

Arkansas Development Finance Authority

2005~~6~~ Guidelines for Allocating Multi-Family Tax Exempt Private Activity Volume Cap

Adopted by the Board of Directors
~~August~~ **July 19~~21~~, 2004~~5~~**
Effective September ~~3~~, 2004~~5~~



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I. INTRODUCTION.

The Arkansas Development Finance Authority (“ADFA”) has as one of its primary purposes, the creation and preservation of affordable housing for low and moderate-income persons. ADFA has available tax-exempt bond authority to provide financing to private developers for the development of multi-family housing. In return for receiving below market interest rate financing, the developer is required to set aside units in the development for low and moderate income families and persons. The tax-exempt multi-family housing program is intended to encourage the creation of new rental housing units as well as the rehabilitation of existing rental units.

II. USE OF PRIVATE ACTIVITY VOLUME CAP.

Any tax-exempt bond authority allocated pursuant to this program must be used to provide permanent financing for the development. The authority is not intended for short-term escrow financing, construction financing or any other financing, which is not permanent financing for the development. All units must be rental units and be “complete” units.

III. FEDERAL TAX REGULATIONS AND REQUIREMENTS.

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

IV. AVAILABLE TAX EXEMPT MULTIFAMILY PRIVATE ACTIVITY VOLUME CAP. A. — FIRST CONTINUOUS FUNDING ROUND

Approximately Twenty-three Million ~~Three~~ **Nine** Hundred ~~Seventy Nine~~ **Eighteen** Thousand Dollars (\$23,918,000) will be available ~~in January 2005~~ **for reservation in 2006.**

~~B. — ADDITIONAL FUNDING ROUND.~~

~~An additional amount may be available depending on potential competing uses of the private activity volume cap and any possible turnback of previously allocated, but unused cap. Notification will be sent to bond counsel and underwriters should volume cap become available.~~

V. RECEIPT OF APPLICATION AND APPLICATION DEADLINE.

Application for 2005~~6~~ Multifamily Private Activity Volume Cap requires completion of a 2005~~6~~ Multi-Family Housing Application and compliance with~~the~~: 1) The Second Amended Rules and Regulations Implementing the Law on the Allocation of the State Volume Cap for Private Activity Bonds Pursuant to Act 1044 of 2001; 2) these 2006 Guidelines for Allocating Multi-Family Tax Exempt Activity Volume Cap; and 3) the Housing Credit Program 2005~~6~~ Qualified Allocation Plan. Applicants applying for tax-exempt bonds must utilize the four percent (4%) tax credits. ADFA retains the authority to determine eligibility to receive tax credits and the amount of tax credits to be allocated to the development.

~~**DEADLINE FOR SUBMISSION OF APPLICATIONS:**
The applicant must submit a complete application to ADFA by
Thursday, January 6, 2005.~~

**APPLICATIONS FOR 2006 MULTIFAMILY PRIVATE ACTIVITY VOLUME
CAP CAN BE FILED ANYTIME DURING CALENDAR YEAR 2006.**

~~The deadline for submitting applications is set forth above. Only complete applications will be considered for funding. Facsimiles and e-mails will not be accepted. All applications must be submitted online as provided by ADFA (if available) and by submitting a tabbed, 3-ring bound hardcopy delivered to ADFA no later than 4:30 p.m., Thursday, January 6, 2005. The tabbed, 3-ring bound hardcopy must be delivered to ADFA 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**

Following review of any application by ADFA staff, applicants 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.

VI. FEES.

- A. **APPLICATION FEE.** A Five Hundred Dollar (\$500) non-refundable application fee is payable at the time an application is submitted to ADFA. Applications submitted without the application fee will be considered incomplete.
- B. **ISSUANCE FEE.** A one-time fee of 0.15%, based on the principal amount of bonds issued, is payable at the bond closing.
- C. **BOND ADMINISTRATIVE/MONITORING FEE.** The owner will be responsible for paying an annual bond administrative/monitoring fee in the amount of one eighth of one percent (0.125%) on the outstanding principal balance of the bonds payable to ADFA annually in arrears.
- D. **LOW-INCOME HOUSING TAX CREDITS (“LIHTC”) FEES.**
1. **RESERVATION OF CREDIT FEE.** A non-refundable reservation fee of One Hundred Dollars (\$100) per low-income unit will be required at the bond closing.
 2. **ALLOCATION OF CREDIT FEE.** An allocation of credit fee of One Hundred Dollars (\$100) per low-income unit will be required at the time the credits are allocated (issuance of IRS Form 8609).
 3. **COMPLIANCE/MONITORING FEE.** A one-time compliance and monitoring fee of six percent (6%) of the yearly allocation of credits (amount of annual credits) is required to be paid at the time the credits are allocated (issuance of IRS Form 8609).

VII. APPRAISAL FEE, MARKET STUDY, ETC.

The developer will be responsible for paying all costs incurred in providing ADFA with a market study, appraisal, construction cost analysis certification and any other special studies in the event such special study is required by ADFA. The market study must be performed by a market analyst from the ADFA Approved Market Study Firm List. The market study must contain all information outlined in the ADFA Market Study Guidelines. Any market study not meeting these requirements will not meet program threshold requirements for funding.

VIII. ISSUANCE EXPENSES AND ALL OTHER EXPENSES INCURRED.

The developer will be responsible for such expenses incurred regardless of whether or not a bond closing occurs. The developer is also responsible for such expenses incurred in the arbitrage rebate calculation.

IX. REVIEW OF APPLICATION AND APPROVAL PROCESS.

A. NOTIFICATION.

Notification will be sent to all developers and affordable housing professionals advising them of the availability of volume cap and the process for submission of applications.

B. SUBMISSION OF APPLICATION.

The developer or its representative shall submit a complete application, including all required documentation and application fee to ADFA ~~by the deadline outlined in the Timetable for Allocation and Funding Cycle (below).~~

C. REVIEW OF APPLICATION.

Applications are reviewed by ADFA's Multi-Family Housing Staff for completeness and compliance with all requirements of these Guidelines for Tax Exempt Bonds and the Housing Credit Program 2005~~6~~ Qualified Allocation Plan. ADFA's Multi-Family Housing staff will conduct a review of the Applicant's previous performance related to ADFA and other programs. 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. ~~Non-performance~~ **In addition, unsatisfactory performance, as determined by the Board Housing Review Committee, on previous developments and or delinquencies in payments will result in disqualification of an application by the ADFA Board Housing Review Committee.**

D. COVENANT TO EXECUTE CERTIFICATE OF BOND PROCEEDS EXPENDITURE

With its application, the applicant must covenant that the borrower/user of the bond proceeds will, by the earlier of:

- 1) within six months after the date on which the development is to be placed in service, or
 - 2) at the time of submission of the development's cost certification for the issuance of IRS Form 8609
- execute and submit to ADFA a certificate that designates the manner in which the

proceeds of the bonds were applied to expenditures.

FURTHER, at bond issuance/closing, the **BORROWER/USER** will execute a separate document/letter declaring the above covenant. Such document/letter will be included with all other bond closing documentation.

E. EXTENSIONS OF THE CLOSING DATE.

The bond closing must take place within sixty (60) days of the reservation date. If the 60th day falls on the weekend or legal holiday, the closing date will be extended to the next business day. Requests for extension of the closing deadline must be submitted in accordance with the Second Amended Arkansas Development Finance Authority Rules and Regulations Regarding Allocation of the State Volume Cap for Private Activity Bonds.

F. CREDIT ENHANCEMENT OR PRIVATE PLACEMENT.

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 U.S. 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. The minimum rating requirement for Credit Enhancement to be eligible for multi-family Bond Issues would be "A" or better by Moodys Investor Service or "A" or better by Standard and Poor's at the time of closing.

Bonds issued and placed with "Accredited Investors," as defined above, would be issued in initial minimum denominations of \$100,000 or any integral multiples of \$5,000 in excess thereof.

G. NOTIFICATION OF PRESENTATION SCHEDULE..

~~Approximately ten (10) days prior to the February 2005 Board of Directors' meeting,~~
Applicants will be notified **by ADFA staff** of the schedule for making **formal** presentations before ADFA's ~~Joint Staff~~ and Board Housing Review Committee.

H. FORMAL PRESENTATION BEFORE BOARD HOUSING REVIEW COMMITTEE..

The applicant will make a formal presentation to the ~~Joint~~ Committee. The presentation shall include, but is not limited to, discussion of the following:

1. Demonstrated demand for affordable housing in the proposed project locale;
2. Project location;
3. Project size;
4. Unit types and bedroom mix;
5. Projected market and low-income unit mix;
6. Tenants to be served;
7. Proposed financing structure;
8. Readiness to close bond transaction within sixty (60) days;
9. Zoning and site plan approval status;
10. Background and experience of developer and development team;
11. Community support;
12. Energy efficiency/maintenance standards;
12. Detailed synopsis of rehabilitation work, if applicable;
14. Monitoring procedures; and
15. Serving special needs, e.g., elderly housing, housing for persons with physical disabilities; housing for large families.

I. DECISION OF BOARD HOUSING REVIEW COMMITTEE..

The Board Housing Review Committee will make its recommendation of selected applications to the Board of Directors. The Board of Directors will approve selected applications at ~~their~~ a regular Board meeting.

J. CHANGES TO THE ORIGINAL APPLICATION.

Any change to the original application must be submitted to ADFA in writing at least thirty (30) days prior to the desired effective date of the change. All changes must be reviewed and approved by ADFA's Multi-Family Housing Staff or ADFA's Board of Directors. Any change to the original application made without approval from ADFA will be null and void.

K. ISSUANCE OF COMMITMENT BY ADFA..

All commitments of volume cap made by ADFA will be issued for the purpose of providing bond financing for a specific development on a specific site. Any change in the development site, the applicant entity, the ownership entity or the size, nature or other characteristics of the development may, in ADFA's sole discretion, invalidate the commitment. The applicant is obligated to report any changes to ADFA. Should the highest elected official withdraw the letter of support for the development at any time prior to the bond closing, ADFA will invalidate the

commitment for volume cap. Revocation of the letter of support at any time after the bond closing will not affect the commitment for volume cap.

The validity of the commitment will be subject to the applicant's compliance with all terms stated in the Commitment Letter.

L. ——— TIMETABLE.

JANUARY, 2005 FUNDING CYCLE	
November 11, 2004	Notification to bond counsel and underwriters of availability of 2005 Multi-Family Private Activity Volume Cap
January 6, 2005	Application deadline (4:30 pm)
February 3, 2005	Notification of Staff findings to Board Housing Review Committee
February 7, 2005	Notification to applicants regarding presentation to Board Housing Review Committee.
February 17, 2005	Applicant presentation to Joint Housing Review Committees and Board of Directors' approval of applicants
February 21, 2005	Commitment Letters mailed to developers
April 18, 2005	Deadline for bond closing (60 days from reservation date)

~~Any additional funding cycles shall follow the same time format outlined above.~~

X. BONDS ISSUED BY ENTITY OTHER THAN ADFA..

If bonds are issued by an entity other than ADFA, the applicant must comply with the Arkansas Development Finance Authority Rules and Regulations Regarding Allocation of the State Volume Cap for Private Activity Bonds. In addition, the applicant must submit a completed 2005⁶ Multi-Family Housing Application to ADFA for the four percent (4%) LIHTC. 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 V(B) of the Housing Credit Program 2005⁶ Qualified Allocation Plan and the ADDITIONAL PROGRAM REQUIREMENTS set forth in Section VI of that Qualified Allocation Plan. All information submitted to ADFA along with ADFA Staff findings and notes may be shared

with the issuing entity to assist the issuing entity with funding decisions. The applicant will be responsible for the following fees when ADFA is NOT the issuer:

- A. **APPLICATION FEE..** A Five Hundred Dollar (\$500) non-refundable application fee is payable at the time an application is submitted to ADFA. All applications submitted without the application fee will be considered incomplete.
- B. **LIHTC FEES..**
 - 1. **RESERVATION OF CREDIT FEE.** A non-refundable reservation fee of One Hundred Dollars (\$100) per low-income unit will be required at the bond closing.
 - 2. **ISSUANCE OF CREDIT FEE.** An allocation of credit fee of One Hundred Dollars (\$100) per low-income unit will be required at the time the credits are issued (issuance of IRS Form 8609).
 - 3. **COMPLIANCE/MONITORING FEE.** A one-time compliance and monitoring fee of six percent (6%) of the amount of annual credits issued is required to be paid at the time the credits are issuance (issuance of IRS Form 8609).

XI. CRIMINAL BACKGROUND CHECK and DISCLOSURE REQUIREMENTS.

Each applicant, consultant, and development team member shall complete a Criminal Background and Disclosure Form – Housing, Attachment A to the 2006 Multi-Family Housing Application. 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.

Each applicant or recipient of tax-exempt bonds, and any principal of such applicant or recipient, is subject to ADFA's Criminal Background Check Policies and Procedures and their requirements. Each consultant, developer, or other development team member or any principal of such consultant, developer, or other development team, is subject to ADFA's Criminal Background Check Policies and Procedures and their requirements.

XII. CERTIFICATION.

ADFA reserves the right to disapprove any development for an allocation of volume cap, regardless of the evaluation. ADFA reserves the right, in its sole and absolute discretion, to suspend or debar any applicant from the volume cap program which ADFA determines has

acted improperly, illegally or inappropriately in the applicant's dealings with the Authority or in any way relative to the program. It is the policy of ADFA to prohibit applicants from contacting ADFA staff for information on the status of their applications after the expiration of the deadline for final applications. Violations of this policy will be brought to the attention of the Board Housing Review Committee and could result in disqualification of your application. No contact with ADFA board members is allowed and any such contact will be grounds for immediate rejection of the application.

Adopted by the Board of Directors of the Arkansas Development Finance Authority this 15th 21st day of July 20045.

By: _____
Lloyd Lindsey, Chair Person

ATTEST:

Mac Dodson, President/Secretary

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Development Finance Authority
DIVISION Executive
DIVISION DIRECTOR Mac Dodson, President
CONTACT PERSON Patrick Patton
ADDRESS 423 Main Street, Suite 500, Little Rock, AR 72201
PHONE NO. (501) 682-5902 FAX NO. (501) 682-5939

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?

ADFA's Guidelines for Allocating 2006 Tax-Exempt Multifamily Private Activity Volume Cap

2. What is the subject of the proposed rule?

The rule is intended to encourage the creation of new rental housing units as well as the maintenance of existing rental units.

3. Is this rule required to comply with federal statute or regulations? Yes X No

If yes, please provide the federal regulation and/or statute citation.

IRS Section 141 – 150 of the Internal Revenue Code.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No X

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes_____ No X

Does this repeal an existing rule? Yes_____ No X
If yes, please provide a copy of the repealed rule.

Is this an amendment to an existing rule? **YES** If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.

6. What state law grants the authority for this proposed rule?
If codified, please give Arkansas Code citation.

Ark. Code Ann. § 15-5-207(b)(5) sets forth the rights, powers, privileges and duties of the Authority.

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of the plan is to allocate Multifamily private Activity Volume Cap to encourage the creation of new rental housing units as well as the maintenance of existing rental units.

8. Will a public hearing be held on this proposed rule?
Yes X No_____ If yes, please give the date, time and place of the public hearing?

August 29, 2005; 9:00 a.m.; ADFA Fifth Floor Conference Room

9. When does the public comment period expire? **August 29, 2005**

10. What is the proposed effective date of this proposed rule?

September 8, 2005, if no changes are made after the public hearing

11. Do you expect this rule to be controversial? Yes_____ No X If yes, please explain.

12. Please give the names of persons, groups, or organization's which you expect to comment on these rules? Please provide their position (for or against) if known.

None

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Development Finance Authority
DIVISION Executive
PERSON COMPLETING THIS STATEMENT Patrick Patton
TELEPHONE NO. (501) 682-5902 FAX NO. (501) 682-5939

FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ADFA's Guidelines for Allocating 2006 Tax-Exempt Multifamily Private Activity Volume Cap

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes _____ No X
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain. N/A
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

2005-2006 Fiscal Year

2006-07 Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other _____
Total _____

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other _____
Total _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

2005-2006 Fiscal Year

2006-07 Fiscal Year

None

None

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

2005-2006 Fiscal Year

2006-07 Fiscal Year

None

None