

**Title 15. Natural Resources and Economic Development**  
**Chapter VII. Arkansas Development Finance Authority, Department of**  
**Commerce**  
**Subchapter A. Generally**  
**Part 61. Criminal Background Check Policies and Procedures**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Presented to ADFA Board of Directors July 21, 2005"

**Subpart 1. Generally**

**15 CAR § 61-101. Introduction.**

(a) Acts 2005, No. 2173, permits the Arkansas Development Finance Authority to request a criminal background check on:

- (1) Applicants for employment or programs; or
- (2) Employees.

(b) The following addresses the authority's policy with regard to criminal background checks for program participants.

(c) The criminal background check on employees and applicants for employment will be addressed in the authority's employee handbook.

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**15 CAR § 61-102. Basis of denial for program participation.**

(a)(1) An allocation of state or federal low-income housing tax credits (LIHTCs) or tax-exempt private activity volume cap bonds or HOME Investment Partnerships Program funds will be denied to any applicant or recipient due to the following:

- (A) A conviction of those felonies listed below;

(B) A conviction of certain felonies as described below of any principal of such applicant or recipient; or

(C) A conviction of certain felonies as described below of any:

(i) Consultant;

(ii) Developer;

(iii) Other development team member; or

(iv) Principal of such:

*(a)* Consultant;

*(b)* Developer; or

*(c)* Other development team member.

(2) If the development team member is a partnership, association, limited liability company, or corporation, "principal" shall include:

(A) Its general partner or partners;

(B) Its managing member or members; or

(C) Any person who has at least a ten percent (10%) ownership interest in any ownership entity of such:

(i) Partnership;

(ii) Association;

(iii) Limited liability company; or

(iv) Corporation.

(3) HOME Investment Partnerships Program participants shall include any consultant, development team member, or public official affiliated with the HOME Investment Partnerships Program application.

(b)(1) A borrower of Arkansas Development Finance Authority's economic development bond programs or direct loan/bond guaranty loan programs will be denied program participation due to the following:

(A) A conviction of those felonies listed below; or

(B) A conviction of certain felonies as described below of any principal of such applicant or recipient.

(2) If the borrower is a partnership, association, limited liability company, or corporation, "principal" shall include:

(A) Its general partner or partners;

(B) Its managing member or members; or

(C) Any person who has at least a ten percent (10%) ownership interest in any ownership entity of such:

(i) Partnership;

(ii) Association;

(iii) Limited liability company; or

(iv) Corporation.

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**15 CAR § 61-103. Requirement to submit criminal background disclosure form.**

(a)(1) Each person listed in 15 CAR § 61-102(a), or their authorized representative, is required to complete, execute, and submit a "Criminal Background Disclosure Form - Housing" (Attachment A) as provided by the Arkansas Development Finance Authority.

(2) Failure to submit a "Criminal Background Disclosure Form - Housing" will result in a disqualification of the application for the reservation of:

(A) LIHTCs;

(B) Tax-exempt private activity volume cap bonds; or

(C) HOME Investment Partnerships Program funds.

(3) Misrepresentations found in the "Criminal Background Disclosure Form - Housing" can disqualify the application or, if applicable, result in a return of any low-income housing tax credits or HOME Investment Partnerships Program funds allocated pursuant to the application.

(b)(1) Each person listed in 15 CAR § 61-102(b), or their authorized representative, is required to complete, execute, and submit a "Criminal Background Disclosure Form - Economic Development" (Attachment B) as provided by the authority.

(2) Failure to submit a "Criminal Background Disclosure Form - Economic Development" will result in a disqualification of the application.

(3) Misrepresentations found in the "Criminal Background Disclosure Form - Economic Development" can disqualify the application.

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 61-104. Grounds for Arkansas Development Finance Authority to require criminal background checks.**

(a) Upon information that any person listed in 15 CAR § 61-102 may have committed any felony or at the discretion of the President of the Arkansas Development Finance Authority, the Arkansas Development Finance Authority, pursuant to authority established by Arkansas Code § 15-5-214, shall require such person to apply for, pay for, and release for review by the Arkansas Development Finance Authority, criminal background checks obtained through the Division of Arkansas State Police and the Federal Bureau of Investigation.

(b) Such person will be required to request the criminal background checks within two (2) weeks of receiving notification from the Arkansas Development Finance Authority that such a request must be made.

(c) The Arkansas Development Finance Authority will furnish a form, acceptable to the division and the Federal Bureau of Investigation, to such person for use in making the request.

(d) Failure to make the request as required or ensure for its payment or release for the Arkansas Development Finance Authority's consideration will result in a disqualification of the application or, if applicable, a return of:

- (1) LIHTCs;
- (2) HOME Investment Partnerships Program funds; or
- (3) Economic development bond funds or direct loans.

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 61-105. Review of criminal background checks.**

(a) The President of the Arkansas Development Finance Authority shall review the criminal background checks and any written information submitted by such person that he or she wants considered by the president.

(b) Unless the conviction has been the subject of an official pardon, expungement, annulment, concealment, or similar official treatment, the president may consider the following types of convictions to be disqualifying or good cause for the return of LIHTCs, HOME Investment Partnerships Program funds, or economic development bond funds or direct loans:

- (1) Any felony conviction within the last three (3) years;
- (2) Any felony against a person conviction within the last ten (10) years;
- (3) Any felony involving the manufacture or distribution of a controlled substance conviction within the last ten (10) years; or
- (4) Any felony against property conviction within the last seven (7) years.

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 61-106. Waiver of convictions.**

(a) The President of the Arkansas Development Finance Authority shall have the authority to waive a conviction, as disqualifying of an application or as good cause for the return of LIHTCs, HOME Investment Partnerships Program funds, or economic development bond funds or direct loans, upon consideration of the following factors:

- (1) The age of such person at the time of the offense;

(2) The circumstances surrounding the offense, particularly any extenuating or mitigating matters;

(3) The length of time since the offense;

(4) Subsequent rehabilitated measures accomplished by such person, including whether such person was the recipient of parole or probation;

(5) The number of other convictions by such person;

(6) Subsequent work history;

(7) Employment references;

(8) Character references; and

(9) Any other information authorized by the president.

(b) Prior to the president's determination of disqualification or return of LIHTCs, HOME Investment Partnerships Program funds, or economic development bond funds or direct loans, the president shall notify such person of his or her:

(1) Opportunity to present written evidence of the above factors listed in this section; and

(2) Right for a personal appearance before the president regarding a request to waive a conviction.

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

### **15 CAR § 61-107. Disqualifying offenses.**

Notwithstanding 15 CAR §§ 61-105 and 61-106, any conviction of the following offenses, or its equivalent if convicted in some state or federal jurisdiction other than Arkansas, unless the subject of an official pardon, expungement, annulment, concealment, or similar official treatment, will result in disqualification of the application or the return of LIHTCs, HOME Investment Partnerships Program funds, or economic development bond funds or direct loans:

(1) Capital murder, as prohibited in Arkansas Code § 5-10-101;

(2) Murder in the first degree and murder in the second degree, as prohibited in Arkansas Code §§ 5-10-102 and 5-10-103;

(3) Kidnapping, as prohibited in Arkansas Code § 5-11-102;

(4) Rape, as prohibited in Arkansas Code § 5-14-103;

(5) Sexual assault in the first degree and second degree, as prohibited in Arkansas Code §§ 5-14-124 and 5-14-125;

(6) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in Arkansas Code §§ 5-27-205 and 5-27-206;

(7) Incest, as prohibited in Arkansas Code § 5-26-202;

(8) Arson, as prohibited in Arkansas Code § 5-38-301;

(9) Endangering the welfare of an incompetent person in the first degree, as prohibited in Arkansas Code § 5-27-201;

(10) Adult abuse that constitutes a felony, as prohibited in Arkansas Code § 5-28-103; and

(11) Theft of public benefits, a Class B felony, as prohibited in Arkansas Code § 5-36-202 and § 5-36-203 [repealed].

**Authority.** Arkansas Code §§ 15-5-207, 15-5-214.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

## **Appendix A. Criminal Background and Disclosure Form – Housing**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/65/15CARpt.61AttachmentA.pdf>

## **Appendix B. Criminal Background Disclosure Form – Economic Development**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/66/15CARpt.61AttachmentB.pdf>