

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1892

By: Representatives Love, Jett, M. Hodges

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS DREAM DOWN PAYMENT
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS DREAM DOWN
PAYMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 18 is amended to add an additional chapter to read as follows:

CHAPTER 18

ARKANSAS DREAM DOWN PAYMENT ACT

18-18-101. Title.

This chapter shall be known and may be cited as the "Arkansas Dream Down Payment Act".

18-18-102. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Loan companies and government programs do not require a down payment of twenty percent (20%) of the total mortgage loan before a borrower can purchase a principal residence;

(2) However, a down payment of at least twenty percent (20%) of the total mortgage loan is beneficial to a borrower to reduce monthly mortgage loan payments; and



(3) A borrower who has the opportunity to save up to twenty thousand dollars (\$20,000) toward a down payment on a principal residence could reduce monthly mortgage loan payments and increase first-time homeownership in this state.

(b) It is the intent of the General Assembly to establish the Arkansas Dream Down Payment Program that is exempt from taxation for potential borrowers who are first-time homebuyers to afford a down payment on a principal residence that leads to affordable monthly mortgage loan payments.

18-18-103. Definitions.

As used in this chapter:

(1) "Cash contribution" means a monetary contribution to a qualified down payment program account by an eligible individual or on behalf of a designated beneficiary that:

(A) Is in cash;

(B) Does not result in a qualified down payment program account balance exceeding twenty thousand dollars (\$20,000); and

(C) Provides a separate accounting for each designated beneficiary;

(2)(A) "Designated beneficiary" means an individual designated at the commencement of participation in the Arkansas Dream Down Payment Program as the beneficiary of amounts paid or to be paid to the Arkansas Dream Down Payment Program and is the owner of the qualified down payment program account.

(B) "Designated beneficiary" includes a spouse;

(3) "Eligible individual" means an individual who for a taxable year makes cash contributions to a qualified down payment program account;

(4) "Investment direction" means instructions for the investment of any cash contributions to the Arkansas Dream Down Payment Program or any earnings generated;

(5) "Nonqualified distribution" means a distribution from a qualified down payment program account that is not used to pay qualified down payment expenses;

(6) "Principal residence" means a principal residence within the meaning of 26 U.S.C. § 121, as it existed on January 1, 2021;

(7) "Qualified down payment expenses" means amounts, including

closing costs, paid or incurred to purchase a principal residence located in this state; and

(8) "Qualified down payment program account" means an account that is:

- (A) Established by an eligible individual;
- (B) Owned by a designated beneficiary; and
- (C) Maintained under this chapter.

18-18-104. Arkansas Dream Down Payment Program – Creation – Administration – Authority – Powers.

(a) The Arkansas Dream Down Payment Program is established under this chapter.

(b) The program shall be administered by the Treasurer of State, or his or her designee.

(c) The Treasurer of State shall:

(1) Develop, implement, manage, and maintain the program in a manner consistent with this chapter;

(2) Provide office space, staff, and materials for the program;

(3) Conduct outreach and engage in financial educational activities with individuals within the community to encourage homeownership;

(4)(A) Make and enter into contracts, agreements, or arrangements and retain, employ, and contract for the services of financial institutions, depositories, consultants, broker-dealers, investment advisors or managers, third-party plan administrators, and research, technical, and other services necessary or desirable for carrying out the purposes of this chapter.

(B) Contracts entered into by the Treasurer of State for the program may be for a term of one (1) to ten (10) years; and

(5) Perform other services necessary to implement this chapter.

18-18-105. Rules.

(a) The Treasurer of State shall adopt rules necessary to administer this chapter.

(b) Rules adopted under this chapter shall:

(1)(A) Ensure that a designated beneficiary is limited to one (1) qualified down payment program account.

(B) The program is limited to first-time homebuyers;

(2) Ensure that a qualified down payment program account may be established only for a designated beneficiary who is a resident of Arkansas or who plans to buy a principal residence located in the state as a first-time homebuyer;

(3) Address how to fairly administer a qualified down payment program account for a designated beneficiary who has left the state;

(4) Address impermissible investments for qualified down payment program accounts;

(5) Establish permissible fees, including the maximum amount of overall fees and commissions, that may be charged in association with a qualified down payment program account;

(6) Establish minimum required disclosures to designated beneficiaries, including disclosures related to any possible losses that could be incurred in a qualified down payment program account; and

(7) Ensure that other requirements of this chapter are met.

18-18-106. Investment direction.

(a) Except as provided in subsection (b) of this section, a designated beneficiary may provide investment direction:

(1) No more than two (2) times in any calendar year; and

(2) Subject to the rules established under this chapter.

(b) If a balance in a qualified down payment program account reaches twenty thousand dollars (\$20,000), then the funds of the qualified down payment program account shall be transferred to investments in United States Treasury securities.

18-18-107. Qualified down payment program accounts – Fees.

(a)(1)(A) An eligible individual may establish a qualified down payment program account by:

(i) Making an initial cash contribution to a qualified down payment program account;

(ii) Signing an application form approved by the Treasurer of State; and

(iii) Naming the designated beneficiary.

(B) If the cash contributor is not the designated

beneficiary, the designated beneficiary shall also sign the application form.

(2) An Arkansas resident person may make a cash contribution to a qualified down payment program account after the qualified down payment program account is opened.

(3) A cash contribution to a qualified down payment program account shall be made only in cash.

(b)(1) The total balance of a qualified down payment program account shall not exceed twenty thousand dollars (\$20,000).

(2) The Treasurer of State shall establish maximum annual cash contribution limits applicable to a qualified down payment program account.

(c)(1) Separate records and accounting shall be required by the Arkansas Dream Down Payment Program for each qualified down payment program account.

(2) An annual report shall be made to the designated beneficiary.

(d)(1) The program may collect application fees, account fees, or administrative fees to defray the costs of the program.

(2) The application fees, account fees, or administrative fees shall be approved by the Treasurer of State.

18-18-108. Transfers of qualified down payment program accounts.

Unless prohibited by federal law, upon the death of a designated beneficiary, proceeds from a qualified down payment program account may be transferred to:

(1) The estate of a designated beneficiary; or

(2) An account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary.

18-18-109. Prohibitions.

(a) Total cash contributions to a qualified down payment program account established on behalf of a particular designated beneficiary in excess of twenty thousand dollars (\$20,000) are prohibited.

(b)(1) A qualified down payment program account or a legal or beneficial interest in a qualified down payment program account shall not be assignable, pledged, or otherwise used to secure or obtain a loan or other advancement.

(2) A qualified down payment program account or a legal or beneficial interest in a qualified down payment program account is not subject to attachment, levy, or execution by a creditor of a designated beneficiary.

18-18-110. Funds exempt from tax.

(a) The amount of a cash contribution to a qualified down payment program account:

(1) For purposes of an eligible individual:

(A) Shall not exceed twenty thousand dollars (\$20,000);

(B) May be deducted from the eligible individual's net income for purposes of the Income Tax Act of 1929, § 26-51-101 et seq.; and

(C) The deduction for a taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of five (5) years or until the amount of the deduction has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier; and

(2) For purposes of a designated beneficiary:

(A) Is considered a completed gift to the designated beneficiary; and

(B) Is not taxable as income to the designated beneficiary under the Income Tax Act of 1929, § 26-51-101 et seq.

(b) Except as otherwise indicated in this chapter, interest, dividends, and capital gains from funds invested in the Arkansas Dream Down Payment Program are not taxable as income to the designated beneficiary under the Income Tax Act of 1929, § 26-51-101 et seq.

(c)(1) A qualified distribution from a qualified down payment program account established under this chapter is not taxable income under the Income Tax Act of 1929, § 26-51-101 et seq.

(2) A nonqualified distribution from a qualified down payment program account established under this chapter is taxable under the Income Tax Act of 1929, § 26-51-101 et seq.

18-18-111. Limitation on liability.

Neither the Arkansas Dream Down Payment Program, the Treasurer of State or his or her designee, nor the state shall:

- (1) Insure any qualified down payment program account or guarantee any rate of return or any interest rate on any cash contribution;
- (2) Be liable for any loss incurred by any person as a result of participating in the program under this chapter; or
- (3) Be deemed to be a guarantor of a positive return on a cash contribution under this chapter.

18-18-112. Reports.

(a) An officer or employee having control of a qualified down payment program or his or her designee shall make a report regarding the Arkansas Dream Down Payment Program to the Treasurer of State and to designated beneficiaries, including:

- (1) Cash contributions;
- (2) Distributions; and
- (3) Other matters the Treasurer of State may require.

(b) The Treasurer of State shall report to the Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce, as requested:

- (1) The number of qualified down payment program accounts in existence in this state during the time specified in the report;
- (2) The number of qualified down payment program accounts that have been established in this state over the life of the Arkansas Dream Down Payment Program;
- (3) A summary of the account balances held in qualified down payment program accounts in this state;
- (4) The race and gender distribution of designated beneficiaries;
- (5) The income distribution of the designated beneficiaries of qualified down payment program accounts in this state;
- (6) The number of distributions for qualified down payment expenses that have been made in this state since the previous report; and
- (7) Any information the Treasurer of State shall determine is required to assess whether or not qualified down payment program accounts have contributed to facilitating access to affordable first-time homeownership in this state, particularly among young individuals, low-income and moderate-income individuals, and individuals from communities with

historically low rates of homeownership.

SECTION 2. Arkansas Code § 26-51-403(b), concerning the items deducting from an individual's gross income to calculate the individual's adjusted gross income, is amended to add an additional subdivision to read as follows:

(18) Deductions for contributions to a qualified down payment program account under § 18-18-110 not to exceed twenty thousand dollars (\$20,000) per taxpayer.

SECTION 3. EFFECTIVE DATE.

This act becomes effective on and after January 1, 2023.

SECTION 4. DO NOT CODIFY. Rules.

(a) When adopting the initial rules under this act, the Treasurer of State shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2023; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2023, as soon as practicable after approval under § 10-3-309.

(b) The Treasurer of State shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficientl in advance of January 1, 2023, so that the Legislative Council may consider the rules for approval before January 1, 2023.