



## Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

July 10, 2023

Senator Jim Petty  
Strategic Realty  
812 Main Street  
Van Buren, Arkansas 72956

RE: Advisory Opinion No. 2023-10

Dear Senator Petty:

This letter is in response to three Contract and Grant Disclosure and Certification forms that were forwarded to my office and which, on June 12, 2023, I considered to be a written request for an advisory opinion and a waiver pursuant to Ark. Code Ann. § 19-11-715(b) and (c); these forms have been supplemented on June 16, June 21, June 28, and July 2, 2023, regarding the circumstances described below involving Bentonville Housing Partners Limited Partnership d/b/a StoneRidge Duplexes of Bentonville, Bentonville Housing Partners II Limited Partnership d/b/a StoneRidge Duplexes of Bentonville II, and Fayetteville Housing Partners Limited Partnership d/b/a Cobblestone Farm Community and their requests through the Arkansas Development Finance Authority (ADFA) for additional HOME Funds, additional National Housing Trust Funds, and the exchange of 2019 tax credits for 2023 tax credits.

This opinion is based upon the following information that you have presented to me and upon which I am relying. It should be noted that if one or more of these information items are later shown to be incorrect, that could result in a revised opinion.

1. **FIRST PROJECT:** Bentonville Housing Partners Limited Partnership is the owner of a 100-unit affordable housing project located in Bentonville, Arkansas known as StoneRidge Duplexes of Bentonville which targets households making at or below 60% of the Area Median Income and which rents are set according to program limitations;
2. For context and disclosure of the companies involved in this development, which information has also been provided in the ADFA applications, you have provided the following information for entities in which you have an ownership interest and that participate in the development process for this project:
  - a. Bentonville Housing Partners Limited Partnership is an Arkansas limited partnership;
  - b. The General Partner is Bentonville Strategic GP, LLC and owns .01%;
  - c. The Limited Partner is a syndicated tax credit fund which owns 99.99% in which there is no direct or indirect ownership by you or anyone related to you;
  - d. Strategic Realty Holdings, LLC is the owner of Bentonville Strategic GP, LLC, and you personally own 50% of Strategic Realty Holdings, LLC;

- e. Strategic Realty Advisors, Inc. is the developer for the project, and you personally own 50% of this entity;
  - f. Strategic Realty Management, Inc. is the management company for the project, and you personally own 50% of this entity; and
  - g. Grass Roots Construction LLC is the construction company for the project, and you personally own 50% of this entity;
3. Initial funding for the project was approved in 2019 under the established guidelines of the ADFA affordable housing programs, including the Low-Income Housing Tax Credit Program and HOME Program;
4. These programs have very specific requirements, and the funds are awarded to successful applicants pursuant to the Qualified Allocation Plan (QAP) established annually by ADFA and which includes public input into the plan;
5. These programs are competitive programs with specific scoring criteria established by the QAP and contain the required federal standards for QAPs. The QAP ensures that all applicants are judged, compared, and competitively scored according to the standards established;
6. The StoneRidge Duplexes of Bentonville project also applied for and received additional funding in 2021. The application for these funds was submitted in the same manner as established by ADFA for all applicants;
7. The Covid-19 pandemic created a historically volatile environment in the affordable housing industry. Supply chain disruption, pandemic delays from government shut-down, quarantine of workforce, and the unprecedented inflation-related costs all contributed to never-before-seen situations in the industry;
8. ADFA (as did all other states) recognized this effect and began working with the development community during this difficult time to remedy the problem and bring solutions so these much-needed affordable housing projects could remain viable and be completed;
9. Also of significance during this time is the fact that the IRS recognized these unprecedented times and aided the industry in various ways, including extensions of placed-in-service dates;
10. These pandemic-related relief provisions provided by ADFA and the IRS were essential in keeping much-needed affordable housing projects viable and to ensure their success;
11. All of these funds were received prior to me becoming a member of the Arkansas Senate on January 1, 2023;
12. The current request for ADFA funding is within the established ADFA program guidelines, and the primary reason for the request for an increase in funds is in response to ADFA's approach to assisting housing developments with the lingering effects of the Covid-19 Pandemic and the impact historic inflation has had on the operations as the bases for the request for additional funding in 2021;
13. Unlike market rate housing, these programs do not allow for an increase in rents to cover expenses; addressing the gap with lower interest rates for the project's debt service was necessary, which these funds provide. This enables the rent to remain low and affordable to those residents making at or below the program guidelines of 60% or less of Area Median Income;
14. The funding requests for this project are:
  - a. An increase of \$1,350,000 in the project's previously awarded HOME Program funds of \$450,000. The new total for HOME funds will be \$1,800,000. The rate and terms are the same as previously awarded prior to your election as a State Senator;

- b. \$1,125,000 in National Housing Trust Funds (NHTF), which are new funds to the project necessary for operating cost increases. The rates and terms are the same as established by the program guidelines; and
  - c. A modification of the completion date of December 31, 2023, for the reasons noted above and other weather and municipality-related delays. The request is to “refresh” these credits and therefore allow a new deadline of December 31, 2024. Although you do not believe it will take the full extension period, the program limitations are such that this is the only option for extending the placed-in-service deadline;
15. None of the above requests, terms, and conditions are outside those set by the ADFA program guidelines and approved by the ADFA board;
16. You have not had any direct or indirect influence on the approval of the requests for funding of this project outside of the normal application process;
17. **SECOND PROJECT:** Bentonville Housing Partners II Limited Partnership is the owner of a 50-unit affordable housing project located in Bentonville, Arkansas known as StoneRidge Duplexes of Bentonville II, which targets households making at or below 60% of the Area Median Income and which rents are set according to program limitations;
18. For context and disclosure of the companies involved in this development, which information has also been provided in the ADFA applications, you have provided the following information for entities in which you have an ownership interest and that participate in the development process for this project:
  - a. Bentonville Housing Partners II Limited Partnership is an Arkansas limited partnership;
  - b. The General Partner is Bentonville Strategic GP II, LLC and owns .01%;
  - c. The Limited Partner is a syndicated tax credit fund which owns 99.99% in which there is no direct or indirect ownership by you or anyone related to you;
  - d. Strategic Realty Holdings, LLC is the owner of Bentonville Strategic GP II, LLC, and you personally own 50% of Strategic Realty Holdings, LLC;
  - e. Strategic Realty Advisors, Inc. is the developer for the project, and you personally own 50% of this entity;
  - f. Strategic Realty Management, Inc. is the management company for the project, and you personally own 50% of this entity; and
  - g. Grass Roots Construction LLC is the construction company for the project, and you personally own 50% of this entity;
19. Funding for the project was approved in 2020 under ADFA’s established guidelines for its affordable housing programs, including the Low-Income Housing Tax Credit Program and HOME Program;
20. This project also applied for and received additional ADFA funding in 2021 and 2022. The application for these funds was submitted in the same manner as established by ADFA for all applicants;
21. The economic and industry dynamics outlined above also apply to this project;
22. The current request for funding includes the following:
  - a. An increase of \$1,125,000 in the project’s previously awarded HOME Program funds of \$450,000. The new total for HOME funds will be \$1,575,000. The rate and terms are the same as previously awarded prior to your election as a State Senator;

23. None of the above requests, terms, and conditions are outside those set by the ADFA program guidelines and approved by the ADFA board;
24. You have not had any direct or indirect influence on the approval of the requests for funding of this project outside of the normal application process;
25. **THIRD PROJECT:** Fayetteville Housing Partners Limited Partnership is the owner of a 89-unit affordable housing project located in Fayetteville, Arkansas known as Cobblestone Farm Community, which targets households making at or below 60% of the Area Median Income and which rents are set according to program limitations;
26. For context and disclosure of the companies involved in this development, which information has also been provided in the ADFA applications, you have provided the following information for entities in which you have an ownership interest and that participate in the development process for this project:
  - a. Fayetteville Housing Partners Limited Partnership is an Arkansas limited partnership;
  - b. The General Partner is Fayetteville GP, LLC and owns .01%;
  - c. The Limited Partner is a syndicated tax credit fund which owns 99.99% in which there is no direct or indirect ownership by you or anyone related to you;
  - d. Strategic Realty Holdings, LLC is the owner of Fayetteville GP, LLC, and you personally own 50% of Strategic Realty Holdings, LLC;
  - e. Strategic Realty Advisors, Inc. is the developer for the project, and you personally own 50% of this entity;
  - f. Strategic Realty Management, Inc. is the management company for the project, and you personally own 50% of this entity; and
  - g. Grass Roots Construction LLC is the construction company for the project, and you personally own 50% of this entity;
27. Prior funding for this project was approved in 2020 under the established guidelines of ADFA's affordable housing programs, including the Low-Income Housing Tax Credit Program and HOME Program;
28. This project also applied for and received additional funding in 2021 and 2022, and the applications for these funds were submitted in the same manner as established by ADFA for all applicants;
29. The economic and industry dynamics outlined above also apply to this project;
30. The current request for funding includes the following:
  - a. \$1,600,000 in HOME Program funds; the project did not previously have HOME Program funds requested/awarded;
31. None of the above requests, terms, conditions, etc. are outside those set by the ADFA program guidelines and approved by the ADFA board;
32. You have not had any direct or indirect influence on the approval of the requests for funding of this project outside of the normal application process;
33. Jake Bleed, ADFA General Counsel, informed me that the current funding requests "... were not subject to a Request for Proposals, and we did not hold an open unsealing of bids";
34. ADFA has supplied the following information related to the StoneRidge Duplexes of Bentonville project:
  - a. Applicant is seeking to increase the HOME funding to \$1,800,000.00. This is a \$1,350,000.00 increase from the original request of \$450,000.00 in HOME funding;

- b. Applicant is also seeking \$1,125,000.00 in NHTF funding;
  - c. The revision requests are due to eliminating/replacing the external loan with HOME/NHTF funding;
  - d. ADFA HOME: \$1,800,000.00 at 1% amortized over 35 years with a loan term of 35year. HOME Loan will be in a first position;
  - e. ADFA NHTF: \$1,125,000.00 at 0% amortized over 30 years. NHTF Loan will be in second position. Waiver request is needed as request exceed maximum award amount of \$1,000,000.00;
  - f. Applicant was approved for \$1,326,780.00 at 9% LIHTC in 2019, along with \$450,000.00 in HOME funding for 5 HOME units. This project is new construction of 100 units; and
  - g. Additionally, in 2021, the applicant was approved for an increase in LIHTC for hard costs only (\$465,000.00) which resulted in an annual allocation of \$1,791,780.00;
35. ADFA has supplied the following information related to the StoneRidge Duplexes of Bentonville II project:
- a. Applicant is seeking to increase the HOME funding to \$1,575,000.00. This is a \$1,125,000.00 increase from the original request of \$450,000.00 in HOME funding;
  - b. The revision request is due to eliminating/replacing the external loan with HOME funding;
  - c. ADFA HOME: \$1,575,000.00 at 1% amortized over 35 years with a loan term of 35year. HOME Loan will be in a first position;
  - d. Applicant was approved for 9% LIHTC in 2020, along with \$450,000.00 in HOME funding for 5 HOME units. This project is new construction of 50 units;
  - e. Additionally, in 2021, the applicant was approved for an increase in LIHTC for hard costs only (\$165,000.00) which resulted in an annual allocation of \$857,500.00; and
  - f. In 2022, the applicant received another hard cost increase in the amount of \$86,100.00, resulting in an annual allocation of \$943,600.00;
36. ADFA has supplied the following information related to the Cobblestone Farm Community project:
- a. Applicant is seeking HOME funding of \$1,600,000.00. The request revision is due to eliminating/replacing the external first mortgage loan with HOME funding;
  - b. ADFA HOME: \$1,600,000.00 at 1% amortized over 35 years with a loan term of 35 year. HOME Loan will be in a first position;
  - c. Applicant was previously awarded \$400,000.00 in NHTF funding. The NHTF funding will be \$450,000.00 at 0% amortized over 30 years with a loan term of 30 years;
  - d. The project was approved for \$1,220,100.00 in 9% LIHTC in 2020, along with \$450,000.00 in NHTF funding for 5 NHTF units. This project is new construction of 89 units;
  - e. In 2021, the applicant was approved for an increase in LIHTC for hard costs only (\$285,000.00) which resulted in an annual allocation of \$1,505,100.00; and
  - f. In 2022, the applicant received another hard cost increase in the amount of \$360,000.00, resulting in an annual allocation of \$1,865,100.00;

37. John Blackwell, ADFA Director of Tax Credits, provided contextual information relating to awarded LIHTC developers since 2019 in the form of three (3) memorandums as follows:
  - a. The first two memorandums are requests for increases in Low Income Housing Tax Credits due to Hard Cost Increases for previously awarded applicants only. *See* Attachments 1 and 2;
  - b. The third memorandum allowed previously awarded LIHTC developments and new applications to increase the amount of HOME funding requested from \$1,000,000.00 to up to \$3,000,000.00. *See* Attachment 3; and
  - c. All requests for this increased funding were presented to an approved by ADFA's Board of Directors;
38. Mr. Blackwell also addressed two Hard Cost Increases in 2021 and 2022 as follows:
  - a. 2021 Hard Cost Increase (LIHTC) (for previously awarded developments from 2019 and 2020, and 2021 applicants. In 2019, ADFA awarded 11 developments tax credits. 7 of the 11 developers awarded LIHTC from 2019 requested increased 2021 LIHTC due to hard cost increases (Senator Petty was 3 of those 7 that asked for more funding). In 2020, ADFA awarded 10 developments credits. All 10 developers from 2020 requested additional 2021 tax credits due to hard cost increases;
  - b. 2022 Hard Cost Increase (LIHTC)(for previously awarded developments from 2020 and 2021. 8 out of 10 2020 awarded developers requested an increase of LIHTC due to hard cost increases (Senator Petty was 3 of those 8). In 2021, ADFA awarded 9 developments tax credits. All 9 of those developments asked for more LIHTC during this hard cost increase. Senator Petty was 1 of those 9 requesting more tax credits; and
  - c. All requests were reviewed and approved by ADFA's Board of Directors;
39. Mr. Blackwell affirmed, in regard to 2022-23 Home Funding Increase requests for previously awarded developments and new applications, that "ADFA received requests from all developers for increased HOME funding at various levels. All requests were reviewed and approved by the ADFA Board of Directors"; and
40. Mr. Blackwell also stated, "I can personally attest that no preference was given to Jim Petty."

## I. Relevant Law

Arkansas Code Annotated § 19-11-701 *et seq.* addresses ethics in purchasing and contracts and provides generally that any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of your duties is a breach of a public trust, and in order to fulfill this general prescribed standard, you must also meet the specific standards set forth in § 19-11-705, which refers to conflict of interest, § 19-11-706, which refers to disclosure requirements, and other statutes pertaining to ethics.

For purposes of interpreting Ark. Code Ann. §19-11-701 *et seq.*, Arkansas Code Annotated § 19-11-701(8) defines "employee," as "an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing personal services for any state agency." "State agency" is defined in Arkansas Code Annotated § 19-11-701(16) as meaning "any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state."

Arkansas Code Annotated § 19-11-701(2) defines “business” to mean “any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity.” The term “financial interest” is defined in Ark. Code Ann. §19-11-701(9) as meaning:

- A. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
- B. Ownership of more than a five percent (5%) interest in any business; or
- C. Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

Arkansas Code Annotated § 19-11-705 provides, generally, that it shall be a breach of ethical standards for you to participate directly or indirectly in any proceeding or application or any other particular matter pertaining to any contract or subcontract in which, to your knowledge, you or any member of your immediate family has a financial interest OR a business has a financial interest in which you or a member of your immediate family has a financial interest. Direct or indirect participation shall include, but not be limited to, involvement through preparation of any part of a procurement request. Upon discovery of a possible conflict of interest, you shall promptly file a written statement of disqualification with me, as TSS Secretary, and shall withdraw from further participation in the transaction involved. You may, at the same time, apply to me in accordance with § 19-11-715(b) for an advisory opinion as to what further application, if any, you may have in the transaction, or for a waiver in accordance with § 19-11-715(c).

Arkansas Code Annotated § 19-11-706 provides, generally, that if you obtain any benefit from any state contract with a business in which you have a financial interest, you shall report such benefit to me, as TSS Secretary; however, this provision does not apply to a contract with a business where your interest in the business has been placed in a disclosed blind trust. If you know or should have known of such benefit and fail to report the benefit to me, it is a breach of statutory ethical standards, the remedies for which are addressed in Arkansas Code Annotated § 19-11-712 and 714.

Aside from these general provisions, there are specific provisions that address a member of the Arkansas General Assembly. Arkansas Code Annotated § 21-1-403 addresses restrictions on lease agreements, contracts, and grants and provides, generally, that no constitutional officer [which by definition in Arkansas Code Annotated § 21-1-401(1) includes a member of the Senate] may enter into any lease agreement, contract, or grant with any state agency unless it has been awarded as a result of competitive bidding and you played no role, directly or indirectly, in the administrative determination of specifications, evaluation, consideration or decision to accept the bid OR the lease agreement, contract, or grant has received the prior approval of the Joint Budget Committee during legislative sessions or the Legislative Council between legislative sessions and the Governor. These restrictions apply to subgrants, subcontracts, and lease assignments as well as spouses and any corporation, limited liability company, partnership, or any other legal entity in which you or your spouse has an ownership interest of at least ten percent (10%). However, grants, contracts, and leases entered prior to your becoming a State Senator are not subject to the provisions of this section, but renewals and extensions of those grants, contracts, and leases are subject to these provisions. *See also* Executive Order No. 98-04.

Finally, Arkansas Code Annotated § 19-11-715 addresses advisory opinions and waivers and provides, generally, that on your written request, and in consultation with the Attorney General, I may render a written advisory opinion regarding the appropriateness of the course of conduct to be followed in proposed

transactions. Compliance with the requirements of an advisory opinion shall be deemed to constitute compliance with the statutory ethical standards. Upon your written request, I may also grant a written waiver from the application of § 19-11-705, which refers to conflicts of interest, and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote.

## **II. Analysis**

Based on the above representations, your role as a current member of the Arkansas General Assembly classifies you as a state employee, and your role as Manager of the General Partner and ownership of 50% of entities involved in these three projects clearly establishes that you have a financial interest in the proposed state agency contracts.

As established by statutory requirements, and also addressed by executive order, transparency and ethics in state contracting have been addressed consistently by the legislature. Since I have been advised that these contracts were not competitively bid, although some aspects of the process may have involved internal assessment and evaluation, and you have not provided prior approval by the Joint Budget Committee, during the legislative session, or the Legislative Council, since the adjournment of the legislative session, and the Governor, then your request for an advisory opinion and waiver is appropriately submitted. I would also like to emphasize that my review solely addresses ethical requirements as they apply to these proposed transactions and does not in any manner address ADFA's decisions or application of funding as it relates to the underlying three housing development projects and associated requests.

State funding requests for these three housing development projects were initiated prior to your election to the Arkansas Senate and, as a result, do not serve as the bases for my review. However, they are relevant in that they demonstrate a course of action through your submission of initial funding requests and subsequent amendments that were reviewed and approved through ADFA's standard practices and processes prior to your status as a state employee. The fact that ADFA notified affected developers and advised them of the opportunity to apply for available funding on May 25, 2021, April 21, 2022, and December 15, 2022, also serves as an impartial nexus for your applications for the available funding. Even though the current applications have been submitted after your public service began on January 1, 2023, the historical activity for each of these funding requests is persuasive in demonstrating that the merits of each of the applications prior to January 1, 2023, were reviewed and approved on their individual merits without an overlay of ethical conflict.

Your affirmation that you have not had any direct or indirect influence on the approval of the requests for funding of these projects, outside of the normal application process, is also significant as is the personal affirmation by Mr. Blackwell, as an ADFA management representative, that no preference has been accorded to you during this process.

## **III. Decision**

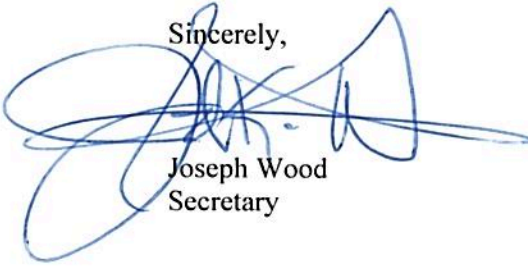
Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that, under the representations as stated above, any ethical conflict that might exist is insubstantial or remote, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This decision grants a waiver in accordance with Arkansas Code Annotated § 19-11-715(c) and, to the extent that the underlying circumstances do not change, compliance with the above course of conduct is



Senator Jim Petty  
Advisory Opinion No. 2023-10  
July 10, 2023

deemed to constitute compliance with the ethical standards of the Arkansas Code Annotated § 19-11-701  
*et seq.*

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph Wood", is written over the typed name. The signature is highly stylized and somewhat illegible due to overlapping loops and a long horizontal stroke extending to the right.

Joseph Wood  
Secretary



MEMORANDUM

**TO:** 2019, 2020 Tax Credit Recipients and 2021 Tax Credit Applicants

**DATE:** May 25, 2021

**FROM:** Mark Conine - President

**RE:** 9% LIHTC Developments – Hard Construction Cost Increases

---

In response to the unprecedented price increases in building materials due to the Covid-19 pandemic, the ADFA Board of Directors approved using some of the 2021 LIHTC Allocation to stabilize developments that have been awarded 9% LIHTC in the 2019 and 2020 Funding Rounds. The Board will allow 2019 and 2020 9% LIHTC awardees and 2021 9% LIHTC applicants to resubmit hard construction cost estimates for their developments and use additional construction costs approved by ADFA for an increased LIHTC reservation or allocation which will be verified with a Final Cost Certification. If the increased hard construction costs submitted are not verified by the Final Cost Certification, the LIHTC allocation to the Applicant will be reduced to the level that is supported by the Final Cost Certification.

Requests for additional 9% LIHTC are permitted to exceed the Per Unit Credit limits outlined in the Qualified Allocation Plan ("QAP").

Requests for additional 9% LIHTC for projects currently being reviewed as part of the 2021 Funding Round may result in changes in scoring and ranking of the project.

All requests for additional LIHTC will be subject to review, underwriting and approval in conformance with the provisions of the Qualified Allocation Plan ("QAP").

All requests for additional LIHTC will be reviewed on a case-by-case for reasonableness and conformance with the QAP and must be approved by the ADFA Board of Directors.

This change could result in there being no competitive 9% LIHTC round in the year 2022. Some 2021 applicants could receive credits from the year 2022. Awardees and Applicants may only submit changes to the hard construction cost information, no other cost increases will be allowed, including those tied to hard construction costs such as General Requirements, Contractor Overhead, Contractor Profit, Developer Fee, etc. The Developer will not be allowed to increase the immediate payment of any submitted and approved Deferred Development Fee from the previously submitted or approved application with any new credits that are approved and issued. The forms used to relay this information to ADFA will be the same forms used at Final Cost



Certification. The Final Development Sources and Final Development costs forms can be found on ADFA's website under LIHTC Final Cost Certification.

For those awardees and applicants that wish to resubmit hard construction cost information please submit the information in the following format no later than June 15, 2021:

1. Final Development Sources form;
2. Final Development Costs form;
3. New letter from the equity investor stating they will purchase the additional credits and at what price.

**ADFA staff may request additional information to support the request for additional 9% LIHTC.**

The 2 forms mentioned above can be found on ADFA's website under LIHTC Final Cost Certification and must be in balance when submitted. The information must be submitted in its entirety to the Authority via email no later than June 15, 2021. Email [multifamily.housing@arkansas.gov](mailto:multifamily.housing@arkansas.gov) .



**MEMORANDUM**

**TO:** 2020 and 2021 9% Tax Credit Recipients

**DATE:** April 21, 2022

**FROM:** Mark Conine - President

**RE:** 9% LIHTC Developments – 2022 Hard Construction Cost Increases

---

In response to the unprecedented price increases in construction costs, the ADFA Board of Directors approved using the remainder of the State's 2022 LIHTC Allocation on a pro-rata basis to stabilize developments that were awarded 9% LIHTC in 2020 and 2021. The Board will allow 2020 and 2021 9% LIHTC awardees to resubmit hard construction cost estimates for their developments and use additional construction costs approved by ADFA for an increase in HOME funding and/or a 2022 9% LIHTC allocation, which will be verified with a Final Cost Certification. If the increased hard construction costs submitted are not verified by the Final Cost Certification, the LIHTC allocation to the Applicant will be reduced to the level that is supported by the Final Cost Certification.

Requests for additional 9% LIHTC are permitted to exceed the Per Unit Credit limits outlined in the Qualified Allocation Plan ("QAP").

All requests for additional HOME/9% LIHTC will be subject to review, underwriting and approval in conformance with the provisions of the Qualified Allocation Plan ("QAP").

All requests for additional HOME/9% LIHTC will be reviewed for reasonableness and conformance with the QAP and must be approved by the ADFA Board of Directors.

Awardees and Applicants may only submit changes to the hard construction cost estimates, no other cost increases will be allowed, including those tied to hard construction costs such as General Requirements, Contractor Overhead, Contractor Profit, Developer Fee, etc. The Developer will not be allowed to increase the immediate payment of any submitted and approved Deferred Development Fee from the previously submitted or approved application with any new credits that are approved and issued. The forms used to relay this information to ADFA will be an updated MFHA, ADFA Summary Construction Cost Estimate, and a new equity investor letter.



For those awardees that wish to resubmit hard construction cost information please submit the information in the following format no later than May 1, 2022:

1. Updated MFHA
2. ADFA Summary Construction Cost Estimate for (1) original application, (2) 2021 Hard Construction Cost Increase (if submitted) and the (3) 2022 Hard Cost Construction Increase.
3. New letter from the equity investor stating they will purchase the additional credits and at what price.

**ADFA staff may request additional information to support the request for additional 9% LIHTC.**

The information must be submitted in its entirety to the Authority via email no later than May 01, 2022. Email [multifamily.housing@arkansas.gov](mailto:multifamily.housing@arkansas.gov) .



Michael Preston  
SECRETARY OF COMMERCE

Mark Conine  
PRESIDENT,  
ARKANSAS DEVELOPMENT  
FINANCE AUTHORITY

## **MEMORANDUM**

**TO:** Tax Credit Applicants

**DATE:** December 15, 2022

**FROM:** Lori Brockway - Federal Housing Programs Manager  
John Blackwell - Director of Tax Credits

**RE:** HOME- Notice of HOME funding availability for 2023 LIHTC applications

---

1. The Arkansas Development Finance Authority (ADFA) hereby notifies interested Applicants of the availability of funds allocated from the HOME Investment Partnerships Program (HOME). The availability and use of these funds is subject to Federal HOME regulations (24 CFR Parts 91 and 92) and any amendments thereto, including the final regulations published by the Department of Housing and Urban Development (HUD) in the Federal Register on or about July 24, 2013, and is further subject to ADFA's policies and program requirements.
2. ADFA anticipates that approximately three million dollars (\$3,000,000) in HOME funds will be available per application, for the 2023 LIHTC applications. ADFA reserves the right to fund, in whole or in part, any all, or none of the applications submitted in response to this notice. ADFA may also reallocate funds from this NOFA to other projects if it determines that such a substitution is necessary to further its administration of the program.
3. ADFA will not award more than \$3,000,000 in HOME funds, per application submitted. ADFA's award of the HOME funds will be subject to subsidy layering guidelines and underwriting criteria to ensure the project's success. Eligible Applicants may submit only one application per property. The loan terms for the HOME dollars are as follows:
  - a. Applicants requesting \$450,000 to \$2,000,000 will sign a note that will bear interest at one percent (1%), for any amount up to \$2,000,000 with level amortization and monthly payments over (at the borrower's election) (a) 20 years, or (b) the development's LIHTC affordability period (30 or 35 years), in



Michael Preston  
SECRETARY OF COMMERCE

Mark Conine  
PRESIDENT,  
ARKANSAS DEVELOPMENT  
FINANCE AUTHORITY

either case with the first payment deferred for one (1) year after the placed-in-service date. Applicants requesting \$2,000,001 to \$3,000,000 will sign a note that will bear interest at two percent (2%), for any amount in excess of the \$2,000,000 with level amortization and monthly payments over (at the borrower's election) (a) 20 years, or (b) the development's LIHTC affordability period (30 or 35 years), in either case with the first payment deferred for one (1) year after the placed-in-service date.

4. HOME funds awarded in connection with an allocation of LIHTC will be in the form of a loan, as described in ADFA's HOME Program Operations Manual and HOME/NHTF Rental guidebook. The loan will be evidenced by a promissory note and secured by a mortgage on the development. The mortgage may be subordinated to a mortgage on the development securing other debt. A number of units in the development equal to the amount of HOME funds awarded with respect to the development divided by the per unit subsidy limits identified in the HOME-Rental guidebook, rounded to the nearest whole number, will be subject to HOME affordability restrictions for a period determined in accordance with the information in the table appearing in the ADFA HOME Program Operations Manual under the heading "LONG-TERM AFFORDABILITY - Affordability Period." Consistent with past practice, a successful LIHTC applicant's acceptance of HOME funds will not require the applicant to place that program's affordability restrictions on units that are not to be under LIHTC restrictions. Rather, that program's affordability restrictions may be placed on units that will be subject to LIHTC affordability restrictions as well. An applicant who receives both HOME and NHTF moneys may not, however, use the same unit to satisfy both low HOME and NHTF affordability requirements. Further, as provided in the QAP, applicants who are awarded points for designating at least five percent of a development's units to serve households whose incomes are 30% or less of the area median income may not use the same units to satisfy low HOME affordability requirements.