees as specified in the application or QAP.

C. Cost Limitations

All project costs must be reasonable and necessary whether directly paid with HOME/NHTF funding or another source. ADFA reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME and/or NHTF projects will be subject to the following specific cost limitations:

- The maximum developer fee is 12.5%[6] of net development costs approved by ADFA. Net development costs are total development costs less syndication related costs and the developer fee itself. Consultant fees are payable only from proceeds of the developer fee.
- Maximum allowable builder General Requirements, Overhead, and Profit are 7%/4%/10%, respectively. The builder line-item percentages are calculated on the construction contract price which cannot include construction contingency. If ADFA's Inspector approves a Change Order for use of construction contingency, the same percentages for builder line items apply.
- Generally, Architectural, including Engineering fees, may not exceed 6% of total project hard costs (excluding builder's line items) unless ADFA has approved a larger fee (e.g. in response to specific project characteristics such as a requirement for historic rehabilitation or unusual site conditions requiring additional engineering).
- Acquisition costs may not exceed the lesser of the appraised value of a property, the purchase price negotiated with an arms-length seller, or the cost basis of an identity of interest seller.

D. Other Public Funding Sources

Applicants must disclose all other firm commitments for funding with the initial HOME and/or NHTF Rental Housing application to ADFA at the time of application and upon receiving any additional commitments of funding. ADFA will conduct a subsidy layering review as part of the underwriting process for any project that includes other public subsidies. Using its underwriting criteria, ADFA will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include a reduction in HOME and/or NHTF funds awarded, reductions in the rents being charged to tenants, requirements that excess cash is deposited to an operating reserve, or increases in annual payments on the HOME and/or NHTF loan.

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[6] ADFA recognizes that many applicants propose lower developer fees as a result of scoring factors in the Qualified Allocation Plan (QAP). To the degree an applicant has proposed a lower fee for LIHTC purposes, that lower fee limit will be observed for HOME/NHTF purposes.

ADFA will consider adjusting its underwriting in consultation with other funders to the project. ADFA retains, at its sole discretion, the power to decide whether to accept alternative standards.

7. Construction Process

A. ADFA Construction Inspections

ADFA will provide HOME and/or NHTF funds in the form of construction and/or permanent financing only. ADFA must be provided with the G-702/703 and supporting documentation and Developer/Owner must provide reasonable notice of any changes to scheduled monthly draw inspections during the construction period. ADFA staff will participate in all draw reviews and conduct inspections to ensure that the project is progressing, and that work completed is consistent with all applicable HOME and/or NHTF requirements.

B. Federal Labor Standards (Davis-Bacon)

HOME

When federal labor standards (i.e. Davis-Bacon and Related Acts) apply to a project, ADFA must be provided with compliance documentation throughout the construction period even when HOME is provided as a permanent loan following the completion of construction. Prior to commencing construction, ADFA must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to ADFA and allow access to the site and workers for the purpose of completing worker interviews.

ADFA will accept Form WH-347 or acceptable internal forms from the contractor.

NHTF

Davis-Bacon does not apply to NHTF projects unless triggered by another source in the project.

C. Drawing Funds

ADFA's HOME and/or NHTF Loan is intended as construction and/or permanent financing. Proceeds of the HOME and/or NHTF loan will only be released as reimbursement for eligible project costs.

I. Conditions of Construction Draws

Proceeds of the HOME and/or NHTF loan will only be released to Owner for actually incurred HOME-eligible and/or NHTF-eligible project costs. The obligation of ADFA to approve any draw or to make any disbursement of HOME and/or NHTF funds is subject to the satisfaction of the following conditions at the time of making such disbursement:

- Draws will not be processed if the Owner is in default of program regulations.
- The Project shall not have been materially damaged by fire or other casualty.
- ADFA shall have received evidence satisfactory to ADFA that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- Owner shall have submitted at least 10 days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by ADFA including, without limitation, the following:
    - Current Contractor Tracking Form and lien waivers must be concurrent with the requested disbursement.
    - Evidence satisfactory to ADFA that the Project and the contemplated use thereof are permitted by and comply with all applicable uses or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been obtained as required; and that no environmental impact statement is required or that such environmental impact statement has been properly filed and approved.
    - Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under federal law.
    - Such other supporting evidence as may be requested by ADFA or its agents to substantiate all payments which are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
    - ADFA shall have determined that all HOME and/or NHTF requirements pertaining to the disbursement of funds have been met, including but not limited to monitoring of Davis Bacon compliance.
    - ADFA shall have received a current inspection report from an ADFA inspector that verifies satisfactory completion of work to HOME/NHTF standards.
    - No determination shall have been made by ADFA that the undisbursed amount of the loan is less than the amount required to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

II. Conditions of Final Disbursement

In addition to the requirements set forth above, ADFA shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and offsite utilities and streets and correction of defects in workmanship and/or materials:

- A certificate of occupancy, if applicable, or a final approved construction report from ADFA's HOME/NHTF Department for the Project.
- Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HOME/NHTF units.
- Evidence satisfactory to ADFA that the Project has been completed lien free and substantially in accordance with the plans and specifications.
- Review and final settlement of the cost certification.
- Such other supporting evidence as may be requested by ADFA or its agent to substantiate all payments which are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.
- A determination by ADFA that all HOME and/or NHTF requirements pertaining to the initial development of the Project have been met, including but not limited to monitoring of Davis-Bacon compliance, as applicable, Section 3, Energy Star Certified Units, and Lead Based Paint reports, if applicable.

III. Limitation on Draw Requests

- In all cases, Owner may not request disbursement of HOME and/or NHTF funds until funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.
- No disbursements for materials stored will be made by ADFA unless Owner shall advise ADFA of its intention to so store materials prior to their delivery. The propriety of disbursements for materials stored shall be determined in ADFA's sole discretion.
- If all or a portion of the developer's fee is not budgeted to be paid with HOME and/or NHTF funds, 10% of total HOME and/or NHTF funds will be held as retainage until submission and approval of all items required for final disbursement above.

D. Project Closeout

Owners are required to submit demographic data at lease up for all HOME-funded and/or NHTF-funded units. Data shall include elderly status, race, gender, female head of household, number of household members, and percent of area median income. Owners must be aware that the Affordability Period does not begin for HOME/NHTF-funded Project(s) until all project costs are processed, all demographic data is verified by ADFA staff, and the project is entered as completed in IDIS.

8. Monitoring During Affordability Period

Following project closeout, ADFA will monitor the project for ongoing compliance with HOME and/or NHTF requirements, including but not limited to income and rent restrictions, property standards, tenant protections, and marketing and fair housing requirements. In addition to requiring periodic reporting as outlined in Section 4.D. above, ADFA will conduct on-site monitoring visits as required by HOME regulations at 24 CFR 92.504(d)(1) and NHTF regulations at 24 CFR 93.404. The purpose of these visits will include, at minimum, reviews of project records and inspection of the premises including common areas and residential units.

In most cases, ADFA conducts such reviews annually. However, ADFA reserves the right to conduct site visits more or less frequently based on changes to HOME or NHTF regulations or ADFA policy or based on evidence of compliance deficiencies in a prior monitoring visit.

As noted above, all projects must be operated in compliance with ADFA's most current Rental Management Handbook, or successor publications, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. The handbook provides additional detail on and updated/current descriptions of ADFA's guidance on property operations. This may include, among other items, procedures for obtaining annual rent or utility allowance approvals, reporting and document submission requirements, use of updated form documents provided by ADFA, and the like.