

Arkansas Development Finance Authority
Criminal Background Check Policies and Procedures

Presented to ADFA Board of Directors July 21, 2005

Introduction

Act 2173 of 2005 permits the Arkansas Development Finance Authority (“ADFA”) to request a criminal background check on applicants for employment or programs or on employees. The following addresses ADFA’s policy with regard to criminal background checks for program participants. The criminal background check on employees and applicants for employment will be addressed in ADFA’s employee handbook.

ADFA Programs

I. A. An allocation of state or federal low-income housing tax credits (“LIHTCs”) or tax-exempt private activity volume cap bonds (“Bonds”) or HOME Investment Partnership Program (HOME) funds will be denied to any applicant or recipient due to the following:

- 1) A conviction of those felonies listed below; or
- 2) A conviction of those felonies listed below of any principal of such applicant or recipient; or
- 3) A conviction of those felonies listed below of any consultant, developer, other development team member, or any principal of such consultant, developer, or other development team member.

If the development team member of the applicant or the recipient is a partnership, association, limited liability company, or corporation, “principal” shall include: its general partner(s), managing member(s), or any person who has at least a ten percent (10%) ownership interest in any ownership entity of such partnership, association, limited liability company or corporation. HOME program participants shall include any consultant, development team member or public official affiliated with the HOME program application.

B. A borrower of ADFA’s economic development bond programs or direct loan/bond guaranty loan programs will be denied program participation due to the following:

- 1) A conviction of those felonies listed below; or
- 2) A conviction of certain felonies as described below of any principal of such applicant or recipient.

If the borrower is a partnership, association, limited liability company, or corporation, “principal” shall include: its general partner(s), managing member(s), or any person who has at least a ten percent (10%) ownership interest in any ownership entity of such partnership, association, limited liability company or corporation.

II. Each person listed in **Paragraph I (A)** above is required to complete, execute and submit a “Criminal Background Disclosure Form - Housing” (Attachment A) as provided by ADFA. Failure to submit a “Criminal Background Disclosure Form - Housing” will result in a disqualification of the application for the reservation of LIHTCs or Bonds or HOME funds. Misrepresentations found in the “Criminal Background Disclosure Form - Housing” can disqualify the application or, if applicable, result in a return of any low-income housing tax credits or HOME funds allocated pursuant to the application.

Each person listed in **Paragraph I (B)** above is required to complete, execute and submit a “Criminal Background Disclosure Form - Economic Development” (Attachment B) as provided by ADFA. Failure to submit a “Criminal Background Disclosure Form - Economic

Development” will result in a disqualification of the application. Misrepresentations found in the “Criminal Background Disclosure Form - Economic Development” can disqualify the application.

- III.** Upon information that any person listed in **Paragraph I** above may have committed any felony or at the discretion of the ADFA President, ADFA, pursuant to authority established by Ark. Code Ann. § 15-5-214, shall require such person to apply, pay for and release for review by ADFA, criminal background checks obtained through the Arkansas State Police and the Federal Bureau of Investigation. Such person will be required to request the criminal background check within 2 weeks of receiving notification from ADFA that such a request must be made. ADFA will furnish a form, acceptable to the Arkansas State Police and the Federal Bureau of Investigation, to such person for use in making the request. Failure to make the request as required, or ensure for its payment or release for ADFA’s consideration, will result in a disqualification of the application or, if applicable, a return of LIHTCs , HOME funds or economic development bond funds or direct loans.
- IV.** ADFA’s President shall review the criminal background checks and any written information submitted by such person that she/he wants considered by the President. Unless the conviction has been the subject of an official pardon or expungement (or similar, equivalent official treatment relative to out-of-state convictions), the President may consider the following types of convictions to be disqualifying or good cause for the return of LIHTCs, HOME funds or economic development bond funds or direct loans:
- 1) Any felony conviction within the last 3 years, or
 - 2) Any felony against a person conviction within the last 10 years, or
 - 3) Any felony involving the manufacture or distribution of a controlled substance conviction within the last 10 years, or
 - 4) Any felony against property conviction within the last 7 years.
- V.** The President shall have the authority to waive a conviction, as disqualifying of an application or as good cause for the return of LIHTCs, HOME funds or economic development bond funds or direct loans, upon consideration of the following factors:
- 1) The age of such person at the time of the offense;
 - 2) The circumstances surrounding the offense, particularly any extenuating or mitigating matter;
 - 3) The length of time since the offense;
 - 4) Subsequent rehabilitated measures accomplished by such person, including whether such person was the recipient of parole or probation;
 - 5) The number of other convictions by such person;
 - 6) Subsequent work history;
 - 7) Employment references;
 - 8) Character references; and
 - 9) Any other information authorized by the President.

Prior to the President’s determination of disqualification or return of LIHTCs, HOME funds or economic development bond funds or direct loans, the President shall notify such person of:

- 1) Her/his opportunity to present written evidence of the above factors listed in **Paragraph V** above; and
- 2) Her/his right for a personal appearance before the President regarding a request to waive a conviction.

VI. Notwithstanding **Paragraph V** above, because of their serious nature, the President will not waive any conviction of the following offenses¹, or their equivalent if convicted in some other state or federal jurisdiction:

- 1) Capital murder, as prohibited in A.C.A. § 5-10-101;
- 2) Murder in the first degree and murder in the second degree, as prohibited in A.C.A. §§ 5-10-102 and 5-10-103;
- 3) Kidnapping, as prohibited in A.C.A. § 5-11-102;
- 4) Rape, as prohibited in A.C.A. § 5-14-103;
- 5) Sexual assault in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-124 and 5-14-125;
- 6) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in A.C.A. §§ 5-27-203 and 5-27-204;
- 7) Incest, as prohibited in A.C.A. § 5-26-202;
- 8) Arson, as prohibited in A.C.A. § 5-38-301;
- 9) Endangering the welfare of an incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;
- 10) Adult abuse that constitutes a felony, as prohibited in A.C.A. § 5-28-103;
- 11) Theft of public benefits, a Class B Felony, as prohibited in A.C.A. §§ 5-36-202 and 5-36-203.

¹ These convictions are not considered permanent disqualifications from ADFA programs if they have been the subject of an official pardon or expungement.