

Title 15. Natural Resources and Economic Development

Chapter VII. Arkansas Development Finance Authority, Department of Commerce

Subchapter C. Housing

Part 85. Housing Tax Credit Program Qualified Allocation Plan

Subpart 1. Generally

15 CAR § 85-101. Development of the plan.

(a)(1)(A) The Arkansas Development Finance Authority (the "authority") is charged with the responsibility of administering federal low-income housing tax credits ("housing credits") for the State of Arkansas (the "state").

(B) The authority is also charged with the responsibility of promulgating rules concerning the allocation of the Arkansas low-income housing tax credit (the "state housing credits") pursuant to Arkansas Code § 26-51-1701 et seq.

(C) The Tax Reform Act of 1986 created the housing credit to encourage the private sector to invest in the construction and rehabilitation of rental housing for low-income and moderate-income individuals and families (I.R.C. § 42).

(D) The Revenue Reconciliation Act of 1989 amended I.R.C. § 42(m) that requires allocating agencies to allocate low-income housing tax credits pursuant to a qualified allocation plan.

(2) Low-income housing tax credits shall be allocated in accordance with this plan and any amendments thereto and are set forth below.

(b)(1) **Qualified allocation plan.** For purposes of this section, the term "qualified allocation plan" means any plan that:

(A) Sets forth selection criteria to be used to determine housing priorities of the housing credit agency that are appropriate to local conditions;

(B) Gives preference in allocating housing credit dollar amounts among selected projects to:

(i) Projects serving the lowest income tenants;

(ii) Projects obligated to serve qualified tenants for the longest periods; and

(iii) Projects that are located in qualified census tracts, as defined in I.R.C. § 42(d)(5)(B)(ii), and the development of which contributes to a concerted community revitalization plan; and

(C) Provides a procedure that the agency, or an agent or other private contractor of such agency, will follow in monitoring for noncompliance with the provision of this section and in notifying the Internal Revenue Service of such noncompliance that such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(2) **Certain selection criteria must be used.** The selection criteria set forth in a qualified allocation plan must include:

(A) Project location;

(B) Housing needs characteristics;

(C) Project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan;

(D) Sponsor characteristics;

(E) Tenant populations with special housing needs;

(F) Public housing waiting lists;

(G) Tenant populations of individuals with children;

(H) Projects intended for eventual tenant ownership;

(I) The energy efficiency of the project; and

(J) The historic nature of the project.

(3) **Application to bond-financed projects.** I.R.C. § 42(h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(c) **Credit allocated to building not to exceed amount necessary to assure project feasibility.**

(1) In general, the housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(2) Agency evaluation.

(A) In making the determination under subdivision (c)(1) of this section, the housing credit agency shall consider:

(i) The sources and uses of funds and the total financing planned for the project;

(ii) Any proceeds or receipts expected to be generated by reason of tax benefits;

(iii) The percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries; and

(iv) The reasonableness of the developmental and operational costs of the project.

(B) Subdivision (c)(2)(A)(iii) of this section shall not be applied so as to impede the development of projects in hard-to-develop areas.

(C) Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(3) Determination made when credit amount applied for and when building placed in service.

(A) In general, a determination under subdivision (c)(1) of this section shall be made as of each of the following times:

(i) The application for the housing credit dollar amount;

(ii) The allocation of the housing credit dollar amount; and

(iii) The date the building is placed in service.

(B) **Certification as to amount of other subsidies.** Prior to each determination under subdivision (c)(3)(A) of this section, the taxpayer shall certify to the housing credit agency the full extent of all federal, state, and local subsidies that apply, or that the taxpayer expects to apply, with respect to the building.

(4) **Application to bond financed projects.** I.R.C. § 42(h)(4) shall not apply to any project unless the governmental unit that issued the bonds, or on behalf of which the bonds were issued, makes a determination under rules similar to the rules of subdivisions (c)(1) and (2) of this section.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

15 CAR § 85-102. Multi-family housing application.

(a)(1) The Arkansas Development Finance Authority multi-family housing application (MFHA) shall set forth all other requirements, instructions, clarifications, and definitions for the year in which the application for LIHTC is submitted.

(2) The MFHA and all other documents necessary for a complete application are available at the authority's website, <https://adfa.arkansas.gov/>.

(3) The terms and conditions of the MFHA will be incorporated into the carryover allocation documentation.

(4) The MFHA will be used at final cost certification to ensure continued compliance with all requirements for the development.

(b)(1) Any material change to the original application, and all subsequent material changes, shall be submitted to the authority in writing at least thirty (30) days prior to the desired effective date of the change.

(2) All changes shall be reviewed and approved by the authority's multi-family housing staff, the authority's Board Housing Review Committee, and/or the Board of Directors of the Arkansas Development Finance Authority, as appropriate.

(3) Any change to the original application made without approval from the authority will be null and void and may result in remedial action by the authority, including, but not limited to, penalties on future applications or suspension from the tax credit program in Arkansas for a set period of time.

(4)(A) A fee of five hundred dollars (\$500) per change item submitted shall be submitted to the authority with all change requests.

(B) Five hundred dollars (\$500) shall be submitted for all such change requests, including, but not limited to:

- (i) Change in unit size, configuration, location;
- (ii) Requests for approval of change of management company;
- (iii) Change in development team; and
- (iv) Transfer of ownership interest.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

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

15 CAR § 85-103. Limits on allocation of credits.

(a) The Internal Revenue Code requires that the Arkansas Development Finance Authority determine "the [housing credit] dollar amount allocated to the development will not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period."

(b) Housing credits will be limited to the amount the authority, in its sole discretion, deems necessary.

(c) Housing credits are not intended to provide the primary or principal source of financing for a development, but are intended to provide financial incentives sufficient to fill gaps that would otherwise exist in developing affordable rental housing for low-income households.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

15 CAR § 85-104. Housing credit allocation standards.

(a) **Amount.**

(1) The base amount of annual credit authority is based upon population estimates released each year by the Internal Revenue Service.

(2)(A) The maximum amount of housing credits that may be reserved for allocation to one (1) individual development shall be no more than six hundred thousand dollars (\$600,000) of the annual housing credits available in the calendar year.

(B) However, the maximum amount of housing credits that may be reserved for allocation to one (1) individual development that is located in a designated low-income county as defined in the currently applicable state consolidated plan, whose structure or structures are individually listed in the National Register of Historic Places or have been determined to contribute to a National Register Historic District, or that is a qualified assisted living development shall be no more than six hundred twenty-five thousand dollars (\$625,000) of the annual housing credits available in the calendar year.

(3)(A) Pursuant to I.R.C. § 42(d)(5)(B)(v), the Arkansas Development Finance Authority designates that the eligible basis of any qualified low-income new building will be increased by thirty percent (30%) if it is:

- (i) A building within a qualified assisted living development;
- (ii) Located in any low-income county designated in the currently applicable state consolidated plan;
- (iii) Located in a county in which a tax credit award has not been made in the past three (3) years;
- (iv) Funded in part by United States Department of Agriculture Rural Development; or
- (v) A building that the Arkansas Development Finance Authority determines needs the boost to be economically feasible.

(B)(i) However, it is not available to any building that would already qualify for boost under subdivisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), or (a)(3)(A)(iv) of this section.

(ii) This boost will not apply to any noncompetitive four percent (4%) application.

(b) **Nonprofit set-aside.**

(1) Not less than ten percent (10%) of the housing credits will be set aside for developments involving any qualified nonprofit organization that meets the standards set forth in I.R.C. § 42(h)(5)(C).

(2) The organization shall be a qualified nonprofit organization, as defined in I.R.C. § 501(c)(3) or § 501(c)(4), that:

(A) Is not affiliated with or controlled by a for-profit organization; and

(B) Has included in its articles of incorporation, as one (1) of its tax-exempt purposes, the fostering of low-income housing.

(3) The appropriate section of the MFHA (nonprofit determination) shall be completed and copies of the nonprofit organization's articles of incorporation and Internal Revenue Service documentation determining the organization exempt from federal income tax under I.R.C. § 501(a) shall be included with the MFHA.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

Codification Notes. "MFHA" means multi-family housing application.

15 CAR § 85-105. Allocation of state housing credits.

(a)(1) Arkansas Code § 26-51-1702 provides that a taxpayer owning an interest in a low-income development qualifying for housing credits will be eligible for state housing credits equal to twenty percent (20%) of the allocated federal amount.

(2) The state statute limits the allocation of state housing credits to two hundred fifty thousand dollars (\$250,000) in any one (1) taxable year.

(3) Recognizing the limited availability of the state housing credits and with a desire to assign those credits where they are most needed, the applicant shall demonstrate need in the MFHA.

(b) Based on demonstrated need in the MFHA, the Arkansas Development Finance Authority will give an allocation of state housing credits to those developments as prioritized below:

(1) Developments receiving an allocation of housing credits that are to be located entirely in any one (1) of the low-income counties designated in the state consolidated plan will be awarded state housing credits equal to twenty percent (20%) of the applicable federal housing credits;

(2) In the event of a shortage of eligible developments in low-income counties designated in the consolidated plan, priority for state housing credits, equal to twenty percent (20%) of the applicable federal housing credits, will be awarded to those qualified developments located within qualified census tracts, beginning with the highest score under the scoring system set forth in the MFHA;

(3) In the event of a shortage of eligible developments in low-income counties designated in the consolidated plan and eligible developments located within qualified census tracts, priority for state housing credits, equal to twenty percent (20%) of the applicable federal housing credits, will be awarded to developments located within counties identified herein as not having received an award of tax credits in the previous three (3) years, beginning with the highest score under the scoring system set forth in the MFHA;

(4) To the extent that there are remaining state housing credits, the state housing credits will be allocated, equal to twenty percent (20%) of the applicable federal housing credits, to remaining qualified developments until such time as the available state housing credits are exhausted, with priority given to those developments with the highest scores under the scoring system set forth in the MFHA; and

(5) The authority expects to allocate no less than ten percent (10%) of state housing credits to nonprofit organizations.

(c)(1) The authority will annually notify the Department of Finance and Administration of those developments that have been allocated state housing credits.

(2) The department will be notified of any revocation of state housing credits.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

Codification Notes. "MFHA" means multi-family housing application.

15 CAR § 85-106. Allocation of affordable neighborhood housing tax credits.

(a)(1)(A) The Affordable Neighborhood Housing Tax Credit Act of 1997, codified at Arkansas Code § 15-5-1301 et seq., provides that any business firm engaging in the provision of affordable housing assistance activities in the State of Arkansas may be entitled to receive affordable neighborhood housing tax credits (ANHTCs).

(B) "Affordable housing assistance activities" includes any "money, real, or personal property expended or devoted to the construction or rehabilitation of affordable housing units developed by or in conjunction with any governmental unit or not-for-profit corporation".

(2) The Affordable Neighborhood Housing Tax Credit Act of 1997 limits the total allocation of ANHTCs to seven hundred fifty thousand dollars (\$750,000) in any taxable year.

(b)(1) The Arkansas Development Finance Authority and the Department of Finance and Administration have determined that, in the best interest of affordable housing in Arkansas, affordable housing assistance activities must be devoted to those low-income housing developments that qualify for housing tax credits pursuant to I.R.C. § 42 through the authority's federal low-income housing tax credit or tax-exempt bond programs for residential rental housing.

(2) Thus, any business firm seeking allocation of ANHTCs must do so in conjunction with an MFHA for federal low-income housing tax credits or tax-exempt bonds to develop affordable housing units by or in conjunction with any governmental unit or not-for-profit corporation.

(c)(1) A proposal for ANHTCs must be submitted with the MFHA for federal low-income housing tax credits.

(2)(A) In its MFHA for federal low-income housing tax credits, the applicant will include a commitment from each business firm providing affordable housing assistance activities to the proposed low-income housing development.

(B) Each such commitment must:

(i) Be in writing and executed by an authorized representative of the business firm;

(ii) Identify the governmental unit or not-for-profit corporation to which the affordable housing assistance activities are committed;

(iii) Describe in detail the nature of the affordable housing assistance activities to be provided, i.e., whether money, real, or personal property, and how it will be devoted to the construction or rehabilitation of affordable housing units; and

(iv)(a) The Affordable Neighborhood Housing Tax Credit Act of 1997 limits the amount of tax credits allowable to a business firm to thirty percent (30%) of the total amount invested.

(b) If the affordable housing assistance activity is other than money, the business firm must provide an appraisal certifying the value of the property invested.

(d) If the business firm commits its affordable housing assistance activities to a governmental unit, a not-for-profit organization, or a neighborhood organization, as defined within the Affordable Neighborhood Housing Tax Credit Act of 1997, that is not the applicant on the MFHA, the applicant must submit with its MFHA the following from such governmental unit, not-for-profit organization, or neighborhood organization:

(1) Organizational documents, including:

(A) Arkansas articles of incorporation; and

(B) Tax-exempt status determination letter from the Internal Revenue Service;

(2) A written statement describing its relationship with the applicant, i.e., any ownership interest in the applicant or other relationship with the applicant; and

(3) A written statement describing in detail its commitment of the affordable housing assistance activities received from each business firm to the construction or rehabilitation of affordable housing units within the development proposed.

(e) For each proposal of affordable housing assistance activities submitted with the MFHA, the applicant must certify in writing that it will expend or devote the affordable

housing assistance activities committed to the construction or rehabilitation of affordable housing units within the development.

(f)(1)(A) Based on demonstrated need in the MFHA, the authority will give a priority allocation of ANHTCs to those developments that are in designated low-income counties under the state's consolidated plan submitted to the United States Department of Housing and Urban Development.

(B) The list of these counties is contained in the MFHA.

(2) The allocation of ANHTCs will be as follows:

(A) Developments receiving an allocation of federal low-income housing tax credits that are to be located in any one (1) of the low-income counties designated in the state consolidated plan, beginning with the highest score under the scoring system set forth in the MFHA;

(B) In the event of a shortage of eligible developments in low-income counties designated in the consolidated plan, priority for ANHTCs will be given to those developments within qualified census tracts, beginning with the highest score under the scoring system set forth in the MFHA; and

(C) To the extent that there are remaining ANHTCs, the remaining ANHTCs will be allocated to remaining qualified developments until such time as exhausted, beginning with the highest score under the scoring system set forth in the MFHA.

(g)(1) The authority will reserve and allocate ANHTCs in conjunction with its reservation and allocation or issuance of federal low-income housing tax credits.

(2)(A) With its issuance of Internal Revenue Service Forms 8609 for federal low-income housing tax credits, the authority will issue a certificate of allocation certifying the amount of ANHTCs allocated to the business firm entitled to such allocation.

(B) The authority will annually provide the Department of Finance and Administration with a copy of each certificate of allocation for ANHTCs allocated that year.

(3) The Department of Finance and Administration will be notified of any revocation of ANHTCs.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

Codification Notes. “MFHA” means multi-family housing application.

15 CAR § 85-107. Compliance.

(a)(1) Applicants shall comply with all applicable federal, state, and local laws, including, but not limited to, I.R.C. § 42.

(2) The Arkansas Development Finance Authority’s Compliance Monitoring Policies and Procedures Manual for the Low-Income Housing Tax Credit Program, 15 CAR pt. 86, may be obtained from the authority’s office, and may also be accessed at the authority’s website, <https://adfa.arkansas.gov/>.

(3) Fair housing manuals may be obtained from the United States Department of Housing and Urban Development’s Little Rock office, and the Fair Housing Accessibility Guidelines may be accessed at the United States Department of Housing and Urban Development’s website, www.hud.gov.

(b)(1) The owner will be required to prepare and submit to the authority, no later than February 1 of each year following the first taxable year of the owner’s credit period, an Owner’s Certificate of Continuing Program Compliance, which, among other certifications, certifies that for the preceding twelve-month period:

(A) No tenants in low-income units were evicted or had their tenancies terminated other than for good cause; and

(B) No tenants had an increase in the gross rent with respect to a low-income unit other than as permitted under I.R.C. § 42.

(2) The owner will also be required to prepare and submit to the authority, no later than February 1 of each year following the first taxable year of the owner’s credit period, the LIHTC Compliance Monitoring Status Report.

(3) Both the Certificate of Continuing Program Compliance and the LIHTC Status Report shall be submitted under penalty of perjury to the authority in accordance with Internal Revenue Service procedures for monitoring compliance.

(4) The compliance monitoring procedures apply to all buildings placed in service in Arkansas that have received an allocation of housing credits as determined by I.R.C. § 42.

(5) Regular site inspections to monitor compliance with habitability standards, according to the Uniform Physical Conditions Standards established by the United States Department of Housing and Urban Development and the authority's design standards, will be carried out by the authority at least once every three (3) years.

(c)(1)(A) In the event the authority becomes aware of noncompliance or upon the failure to submit a Certificate of Continuing Program Compliance, the authority will notify the owner of the areas of noncompliance and the required timeframe to correct the deficiencies.

(B) There is a maximum of sixty (60) days to correct such noncompliance.

(2) Additionally, the authority will notify the Internal Revenue Service, as required, of any noncompliance or failure to certify no later than forty-five (45) days after the end of the allowed time for correction.

(d)(1) Frequent or consistent noncompliance of the applicant or any member of the development team in regard to the operation of any development may result in points reduction in the scoring of applications and/or suspension of the applicant or development team member from applying for tax credits for a set term of time and/or compliance with conditions set forth by the authority.

(2) Frequent or consistent noncompliance shall be determined in the sole discretion of the authority and will include but not be limited to reports from the authority's Compliance Department and Internal Revenue Service Form 8823.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

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

15 CAR § 85-108. Miscellaneous matters.

(a) Closing requirements.

(1) The Board of Directors of the Arkansas Development Finance Authority has delegated to the President of the Arkansas Development Finance Authority the authority to implement closing requirements that are financially prudent for each development awarded Arkansas Development Finance Authority resources.

(2) Recipients will be notified of closing requirements as promptly as possible after notice of award or awards.

(3)(A) The standard list of information and documents required prior to closing is available on the Arkansas Development Finance Authority website.

(B) The president has the authority and discretion to add, modify, or waive requirements.

(b) **Partnership documentation.** Tax credit recipients must provide the Arkansas Development Finance Authority with a copy of the executed partnership agreements, including, but not limited to, the initial partnership agreement, the amended and restated limited partnership agreement, or operating agreement, promptly upon its execution.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

15 CAR § 85-109. Clarifications.

(a)(1) The Arkansas Development Finance Authority is charged with allocating no more housing credits to any given development than is required to make that development economically feasible.

(2) This decision shall be made solely at the discretion of the Arkansas Development Finance Authority, but in no way represents or warrants to any sponsor, investor, lender, or anyone else that the project is, in fact, feasible or viable.

(b)(1) The Arkansas Development Finance Authority's review of documents submitted in connection with the allocation is for its own purposes.

(2) The Arkansas Development Finance Authority makes no representations to the owner or anyone else as to compliance with the Internal Revenue Code, United States Treasury regulations, or any other laws or regulations governing housing credits.

(3) The applicant and owner of the development are responsible for understanding and following all applicable tax law requirements for the development.

(c) No director, officer, agent, or employee of the Arkansas Development Finance Authority shall be personally liable concerning any matters arising out of, or in relation to the:

- (1) Award or allocation of housing credits;
- (2) Rejection of any MFHA for housing credits;
- (3) Award or lack of award of any other Arkansas Development Finance Authority-administered resource, whether federal or state in origin;
- (4) Closing of any awarded funds or lack of closing;
- (5) Failure of a development to comply with federal, state, or local laws, rules, regulations, or other governing instruments;
- (6) Recapture of any credits or funds from any development;
- (7) Failure of any development to remain financially feasible; or
- (8) Failure of any development to meet federal, state, or local deadlines.

(d) The Arkansas Development Finance Authority reserves the right to:

- (1) Amend this part as necessary to prudently administer Arkansas Development Finance Authority-administered funds or to comply with state or federal law;
- (2) Adopt rules ancillary to this part as necessary to prudently administer Arkansas Development Finance Authority-administered funds;
- (3) Make any and all necessary technical changes to this part as circumstances may warrant; and
- (4) Do or require all things necessary or convenient to carry out its purposes, pursuant to Arkansas Code § 15-5-207(b)(20)(A) and § 15-5-207(b)(26).

(e)(1) It is the policy of the Arkansas Development Finance Authority to prohibit applicants from contacting the Arkansas Development Finance Authority's staff in any

manner regarding any application after submission of application and during the Arkansas Development Finance Authority's review period, unless the Arkansas Development Finance Authority's staff has initiated contact for clarification of material or questions pertinent to application underwriting.

(2) The Arkansas Development Finance Authority's review period concludes when the Board of Directors of the Arkansas Development Finance Authority approves successful applicants.

(3) Violations of this policy will be brought to the attention of the Board Housing Review Committee and could result in:

(A) A downgrade to the final scoring;

(B) Rejection of the application from consideration for an award of federal or state housing credits; or

(C) Suspension or disqualification from the Arkansas Development Finance Authority's housing tax credit program.

(f)(1) The provision of these policies and procedures shall apply to any multi-family housing program administered or multi-family housing transaction funded by the Arkansas Development Finance Authority.

(2)(A) The Arkansas Development Finance Authority retains the right to suspend for good cause any entity who does not exhibit the capacity to effectively administer, manage, and/or utilize resources provided by the Arkansas Development Finance Authority to further affordable housing in Arkansas.

(B) By action of the board of directors dated August 21, 2003, the President of the Arkansas Development Finance Authority shall have full authority to suspend for good cause persons or organizations from participation in the Arkansas Development Finance Authority's housing programs.

(3)(A) Any appeal of such suspension shall be presented in writing to the president for possible consideration.

(B) The appeal shall provide written justification for the appeal request.

(4) The president shall review the written appeal request and make a recommendation to the Board Housing Review Committee as to the merits of the justification provided in the appeal request.

(5) The decision to allow any appeal of suspension shall reside with the Board Housing Review Committee, which will set the time, date, terms, and requirements associated with any appeal process granted by the Board Housing Review Committee.

Authority. Arkansas Code §§ 15-5-1305, 15-5-207, 26-51-1705.

Codification Notes. "MFHA" means multi-family housing application.