

# **ARKANSAS DEVELOPMENT FINANCE AUTHORITY**

## **HOUSING CREDIT PROGRAM**

The Arkansas Development Finance Authority ("ADFA" or the "Authority") is charged with the responsibility of administering the federal low-income housing credits ("Housing Credits") for the State of Arkansas (the "State"). ADFA is also charged with the responsibility of promulgating rules and regulations concerning the allocation of the Arkansas low-income housing tax credit (the "State Housing Credits") pursuant to *Ark. Code Ann. §26-51-1701 et seq.* 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 and moderate-income individuals and families (*IRC Section 42*). The Revenue Reconciliation Act of 1989 amended *IRC Section 42(m)* that requires allocating agencies to allocate low income housing tax credits pursuant to a Qualified Allocation Plan ("QAP"). Housing tax credits shall be allocated in accordance with this plan and any amendments thereto and are set forth below.

### **I. QUALIFIED ALLOCATION PLAN**

(A) Qualified Allocation Plan ("QAP") means any plan:

- (1) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions;
- (2) which also gives preference in allocating housing credit dollar amounts among, selected projects to:
  - (a) projects serving the lowest income tenants,
  - (b) projects obligated to serve qualified tenants for the longest periods, and
  - (c) projects which are located in qualified census tracts (as defined in *IRC Section 42(d)(5)(c)*) and the development of which contributes to a concerted community revitalization plan; and
- (3) which 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 which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(B) Certain Selection Criteria Must Be Used

The selection criteria set forth in a qualified allocation plan must include:

- (1) project location;
- (2) housing needs characteristics;
- (3) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan;
- (4) sponsor characteristics;
- (5) tenant populations with special housing needs;
- (6) public housing waiting lists;
- (7) tenant populations of individuals with children;
- (8) projects intended for eventual tenant ownership;

- (9) the energy efficiency of the project; and
- (10) the historic nature of the project.

(C) Application to Bond Financed Projects

*IRC Section 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 which the project is located.

(D) 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. In making the determination under subparagraph (1), the housing credit agency shall consider:
  - (a) the sources and uses of funds and the total financing planned for the project;
  - (b) any proceeds or receipts expected to be generated by reason of tax benefits;
  - (c) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries; and
  - (d) the reasonableness of the developmental and operational costs of the project.

Clause (c) shall not be applied so as to impede the development of projects in hard-to-develop areas. 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 subparagraph (1) shall be made as of each of the following times:
    - (i) The application for the housing credit dollar.
    - (ii) The allocation of the housing credit dollar amount.
    - (iii) The date the building is placed in service.
  - (b) Certification as to amount of other subsidies--Prior to each determination under clause (a), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.
- (4) Application to bond financed projects:

*IRC Section 42(h)(4)* shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (1) and (2).

## II. MULTIFAMILY HOUSING APPLICATION ("MFHA")

The ADFA MFHA shall set forth all other requirements, instructions, clarifications and definitions for the year in which the application for LIHTC is submitted. The MFHA and all other documents necessary for a complete application are available at ADFA's website ([www.arkansas.gov/adfa](http://www.arkansas.gov/adfa)). The terms and conditions of the MFHA will be incorporated into the Carryover Allocation documentation. The MFHA will be used at final cost certification to ensure continued compliance with all requirements for the development.

Any material change to the original application, and all subsequent material changes, shall be submitted to ADFA in writing at least thirty (30) days prior to the desired effective date of the change. All changes shall be reviewed and approved by ADFA's Multifamily Housing Staff, ADFA's Board Housing Review Committee and/or ADFA's Board of Directors, as appropriate. Any change to the original application made without approval from ADFA will be null and void and may result in remedial action by ADFA, including but not limited to penalties on future applications or suspension from the tax credit program in Arkansas for a set period of time. A \$500.00 fee per change item submitted shall be submitted to ADFA with all change requests. \$500.00 shall be submitted for all such change requests, including but not limited to change in unit size, configuration, location, requests for approval of change of management company, change in development team and **transfer of ownership interest**.

## III. LIMITS ON ALLOCATION OF CREDITS

The Code requires that ADFA 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". Housing Credits will be limited to the amount the Authority, in its sole discretion, deems necessary. 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" which would otherwise exist in developing affordable rental housing for low-income households.

## IV. HOUSING CREDIT ALLOCATION STANDARDS

### (A) Allocation Amounts

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

The maximum amount of Housing Credits that may be reserved for allocation shall be no more than the amount permitted under Section C(29) of the Multifamily Housing Application Guidelines.

**For purposes of calculating the amount of annual Housing Credits, only acquisition of existing buildings, site work, on-site infrastructure, construction hard costs, general requirements, contractor overhead and contractor profit will be included in eligible basis.**

**These restrictions do not apply to applications for 4% Tax Credits/Multifamily Bonds.**

Pursuant to *IRC §42(d)(5)(B)(v)*, the Authority designates that the eligible basis of any qualified low-income new building will be increased by thirty percent (30%) if:

- (1) it is located in any low-income county designated in the currently applicable State Consolidated Plan;
- (2) it is funded in part by Rural Development; or
- (3) it is a building that ADFA determines needs the boost to be economically feasible. However, it is not available to any building that would already qualify for boost under 1, 2, or 3 above. This boost will not apply to any noncompetitive 4% application.

(B) Nonprofit Set-Aside

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 *IRC § 42(h)(5)(C)*. The organization shall be a qualified nonprofit organization, as defined in *IRC § 501(c)(3) or §501(c)(4)*, which is not affiliated with or controlled by a for-profit organization and has included in its Articles of Incorporation, as one of its tax-exempt purposes, the fostering of low-income housing. **The appropriate section of the Application (NONPROFIT DETERMINATION)** shall be completed and copies of the nonprofit organization's Articles of Incorporation and Internal Revenue Service ("IRS") documentation determining the organization exempt from federal income tax under *IRC §501(a)* shall be included with the MFHA.

## **V. ALLOCATION OF STATE HOUSING CREDITS**

*Ark. Code Ann. §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. The State statute limits the allocation of State Housing Credits to \$250,000 in any one taxable year. 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. Based on demonstrated need in the MFHA, the Authority will give an allocation of State Housing Credits to those developments as prioritized below:

- (A) Developments receiving an allocation of Housing Credits that are to be located entirely in any one 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.
- (B) 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.

- (C) 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.
- (D) To the extent there are remaining State Housing Credits, the State Housing Credits will be awarded, 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, beginning with the highest scores under the scoring system set forth in the MFHA.
- (E) The Authority expects to allocate no less than ten percent (10%) of State Housing Credits to nonprofit organizations.

The Authority will annually notify the Arkansas Department of Finance and Administration of those development that have been allocated State Housing Credits. The Arkansas Department of Finance and Administration will be notified of any revocation of State Housing Credits.

## **VI. ALLOCATION OF AFFORDABLE NEIGHBORHOOD HOUSING TAX CREDITS**

The Affordable Neighborhood Housing Tax Credit Act of 1997, (the "ANHTC Act"), codified at *Ark. Code Ann. §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 ("ANHTC"). "Affordable housing assistance activities" is defined to include 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". The ANHTC Act limits the total allocation of ANHTCs to \$750,000 in any taxable year.

The Authority and the Arkansas 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 which qualify for Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code through the Authorities federal low-income housing tax credit or tax-exempt bond programs for residential rental housing. Thus, any business firm seeking allocation of ANHTCs must do so in conjunction with a MFHA for federal low-income housing tax credit or tax-exempt bonds to develop affordable housing units by or in conjunction with any governmental unit or not-for-profit corporation.

A proposal for ANHTCs must be submitted with the MFHA for federal low-income housing tax credits. 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. Each such commitment must:

- (A) Be in writing and executed by an authorized representative of the business firm;
- (B) Identify the governmental unit or not-for-profit corporation to which the "affordable housing assistance activities" are committed;
- (C) 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.

The ANHTC Act limits the amount of tax credits allowable to a business firm to thirty percent (30%) of the total amount invested. If the affordable housing assistance activity is other than money, the business firm must provide an appraisal certifying the value of the property invested.

If the business firm commits its "affordable housing assistance activities" to a governmental unit, a not-for-profit corporation, or a "neighborhood organization", as defined within the ANHTC Act, which is not the applicant on the MFHA, the applicant must submit with its MFHA the following from such governmental unit, not-for-profit corporation, or "neighborhood organization":

- (D) Organizational documents including: a) Arkansas Articles of Incorporation; and b) Tax Exempt Status Determination Letter from the Internal Revenue Service;
- (E) A written statement describing its relationship with the applicant, *i.e.*, any ownership interest in the applicant or other relationship with the applicant; and
- (F) 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.

For each proposal of "affordable housing assistance activities" submitted with the MFHA, the applicant must certify in writing that it will expend or devoted the "affordable housing assistance activities" committed to the construction or rehabilitation of affordable housing units within the development.

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 federal Department of Housing and Urban Development. The list of these counties is contained in the MFHA. The allocation of ANHTCs will be as follows:

- (G) Developments receiving an allocation of federal low-income housing tax credits that are to be located in any one 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;
- (H) 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 located within Qualified Census Tracts, beginning with the highest score under the scoring system set forth in the MFHA;

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

The Authority will reserve and allocate ANHTCs in conjunction with its reservation and allocation or issuance of federal low-income housing tax credits. With its issuance of IRS 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. The Authority will annually provide the Arkansas Department of Finance and Administration with a copy of each Certificate of Allocation for ANHTCs allocated that year. The Arkansas Department of Finance and Administration will be notified of any revocation of ANHTCs.

## **VII. COMPLIANCE**

Applicants shall comply with all applicable federal, state and local laws, including but not limited to Section 42 of the Code. ADFA's Compliance Monitoring Policies and Procedures Manual for the Low-Income Housing Tax Credit Program may be obtained from ADFA's office and may be accessed at ADFA's website ([www.arkansas.gov/adfa](http://www.arkansas.gov/adfa)). Fair Housing manuals may be obtained from HUD's Little Rock office, and the Fair Housing Accessibility Guidelines may be accessed at HUD's website ([www.hud.gov](http://www.hud.gov)).

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 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low-income unit other than as permitted under Section 42 of the Internal Revenue Code. 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. 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. The compliance monitoring procedures apply to all buildings placed in service in Arkansas that have received an allocation of Housing Credits as determined by Section 42 of the Code. 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 ADFA design standards, will be carried out by the Authority at least once every three (3) years.

In the event the Authority becomes aware of non-compliance or upon the failure to submit a Certificate of Continuing Program Compliance, the Authority will notify the owner of the areas of non-compliance and the required timeframe to correct the deficiencies. There is a maximum of sixty (60) days to correct such non-compliance. Additionally, the Authority will notify the IRS, as required, of any non-compliance or failure to certify no later than forty-five (45) days after the end of the allowed time for correction.

Frequent or consistent non-compliance of 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 housing credits for a set term of time and/or compliance with conditions set forth by ADFA. Frequent or consistent non-compliance shall be determined in the sole discretion of ADFA and will include, but not limited to reports from ADFA's Compliance Department and IRS Form(s) 8823.

## **VIII. MISCELLANEOUS MATTERS**

- (A) Closing Requirements. The ADFA Board of Directors has delegated to the President of ADFA the authority to implement closing requirements that are financially prudent for each development awarded ADFA resources. Recipients will be notified of closing requirements as promptly as possible after notice of award(s). The standard list of information and documents required prior to closing is available on the ADFA website. The President has the authority and discretion to add, modify or waive requirements.
- (B) Partnership Documentation. Tax credit recipients must provide ADFA 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 their execution.

## **IX. CLARIFICATIONS**

The Authority is charged with allocating no more Housing Credits to any give development than is required to make that development economically feasible. This decision shall be made solely at the discretion of the Authority, but in no way represents or warrants to an sponsor, investor, lender or anyone else that the project is, in fact, feasible or viable.

ADFA's review of documents submitted in connection with the allocation is for its own purposes. ADFA makes no representations to the owner or anyone else as to compliance with the Code, Treasury regulations, or any other laws or regulations governing Housing Credits. The applicant and owner of the development are responsible for understanding and following all applicable tax law requirements for the development.

No director, officer, agent or employee of ADFA shall be personally liable concerning any matters arising out of, or in relation to, the award or allocation of Housing Credits, the rejection of any MFHA for housing credits, the award or lack of award of any other ADFA-administered resource whether federal or state in origin, the closing of any awarded funds or lack of closing, or the failure of a development to comply with federal, state or local laws, regulations, or other governing instruments, or the recapture of any credits or funds from any development, or the failure of any development to remain financially feasible, or the failure of any development to meet federal, state or local deadlines.

ADFA reserves the right to amend this Qualified Allocation Plan as necessary to prudently administer ADFA-administered funds or to comply with state or federal law. ADFA reserves the right to adopt rules ancillary to this Qualified Allocation plan as necessary to prudently administer ADFA-administered funds. ADFA reserves the right to make any and all necessary technical changes to this Qualified Allocation Plan as circumstances may warrant. ADFA reserves the right to do or

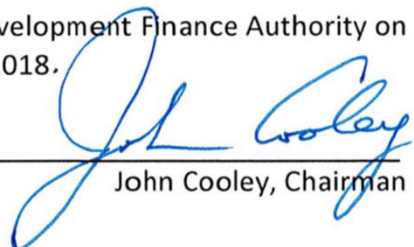


require all things necessary or convenient to carry out its purpose, pursuant to *Ark. Code Ann. §15-5-207(b)(20)(A) and Ark. Code Ann. §15-5-207(b)(26)*.

It is the policy of ADFA to prohibit applicants from contacting ADFA staff in any manner regarding any application after submission of application and during the ADFA review period, unless ADFA staff has initiated contact for clarification of material or questions pertinent to application underwriting. ADFA review period concludes when the ADFA Board of Directors approve successful applicants. Violations of this policy will be brought to the attention of the Board Housing Review Committee and could result in a downgrade to the final scoring, rejection of the application from consideration for an award of federal or state housing credits, or suspension or disqualification from the ADFA housing tax credit program.

The provision of these policies and procedures shall apply to any multifamily housing program administered or multifamily housing transaction funded by ADFA. ADFA 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 ADFA to further affordable housing in Arkansas. By action of ADFA's Board of Directors dated August 21, 2003, the President of ADFA shall have full authority to suspend for good cause persons or organizations from participation in ADFA housing programs. Any appeal of such suspension shall be presented in writing to the ADFA President for possible considerations. The appeal shall provide written justification for the appeal request. The President of ADFA shall review the written appeal request and make a recommendation to the ADFA Board Housing Review Committee as to the merits of the justification provided in the appeal request. 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 ADFA Board Housing Review Committee.

Adopted by the Board of Directors of the Arkansas Development Finance Authority on this the 15th day of November, 2018.

By:   
John Cooley, Chairman

ATTEST:   
Cheryl Schuterman, President/Secretary

