

Title 15. Natural Resources and Economic Development

Chapter VII. Arkansas Development Finance Authority, Department of Commerce

Subchapter C. Housing

Part 87. Guidelines for Reserving Volume Cap for Multi-Family Housing Bonds

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

"Adopted by the Board of Directors July 17, 2008
Effective October 6, 2008"

"Adopted by the Board of Directors of the Arkansas Development Finance Authority this 17th day of July 2008.

By: Art Morris, Chair Person

ATTEST:

Mac Dodson, President/Secretary"

Subpart 1. Generally

15 CAR § 87-101. Introduction.

(a) The Arkansas Development Finance Authority has as one (1) of its primary purposes the creation and preservation of affordable rental housing for low-income and moderate-income persons.

(b) The authority has available volume cap for reservation in the issuance of tax-exempt bond authority to provide financing to private developers for the development of multi-family rental housing.

(c) In return for receiving below market interest rate financing, the developer is required to set aside units in the development for low-income and moderate-income families and persons.

(d) The reservation of volume cap in the tax-exempt bond multi-family housing program is intended to encourage the creation of new rental housing units as well as the rehabilitation of existing rental units.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-102. [Reserved].

15 CAR § 87-103. Federal tax regulations and requirements.

The applicant is responsible for understanding and following all applicable tax law requirements for the proposed development.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-104. Continuous funding round.

Pursuant to Arkansas Code § 15-5-603:

(1) Approximately twenty-six million two hundred nine thousand dollars (\$26,209,000) in volume cap will be available for reservation through the Arkansas Development Finance Authority; and

(2) Approximately seventy-eight million six hundred twenty-eight thousand five hundred dollars (\$78,628,500) will be available for allocation to any issuer authorized to issue tax-exempt private activity bonds for the development of multi-family residential rental housing.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-105. Receipt of application.

(a) Application for 2009 Multifamily Volume Cap requires compliance with:

(1) Rules for the Allocation of the State Volume Cap for Private Activity Bonds, 15 CAR pt. 73, in effect at the time an application is filed;

(2) This part; and

(3)(A) The Housing Credit Program 2009 Qualified Allocation Plan.

(B) Applicants applying to reserve volume cap for tax-exempt bonds must utilize the four percent (4%) low-income housing tax credits.

(C) The Arkansas Development Finance Authority retains the authority to determine eligibility to receive tax credits and the amount of tax credits to be awarded to the development.

(b)(1) Each applicant must complete:

(A) An Application for Reservation of Volume Cap (see Appendix A-1 of Rules for the Allocation of the State Volume Cap for Private Activity Bonds); and

(B) A 2009 Multi-Family Housing Application.

(2) Only complete applications will be considered for funding.

(3) Facsimiles and emails will not be accepted.

(4) The 2009 Multi-Family Housing Application must be submitted online as provided by the authority and by submitting a tabbed, three-ring bound hardcopy delivered to the authority at the following address:

Arkansas Development Finance Authority
Attn: Multi-Family Housing Department
423 Main Street, Suite 500
Little Rock, AR 72201
Telephone Number: 501-682-5900

(c) Following assignment of a priority number pursuant to 15 CAR § 73-103(d), the applicant will be notified of the date and time the applicant will be required to make a formal presentation of its development for approval to the Board Housing Review Committee.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-106. Fees.

(a) Application fee.

(1) A five-hundred-dollar nonrefundable application fee is payable at the time an application is submitted to the Arkansas Development Finance Authority.

(2) Applications submitted without the application fee will be considered incomplete.

(b) Issuance fee (Arkansas Development Finance Authority issues only).

(1) A one-time fee of one-half of one percent (0.5%), based on the principal amount of bonds issued, is payable at the bond closing for bonds with a maturity date of five (5) years or less.

(2) An annual fee of one-eighth of one percent (0.125%), based on the principal amount of bonds issued, is payable on October 1 of each year the bonds remain outstanding for bonds with a maturity date in excess of five (5) years.

(c) Low-income housing tax credits (LIHTC) fees.

(1) **Reservation of credit fee.** A nonrefundable reservation fee of one hundred dollars (\$100) per low-income unit will be required at the bond closing.

(2) **Award of credit fee.** An award of credit fee of one hundred fifty dollars (\$150) per low-income unit will be required at the time the credits are awarded (at issuance of Internal Revenue Service Form 8609).

(3) Compliance/monitoring fee.

(A) A compliance and monitoring fee of six percent (6%) of the amount of annual credits is required to be paid at the time the credits are awarded (at issuance of Internal Revenue Service Form 8609).

(B) In addition, a monitoring fee of fifty dollars (\$50.00) per low-income housing tax credit unit inspected will be owed to the authority following any on-site compliance and monitoring inspection conducted by the authority during the extended period following the close of the fifteen-year compliance period.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-107. Appraisal fee, market study, etc.

(a) The applicant will be responsible for paying all costs incurred in providing the Arkansas Development Finance Authority with:

- (1) A market study;
- (2) An appraisal;
- (3) A construction cost analysis certification; or
- (4) Any other special study in the event such special study is required by the

authority.

(b) The market study must be performed by a market analyst from the authority's Approved Market Study Firm List.

(c) The market study must contain all information outlined in Market Study Guidelines for Affordable Rental Housing Program, 15 CAR pt. 97.

(d) Any market study not meeting these requirements will not meet program threshold requirements for funding.

(e) The capital needs assessment, if applicable, must be performed by a capital needs assessment firm from the authority's Capital Needs Assessment Firm – Approved list.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-108. Issuance expenses and all other expenses incurred.

(a) The applicant will be responsible for any expenses incurred regardless of whether or not a bond closing occurs.

(b) The applicant is also responsible for such expenses incurred in the arbitrage rebate calculation.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-109. Review of application and approval process.

(a) **Notification.** Notification, via the Arkansas Development Finance Authority's

website at www.arkansas.gov/adfa, will be sent to all developers and affordable housing professionals advising them of the:

- (1) Availability of volume cap; and
- (2) Process for submission of applications.

(b) **Submission of application.** The applicant, developer, or its representative shall submit a completed 2009 Multi-Family Housing Application, including all required documentation and exhibits, with the application fee to the authority.

(c) **Review of application.**

(1) Applications are reviewed by the authority's multi-family housing staff for completeness and compliance with all requirements of this part and Low-Income Housing Tax Credit Program Qualified Allocation Plan, 15 CAR pt. 85.

(2) Pursuant to Section 42(m)(1)(D) of the Internal Revenue Code, the application will be evaluated for compliance with the threshold requirements set forth in Section VI.B. of the QAP and the additional requirements for a complete application set forth in Section VI.C. of the QAP.

(3)(A) The authority's multi-family housing staff will conduct a review of the applicant's previous performance related to the authority and other programs.

(B) The applicant's performance under the bond program to close previous bond transactions within the program requirements will be reviewed and could impact the funding decision.

(C) In addition, unsatisfactory performance, as determined by the Board Housing Review Committee on previous developments, or delinquencies in payments will result in disqualification of an application by the authority's Board Housing Review Committee.

(4) All information submitted to the authority along with authority staff findings and notes may be shared with any issuing entity to assist the issuing entity with funding decisions.

(d) **Covenant to execute certificate of bond proceeds expenditure.**

(1) With its application, the applicant must covenant that the borrower/user of the bond proceeds will execute and submit to the authority a certificate that designates

the manner in which the proceeds of the bonds were applied to expenditures, by the earlier of:

(A) Within six (6) months after the date on which the development is to be placed in service; or

(B) At the time of submission of the development's cost certification for the issuance of Internal Revenue Service Form 8609.

(2)(A) Further, at bond issuance/closing, the borrower/user will execute a separate document/letter declaring the above covenant.

(B) Such document/letter will be included with all other bond closing documentation.

(e) **Extensions of the closing date.** The bond closing must take place prior to the expiration of the reservation period, as extended, as provided for in 15 CAR § 73-105.

(f) **Credit enhancement of private placement (Arkansas Development Finance Authority issues only).**

(1)(A) All multi-family transactions must be either credit enhanced or placed with a bank, registered investment company, insurance company, or "accredited investors", as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission, ("qualified investors") who are willing to sign investor letters stating their qualifications to analyze and gauge risk relating to their investment in such issues.

(B) The minimum rating requirement for credit enhancement to be eligible for multi-family bond issues would be "A" or better by Moody's Investors Service or "A" or better by S&P Global Ratings at the time of closing.

(2) Bonds issued and placed with accredited investors, as defined above, would be issued in initial minimum denominations of one hundred thousand dollars (\$100,000) or any integral multiples of five thousand dollars (\$5,000) in excess thereof.

(g) **Formal presentation before Board Housing Review Committee.**

(1) All applicants will be required to make a formal presentation before the authority's Board Housing Review Committee.

(2) Applicants will be notified by the authority's staff of the schedule for making the formal presentation.

(3) The presentation shall include, but is not limited to, discussion of the following:

(A) Demonstrated demand for affordable housing in the proposed project locale;

(B) Project location;

(C) Project size;

(D) Unit types and bedroom mix;

(E) Projected market and low-income unit mix;

(F) Tenants to be served;

(G) Proposed financing structure;

(H) Readiness to close bond transaction within sixty (60) days;

(I) Zoning and site plan approval status;

(J) Background and experience of developer and development team;

(K) Community support;

(L) Energy efficiency/maintenance standards;

(M) Detailed synopsis of rehabilitation work, if applicable;

(N) Monitoring procedures; and

(O) Serving special needs, e.g., elderly housing, housing for persons with physical disabilities, or housing for large families.

(h) Decision of Board Housing Review Committee.

(1) The Board Housing Review Committee will make its recommendation of selected applications to the Board of Directors of the Arkansas Development Finance Authority.

(2) The Board of Directors of the Arkansas Development Finance Authority will approve selected applications at a regular Board of Directors of the Arkansas Development Finance Authority meeting.

(i) Changes to the original application.

(1) Any change to the original application must be submitted to the authority

in writing at least thirty (30) days prior to the desired effective date of the change.

(2) All changes must be reviewed and approved by the authority's multi-family housing staff or the Board of Directors of the Arkansas Development Finance Authority.

(3) Any change to the original application made without approval from the authority will be null and void.

(j) Reservation of volume cap by Arkansas Development Finance Authority.

(1) All reservations of volume cap made by the authority will be made for the purpose of providing bond financing for a specific development on a specific site.

(2) Any change in the development site, the applicant entity, the ownership entity, or the size, nature, or other characteristics of the development may, in the authority's sole discretion, invalidate the reservation.

(3) The applicant is obligated to report any changes to the authority.

(4) Should the highest elected official withdraw the letter of support for the development at any time prior to the bond closing, the authority will invalidate the reservation for volume cap.

(5) Revocation of the letter of support at any time after the bond closing will not affect the reservation for volume cap.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

Codification Notes. Section 42(m)(1)(D) of the Internal Revenue Code is codified at 26 U.S.C. § 42(m)(1)(D).

15 CAR § 87-110. Criminal background check and disclosure requirements.

(a)(1) Each applicant, consultant, and development team member shall complete a Criminal Background and Disclosure Form – Housing, Attachment A to the 2009 Multi-Family Housing Application.

(2) Failure to submit or correctly complete the Criminal Background and

Disclosure Form – Housing for each applicant, consultant, and development team member shall disqualify the application for tax-exempt bonds.

(b)(1) Each applicant or recipient of tax-exempt bonds and any principal of such applicant or recipient is subject to the Arkansas Development Finance Authority's Criminal Background Check Policies and Procedures, 15 CAR pt. 61, and their requirements.

(2) Each consultant, developer, or other development team member or any principal of such consultant, developer, or other development team is subject to the authority's Criminal Background Check Policies and Procedures and their requirements.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.

15 CAR § 87-111. Certification.

(a) The Arkansas Development Finance Authority reserves the right to disapprove any development for a reservation of volume cap, regardless of the evaluation.

(b) The authority reserves the right, in its sole and absolute discretion, to suspend or debar any applicant from the volume cap program that the authority determines has acted improperly, illegally, or inappropriately:

(1) In the applicant's dealings with the authority; or

(2) In any way relative to the program.

(c) No contact with the authority's board members is allowed, and any such contact will be grounds for immediate rejection of the application.

Authority. Arkansas Code §§ 15-5-207, 15-5-605.