

ALABAMA HOUSING FINANCE AUTHORITY MULTIFAMILY HOUSING REVENUE BOND POLICY

INTRODUCTION

Alabama Housing Finance Authority (“AHFA”) receives an allocation of tax-exempt bond volume cap (“Volume Cap”) each year from the State of Alabama. AHFA also administers, among other programs, the State of Alabama’s annual allocation of Low Income Housing Tax Credits (“Tax Credits”) and its annual allocation of funds made available under the HOME Partnership Investments Program (“HOME Funds”).

AHFA dedicates its Tax Credits and HOME Funds to the development of safe, decent and affordable multifamily housing. Because of the availability of these substantial resources for multifamily housing, AHFA’s first priority in the use of its Volume Cap is for single family mortgage programs for persons with low to moderate income. To the extent that AHFA’s annual Volume Cap exceeds the needs of its single family mortgage program, AHFA’s policy is to make the excess Volume Cap available for development of safe, decent and affordable multifamily housing.

In order to enhance the feasibility and stability of multifamily projects constructed through the use of Tax Credits and/or HOME Funds, AHFA’s priority in the issuance of multifamily revenue bonds, whether or not they are tax-exempt, will be (a) first, for the acquisition and renovation of existing affordable housing and (b) second, for new construction of projects where permitted by AHFA’s then applicable state qualified allocation plan for Housing Credits (as applicable for each application, the “Housing Credit QAP”), all as described more particularly below under the heading “PROJECT REQUIREMENTS – Location and Types of Projects”.

This document sets forth AHFA’s policy concerning use of Volume Cap for the acquisition, renovation and new construction of affordable residential rental housing. This policy also applies to requests for AHFA to serve as a conduit issuer of bonds to be used for multifamily housing developments, whether or not the project to be financed expects to utilize Volume Cap or any other source of funding from AHFA, including without limitation Tax Credits or HOME Funds.

This policy was last revised on September 25, 2019, and is intended to coordinate with the requirements of the Alabama Housing Finance Authority’s Low-Income Housing Tax Credit Qualified Allocation Plan (the “Housing Credit QAP”) and its HOME Action Plan (the “HOME Action Plan”), which the Authority revises each year. If and to the extent that the Authority revises its Housing Credit QAP or HOME Action Plan in ways that conflict with this policy, the terms and conditions of the revised Housing Credit QAP and HOME Action Plan shall govern. Readers are strongly encouraged to review the Authority’s current Housing Credit QAP and HOME Action Plan in order to confirm that they have not been revised in ways not yet reflected in this policy.

PROGRAM OVERVIEW

AHFA issues multifamily housing revenue bonds for the acquisition, renovation, and new construction of affordable residential rental housing. The development team should have considerable experience in multifamily rental housing designed for use by low-to-moderate-income tenants to assure the successful completion and operation of the development.

All applicants must meet all threshold requirements in the Housing Credit QAP.

Applicants seeking Tax Credits for a bond-financed project must meet the requirements imposed by Section 42 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”).

In addition to qualified residential rental bonds under Section 142 of the Internal Revenue Code, AHFA may consider issuing tax-exempt bonds to qualified 501(c)(3) organizations for developments that meet the requirements of Section 145 of the Internal Revenue Code.

All costs incurred in the application or development process are the sole responsibility of the applicant.

AHFA reserves the right to modify, suspend or amend this Multifamily Housing Revenue Bond Policy in any respect at any time, with or without notice, and AHFA in its sole discretion may impose additional conditions, restrictions, and requirements.

APPLICATION PROCESS

Declaration of Official Intent

Application for Declaration of Official Intent. The initial step for any applicant seeking an allocation of Volume Cap from AHFA is to submit a written application for a declaration of official intent. The form of application is available at www.ahfa.com. An application will not be deemed submitted until AHFA has deemed it complete. Each application must be accompanied by a non-refundable application fee in the amount required by the Housing Credit QAP.

Timing for Consideration of Application. If AHFA determines that the application is complete and is otherwise satisfactory and has received payment in full of the application fee, AHFA will execute and deliver a written declaration of official intent with respect to the proposed project and bond issue no sooner than 30 days after the date on which the application is deemed complete. The declaration of official intent shall be in form and substance satisfactory to AHFA and its counsel. The Executive Director of AHFA shall have the authority to execute and deliver declarations of official intent on behalf of the AHFA with respect to proposed projects. **AHFA’s execution and delivery of a declaration of official intent for a project offers no assurance that Volume Cap is or will be available for the project. Actual availability of Volume Cap for each project could be affected by a number of variables and will not be approved unless and until the applicant satisfies the requirements outlined in this policy for Volume Cap Allocation and receives a written allocation of Volume Cap executed by AHFA (a “Volume Cap Allocation”) prior to the Termination Date defined below.** See “APPLICATION PROCESS – Volume Cap Allocation” below. In all events, any issuance of bonds must be approved by the Board of Directors of AHFA (the “Board of Directors”) in the form of a bond resolution.

Declaration of Official Intent as “Official Action” under Internal Revenue Code. AHFA’s execution and delivery of a declaration of official intent is intended to serve as AHFA’s “official action” for purposes of Section 1.150-2 of the United States Treasury Regulations, or its successor.

Expiration of Declaration of Official Intent. Each declaration of official intent will expire on a date by which the applicant has represented to AHFA that the applicant reasonably expects to meet all conditions necessary for the issuance of the bonds (the “Termination Date”). The Termination Date must be satisfactory in all respects to AHFA, and in no event shall the Termination Date be later than one year after the date on which AHFA executed and delivered the declaration of official intent.

Commitment Agreement; Expiration

Commitment Agreement. Following the execution and delivery of a declaration of official intent, AHFA, applicant, lender, and credit provider (if any) must execute a commitment agreement in form and substance satisfactory to AHFA (the “Commitment Agreement”). AHFA will not execute a Commitment Agreement with respect to a project unless AHFA has received from the applicant all items and information that the submitted application requires be delivered prior to execution of the Commitment Agreement. The Commitment Agreement permits bond counsel and AHFA’s counsel to commence legal work at the applicant’s expense, regardless of whether the proposed bonds are ever actually issued.

Commitment Fee. Each Commitment Agreement executed and delivered by an applicant must be accompanied by a cashier’s or certified check in an amount equal to the then-applicable commitment fee. The amount of the commitment fee is determined as follows: (1) if the project to be financed with the proposed bonds consists of a single multi-family residential project, an amount equal to the greater of \$75,000 or one percent (1.0%) of the principal amount of the proposed bonds, and (2) if the Development to be financed with the proposed bonds consists of two or more multi-family residential projects, an amount equal to the greater of \$112,500 or one and one-half percent (1.5%) of the principal amount of the proposed bonds. AHFA will not pay interest on the commitment fee, and the commitment fee will be nonrefundable except as provided below. If bonds are issued, AHFA will refund the full amount of the commitment fee (provided that there remain no open issues that could result in AHFA’s incurrence of additional costs or expenses) upon receipt of written confirmation that all costs and expenses incurred by the Authority in connection with the transaction, including without limitation the legal fees and expenses of the Authority’s issuer counsel, bond counsel and (if any) special tax counsel, if any (collectively, the “Authority Expenses”) have been paid in full. Additional terms or conditions for the commitment fee may be established from time to time through updates of AHFA’s required form of Commitment Agreement.

Expiration of Commitment Agreement. Unless bonds are issued, all Commitment Agreements will expire according to their terms on the Termination Date set forth in the declaration of official intent executed by AHFA with respect to the bonds. If the bonds have not been issued on or before the Termination Date, the Authority shall terminate the Commitment Agreement. An applicant may request an extension of the Termination Date for a period not to exceed six months, and if such request demonstrates good cause for the requested extension, AHFA may (but shall have no obligation to) extend the Termination Date for such period as it deems appropriate, not to exceed six months, and may condition any such extension upon the applicant’s acceptance or satisfaction of additional terms and conditions determined by the Authority in its sole and absolute discretion.

Bond Resolution

Submissions Required for Bond Resolution. Not less than thirty (30) days prior to the date of the AHFA board meeting at which an applicant wishes for the Board of Directors to consider a bond resolution for approval, AHFA must have received the following:

1. a true and complete copy of the fully executed declaration of official intent with respect to the project (see “APPLICATION PROCESS – Declaration of Official Intent” above),
2. a fully executed Commitment Agreement for the project in form satisfactory to AHFA (see “APPLICATION PROCESS - Commitment Agreement; Expiration – Commitment Agreement” above), and

3. payment in full of the commitment fee (see “APPLICATION PROCESS - Commitment Agreement; Expiration – Commitment Fee” above).

In addition, AHFA will not place a proposed bond issue on the agenda for a Board of Directors meeting unless the proposed bond documents have been submitted in substantially final form and have been approved by AHFA, its counsel and bond counsel prior to the date on which AHFA circulates board packages to the Board of Directors for the meeting, which typically occurs approximately 10 days in advance of the meeting date. THE 30-DAY DEADLINE REFERENCED ABOVE IS A MINIMUM REQUIREMENT, AND IT IS HIGHLY RECOMMENDED THAT APPLICANTS DELIVER ALL OF THE ABOVE ITEMS TO AHFA AS SOON AS THEY ARE AVAILABLE IN ORDER TO ENSURE THAT AHFA, ITS COUNSEL AND BOND COUNSEL HAVE SUFFICIENT TIME TO COMPLETE THE DRAFTING, NEGOTIATION AND REVISION OF THE FINANCING DOCUMENTS BEFORE BOARD PACKAGES ARE CIRCULATED.

Conditions for Approval. Final approval by the Board of Directors to issue bonds for any project is subject to the following approvals and requirements:

1. final determination of project’s eligibility for Tax Credits (if applicable),
2. form and substance of either (a) if applicable, the credit enhancement to be provided for the bonds (see “APPLICATION PROCESS - Bond Resolution – Public Sale/Private Sale” below), or (b) the investment letter to be provided with respect to the bonds (see “APPLICATION PROCESS - Bond Resolution – Investment Letter” below),
3. form and substance of all financing documents to be approved in the proposed bond resolution in substantially final form and satisfactory to AHFA, its counsel, bond counsel and special tax counsel, if any (see “APPLICATION PROCESS - Bond Resolution – Submissions Required for Bond Resolution” above), and
4. applicant’s full payment of all applicable fees.

Public Sale; Private Placement. Any bond issued by AHFA must meet one of the following requirements:

1. Public Sales. Any bond issued by AHFA and offered for sale to the public must have a long-term credit rating of rating of A or higher from Moody’s Investors Service, Inc.; S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC; or Fitch Ratings, Inc.
2. Private Placement; Investment Letter. Any bond that does not have a long-term credit rating of A or higher, as described above, will be issued by AHFA only if the bond is sold to a single “accredited investor” (as such term is defined in Reg. D of the SEC) or “qualified institutional buyer” that signs an investment letter in AHFA’s required form and is otherwise acceptable to AHFA in its sole discretion. The investment letter will be a so-called “traveling” investment letter, and the form of the proposed bonds shall provide that the bonds may be transferred only in accordance with the terms and conditions of the traveling investment letter. Prospective applicants may obtain a copy of AHFA’s required form of investment letter upon request.

All Terms and Documents Must be Satisfactory to AHFA. Without limiting any of the foregoing requirements, and in addition thereto, AHFA reserves the right to approve in its sole discretion any proposed transaction structure for the issuance of multifamily housing revenue bonds and the forms of all financing documents, including without limitation financing documents to which AHFA is not a party.

Amount of Volume Cap Allocation. The maximum amount of Volume Cap that will be allowed for any project or group of projects being financed by the same bond issue will be established in the bond resolution adopted by the Board of Directors. Adoption of a bond resolution will not constitute an allocation of Volume Cap. After adoption of the a bond resolution, the applicant will be eligible to receive Volume Cap only if the applicant satisfies the requirements outlined in this policy and receives a Volume Cap Allocation prior to the Termination Date. See “APPLICATION PROCESS – Volume Cap Allocation” below.

Volume Cap Allocation

An applicant is eligible to request Volume Cap for a particular project or group of projects financed by the same bond issue if the applicant has (a) received a declaration of official intent, (b) executed a Commitment Agreement, (c) received a bond resolution adopted by the Board of Directors, (d) satisfied all pre-closing requirements for related tax credits or other resources from AHFA, (e) confirmed that the Authority has reviewed the reasonableness of development costs, the market study, the financial and market feasibility, and if applicable, a Capital Needs Assessment and the minimum rehabilitation costs for the project, and (f) has obtained or satisfied all other requirements set forth in the Commitment Agreement, Housing Credit QAP or other applicable policies and procedures of AHFA with respect to the project (all of the foregoing, collectively, the “Program Requirements”).

In order to request a Volume Cap Allocation, the applicant must certify to the Authority that (a) all Program Requirements have been satisfied with respect to the project, (b) all conditions necessary for the issuance of bonds under the terms and conditions of the financing documents have been satisfied, or are reasonably certain to be satisfied, on the earlier to occur of (i) 90 days after applicant’s receipt of the Volume Cap Allocation, or (ii) the existing Termination Date for the project’s Commitment Agreement (the “Volume Cap Expiration Date”), (c) the applicant expects and intends in good faith to cause the bonds to be issued on or before the Volume Cap Expiration Date. Absent a reasonable basis to question whether such certifications are accurate, the Authority will issue a Volume Cap Allocation within ten days after receipt of a valid request at no additional cost to the applicant.

Each Volume Cap Allocation for any project or group of projects will expire automatically according to its terms, without further action by the Authority or the applicant, on its Volume Cap Expiration Date. If bonds are not issued prior to expiration of a Volume Cap Allocation, the applicant must request a new Volume Cap Allocation in accordance with the previous paragraph. Absent a reasonable basis to question whether the certifications contained in the request for a new Volume Cap Allocation are not accurate, the Authority will issue a new Volume Cap Allocation within ten days after receipt of a valid request; provided, however, that each new Volume Cap Allocation issued under this paragraph for any project or group of projects that received one or more previously expired Volume Cap Allocations will (a) be subject to a fee equal to one-quarter of one percent (0.25%) of the amount of Volume Cap requested, and (b) have a Volume Cap Expiration Date determined in accordance with the previous paragraph of this policy. This fee will be due and payable in full prior to issuance of each new Volume Cap Allocation under this paragraph and will be fully earned and non-refundable upon receipt, regardless of whether bonds are ever issued. Notwithstanding anything in this paragraph, no new Volume Cap Allocation will be issued after a project’s or group of projects’ existing Termination Date unless and until the Termination Date itself has been extended in accordance with this policy.

ISSUANCE OF BONDS

After the Board of Directors has adopted a bond resolution, the applicant has received a Volume Cap Allocation and all requirements set forth in the resolution and Volume Cap Allocation have been satisfied, the pre-closing for the bond issue shall take place at AHFA's offices in Montgomery, Alabama. All parties required to execute documents in connection with an AHFA bond issue are expected to do so in person at the pre-closing. Actual delivery of bonds may take place via the book-entry only procedures established by The Depository Trust Company or, in the case of a private placement pursuant to an approved investment letter, by physical delivery to the bondholder in accordance with its instructions.

ADMINISTRATIVE FEE

AHFA's agreement to issue bonds for any project is contingent upon the applicant's payment of an Administrative Fee equal to (a) one eighth of one percent (0.125%) of the outstanding balance of the bonds, due and payable in advance on the closing date and the first day of October of each year for so long as any amount of the bonds is outstanding, and (b) a prepayment penalty to be calculated in a manner satisfactory to AHFA if the bonds are defeased or retired early. Satisfactory arrangement for ongoing payment of the Administrative Fee is a condition of the AHFA's financing.

SPECIAL REQUIREMENTS FOR TAX CREDITS

For projects receiving Tax Credits, applicants must comply with the requirements of the Housing Credit QAP and the Tax Credit reservation issued by AHFA, including without limitation the payment of a non-refundable reservation fee by remitting a check to AHFA, in accordance with the terms and conditions of the Tax Credit reservation, in the amount outlined in the AHFA Approved and Funded Transaction Fee Requirements found at www.AHFA.com.

PROJECT REQUIREMENTS

Location and Types of Projects

AHFA will accept applications for Volume Cap for multifamily residential rental projects throughout the State of Alabama that are (a) new construction projects, which are defined to include both new construction and rehabilitation of projects that are less than 50% occupied at the time of application ("New Construction Projects"), or (b) rehabilitation projects, which are defined to include projects that are at least 50% or more occupied at the time of application ("Rehabilitation Projects").

AHFA will accept applications for New Construction Projects in a city or county in which AHFA has previously provided funding for any type of project (whether in form of a multifamily bond, Tax Credits, HOME Funds, awards under the Tax Credit Exchange Program or Tax Credit Assistance Program, or any combination of the foregoing) only if the project funded previously in that city or county has been placed in service and is not less than ninety percent (90%) occupied at the time of application; provided, however, that AHFA may consider an exception to this limitation for a proposed New Construction Project that meets the radius test with respect to projects previously funded by AHFA that is described in the threshold requirements of the Housing Credit QAP.

The applicant must provide a market study, in form acceptable to AHFA, demonstrating an adequate market for the proposed units to be financed with any proposed bond issue. If AHFA does not agree with applicant's market study or feels that the proposed project would adversely impact existing projects or create excessive concentration, AHFA reserves the right to obtain, at the applicant's expense after prior notice, a market study or other information from an independent consultant for AHFA's consideration in resolving the matter.

Occupancy Requirements for All Projects

A “qualified residential rental project” as defined by Section 142 of the Internal Revenue Code must remain in compliance with the applicable set aside test throughout the “qualified project period” as defined by Section 142 of the Internal Revenue Code. A failure to do so can result in the retroactive taxability of the project bonds back to their issue date, as well as recapture of any Tax Credits.

At all times during the qualified project period, the project must meet one of the following set-aside tests:

- (a) 20/50 percent test – Twenty (20) percent or more of the residential units in the project must be occupied by and rent restricted to individuals whose income is 50 percent or less of the area median income adjusted for size of household; or
- (b) 40/60 percent test – Forty (40) percent or more of the residential units in the project must be occupied by and rent restricted to individuals whose income is 60 percent or less of the area median gross income, adjusted for size of household.

Physical Requirements for All Projects

A residential rental project must consist of units containing complete living facilities and which are available to the general public. Complete facilities provide separate space for living, sleeping, eating, cooking, and sanitation.

Residential rental projects must be on a single site or contiguous sites. Sites may be considered contiguous if separated only by one neighborhood street. Intermediate care facilities, group homes, and congregate care facilities are not allowed.

Special Minimum Requirements for Rehabilitation Projects

All hard construction costs for Rehabilitation Projects must be certified by a capital needs assessment satisfactory to AHFA, which must be submitted with the initial application for a declaration of official intent (a “Capital Needs Assessment”). AHFA reserves the right to engage a third-party construction consultant at the applicant’s expense to verify the scope of work and costs and/or to inspect the development periodically to verify the rehabilitation is as proposed and is proceeding in a timely manner. All work in a Rehabilitation Project must meet applicable building code requirements and AHFA Design Quality Standards.

For rehabilitation of projects not previously funded by AHFA, the application must meet all threshold requirements set forth in the Housing Credit QAP, except for the minimum rehabilitation expenditure of \$20,000 of hard construction costs per qualified low-income unit. For this type of project, AHFA may allow a lower minimum rehabilitation expenditure per unit, but only if supported by a Capital Needs Assessment satisfactory to AHFA.

For rehabilitation of projects previously funded by AHFA, the application must meet all threshold requirements set forth in the Housing Credit QAP, except that for this type of project, AHFA will require a minimum rehabilitation expenditure of \$12,500 of hard construction costs per qualified low-income unit.

In no event may the minimum rehabilitation expenditure be less than the greater of (a) the amount required by Section 42 of the Internal Revenue Code or other applicable law, and (b) \$12,500 per qualified low-income unit.

FEASIBILITY AND COST REQUIREMENTS

AHFA reserves the right to review and approve in its discretion the economic feasibility, market feasibility and costs for each project proposed to be financed with bonds. AHFA may review this information, including any changes thereto, at any time from receipt of initial application through issuance of bonds.

Financial and Market Requirements

All developments will be subject to an underwriting review for financial and market feasibility by AHFA in accordance with its Housing Credit QAP.

Development Cost Review

Each development will be evaluated for comparability and reasonableness of development costs. Costs will be reviewed as to their validity and necessity against previous years' developments, regional data, third party documentation, and other factors and data.

The applicant must be as accurate as possible in providing development cost information. Underestimating could result in insufficient funds being available to successfully complete the development. Overestimating could result in a development being considered not feasible based on the debt level needed to complete the development. Additional documentation from the applicant may be requested.

The Internal Revenue Code limits the amount of bond issuance cost that may be financed with tax-exempt bond proceeds to 2% of the principal amount of the tax-exempt issue.

LEGAL REQUIREMENTS AND PLAN UPDATES

It is AHFA's policy and intent to issue bonds to finance multifamily residential rental projects only in compliance with applicable law and with AHFA's then effective policies and procedures, including without limitation the policy and its Housing Credit QAP. Future changes to the Housing Credit QAP shall be deemed to amend accordingly any provision of this policy that is inconsistent in operation or intent with such changes, and to the extent that any term or condition of this policy conflicts with applicable law, applicable law shall govern.

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[End of Policy]