

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



Michael Preston
Secretary of Commerce,
Executive Director
Arkansas Economic
Development Commission

Fresh Start Program Proposed Rule Summary

The Arkansas Economic Development Commission (AEDC) is seeking to promulgate a permanent rule to administer the Arkansas Fresh Start COVID-19 Housing Stabilization Program (Fresh Start Program). AEDC, in collaboration with the Arkansas Community Action Agencies Association, will provide short-term rental assistance to low to moderate individuals and families in Arkansas who are experiencing housing instability. The program will also assist landlords who are experiencing revenue loss due to the impact of the COVID-19 pandemic. AEDC promulgated an emergency rule to administer the Fresh Start Program that was effective on October 16, 2020 for a 120-day period. The proposed permanent rule is necessary to continue to administer the program after the emergency period expires.

PROPOSED RULE SUMMARY

- The proposed rule provides an overview of the Fresh Start program and the need created by the impact of COVID-19 on Arkansans and the Arkansas economy.
- \$10 million for the Fresh Start Program would be funded by \$5.76 million in federal CDBG-CV grant funds from HUD and a \$4.24 million CARES Act Funds appropriation approved by the Arkansas Legislative Council (ALC) on October 16, 2020.
- The proposed rule establishes the eligibility criteria for applicants and the required documentation that will demonstrate eligibility.
- Fresh Start Program benefits are outlined in Section III of the proposed rule.
- Eligible applicants may receive benefits of up to 2.5 months of past due rent. The amount of the grant assistance shall not exceed the fair market rental value as determined by HUD for the dwelling occupied by the applicant.
- Benefits will be paid directly to the landlord of the dwelling occupied by the applicant and are strictly limited to rental charges for the dwelling and shall not include separate ancillary charges for property amenities unrelated to rent.
- The Arkansas Community Action Agencies Association (ACAAA) shall serve as the overall project manager of the Fresh Start Program and the duties and responsibilities of the ACAA are outlined in the proposed rules under Section V.
- Benefits under the Fresh Start Program shall be administered through the 15 Community Action Agencies (CAA) throughout Arkansas. The responsibilities of the CAA's are outlined in Section VI.
- Exhibit A outlines the percentage of overall award that will be allocated to each CAA. This allocation is determined based on the population of the area served by each CAA.

RULEMAKING AUTHORITY

AEDC has authority granted under A.C.A. § 15-4-209(a)(1) and § 15-4-209(b)(5) to promulgate rules for programs that the agency administers.

Arkansas Fresh Start COVID-19 Housing Stabilization Program

Rule

Overview

The Arkansas Fresh Start COVID-19 Housing Stabilization Program (referred to herein as the “Fresh Start Program” and the “program”) is designed to provide short-term rental assistance to individuals and families in Arkansas who are experiencing housing instability, as well as landlords who are experiencing loss of revenues due to the economic impact of the COVID-19 pandemic and the temporary halt by the CDC on residential evictions to help prevent further spread of the virus. The combined effects of housing instability and loss of rental income hinders the economic recovery within Arkansas.

Based on the forgoing economic development need, and pursuant to the authority granted under Ark. Code Ann. § 15-4-209(a)(1) and § 15-4-209(b)(5), the Arkansas Economic Development Commission (“AEDC”) is establishing the Fresh Start Program to address this need and in so doing benefit the economy of Arkansas.

I. Funding for Fresh Start Program

- A. The maximum funding available under the Fresh Start Program shall be \$10 million, provided through funds under Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act funds.”), and from the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grants allocated to prevent, prepare for, and respond to COVID-19 (the “CDBG-CV funds”).
- B. The expenditure of any CARES Act funds and CDBG-CV funds shall be conditioned upon adequate appropriation for such funds by the Arkansas General Assembly. Additionally, the use of CDBG-CV funds is conditioned upon AEDC’s satisfaction of all the necessary HUD regulatory requirements associated with the use of CDBG-CV funds.
- C. All CARES Act funds must be fully expended by no later than December 30, 2020. All CDBG-CV funds must be expended no later than the deadline set forth in the terms of the HUD grant award to AEDC and applicable HUD regulations.

II. Eligibility Criteria

- A. To qualify for assistance under the program, applicants must meet **each** of the following criteria:
 - Be a full-time Arkansas resident.
 - Be a renter with an income at or below 80% of the area median income as determined by HUD.
 - Either (i) have an eligible rent expense that was incurred on or after March 18, 2020 that is past due or with notice of pending eviction, or (ii) have been evicted within the previous thirty (30) days.
 - Certify inability to make rent payment(s) owed because of the public health emergency due to unemployment, illness, or another COVID-19 related issue, through the submission of a signed CDC Eviction Moratorium Declaration.

- B. Applicants for assistance under the program must provide the following documentation to demonstrate eligibility:
- Proof of identification of the applicant;
 - Verification of applicant's rent arrearage (past due rent notice/or eviction notice);
 - Lease or rental agreement;
 - Proof of gross income from the month prior to application (self-declaration accepted, when applicable);
 - Basic demographic information for all household members (name, relationship to applicant, DOB, race/ethnicity, employment status, disability status, and education level);
 - Signed CDC Eviction Moratorium Declaration;
 - Declaration from landlord in accordance with Section III(c); in the event a landlord will not provide the declaration, the applicant's benefits under the program will be limited as set forth in Section III(D) and Section III(E) below;
 - Such other documentation as AEDC may reasonably require evidencing the applicant's eligibility for benefits under the program.

III. Program Benefits

- A. Eligible applicants may receive benefits of up to 2.5 months of rent. The amount of monthly rent assistance shall not exceed the fair market rental value ("FMRV") as determined by HUD for the dwelling occupied by the applicant.
- B. Benefits may only be paid directly to the landlord of the dwelling occupied by the applicant.
- C. As a requirement of receiving benefits under the program, the Landlord must sign an agreement, the form of which shall be approved by AEDC, in which the landlord agrees to (i) follow the requirements of the CDC eviction moratorium, (ii) waive all outstanding late fees, and (iii) not raise the applicant's rent during the moratorium. Nothing in these rules shall be construed so as to obligate a landlord to abrogate any provision of a lease agreement with a tenant.
- D. Except as provided in Section III(E), in the event (i) applicant's rent arrearage exceeds the program limit of 2.5 months of rent and the applicant is unable to satisfy the deficiency through other financial resources, or (ii) the landlord refuses to sign the agreement specified in Section III(C), the applicant will be ineligible for benefits under the program.
- E. If any applicant (including an applicant described in Section III(D)) receives notice of eviction and the applicant is ineligible for emergency housing assistance from other state and federal programs such as Emergency Solutions Grants, benefits under the program will be limited to (i) providing an amount (not to exceed one month's FMRV rent) necessary for a security deposit at a new dwelling, and (ii) 1.5 months of FMRV rent for the new dwelling. The benefits under this Section III(E) will be in lieu of any benefits under Section III(A). These applicants will be required to (a) have been evicted within the previous 30 days, (b) be currently homeless, and, (c) have furnished proof that the pandemic has impacted household health and/or financial stability, through the submission of a signed CDC Eviction Moratorium Declaration.
- F. Benefits under the program shall be strictly limited to rental charges for the dwelling and shall not include separate ancillary charges for property amenities unrelated to rent.

IV. Responsibilities of AEDC

AEDC shall have full authority to administer the program consistent with these rules and applicable state and federal law and to make determinations concerning program eligibility and benefits. AEDC may enter into grant agreements with third party non-profit organizations to receive and process applications, make determinations as to program eligibility and benefits, and to make disbursements of benefits under the program.

V. Responsibilities of Arkansas Community Action Agencies Association

- A. The Arkansas Community Action Agencies Association (the “ACAAA”) shall serve as the overall project manager of the Fresh Start Program. The duties of ACAA shall include:
 - Providing technical and logistical support to the CAA’s (as defined in Section VI(A)), including providing software necessary to receive program applications via the internet;
 - Developing forms for the use by all CAA’s in administering the program;
 - Promoting the Fresh Start Program throughout the state;
 - Monitoring the performance of the CAA’s with respect to the program;
 - Preparing such reports as AEDC may require concerning the program, including aggregate information concerning the applicants and program expenditures; and
 - Such other duties as AEDC and ACAA may determine as set forth in a grant agreement between AEDC and ACAA.
- B. Up to 5% of the CARES Act funds and CDBG-CV funds shall be awarded to ACAA for its program management responsibilities.

VI. Responsibilities of Community Action Agencies

- A. Benefits under the Fresh Start Program shall be administered through the Community Action Agencies (each a “CAA”) listed on Exhibit A.
- B. Duties to be performed by each CAA include:
 - Meeting with program applicants to answer questions and assist with the application process;
 - Receive phone calls from the community during regular business hours to provide basic information about the program;
 - Promote the program within their respective communities, including to city and county governments, realtor’s associations, chambers of commerce, local churches, etc.
 - Process applications for benefits and make determinations as to the amount of benefits to be provided under the program;
 - Development and implement appropriate screening measures to detect and mitigate fraudulent applications;
 - Make disbursements of approved program benefits to eligible landlords;
 - Such other duties as may be mutually agreed to in the grant agreements between the CAA, AEDC, and ACAA.
- C. The percentage of program funds to be awarded to each CAA is set forth on Exhibit A. Each CAA shall fully expend its CARES Act funds prior to expending any CDBG-CV funds. Any CARES

Act funds unexpended as of December 30, 2020 must be returned to AEDC no later than January 8, 2021.

- D. Each CAA may utilize up to 10% of its awarded CARES Act funds and CDBG-CV funds for administrative purposes necessary to support the program. Program funds may not be used to:
- Duplicate or supplant funding from any other federal or state program.
 - Provide “retention” or retainer payments to staff
 - Pay bonuses to staff; or
 - Pay any increase in management fees to administrative personnel.
- E. CARES Act and CDBG-CV funds shall be advanced to each CAA as needed so that sufficient funds are in hand to promptly pay program benefits. Each CAA shall submit a draw request, on a form approved by AEDC for that purpose, setting forth the CAA’s funding request. The amount of funds advanced to each CAA shall not exceed the amount of the grant awarded to the CAA.
- F. Each CAA shall prepare such periodic reports as AEDC may require setting forth its expenditures under the program. CAA shall also make its records available to AEDC, the Office of Inspector General, Bureau of Legislative Audit of the Arkansas General Assembly, and to HUD to audit the CAA’s performance under the program and to ensure that program funds have been spent only for their intended purposes.
- G. If an audit determines that program funds have been spent for an ineligible purpose, the CAA shall render all assistance that AEDC may require in order to recover the funds.

EXHIBIT A – COMMUNITY ACTION AGENCIES ADMINISTERING FRESH START PROGRAM

Community Action Agency	Counties Served	Percentage of Overall CAA Award Allocated to Each CAA
Arkansas River Valley Area Council, Inc. (ARVAC)	Conway, Franklin, Johnson, Logan, Perry, Polk, Pope, Scott, Yell	8.95%
Black River Area Development Corp.	Clay, Lawrence, Randolph	2.48%
Central Arkansas Development Council, Inc. (CADC)	Calhoun, Clark, Columbia, Dallas, Hempstead, Hot Spring, Howard, Lafayette, Little River, Lonoke, Miller, Montgomery, Nevada, Ouachita, Pike, Pulaski, Saline, Sevier, Union	30.68%
Central Delta Community Action Agency (CDCAA)	Arkansas, Cleveland, Grant, Jefferson, Lincoln	5.03%
Community Action Program for Central Arkansas, Inc. (CAPCA)	Cleburne, Faulkner, White	4.45%
Community Services Office, Inc. (CSO)	Garland	3.90%
Crawford-Sebastian Community Development Council, Inc. (C-SCDC)	Crawford, Sebastian	4.29%
Crowley's Ridge Development Council, Inc. (CRDC)	Craighead, Crittenden, Cross, Greene, Jackson, Poinsett, St. Francis, Woodruff	11.07%
Economic Opportunity Agency of Washington County (EOAWC)	Washington	3.97%
Mid-Delta Community Services, Inc. (MDCS)	Lee, Monroe, Phillips, Prairie	4.22%
Mississippi County Arkansas Economic Opportunity Commission, Inc. (MCAEOC)	Mississippi	3.84%
Northcentral Arkansas Development Council, Inc. (NADC)	Fulton, Independence, Izard, Sharp, Stone	3.17%
Our Healthy Communities (OHC)	Benton, Carroll, Madison	3.72%
Ozark Opportunities, Inc. (OOI)	Baxter, Boone, Marion, Newton, Searcy, Van Buren	5.88%
Southeast Arkansas Community Action Corp. (SEACAC)	Ashley, Bradley, Chicot, Desha, Drew	4.36%

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Commerce
DIVISION Arkansas Economic Development Commission
PERSON COMPLETING THIS STATEMENT Renee Doty
TELEPHONE NO. 501-682-2460 **FAX NO.** _____ **EMAIL:** RDoty@ArkansasEDC.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Fresh Start Rental Assistance Proposed Rule

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

Total 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 300

Next Fiscal Year

\$ 0

AEDC anticipates \$300 in legal advertising and copying fees during the promulgation process of the rule.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.