



# HOME PROGRAM

## TENANT-BASED RENTAL ASSISTANCE GUIDE



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# SECTION 1. INTRODUCTION

Planning, administering and operating an affordable housing activity is a rewarding but challenging venture. The federal regulations relating to the HOME Investment Partnership Program (HOME) can be very complex. The Arkansas Development Finance Authority (ADFA) provides subrecipients with this HOME Program Tenant-Based Rental Assistance Guide (Guide) as a tool to help them manage their HOME award and to assist them in staying in compliance with applicable requirements. This Guide is not a stand-alone document and needs to be utilized with other HOME sources of information for state and federal regulations. HUD regulation sections cited in this document refer to HUD Regulations 24 CFR (Code of Federal Regulations).

ADFA's website lists a vast amount of information, regulations, forms, and announcements regarding the HOME Program and is one of the best tools available for subrecipients. The state and federal HOME rules along with many of the documents referenced in this Guide can be found on the website at <https://adfa.arkansas.gov>. This TBRA guidebook is supplemental to the 2018 HOME Program Operations Manual.

## A. HOME ALLOCATION STAFF

<b>Name/Title</b>	<b>Contact Info.</b>	<b>Resource</b>
Lori Brockway Federal Housing Programs Manager	501-682-3339 <a href="mailto:lori.brockway@arkansas.gov">lori.brockway@arkansas.gov</a>	Program Manager
Jason Bays HOME Specialist	501-682-5861 <a href="mailto:jason.bays@arkansas.gov">jason.bays@arkansas.gov</a>	Project Specialist
Lanita Wasson HOME Specialist	501-682-5901 <a href="mailto:Lanita.wasson@arkansas.gov">Lanita.wasson@arkansas.gov</a>	Project Specialist
Susan Gardner Assistant Federal Housing Programs Manager	501-682-5931 <a href="mailto:Susan.gardner@arkansas.gov">Susan.gardner@arkansas.gov</a>	Reporting/Internal System MITAS

## SECTION 2. GENERAL INFORMATION

Tenant-Based Rental Assistance (TBRA) is a program that enables individual households to rent safe, sanitary housing units.

Subrecipients can provide TBRA to very low- and low-income households in three forms:

- Monthly rental assistance payment (not to exceed two years)
- Upfront security deposit assistance
- Utility deposit assistance

NOTE: The utility deposit assistance shall only be provided in conjunction with rental assistance or security deposit. Utility deposits cannot be standalone assistance.

ADFA requires that TBRA assistance be made:

- Directly to the landlords on behalf of the tenants
- Directly to the utility provider on behalf of the tenants

As a general rule, students are not considered eligible tenants unless they meet HUD's student exception rule. If you have any questions, please contact ADFA. Please refer to: [Student Eligibility for Section 8 Assistance and Streamlining Final Rule \(constantcontact.com\)](http://constantcontact.com)

Subrecipients shall directly administer the TBRA project.

The Section 8 Housing Choice Voucher Program (HCV) is an example of a typical TBRA program. It is the model used by the majority of subrecipients and **ADFA expects subrecipients to model their HOME-funded TBRA program after the Section 8 HCV program.**

### **A. TBRA FLEXIBILITY**

TBRA differs from other types of HOME rental housing activities in three key ways:

- TBRA Assists Individual Households  
Individual households are assisted rather than rental units.
- TBRA Moves with the Tenant  
If a household decides to move to another rental property, the household may take its TBRA assistance with them.
- TBRA Subsidy Varies per Household  
The TBRA subsidy level is based upon the income of the household, the particular unit the household selects and the current rent standard.
- TBRA can be designed to serve the general objective of making housing more affordable for low-income households within a jurisdiction.
- TBRA can focus on special purpose or specific housing needs.

### **B. ELIGIBLE ACTIVITIES**

#### 1. RENT ASSISTANCE

Rent assistance is the difference between 30% of the household's adjusted monthly income and the actual monthly rent.

2. SECURITY DEPOSIT ASSISTANCE

The TBRA project may assist tenants with security deposits.

- The term "security deposit" is defined by the local or state tenant-landlord law covering the jurisdiction.
- The maximum amount of HOME funds that may be provided for the security deposit is the equivalent of two months' rent for the unit.

3. UTILITY DEPOSIT ASSISTANCE

Utility deposit assistance must be used along with either rent assistance or security deposit assistance. Utility deposit assistance can be granted when the household moves in if they are required to pay a utility deposit.

**C. INELIGIBLE ACTIVITIES**

TBRA cannot be used:

- To assist a resident owner of a cooperative or mutual housing unit when that resident is recognized by state law as a homeowner.
- To prevent the displacement of tenants from projects assisted with Rental Rehabilitation Program funds.
- For homeless persons for overnight or temporary shelter.
- To duplicate existing rental assistance programs that already reduce the tenant's rent payment to 30% of income.
- To pay any past due utility charges.

**D. ELIGIBLE TENANT**

1. INCOME ELIGIBILITY

HOME TBRA is limited to tenants who are at or below 60% of the area median income (AMI).

2. INCOME DETERMINATION

The subrecipient must assure that the household is income-eligible prior to signing a contract for TBRA assistance. The income determination is valid for six months.

Household income shall be calculated using the Part 5/Section 8 definition of annual gross income. Two additional resources to reference include the Technical Guide for Determining Income and Allowances for the HOME Program and HUD Income and Allowances Calculator (located online at the HUD Exchange website at [www.hudexchange.info](http://www.hudexchange.info)).

a. Source Documentation for Income Determinations for all Household Members

HOME subrecipients shall examine at least two months of source documentation

(e.g., wage statements, interest statements, or unemployment compensation documentation) when determining household income for all potential HOME beneficiaries. (See 2013 Rule amends §92.203(a)(1)(i) and (a)(2))

b. Counting All Household Members' Income

The income of all persons in the household, including nonrelated individuals, shall be included in the household income determination. (See §92.203(d)(1))

These tools on the HUD Exchange website may be helpful in determining household income:

- Online Income Eligibility Calculator: [CPD Income Eligibility Calculator and Income Limits - HUD Exchange](#)
- Income Eligibility Calculator User Manual: [CPD Income Eligibility Calculator User Manual \(hudexchange.info\)](#)
- Technical Guide for Determining Income and Allowances for the HOME Program: [Technical Guide for Determining Income and Allowances for the HOME Program \(hudexchange.info\)](#)

NOTE: The current passbook savings rate on assets is .06%. This is in accordance with HUD Notice 2016-01, which is subject to change and will need to be reviewed to verify any changes.

## **E. TENANT SELECTION PLAN**

A subrecipient of TBRA funds must have a written tenant selection policy that clearly specifies how households will be selected for participation in their project. There are two major components of tenant selection:

- Income Eligibility - A project can target the assistance to distinct AMI levels as long as it is below the 60% AMI level.
- Preferences - A project can target populations of unmet needs as defined in the State of Arkansas' Consolidated Plan. (See §92.209(c)(2)(i) and (ii))

Preferences can be established for both individuals with special needs (such as homeless persons or elderly persons) and persons with disabilities, in certain situations.

A project can limit TBRA to persons with a specific disability or disabilities if doing so is necessary to provide housing, aid, benefit, or services that are as effective as those provided to others, in accordance with the requirements in 24 CFR 8.4(b)(1)(iv).

A project is prohibited from requiring participation in medical or disability-related services as a condition of receiving or continuing to receive HOME TBRA.

## **F. RENT REASONABLENESS**

A subrecipient must disapprove a lease if the subrecipient determines the rent is not reasonable based on rents that are charged for comparable unassisted rental units.

## **G. PROPERTY AND OCCUPANCY STANDARDS**

Inspections to verify compliance with the Section 8 Housing Quality Standards (HQS), lead safe housing and occupancy standards are to be made at initial move-in and at annual recertifications.



1. SECTION 8 HOUSING QUALITY STANDARDS

The Section 8 Housing Quality Standards (HQS) must be used for HOME TBRA projects. The inspections at move-in must ensure that the unit meets HQS: [52580A.PDF \(hud.gov\)](#).

2. LEAD SAFE

HOME TBRA units must be lead safe housing. The inspections at move-in must ensure that the unit is lead safe.

3. OCCUPANCY STANDARDS

Subrecipients must develop local occupancy standards that specify the number of bedrooms needed by households of various sizes and composition. The occupancy standards are used to provide consistent criteria for determining the unit size for which the household is eligible.

- ✓ 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.

4. TERMINATION

Subrecipients must establish standards for 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 in the lease and/or in the contract between the subrecipient and the tenant.

**H. PROCESSING APPLICATIONS FOR TENANTS**

1. APPLICATION INTAKE AND WAITING LIST

The subrecipient must create a waiting list policy. The subrecipient must follow its written tenant selection plan. Documentation must demonstrate that all eligible households had the opportunity to apply and were treated fairly in the application process. The subrecipient shall retain records on all applicants.

2. ELIGIBILITY DETERMINATIONS

The subrecipient must verify all factors that relate to the household's eligibility, the household composition, and preference and income information provided by the household. The subrecipient must use source documents (i.e. wage or interest statements, payroll) to determine each member of the household's income.

3. TBRA ASSISTANCE

Once a household is determined eligible and selected to receive TBRA assistance, the subrecipient should notify the household and authorize the household to look for housing. The subrecipient should establish a deadline for the household to locate a unit.

4. REQUEST FOR TBRA UNIT APPROVAL

Once the household finds a unit and a landlord willing to participate in the project, the tenant submits a request for the unit to be approved and for using TBRA to rent

the unit. The subrecipient must inspect the unit to assure that Section 8 Housing Quality Standards, lead safe housing, and occupancy requirements will be met and assure that the rent is reasonable.

## 5. LEASE EXECUTION

Once the unit has been approved, the tenant and the owner must enter into a lease. ADFA expects that subrecipients will adopt their Section 8 program lease templates for the HOME-funded TBRA program they are administering. The subrecipient must provide required language regarding the HOME Program as an addendum to the owner's lease. The subrecipient and the owner will enter into an agreement in which the owner agrees to comply with the HOME rules and the subrecipient agrees to pay the TBRA share of rent.

The lease between the landlord and the tenant may not contain certain prohibited lease provisions and must be in effect for at least one year, unless otherwise agreed upon by the tenant and landlord for a lease less than one year.

Subrecipients must establish standards for 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 (agreement) between the subrecipient and the tenant.

- The landlord may only refuse to renew or terminate the lease of a tenant residing in a HOME-assisted unit, if there is good cause.
- Good cause is defined as: repeated violations of lease terms; violation of Federal, State, or local law; or for completion of the tenancy period for transitional housing.
- Tenant's failure to participate in any required supportive services of transitional housing is permissible basis for terminating a tenancy or refusing to renew a lease.
- An increase in a tenant's income does not constitute good cause for termination of or refusal to renew, a lease. Participants are eligible to receive TBRA assistance as long as their household income remains at or below 60% of area median income.
- The landlord is required to serve written notice to tenant specifying the grounds for the action at least thirty (30) days before the termination or refusal to renew the lease.

## I. ONGOING RESPONSIBILITIES

### 1. OCCUPANCY STANDARDS

The subrecipient shall inspect the unit at move-in to ensure the unit meets HQS, lead safe standards and to ensure that the unit is the appropriate size for the household in order to meet occupancy standards.

### 2. RENT INCREASES

The subrecipient must review and approve rent increases by landlords renting to TBRA tenants. Landlords can adjust rents as leases are renewed. The rent must be reasonable.

### 3. RECERTIFYING INCOME

Income of tenants receiving rental assistance must be re-examined at least annually

using current source documents.

4. TENANTS ON SECTION 8 WAITING LIST

Special provisions are needed for tenants receiving HOME TBRA who were on the Section 8 waiting list at the time of selection. Section 8 providers are required to maintain households on the Section 8 waiting list even if they are selected for HOME TBRA assistance.

**J. EXPENDITURE TIMEFRAMES**

The subrecipient has 24 months from the contract effective date to expend all awarded HOME funds unless an amendment to the contract for a time extension is approved.

**K. MATCH**

ADFA does not require TBRA projects to generate match contributions.

**L. GENERAL ADMINISTRATION**

General administration is a separate activity contained in the subrecipient's approved budget in the HOME Agreement. Subrecipients can request administration funds not to exceed 10% of the total amount requested. General administration costs are paid out of the general administration funds line-item of the HOME application budget. The following items are considered general administration costs (not all inclusive) and the activity must be an allowable cost per federal requirements:

- Overall project coordination. (e.g. establishing financial accounting documents and systems, management, internal controls and oversight responsibilities, etc.)
- General administration services. (e.g. third-party contracts, accounting, legal, etc.)
- Reporting to ADFA. (e.g. draw requests, etc.)
- Advertising and marketing (e.g. general information, public outreach) about the activity or project.
- Direct costs and salaries of the subrecipient's staff directly involved in the administration of the activity project.
- Indirect costs such as office space rent, utilities, insurance, supplies, etc.
- Costs incurred in the procurement of third-party administrative services, technical services or in the procurement/purchase of any indirect costs noted above.
- Internal monitoring and oversight of funded project activities.
- Coordination and resolution of monitoring and/or audit issues.
- Audit costs.
- Environmental review. (overall project)
- Activities to affirmatively further fair housing. (in a general way)
- Preparation and adoption of the Administration Plan.
- Processing of individual applications for assistance.
- Third party verification of applicant's income.
- Income eligibility determination and verification of applicants.
- Cost of inspecting housings units and determining income eligibility will be reimbursed with the general administration funds.

**M. AUDIT STATEMENT**

AUDIT (FOR LOCAL GOVERNMENTS AND NON-PROFIT ORGANIZATIONS)

The subrecipient’s HOME Agreement will contain language regarding federal audit regulations found in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Financial Guidance. As required by 2 CFR Part 200, HOME subrecipients must provide applicable audit documentation to ADFA within nine (9) months of EACH of their fiscal years while the project is open.

For local governments and non-profit organizations, the following applies:

- A Single Audit Not Required Form must be submitted for each fiscal year that the subrecipient expends up to \$750,000 in federal funds, part of which must be HOME funds.
- An audit must be submitted for each fiscal year that the subrecipient expends \$750,000 or more in federal funds, part of which must be HOME funds.
- The subrecipient must submit one copy of the applicable document for EACH contract.
- ADFA reserves the right to request additional information as needed.

**N. BREACH OF CONTRACT**

Any breach of contract provisions may result in repayment of the subrecipient’s HOME funds and may prevent future awards from ADFA.

**SECTION 3. FEDERAL CROSS-CUTTING MEASURES**

**A. SUMMARY OF OTHER FEDERAL CROSS-CUTTING MEASURES**

<b>SUMMARY OF OTHER FEDERAL CROSS-CUTTING MEASURES</b>			
<b>Other Federal Requirements</b>	<b>Applies to TBRA Projects?</b>	<b>Special Issues/Considerations</b>	<b>Regulatory Citations and References</b>
<b><i>Non-Discrimination and Equal Access Rules</i></b>			
Fair Housing and Equal Opportunity	Yes	Subrecipient must affirmatively further fair housing	<ul style="list-style-type: none"> <li>• 92.202</li> <li>• Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.)</li> <li>• Fair Housing Act (42 U.S.C. 3601-3620)</li> <li>• Executive Order 11063 (amended by Executive Order 12259)</li> <li>• Age Discrimination Act of 1975, as amended (42 U.S.C. 6101)</li> <li>• 24 CFR 5.105(a)</li> </ul>
Affirmative Marketing	Yes	Affirmative Fair Housing Marketing Plan must be submitted to ADFA	<ul style="list-style-type: none"> <li>• 92.351</li> </ul>
<b><i>Employment and Contracting Rules</i></b>			
Conflict of Interest	Yes	Contract includes language	<ul style="list-style-type: none"> <li>• 92.356</li> <li>• 2 CFR Part 200</li> </ul>
Equal Opportunity Employment	Yes	Contracts and subcontracts over \$10,000 should include language	<ul style="list-style-type: none"> <li>• Executive Order 11246 (implemented at 41 CFR Part 60)</li> </ul>

		prohibiting discrimination.	
<b>Environmental Requirements</b>			
Environmental Reviews	Yes	58.35(b)(1) - TBRA level of review is Categorically excluded NOT subject to 58.5.	<ul style="list-style-type: none"> <li>• 92.352</li> <li>• 24 CFR Part 58</li> <li>• National Environmental Policy Act (NEPA) of 1969</li> </ul>
Lead-Based Paint	Yes pre-1978 units	The regulation only applies to structures built before 1978 that house children under the age of six.	<ul style="list-style-type: none"> <li>• 92.355</li> <li>• Lead Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4821 et. seq.)</li> <li>• 24 CFR Part 35</li> <li>• 982.401(j) (except paragraph 982.401(j)(1)(i))</li> </ul>

## **B. CIVIL RIGHTS AND FAIR HOUSING**

The purpose of Affirmative Fair Housing Marketing requirements is to promote a condition in which individuals of similar income levels in the same housing market area have available to them a like range of choices in housing, regardless of the individual's race, color, religion, sex, physical/mental disability, familial status, or national origin.

The subrecipient's contract will list several federal and state regulations related to civil rights, equal opportunity and fair housing. The Fair Housing Act prohibits discrimination in the sale, rental, financing or other services related to housing based upon the protected classes. If you participate in the HOME Program, you cannot be denied benefits or be subjected to discrimination based on the protected classes. Fair housing also applies to any project funded in whole or in part with federal funds. When the subrecipient signs the contract, it certifies that it will comply with the laws listed. If the subrecipient does not understand the requirements, it should request the full text of the regulation from ADFA and consult with ADFA's Civil Rights/Fair Housing Specialist to ensure compliance. Please review: [Home Page - Fair Housing Commission \(arkansas.gov\)](http://www.fairhousing.com)

While some of the civil rights and fair housing regulations simply prohibit discrimination, others require the subrecipient to take some affirmative steps or action. These are addressed below.

### 1. AFFIRMATIVELY FURTHERING FAIR HOUSING

Title VIII of the Civil Rights Act of 1968 and Title I of the Housing and Community Development Act of 1974 require that subrecipients take some action to affirmatively further fair housing in their communities. This means the subrecipient must conduct outreach and informational efforts to those who are least likely to know about and apply for the housing assistance.

Refer to the following links for information and examples:

- Affirmative Fair Housing Marketing Plan Form (TBRA): [AFFIRMATIVE FAIR HOUSING MARKETING PLAN \(AFHMP\) MULTIFAMILY HOUSING \(d38t1cionx51tx.cloudfront.net\)](http://d38t1cionx51tx.cloudfront.net)
- HOME/NHTF/LIHTC Affirmative Fair Housing Marketing Guide: [pvntvtj5iy65iirakh2ump5hnnpp \(d38t1cionx51tx.cloudfront.net\)](http://pvntvtj5iy65iirakh2ump5hnnpp(d38t1cionx51tx.cloudfront.net))
- HOME Tenant Selection Plan Summary-if different from adopted PHA Administrative Plan.

- Equal Housing Opportunity Logo: [FHEO Logo | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)
- Accessible Unit Lease Addendum - [Lease Addendum Pertaining to Occupancy of Accessible Unit \(phfa.org\)](#)
- Lease Addendum - [Lease Addendum \(hud.gov\)](#)
- Policy on Assistance Animals - [AsstAnimalsGuidFS1-24-20.pdf \(hud.gov\)](#)
- Federal Fair Housing Poster can be found here: [928.1A \(hud.gov\)](#)
- Equal Access to Housing in HUD Programs-Regardless of Sexual Orientation or Gender Identity\_can be found here: [Housing Discrimination and Persons Identifying as Lesbian, Gay, Bisexual, Transgender, and/or Queer/Questioning \(LGBTQ\) | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

When the TBRA project is monitored, the assigned ADFA Project Manager will review the actions that the subrecipient took to affirmatively further fair housing. The subrecipient should document those activities and the results.

- a. Affirmative Fair Housing Marketing (AFHM) Plan  
HOME subrecipients are required to develop an Affirmative Fair Housing Marketing Plan for the project.

### **C. ENVIRONMENTAL REVIEW**

ADFA determines the level of review for HUD activities following the guidance according to 24 CFR Part 58. TBRA projects are Categorically Excluded Not Subject to 58.5.

### **D. FEDERAL CONTRACT PROVISION LANGUAGE**

The subrecipient must certify that all federal requirements listed in its contract with ADFA are satisfied. The certifications must be part of every contract and subcontract funded in whole or in part with HOME funding.

### **E. LEAD SAFE HOUSING**

HUD Lead Regulation 24 CFR Part 35, Subpart M, applies to the TBRA Program. **The regulation only applies to structures built before 1978 that house children under the age of six.** The subrecipient should consult the regulation itself to make sure that it implements this regulation fully and properly. Further information concerning the state specific requirements for lead poisoning prevention can be found at Arkansas Department of Health - Lead Based Paint Program at: [Lead-Based Paint Program Arkansas Department of Health](#)

The following summarizes the key requirements for TBRA projects:

1. EVALUATION  
**Subrecipients must ensure that a visual assessment of a unit is conducted prior to occupancy and at least annually thereafter.** The visual assessment identifies deteriorated paint, dust, debris, and other residue. The visual assessment must be completed by an inspector certified by the Department of Public Health to conduct visual assessments or provide verification that the inspector has taken the Visual Assessment Training provided online by HUD at: [Visual Assessment Training - HUD](#)
2. PAINT STABILIZATION  
The property owner must correct any conditions identified in the HQS inspection or visual assessment including stabilization of deteriorated paint. Paint stabilization

normally involves repairing the substrate, scraping, and repainting the surface. All deteriorated paint must be stabilized by properly trained or supervised workers using Lead Safe Work Practices.

When work is complete, the subrecipient must ensure that the unit passes clearance and must maintain a copy of the clearance report. Failure to obtain clearance on any unit where lead hazard reduction activities have occurred will result in disqualification of the unit. Records should be kept on any unit where clearance is required but has not been obtained to ensure that the unit is not rented to a TBRA assisted household.

### 3. COMMUNICATION WITH TENANTS

The subrecipient must ensure that residents receive the following communications:

- The tenant must receive the EPA pamphlet, Protect Your Family from Lead in Your Home prior to occupying the unit. Documentation of the tenant's receipt of one of these pamphlets must be maintained in the tenant's file. This pamphlet can be found here: [Lead in Your Home Portrait Color \(epa.gov\)](http://www.epa.gov/lead/pamphlet)
- Prior to occupancy, tenants must receive a Lead Disclosure Notice from the owner notifying them of any known lead-based paint or hazards in the unit. This notice can be found here: [Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards \(epa.gov\)](http://www.epa.gov/lead/disclosure)

### 4. ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVELS

The subrecipient and property owners must take specific steps after receiving notice that a child with EIBLL is living in a unit occupied by a TBRA assisted household.

### 5. REIMBURSABLE EXPENSES

Inspections associated with lead-based paint requirements are reimbursable with general administration funds. There are no TBRA funds available for lead hazard reduction. The burden to pay for lead reduction work is on the building owner.

## **F. PROCUREMENT AND CONFLICT OF INTEREST**

### 1. PROCUREMENT

All subrecipients must follow the General Procurement Standards in 2 CFR §200.318.

### 2. CONFLICT OF INTEREST

Along with other requirements not mentioned in this Guide, this regulation states that non-Federal entity recipients must maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest. "Organizational conflicts of interest" means that, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

### 3. MINORITY OR WOMEN-OWNED BUSINESSES

All projects utilizing HOME funding must take affirmative steps to use small businesses and minority- or women-owned businesses as sources of supplies, equipment, construction, and services. A searchable database of registered MBE's and WBE's is available at: [Get Certified | AEDC \(arkansasedc.com\)](http://www.arkansasedc.com)

## **G. VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2012 (VAWA)**

The Violence Against Women Act of 1994 (VAWA) is a United States federal law that provides funding and rules designed to investigate and prosecute violent crimes and to protect victims of such crimes.

VAWA was reauthorized in 2000, 2005 and 2013. The 2005 version first introduced provisions that applied to housing. Specifically affected were the Section 8 programs and public housing.

The 2013 reauthorization greatly expanded the housing programs covered by the Act to include HOME-funded Tenant-Based Rental Assistance. Final guidance was released by HUD in the Federal Register (Vol. 81, No. 221) on November 16, 2016.

Despite its name, VAWA protects both male and female victims.

A victim is not protected from eviction or termination based on their own lease violations or good cause unrelated to the violence of which they were a victim.

### **1. PROHIBITED DENIAL/TERMINATION**

Subrecipient shall ensure that any applicant for or tenant of HOME-assisted housing may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

### **2. LEASE TERMS**

Subrecipient shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- a. A serious or repeated violation of a lease for HOME-assisted housing by the victim or threatened victim of such incident; or
- b. Good cause for terminating the assistance, tenancy or occupancy rights to HOME-assisted housing of the victim of such incident.

### **3. TERMINATION ON THE BASIS OF CRIMINAL ACTIVITY**

No person may deny assistance, tenancy, or occupancy rights to HOME-assisted housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

### **4. CONFIDENTIALITY OF TENANT INFORMATION RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

The subrecipient shall ensure that any information submitted to the subrecipient and or staff of HOME-assisted housing including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any



other entity or individual, except to the extent that the disclosure is:

- a. Requested or consented to by the individual in writing;
- b. Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- c. Otherwise required by applicable law.

5. REMEDIES AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

The subrecipient may bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

- Without regard to whether the household member is a signatory to the lease; and
- Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

A lease bifurcation shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases. If a family who lives in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

6. LIMITATIONS OF VAWA PROTECTIONS

VAWA as applied does not limit the authority of the subrecipient, when notified of a court order, to comply with a court order with respect to:

- The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
- The distribution or possession of property among members of a household.

VAWA as applied does not limit any available authority of the subrecipient to evict a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the subrecipient must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

VAWA as applied does not limit any available authority of the subrecipient to terminate assistance to or evict a tenant under a covered housing program if the subrecipient can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the Project would be present if that tenant or

lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the standards provided in the definition of “actual and imminent threat” in 24 CFR 5.2003.

Any eviction or termination of assistance, should be utilized by the subrecipient only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns

## 7. REQUIRED FORMS

### Appendix A: HUD-5380 Notice of Occupancy Rights under the Violence Against Women Act

The subrecipient must ensure that notice of occupancy rights which is set forth in Form HUD-5380 is provided to each of its applicants and to each of its tenants. It is to be provided to TBRA applicants and households as follows:

- When the TBRA applicant’s rental assistance is approved or denied
- When the subrecipient provides the tenant with notification of termination of the HOME TBRA assistance
- When the subrecipient learns that the tenant’s housing owner intends to provide the tenant with notification of eviction.

### Appendix B: HUD-5381 Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The subrecipient must use and implement the emergency transfer plan set forth in Form HUD-5381 and must make the determination of whether a tenant qualifies for an emergency transfer under the plan. The subrecipient may provide Form HUD-5383 to a tenant that is requesting an emergency transfer. With respect to tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the subrecipient must provide a list of properties in the jurisdiction that include HOME-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME-assisted units. In addition, the subrecipient may:

- Establish a preference under the grantee's HOME program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e); and
- Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

The tenant must expressly request the transfer and reasonable confidentiality measures must be incorporated to prevent the perpetrator from discovering the location of the new unit. Situations where a transfer would be allowed might include:

- Tenant reasonably believes that they are threatened with imminent harm of further violence if they remain in their current unit.
- A sexual assault occurred on the premises within 90 days prior to the request for transfer.

The plan must establish recordkeeping and reporting requirements. Documentation relating to a victim must be maintained in confidence and may not be entered into any shared database or disclosed to any other entity. Exceptions are applicable if:

- The victim requests or consents to disclosure
- The documentation is required in the bifurcation eviction proceedings, or
- Otherwise, as required by applicable law.

#### Appendix C: HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking and Alternate Documentation

The HUD-5382 form must be provided to the applicant or tenant at the time that you distribute the HUD-5380.

- The form may be completed by the applicant or tenant seeking to invoke their VAWA rights or someone doing so on their behalf.
- The form states that the household member may be asked (but not required) to provide third-party documentation if doing so potentially puts them at risk of further violence.
- This form must be used "as is" and care must be taken that the most current version is being used.

#### Appendix D: HUD-5383 Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The HUD-5383 form is to be distributed to and completed by any household member who is seeking an emergency transfer while receiving HOME TBRA.

HUD advised that the subrecipient MAY require tenants to provide a written emergency transfer request. You may also accept other written or oral requests for a transfer. ADFA suggests that this policy be made clear in your tenant selection plan and applied consistently.

You MAY ask for, but MAY NOT require third-party documentation if they refuse or do not have the documentation; the form lists a variety of acceptable documentation. The form advises the tenant that they only need to provide documentation if it is safe for them to do so.

#### HUD 91067 Lease Addendum

The subrecipient must ensure that each tenant has the VAWA lease addendum form required by ADFA that incorporates all requirements that apply to the owner or lease of HOME-assisted rental housing under 24 CFR part 5, subpart L, and 24 CFR

92.359(e), including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if it is determined that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e).

- The lease addendum must be signed by all adult household members that are required to sign the lease agreement according to your policy.
- The lease addendum must also be signed with the same frequency as your other lease addendum. It is a good practice to review this policy with your tenants annually during the lease renewal process.

Acknowledgement of Receipt of HUD Forms 5380 and 8382

Each adult household member must be given ADFA Form Acknowledgement of Receipt of HUD Forms 5380 and 8382 at the prescribed times above. An attempt must be made to obtain the signature of the appropriate household members and the subrecipient representative to indicate their receipt of the VAWA forms.

## **SECTION 4. AFTER RECEIPT OF AWARD**

### **A. NOTICE OF APPROVAL**

The subrecipient will receive a notice of approval.

### **B. READ HOME TBRA GUIDE AND 2018 HOME PROGRAM OPERATIONS MANUAL-CHAPTER 7**

### **C. ATTEND MEETINGS/TRAINING SESSIONS**

The subrecipient shall attend meetings/trainings as specified by ADFA.

### **D. CONTRACT DOCUMENTS**

When the subrecipient receives its HOME Agreement, it should review it carefully, obtain the required signature(s) and return it to the assigned ADFA Project Specialist. ADFA will execute the contract and return a copy to the subrecipient.

### **E. NOTICE TO PROCEED**

Only expenses incurred by the subrecipient after receipt of the ADFA fully executed HOME Agreement are eligible for reimbursement.

### **F. LEASE PROVISIONS**

The following provisions must be included with each tenant lease under the HOME TBRA Lease Addendum.

- The lease between the landlord and the assisted tenant must be for at least one year unless mutually agreed upon by all parties.
- The lease between the owner and the assisted tenant **cannot** contain any of the following provisions:
  - ✓ Agreement to be sued - Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

- ✓ Treatment of property - Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
- ✓ Excusing owner from responsibility - Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- ✓ Waiver of notice - Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
- ✓ Waiver of legal proceedings - Agreement of 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.
- ✓ Waiver of a jury trial - Agreement by the tenant to waive any right to a trial by jury.
- ✓ Waiver of right to appeal court decision - Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
- ✓ Tenant responsible for costs 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.
- Owners may terminate tenancy or refuse to renew a lease only upon 30 days' written notice.
- The subrecipient must adopt written tenant selection policies and criteria that:
  - ✓ Are consistent with the purpose of providing housing for very low-income and low-income households;
  - ✓ Are reasonably related to program eligibility and the household's ability to perform the obligations of the lease;
  - ✓ Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
  - ✓ Give prompt written notification to any rejected applicant of the grounds for any rejection.

#### **G. PROCURE GENERAL ADMINISTRATION SERVICES**

General administration services should be provided by the subrecipient. Project expenses that cannot be provided by the subrecipient should be procured through a competitive process, preferably from three or more firms or individuals (a bid price is not required).

# SECTION 5. ESTABLISHING RENTS

## **A. ASSISTANCE**

### 1. RENT ASSISTANCE

The maximum amount that the HOME TBRA project may pay to assist any given household for rent assistance is the difference between 30% of the household's adjusted monthly income and the actual monthly rent. Tenants cannot pay more than 40% of adjusted monthly income when leasing up.

### 2. DEPOSIT ASSISTANCE

- Security deposits are limited to two month's rent
- Utility deposits are determined by the utility provider

### 3. SUBSIDY

- TBRA subsidy varies per household. The TBRA subsidy level is based upon the income of the household, the particular unit the household selects and the project's established rent standard.

### 4. RENT STANDARD

The subrecipient shall establish a rent standard using one of the following methods:

- Local Public Housing Authority's current payment (rent) standard.
- Section 8 FMRs - The FMR is established by HUD for individual jurisdictions, based upon rent for standard units within that jurisdiction. In certain cases, HUD has approved a Section 8 FMR community-wide exception rent for a particular municipality, county, or locality within the overall jurisdiction. The approval permits rents under the Section 8 Program to go as high as 120 percent of the FMR for the jurisdiction overall.
- ADFA expects that subrecipients will adopt Section 8 FMRs for their HOME-funded TBRA program.

The calculation of Section 8 FMRs includes all utilities and housing-related services, except telephone.

## **B. MINIMUM TENANT PAYMENT**

ADFA's rules require a minimum tenant payment of \$50.00. The subrecipient can set minimum payment level of \$50.00 or higher and can establish a dollar figure or a percentage of income.

## SECTION 6. PREPARATION AND SUBMITTAL OF DRAWS

### A. GENERAL INFORMATION

- The subrecipient must have an ADFA fully executed HOME Agreement from ADFA.
- The subrecipient has 24 months from the contract effective date to expend all awarded HOME funds.
- Draw requests will not be processed before clearance of all applicable contract conditions.
- Draw requests must be in whole dollar amounts.
- Draw requests must contain all supporting documentation for funds to be drawn. **Rent rolls must be submitted with each draw request. This must include rent amount and payee name and address.**
- The subrecipient will be notified if the draw request is denied. ADFA will inform the subrecipient of what needs to be corrected and re-submitted.
- If the draw request is approved, ADFA will transfer the funds to the subrecipient through an electronic funds transfer (EFT) or by check.

### B. SUBMITTAL OF DRAWS

1. COMPLETE DRAW REQUEST FORM  
Complete the Draw Request Form. Draws must be in whole dollar amounts. Draws must be submitted monthly.
2. COMPLETE TBRA BENEFICIARY FORM  
A completed TBRA Beneficiary Form and Environmental Certification Form must be completed for all new leases and at annual recertification. These forms will be submitted with draw requests.
3. SUBMIT DOCUMENTS TO ADFA PROJECT SPECIALIST  
Submit documents to the assigned ADFA Project Specialist by email at [deanne.jennings@arkansas.gov](mailto:deanne.jennings@arkansas.gov).
4. Administration funds will be 10% of the drawdown of regular funds.

## SECTION 7. MONITORING REVIEW

After the first draw, the assigned ADFA Compliance Monitoring Specialist will request an upload to the MITAS portal of all tenant files associated with the first draw. Near the contract end date, the assigned Compliance Monitoring Specialist will contact the subrecipient to set up a monitoring review. The purpose of this review is to assess the subrecipient's performance and compliance with HOME Program requirements.

## SECTION 8. REMEDIES OF DEFAULT

In accordance with the HOME Agreement (Section VII. Remedies on Default) and in accordance with 24 CFR 84.86, Sub-recipient agrees that in the event ADFA determines that a breach of this Agreement has occurred, ADFA may exercise all its rights and remedies under applicable regulations, including the right to terminate this Agreement and recapture or terminate all HOME funds allocated under this Agreement.

## SECTION 9. CLOSEOUT PROCESS

### **A. TERMS OF THE WRITTEN AGREEMENT WITH ADFA**

Subrecipients should pay particular attention to and plan for the following terms in the agreement with ADFA:

- Expiring HOME assistance: Subrecipients must plan ahead for expiring HOME assistance. ADFA HOME assistance is not guaranteed from year to year. It is contingent upon availability of funds from HUD and ADFA's programming priorities.
  - ✓ Subrecipients must have tenants sign a statement certifying that they understand the temporary nature of ADFA TBRA assistance. Signed statement should read: TBRA is temporary assistance, depending on availability of funds. There is a possibility that rental assistance will not be renewed after the first year.
  - ✓ **Limited HOME assistance: Subrecipients must appropriately budget TBRA assistance. ADFA does not have additional funds to make available to subrecipients who have over-extended their budgets. Subrecipients should carefully manage the number of TBRA tenants so that they assist tenants within the parameters of the ADFA HOME award.**

After all funds have been drawn, the assigned ADFA Project Specialist will determine if there are any outstanding items that are needed prior to closing out the subrecipient's contract.

### **B. CLOSEOUT**

Although ADFA may conclude that the subrecipient is in substantial compliance, the subrecipient's HOME Program records may be reviewed as part of ADFA's annual audit by HUD, an independent auditor or the State Auditor's Office. Any of these audits could result in findings or conclusions that differ from those of ADFA.