

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

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

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 this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? _____
2. What is the subject of the proposed rule? _____
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☐
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes ☐ No ☐
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 permanent provisions of the Administrative Procedure Act?
Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☐
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes ☐ No ☐
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes ☐ No ☐
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."** A mark-up is attached.

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

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

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). _____

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☐
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. _____

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE _____ **FAX** _____ **EMAIL:** _____

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 _____

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) _____

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

\$ _____

Next Fiscal Year

\$ _____

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

\$ _____

Next Fiscal Year

\$ _____

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.

APPENDIX A - RULES MARK-UP

Ark. Admin. Code 109.04.2-II
Alternatively cited as AR ADC 109 04 002

109.04.2-II. ~~Use of Volume CAP.~~[Reserved](#)

~~Any volume cap reserved for the issuance of tax exempt private activity bonds 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.~~

Ark. Admin. Code 109.04.2-VI
Alternatively cited as AR ADC 109 04 002

109.04.2-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 (ADFA ISSUES ONLY). A one-time fee of 0.~~15~~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.

An annual fee of 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 non-refundable 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~~⁰) per low-income unit will be required at the time the credits are awarded (at issuance of IRS Form 8609).

3. COMPLIANCE/MONITORING FEE. 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 IRS Form 8609). In addition, a monitoring fee of \$50 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 15-year compliance period.

APPENDIX B - CLEAN COPIES

Ark. Admin. Code 109.04.2-II
Alternatively cited as AR ADC 109 04 002

109.04.2-II. Reserved

Ark. Admin. Code 109.04.2-VI
Alternatively cited as AR ADC 109 04 002

109.04.2-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 (ADFA ISSUES ONLY). A one-time fee of 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.

An annual fee of 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.

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State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

Memorandum

TO: **Members, ALC – Executive Subcommittee**

FROM: **Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section, Legal Services Division**

CC: **Marty Garrity, Director, Bureau of Legislative Research;
Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division**

DATE: **September 5, 2017**

SUBJECT: **Legal Authorization for Emergency Promulgation of Guidelines for Reserving Volume Cap for Multi-Family Housing Bonds by the Arkansas Development Finance Authority**

The Arkansas Development Finance Authority (“ADFA”) shall have such rights, powers, and privileges and shall be subject to such duties as provided by Title 15, Chapter 5 of the Arkansas Code, concerning the Arkansas Development Finance Authority. *See* Ark. Code Ann. § 15-5-207(a), as amended by Act 824 of 2017, § 3. Pursuant to Ark. Code Ann. § 15-5-106, the ADFA is authorized to issue bonds for residential community developments. Likewise, Ark. Code Ann. § 15-5-301 authorizes and empowers the ADFA to issue bonds, whether or not the interest on the bonds is subject to federal income taxation, either for a specific activity or for a particular project or on a pooled or consolidated basis for a series of related or unrelated activities or projects in such amounts as shall be determined by the ADFA for the purpose of enhancing a number of projects, including housing developments. *See* Ark. Code Ann. § 15-5-301(a), as amended by Act 824 of 2017, § 10. The ADFA has further been bestowed the power to administer the allocation of the state ceiling of private activity bonds, as that term is defined in the Tax Reform Act of 1986, which are subject to volume limitations under federal law, including particularly the limitations under 26 U.S.C. § 146, and it shall have the power to make and issue such rules as may be necessary or

convenient in order to carry out the purposes of Title 15, Chapter 5 of the Arkansas Code. *See* Ark. Code Ann. § 15-5-207(b)(5), (32), as amended by Act 824 of 2017, § 5.