

## **HOME Investment Partnerships Program and National Housing Trust Fund (NHTF) Rental Guidelines**

The following changes have been made to the HOME/NHTF Rental Guidelines:

1. Page 5- Changed affordability amounts on the footnote per HOME Final rule.  
<sup>1</sup> HOME regulation allows for an affordability period of 5 years (less than \$25,000/assisted unit) or 10 years (less than \$50,000/assisted unit) for rehab projects; however, in practice, most HOME rehab projects trigger a 15-year affordability period.  
Limits were previously \$15,000 and \$40,000.
2. Page 6- HOME and NHTF Funding Limits section was revised to remove “ADFA will only allow HOME/NHTF funding to be used for hard construction costs.”
3. Page 7- Application Review Process section was revised in paragraph 2 to read “when the ADFA staff receives notification that an application has been submitted to the Portal.” Previously stated “when the portal notifies ADFA staff”
4. Page 7- Application Review Process section was revised in paragraph 2 to remove the Secure Documents Request and add email as the system of notification of deficiencies. Paragraph 4 was edited to correct the word “the” to “then.”
5. Page 7- The 7<sup>th</sup> paragraph was edited to change the ADFA Board meeting from monthly to next scheduled.
6. Page 9- Capital Needs Assessment section was updated to include the Capital Needs Assessment language used in the QAP.
7. Page 11- Narrative was replaced with a more detailed paragraph that describes what ADFA would like included in a narrative.
8. Page 12- Site Plan, ALTA/NSPS Survey revised this paragraph to remove LIHTC reservation and the 3 months after award language and added leasehold estate language to this section.
9. Page 13- Moved Conflict of Interest section and placed it under Project Funding Requirements.
10. Page 14- System for Award Management- added applicants must provide proof of registration to ADFA.

11. Page 15- Capacity and Identify of Interest. Drew added “While the Development Team Information tab only lists the “Contact Person,” ADFA expects all aforementioned documents from every individual in every member of the development team that has either (1) a leadership role or (2) an ownership interest in said development team entity. In addition, ADFA reserves the right to require the aforementioned documents from anyone ADFA determines to be involved in the project and whose capacity to undertake performance should be part of ADFA’s analysis. Failure to submit or correctly complete each required “Criminal Background and Disclosure Form”.”
12. Page 16- Project Location and Site Control was revised to remove the LIHTC language from the paragraph and add “If the applicant only has a long-term (at least 99 years) lease on the project site, ADFA requires completion of ADFA’s Rider for Restrictive Documents, which will be attached to the relevant Mortgage and Declaration of Restrictive Covenants for each HUD funding source—allowing said Mortgage(s) and Declaration(s) of Restrictive Covenants to attach to the fee simple interest”.
13. Page 16- Project Location and Site Control- Added language regarding long-term lease and the required Rider that would need to be signed, if there is a long-term lease.
14. Page 17- Scattered Site Development was edited to remove Section 42 language and add 24 CFR 92 and 24 CFR 93.
15. Page 19- Replaced the United States Environmental Protection Agency link with an updated link. <https://www.epa.gov/home>
16. Page 20-22- ER topics added: Floodplains, Wetlands, Jurisdictional Streams, Environmental Impact Statements.
17. Page 22- Environmental Impact Statements- Added ADFA will not fund any project which requires completion of an Environmental Impact Statement.
18. Page 25- Revised the paragraph under number 9 of the Match section to remove the “HOME can be counted as match for the Mckinney Act programs.”

19. Page 28- Under Other Federal Requirements, revised the Labor Requirement section to include that Davis-Bacon does not apply to NHTF.

20. Page 33- Proforma Requirements. Removed “in the RFP” from the third paragraph since ADFA is not issuing an RFP.

21. Page 38- Rent Limits – added the new verbiage from the current HOME Final Rule. 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. For any HOME unit (Low or High) with local, state, or federal rent assistance (project- based or tenant-based), the tenant’s contribution to rent is set by the rental assistance program (30% of adjusted or 10% of annual gross income). The Owner may accept rental subsidy even if the subsidy + tenant contribution exceeds published HOME rent.

22. Page 43- Loan Types and Terms section was updated to add the loan terms and provisions.

23. Page 43-44- Priorities/Subordination verbiage was added to clarify recordation of certain documents. See below:

As part of its funding of a project, ADFA requires the recordation of certain documents. For HOME and/or NHTF projects, a Declaration of Restrictive Covenants and Mortgage must be recorded to ensure that the restrictions and liens, respectively, run with the land.

The Declarations of Restrictive Covenants are to be recorded before the Mortgages. If a project has both HOME and NHTF, the order of recording priority should be (1) the Declaration of Restrictive Covenants for the funding source supplying the greater amount of funds, (2) the Declaration of Restrictive Covenants for the funding source supplying the lesser amount of funds, (3) the Mortgage for the funding source supplying the greater amount of funds, and (4) the Mortgage for the funding source supplying the lesser amount of funds. If the project is receiving an equal amount of HOME and NHTF funds, the HOME documents are given priority (i.e. HOME Declaration, NHTF Declaration, HOME Mortgage, and NHTF Mortgage).

In certain limited circumstances, ADFA will subordinate its loan to other loans. ADFA will usually subordinate to

1. Construction loans which are required to be paid off prior to the commencement of ADFA’s loan(s) being repaid per the terms of the ADFA Promissory Note(s).
2. A conventional loan of a greater amount than the ADFA loan (if there is only one) or sum of the ADFA loans (if the project has both HOME and NHTF funding).

\*\*\*Note that this only applies to ADFA subordinating its *loan(s)*. ADFA’s Declaration(s) of Restrictive Covenants must remain in a higher priority.

However, even if ADFA subordinates its loan, no subordination shall

1. Affect the terms of ADFA’s Promissory Note(s), including the repayment terms and maturity date.

2. Waive ADFA's right to approve or disapprove any proposed ownership transfer (or any transfer of an ownership interest) in the project through ADFA's usual ownership transfer process.
3. Require ADFA to acquire the senior lender's permission to amend ADFA's Declaration of Restrictive Covenants or Agreement.

Furthermore, while ADFA's HOME and/or NHTF Agreements and Declaration of Restrictive Covenants will set forth the order of priority, ADFA specifically does not approve of any liens, restrictions, etc. which either appear for the first time in the Public Records or are created, attach, or are disclosed between the Commitment Date of the Title Commitment and the date on which the Title Policy is issued. Any lien, restriction, etc. meeting this criteria must be specifically sent to ADFA to be reviewed and a determination made on the effect said lien, restriction, etc. would have on the project.

24. Page 45- Property Standards section – added the Waiver Link. Applicants may request a waiver for rehabilitation proposals by submitting the following: [ADFA Waiver Request](#).

25. Page 50- Removed the Section requiring guarantees.

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:

- 1) Completion Guarantee including provisions guaranteeing construction completion of the project;
  - 2) 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; and
  - 3) 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.

26. Page 55-Compliance Section – decreased the Compliance and Monitoring section and added the link to the Compliance Manual.