

Title 15. Natural Resources and Economic Development

Chapter VII. Arkansas Development Finance Authority, Department of Commerce

Subchapter B. Development Finance and Bond Finance

Part 73. Rules for the Allocation of the State Volume Cap for Private Activity Bonds

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

"SECTION .002 AUTHORITY.

(a) This Rule is authorized and promulgated pursuant to Arkansas Code §15-5-318 and Arkansas Code §§15-5-601 through 15-5-610."

"SECTION .016 SEVERABILITY.

(a) If any provision of this Rule or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Rule which can affect the invalid provisions or applications, and to this end the provisions hereto are declared severable.

SECTION .017 REPEAL.

(a) All rules, resolutions, regulations, and parts of rules, regulations, and resolutions, promulgated or adopted by the Arkansas Development Finance Authority, in conflict herewith, including without limitation, the Third Amended Rules and Regulations, Implementing the Law on the Allocation of State Volume Cap for Tax-Exempt Private Activity Bonds Pursuant to Act 1044 of 2001 and the Guidelines for Reserving Volume Cap for Tax-Exempt Private Activity Bonds for Residential Rental Housing are hereby replaced and repealed."

Subpart 1. Generally

15 CAR § 73-101. Purpose.

The purpose of this part is to:

- (1) Provide procedures for governmental and private participants for the allocation of tax-exempt private activity bond volume cap, including special rules for certain multifamily housing bonds; and
- (2) Repeal and replace prior rules relating to the reservation and allocation of volume cap.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-102. Definitions.

As used in this part:

- (1) "Affected bonds" shall have the meaning ascribed to that term in Arkansas Code § 15-5-601;
- (2) "Application" means the "Application for Reservation of Volume Cap" described in 15 CAR § 73-105 and a form of which is posted on the Arkansas Development Finance Authority website;
- (3) "Board Housing Review Committee" means the committee of members of the Board of Directors of the Arkansas Development Finance Authority selected to review matters related to housing programs of the Arkansas Development Finance Authority;
- (4) "Bond counsel" means a firm of nationally recognized attorneys-at-law, experienced in the issuance of tax-exempt private activity bonds, deemed acceptable to the President of the Arkansas Development Finance Authority to deliver applications and notices required under this part;
- (5) "Committee approval date" means the date on which the Board Housing Review Committee approves a Multifamily Housing Application pursuant to 15 CAR § 73-111(c)(1);
- (6) "Issuance" means the closing and delivery of affected bonds, including the

initial closing of draw-down bonds qualifying for the issue date alternative under Internal Revenue Service Notice 2011-63;

(7) "Issuer" means any state or local governmental entity authorized by state law to issue tax-exempt private activity bonds and includes the Arkansas Development Finance Authority;

(8) "Multifamily Housing Application" means the application form and accompanying guidelines which are made part of the state's current Qualified Allocation Plan, as posted on the Arkansas Development Finance Authority website;

(9) "Multifamily housing bonds" means affected bonds that are exempt facility bonds for qualified residential rental projects as that term is used in 26 U.S.C. § 142(a) and defined in 26 U.S.C. § 142(d);

(10) "Principal user" means the:

(A) Borrower, obligor for repayment, or primary beneficiary of the proceeds of the affected bonds; or

(B) Primary user of the project or projects or facilities financed with the proceeds of the affected bonds;

(11) "Priority number" means the sequential number assigned by the President of the Arkansas Development Finance Authority to a completed application;

(12) "Private activity bonds" shall have the meaning ascribed to them in 26 U.S.C. § 141(a);

(13) "Reservation" means the reservation of volume cap for a particular application which shall be effective as of the date of the written communication by the President of the Arkansas Development Finance Authority to bond counsel described in 15 CAR § 73-106(f);

(14) "Reservation period" means the period which shall be sixty (60) calendar days from the effective date of the reservation;

(15) "Rule" shall mean this Rule Regarding the Reservation of Private Activity Bond Volume Cap;

(16) "Staff Housing Review Committee" means a committee of employees of the Arkansas Development Finance Authority selected by the President of the Arkansas

Development Finance Authority to review Multifamily Housing Applications;

(17) "State" means the State of Arkansas;

(18) "State ceiling" shall have the meaning ascribed to it in 26 U.S.C. § 146, including reductions imposed by 26 U.S.C. § 146(n) for elections made in connection with the issuance of mortgage credit certificates; and

(19) "Volume cap" means the maximum aggregate amount of affected bonds that may be issued by all issuers in the state in any calendar year as described in 26 U.S.C. § 146.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-103. Volume cap.

(a) The amount of affected bonds that can be issued as tax-exempt private activity bonds in the state each calendar year is limited by the state's annual volume cap.

(b)(1) At the beginning of each year the state receives an allocation of volume cap from the United States Department of the Treasury using the population-based formula or minimum allocation found in 26 U.S.C. § 146 referred to as the state ceiling.

(2) In addition, some issuers may have allocations of volume cap available for specific purposes that have been carried forward from allocations received in prior calendar years.

(c) The Arkansas Development Finance Authority is the statewide administrator of the volume cap allocations and is also an issuer of affected bonds.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-104. Allocation of volume cap pursuant to Arkansas Code § 15-5-603.

(a)(1) The volume cap allocated to the state is allocated to the Arkansas Development Finance Authority pursuant to Arkansas Code § 15-5-603, which allocates seventy percent (70%) of the aggregate annual state ceiling to four (4) categories:

- (A) Ten percent (10%) to multifamily residential housing;
- (B) Seventeen percent (17%) to single family residential housing;
- (C) Thirty-three percent (33%) to industrial development; and
- (D) Ten percent (10%) to student loan financing.

(2) Prior to September 1 of each year, the Board of Directors of the Arkansas Development Finance Authority, by resolution, is authorized to reallocate available volume cap amounts among the four (4) categories.

(3) After September 1 of each year, any volume cap not reserved or allocated from the four (4) categories is transferred to all issuers as described in subdivision (b)(2) of this section for any purpose that affected bonds can be issued.

(b)(1) At the beginning of each calendar year, Arkansas Code § 15-5-603(c) allocates the remaining thirty percent (30%) of the aggregate annual state ceiling to all issuers, including the authority, on a nonexclusive basis for any purpose that affected bonds can be issued.

(2) On September 1 of each year, Arkansas Code § 15-5-603(b) reallocates the balance of the state ceiling volume cap not reserved or allocated from the four (4) categories in the exclusive authority allocation to this nonexclusive allocation for all issuers, including the authority, which may be used for all purposes that affected bonds can be issued.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-105. Applications for Reservation of Volume Cap.

(a) In order to reserve volume cap for an issue of affected bonds, a completed application must be submitted to the President of the Arkansas Development Finance Authority.

(b) Applications may be submitted no earlier than:

(1) The first business day of the calendar year in which the reservation is requested, such day being a Monday through Friday, that is not a state holiday observed by the Secretary of State; and

(2) A date that would cause the reservation period to expire before the anticipated date of issuance.

(c) Applications related to multifamily housing bonds may not be submitted prior to the approval of the Multifamily Housing Application by the Board of Directors of the Arkansas Development Finance Authority pursuant to 15 CAR § 73-112.

(d) The president will assign a priority number to each Application for Affected Bonds in the order the application is received and deemed complete.

(e) To be complete, an application must:

- (1) State the name of the issuer;
- (2) State the principal amount of the bonds to be issued, including any bonds issued as part of an issue of affected bonds;
- (3) State the amount of volume cap requested;
- (4) State the purpose for the volume cap, including the description of any project to be funded with the bond proceeds;
- (5) State the type of issue as identified on the then-current United States Department of Treasury, Internal Revenue Service Form 8038;
- (6) State the principal user, if different from the issuer;
- (7) State the date of adoption of the bond authorizing resolution or other official action, if any;
- (8) Include a copy of the bond authorizing resolution or other official action which meets the requirement for "official intent" set forth in 26 C.F.R. § 1.150-2(e);
- (9) State the state statutory authority for the issuance, as distinguished from allocation of volume cap, of the affected bonds;
- (10) State the name, address, telephone number, and email address of bond counsel; and
- (11) Be signed and dated by bond counsel.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-106. Reservation of volume cap.

(a) The President of the Arkansas Development Finance Authority will record and monitor application filings in accordance with Arkansas Code § 15-5-607.

(b) At such time as the president determines an application filing to be complete, a sequential priority number will be assigned to the application.

(c) Reservations of volume cap will be made based upon the priority number.

(d) Applications for Reservation of Volume Cap for Affected Bonds to be issued by the Arkansas Development Finance Authority which qualify for specific purposes set forth in Arkansas Code § 15-5-603 or carryforward purposes will be reserved based upon the priority numbers of applications qualifying for the particular purpose.

(e) The president will continue to assign priority numbers to completed applications after a volume cap shortage applicable to those applications has been declared under 15 CAR § 73-109.

(f) At such time as the president determines an application is complete or incomplete, he or she will provide a dated, written communication to the bond counsel notifying bond counsel of such determination and containing one (1) of the following statements or such other statement as the president deems appropriate:

(1) Priority number _____ is assigned. The application is accepted as a reservation of volume cap in the amount of \$_____;

(2) Priority number _____ is assigned. However, there is no volume cap available; or

(3) A priority number is not assigned. The Application for Volume Cap has been denied or fails to meet the requirements of a completed application.

(g) In the event volume cap not previously available should subsequently become available through the expiration of a reservation, the reallocation of categories described in 15 CAR § 73-103, or otherwise, the president may reserve such volume cap in the same calendar year for a qualifying application based upon the priority number in the manner described in this section.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-107. Reservation period.

(a) Affected bonds, including multifamily housing bonds, must be issued within the reservation period unless the:

(1) President of the Arkansas Development Finance Authority has approved in writing an extension for the affected bonds;

(2) Reservation was issued on or after November 1, in which case the reservation period will terminate on December 31 of the current calendar year; or

(3) Issuer is granted written permission by the president to carry forward the allocation pursuant to 15 CAR § 73-108.

(b)(1) Prior to the expiration of the reservation period, the reservation period may be extended by the president for up to an additional sixty (60) calendar days or such shorter period as the president determines.

(2) An extension request must be made in writing to the president by the issuer and the principal user, if any, stating the reasons for the request.

(3) In granting any extension, the president shall consider the:

(A) Written explanations;

(B) Likelihood of the bonds being issued within the extension period; and

(C) Alternative uses of the volume cap.

(c) In the event of failure to issue the affected bonds, including multifamily housing bonds, within the reservation period, including all approved extensions, the applicable reservation shall terminate.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-108. Carryforward of volume cap.

(a) All carryforwards of volume cap authorized by this section shall be made in accordance with 26 U.S.C. § 146(f), and the issuer designated by the President of the Arkansas Development Finance Authority to make the carryforward shall be responsible for making a valid election utilizing the required forms as are then published by the United States Department of the Treasury, Internal Revenue Service.

(b) Volume cap for which no reservation has been issued by the end of a calendar year may be authorized by the president to be carried forward by any issuer, including the Arkansas Development Finance Authority, for a specific carryforward purpose or purposes designated by the president.

(c)(1) Volume cap for which a reservation has been issued to an issuer other than the authority, but as to which no bonds have been issued, may be carried forward by the other issuer only on written approval of the president.

(2) The other issuer seeking to carry forward the reserved volume cap must request the written permission of the president, and the president may request such information from the other issuer as he or she deems necessary.

(3) If the president approves of the carryforward request, that approval shall be submitted in a written communication which requires the other issuer to:

(A) Comply with the requirements of subsection (a) of this section; and

(B) File a copy of the election statement and any other filings required by subsection (a) of this section with the president.

(4) If the president does not approve of the carryforward request, the reservation shall be deemed to have expired as of the end of the calendar year and the volume cap related to the expired reservation may be carried forward by the president as set forth in subsection (b) of this section.

(5) If the carryforward request by an issuer other than the authority is approved, such issuer shall allocate the volume cap within the time limitations set forth in 26 U.S.C. § 146(f).

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-109. Volume cap shortage.

(a) The President of the Arkansas Development Finance Authority will determine if a volume cap shortage exists as to any application when the amount of volume cap requested in the application exceeds the amount available in any specific or general purpose category of volume cap available to the applicant.

(b) In the event a volume cap shortage exists as to an application, the president may issue a reservation to another application with a higher priority number that qualifies for a specific purpose not available to the application for which the volume cap shortage exists.

(c) A determination by the president that an application exceeds the amount of available volume cap as provided in this section and communicated to the applicant as provided in 15 CAR § 73-106(f) shall constitute declaration of volume cap shortage under Arkansas Code § 15-5-604.

(d) The president may determine within a reasonable time that an applicant will accept a smaller allocation of volume cap which would prevent a declaration of volume cap shortage for a particular application.

(e) Whenever a volume cap shortage has been declared pursuant to this section, the Arkansas Development Finance Authority, in consultation with the Department of Commerce, may resolve the shortage by:

(1) Determining the relative priority of Applications for Reservation of Volume Cap;

(2) Reducing the amount of volume cap to be allocated to any Application for Reservation of Volume Cap;

(3) Denying an Application for Reservation of Volume Cap;

(4) Deferring for a period of time an Application for Reservation of Volume Cap; or

(5) For all applications except those for multifamily bonds, the president may issue letters reserving volume cap for the next succeeding calendar year to a particular bond issue or bond issues, and any such reservation shall be issued in conformance with all applicable rules on the first day of the next calendar year.

(f) After the conclusion of each shortage, the president shall file a report with the Board of Directors of the Arkansas Development Finance Authority at its next regularly scheduled meeting providing the basis for any actions made to resolve the volume cap shortage.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-110. Special rule for multifamily housing bonds — Multifamily Housing Applications.

(a) Applicants for multifamily housing bonds may submit an Application for Reservation of Volume Cap at such time as the applicant's Multifamily Housing Application has been approved by the Board of Directors of the Arkansas Development Finance Authority.

(b) The Staff Housing Review Committee of the Arkansas Development Finance Authority will review Multifamily Housing Applications in:

(1) The same manner as applications for allocations of low-income housing tax credits; and

(2) Accordance with the state's Qualified Allocation Plan.

(c) At such time as the Staff Housing Review Committee determines a Multifamily Housing Application is complete, it will submit its findings to the Board Housing Review Committee.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-111. Board Housing Review Committee.

(a)(1) Applicants for multifamily housing bonds are required to make a formal presentation to the Board Housing Review Committee.

(2) A representative of the Staff Housing Review Committee will notify the applicant of the time, place, and recommended content of the presentation.

(3) Members of the Board Housing Review Committee and any other members of the Board of Directors of the Arkansas Development Finance Authority present at the meeting will be given the opportunity to ask the applicant questions concerning the Multifamily Housing Application.

(b) The Board Housing Review Committee may consider:

(1) Information supplied by the Staff Housing Review Committee relating to

the Multifamily Housing Application; and

(2) Other information its members may deem necessary.

(c) The Board Housing Review Committee will take action to:

(1) Recommend approval of the Multifamily Housing Application to the full Board of Directors of the Arkansas Development Finance Authority with such conditions, if any, as the committee may deem necessary;

(2) Recommend the full Board of Directors of the Arkansas Development Finance Authority not approve the Multifamily Housing Application; or

(3) Postpone action of the Board Housing Review Committee pending further consideration.

(d) The Board Housing Review Committee's approval shall be deemed rescinded and the application must be resubmitted in the event the:

(1) Staff Housing Review Committee determines there has been a material change from the information provided in the Multifamily Housing Application; or

(2) Affected bonds are not issued within one (1) year from the date of the Board Housing Review Committee approval date.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-112. Multifamily housing bonds — Board of directors' approval.

(a) The Board of Directors of the Arkansas Development Finance Authority will consider a Multifamily Housing Application no sooner than the next scheduled Board of Directors of the Arkansas Development Finance Authority meeting in a calendar month following the month of the Board Housing Review Committee approval date.

(b) Upon consideration of such matters as it deems necessary, the Board of Directors of the Arkansas Development Finance Authority may:

(1) Take action to approve or deny the Multifamily Housing Application; or

(2) Take no action regarding the Multifamily Housing Application.

(c) Upon approval of a Multifamily Housing Application by the Board of Directors of

the Arkansas Development Finance Authority, the applicant may submit its Application for Reservation of Volume Cap to the President of the Arkansas Development Finance Authority, which shall be accepted and reserved in accordance with 15 CAR §§ 73-105, 73-106, and 73-107.

(d) Applicants for multifamily housing bonds may request that the Board of Directors of the Arkansas Development Finance Authority and the president concurrently approve of the applicant's Multifamily Housing Application, Application for Reservation of Volume Cap, and a resolution authorizing the issuance of the multifamily housing bonds at the same meeting, provided a shortage of volume cap has not been declared affecting such bonds.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-113. Issuance of bonds and allocation of volume cap.

(a) This part applies solely to the reservation and allocation of volume cap, and a reservation pursuant to this part shall not constitute a binding commitment of any issuer, including the Arkansas Development Finance Authority, to issue bonds, including affected bonds.

(b)(1) Issuance, for purposes of this part, shall be evidenced by bond counsel filing a notice of issuance with the President of the Arkansas Development Finance Authority.

(2) The notice shall contain the:

(A) Name of the issue;

(B) Date of the issue;

(C) Priority number;

(D) Reservation date; and

(E) Volume cap allocated delineated by the current year volume cap amount and carryforward volume cap by year and amount.

(3) The notice shall be signed and dated by bond counsel.

(4) The authority may create a form of notice of issuance containing the information required by this subsection.

(5) Upon receipt of the notice, the president will execute and deliver a certificate of allocation of volume cap that complies with the requirements of:

(A) 26 U.S.C. § 149(e)(2)(F);

(B) 26 C.F.R. § 1.149(e)-1(b)(2); and

(C) Form 8038 published by the United States Department of the Treasury, Internal Revenue Service.

(c) The president is the state official authorized to execute a certificate of allocation of volume cap.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.

15 CAR § 73-114. Delegation of functions.

The President of the Arkansas Development Finance Authority may delegate, in writing, functions under this part to other officers and employees within the Arkansas Development Finance Authority.

Authority. Arkansas Code §§ 15-5-318, 15-5-603, 15-5-604, 15-5-605.