WSHFC BOND FINANCING POLICY

2014

Multifamily Housing Bonds,

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1 Introduction

The Multifamily Housing Bond Financing Policy applies to projects financed through the issuance of bonds issued under Section 142 of the Internal Revenue Code (the "Code") that may use 4% Low-Income Housing Tax Credits ("LIHTCs").

Project type financing are often called according to whether or not they use tax credits. Projects using LIHTCs with bonds are referred to bond/tax credit projects. Those that do not use LIHTCs are often called 80/20 projects in reference to one of the federal set-aside requirement options for such transactions; e.g., 80% of the units with no income restrictions and 20% of the units with incomes (not rents) restricted to households at or below 50% area median income.

This Policy Guide is intended to be in compliance with the current Housing Finance Plan. The commission considers applications for new projects in the context of the current Housing Finance Policy.

The Commission has established the following objectives as guides in the development of new programs and the administration of existing programs:

- To expand the financing opportunities offered by the Commission.
- To use the Commission staff and the finance team's expertise and capacity to develop new financing tools.
- To increase the participation of Washington lenders in providing financing for multifamily and housing for the elderly projects.
- To coordinate with other governmental entities within the state to provide financing for housing facilities.
- To generate revenue to cover all initial and continuing Commission costs associated with the Multifamily Housing program, programs specifically designed to encourage very-low income housing, and alternative financing structures such as Bonds Plus, and to provide funds to reinvest in the Community. Therefore, all excess funds over expenses generated from fees derived from bond issuance must, on an annual basis, be used to increase reserves supporting the Commission's programs in Washington State.
- To assist in the preservation of existing subsidized housing.
- To encourage the participation of nonprofit-sponsored projects in which the nonprofit materially participates in the project development and administration. The Commission may achieve this by scoring priorities, selection criteria, and/or reserving bond issuance authority (Bond Cap) for such nonprofit-sponsored projects.
- To provide housing for the elderly, special needs populations, low-and moderate-income households or other qualifying populations and households.

2 Parties involved in a Bond Transaction

The finance team works together to structure and sell the Commission's bond issues. A distribution list which includes contact details is circulated for each project. The Finance Team of a bond issue may include the following parties:

Commission: Senior Development Analyst, Bond Counsel, Trustee / Fiscal Agent, Financial Advisor (if required)

Borrower: Borrower, Borrower's Counsel, Financial Advisor

Private Placement Bond Issue: Lender, Lender's Counsel, Placement Agent (on larger financings)

Public Sale Bond Issue: Underwriter and Counsel, Credit Enhancer and Counsel, Construction Lender and Counsel, Permanent Lender and Counsel

Project with 4% Tax Credits: Equity Investor and Counsel

The Commission uses its own appointed bond counsel, financial advisor (if required), and trustee/fiscal agent for each transaction and does not use other firms to serve those functions. The borrower is responsible for paying all fees related to the costs of issuance of the bonds. See Section 7 for more details.

Projects that have a complex financing structure regardless of size may require the participation of a financial advisor appointed by the Commission. The borrower is required to pay the fees of the Commission's financial advisor.

A fiscal agent is required on all bond issues that do not have a trustee, unless the bond is being purchased by the Washington Community Reinvestment Association (WCRA).

The Commission requires that the borrower be represented by legal counsel on all transactions.

2.1 Eligible Underwriters

According to RCW 43.180.100, "The commission shall adopt written policies to provide for the selection of underwriters. The policies shall provide for the creation of a roster of underwriters whom the commission believes possess the requisite special expertise and professional standing to provide bond marketing services which would be accepted by bondholders and other members of the financial community, and which would be in furtherance of the public interest in marketing the commission's bonds at the lowest possible costs. Any underwriter may apply to have its name placed on the roster, but may not be placed on the roster unless it demonstrates to the commission's satisfaction that it meets the requirements of this section."

Before an underwriter can be the senior or co-manager on a project using a Commission bond program, the underwriter must be approved to be listed on the Eligible Multifamily Housing and Community Facilities Underwriters List.

Bond underwriters may apply to be added to the List at any time but must apply at least 30 days prior to the scoping meeting for the first project in which the underwriter plans to participate. Underwriters may apply by submitting the Underwriters/Investment Banking Questionnaire. Approved underwriters must execute a Letter of Agreement with the Commission in which they agree to adhere to the

Commission's policies and procedures for the Commission bond issues in which they participate. Once approved, the Underwriter remains on the list until the next biennial review.

The Commission issues a Request for Qualifications every 2 years to all bond underwriters that are on the Commission's current Eligible Underwriters List as required by WAC 262-01-070.

The Commission reserves the right to remove a firm from the list if any of the following occurs:

- The original applicant firm is acquired by or merged with another firm, or is otherwise restructured.
- The services that are offered by the firm are discontinued.
- The underwriter's staff assigned to the Commission's account are replaced or are no longer available.
- The firm fails to perform in a manner acceptable to the Commission.

Underwriters may select their own underwriter's counsel, subject to approval by the Commission.

2.2 How the Commission's Finance Team is selected

2.2.1 Bond Counsel Selection

Every two years, the Commission issues a request for proposals for bond counsel services. The Commission selects a bond counsel based on many factors, including fees and experience. Bond counsel serves for a two-year period and is used for all Commission public bond sales and privately placed transactions. The Commission reserves the right to select a different bond counsel for certain transactions.

2.2.2 Trustee Selection

From time to time, the Commission selects a trustee based on many factors, including fees and administrative experience. That selected trustee is used for all Commission bond issues. The Commission may select a different trustee or elect not to require a trustee for special Commission designed programs, such as the STEP program. The Trustee acts as the required fiscal agent on those transactions that do not have a trustee.

2.2.3 Financial Advisor

The Commission will maintain a list of financial advisors (the "Financial Advisor List") to participate in Commission financings. An RFP will be generated every two years and financial advisors will need to respond in order to maintain the firm's name on the Financial Advisor List. Acceptable financial advisors may not be associated with or employed exclusively by any underwriting firm.

Financial advisors on the list are not precluded from representing clients on Commission financings; however, the Commission will not appoint them to also work on its behalf for that same financing.

2.2.4 Special Projects

The Commission reserves the right to appoint a special finance team to meet the specific goals of special projects.

3 Eligibility

3.1 Eligible Participants

Federal tax code permits participation in this program by for-profit multifamily ownership entities such as:

- Private individuals, proprietorships
- Corporations, development companies
- Partnerships comprised of general and/or limited partners such as an LP
- Member organizations such as an LLC

3.2 Eligible Projects

Multifamily projects financed with bonds must, under federal tax code, have five or more units. Units cannot be used on a transient basis and are required to have long-term occupancy (30 days or more). Examples of eligible projects under the tax code are:

- Multifamily rental housing
- Limited equity cooperative
- Assisted living with full living facilities
- Single Room Occupancy (SRO) housing that does not have complete kitchens or baths

Examples of ineligible types of projects include:

- Hotels or motels; i.e., housing used on a transient basis
- Dormitories and fraternity or sorority houses
- Parks and courts for manufactured homes, unless all the units are rental units owned by the Eligible Participant
- Nursing homes

All projects must be located in the state of Washington and must comply with all applicable local and State laws, including, but not limited to, zoning ordinances, building codes, environmental and growth management regulations, fair housing laws, applicable relocation requirements, and local housing policies.

The Commission may finance housing facilities in which the owner also provides auxiliary services to tenants, such as meal and housekeeping service, transportation, recreational facilities/programs, counseling, medication management, and non-medical attendant care.

3.3 Eligible Activities and Uses of Bond Proceeds

Bond proceeds may be used to finance capital expenditures related to new construction, acquisition, and rehabilitation, subject to the specific requirements of the Code. In general, what is commonly expected in a multifamily living facility may be financed with bonds. Federal tax code states that bond proceeds may not be used for facilities that are not an integral part of a housing project; e.g., garage or storage units rented separately from housing units or to the general public, kitchens or laundry facilities that are commercial in nature such as those built for assisted living communities.

Operating expenditures, including working capital, generally may not be financed with tax-exempt bond proceeds, although certain exceptions may apply. Up to 2% of bond proceeds can be used to pay for costs of issuing the bonds.

3.4 Financing Types and Uses:

- Multifamily New Construction
  - Examples of eligible uses of bond proceeds include the acquisition of land, construction and equipping of units, common areas, on-site recreation facilities, parking areas included with rents, laundry facilities for resident use, etc.
- Assisted Living/Supportive Housing New Construction
  - Examples of eligible uses of bond proceeds are the same as above except those not generally associated with a multifamily housing facility such as: commercial kitchens, dining areas, commercial laundry facilities, etc.
- Acquisition/Rehabilitation
  - Eligible uses of bond proceeds include the same uses as noted previously. In addition Section 147(d) of the Code states that the rehabilitation costs for the proposed project must be equal to or greater than 15% of the portion of the acquired building's value (building and equipment costs) financed by bond proceeds. The costs allocable to the land are subtracted from the total project purchase price. For example if $10 million in bond proceeds were used to acquire a Multifamily facility and land, and 20% of the total purchase price was applicable to the land then 20% or $2,000,000 of the $10 million in bond proceeds would be land cost leaving $8 million financing the building and equipment of which 15% ($1.2 million) must be spent for rehabilitation.
- Acquisition/Rehabilitation
  - Eligible uses of bond proceeds include the same uses as noted previously. In addition Section 147(d) of the Code states that the rehabilitation costs for the proposed project must be equal to or greater than 15% of the portion of the acquired building's value (building and equipment costs) financed by bond proceeds. The costs allocable to the land are subtracted from the total project purchase price. For example, if $10 million in bond proceeds were used to acquire a multifamily facility and land, and bond proceeds used to acquire the land are $2,000,000, $8 million of bond proceeds would finance the acquired building. To satisfy Section 147(d), an amount equal to at least 15% of the building value financed with bond proceeds, or $1.2 million must be spent to rehabilitate the building.
- Rehabilitation only
  - Eligible uses are only those costs related to the rehabilitation of the facility, including new equipment, site, and land improvements.

4 Low-Income Set-Aside Requirements

4.1 Requirements

All projects must be in compliance with Federal tax code for occupancy and use. All projects financed under this program must meet the requirements of Section 142(d) of the Code. Participants are required to set aside a percentage of the units for low-income households.

4.1.1 Eligible Residents

According to the Code:

- at least 20% of the units must be set aside for households who earn no more than 50% of the median income *or*
- 40% of the units must be set aside for households who earn no more than 60% of median income, adjusted for household size.

The set-aside option is elected prior to bond closing.

Resident(s) (individuals and/or family members) who fall within the stipulated income guidelines, are eligible with the exception of full-time students. For more information on the eligibility of student residents see the Bond Compliance Procedures Manual.

4.1.2 Income Limits

The Asset Management and Compliance Division issues income limits annually. These income limits are based on Federal standards and are used by the project sponsor to certify tenant incomes during a current time period. See Income Limits.

4.1.3 Physical Requirements of Qualified Units

Set-aside units; i.e., units set aside for households with low incomes, must be of comparable size to the non-set-aside units and must be distributed throughout the project. Tenants in place at the time of bond closing are not required to be relocated to meet this requirement. The intent of this provision is to prevent low-income residents from being restricted in their choice of comparable units.

4.1.4 Nondiscrimination Policy

All units must be available to the general public, except to the extent the whole development is reserved for a special needs group such as the developmentally disabled or elderly. The intent is to prohibit discrimination based upon race, color, nationality, religious affiliation, membership in an organization, or previous residence.

All services and facilities must be accessible to all the tenants in the building.

4.1.5 Rent Limits

There are no general rent restrictions. Rent restrictions may be established for a specific project. All projects that use low-income housing tax credits with tax-exempt bonds under this program must comply with tax credit rent limits on the tax credit units.

4.1.6 Regulatory Agreement

In addition to financing agreements and loan documents required by the lender, all projects must have a Regulatory Agreement. Projects that also use tax credits require an Extended Use Agreement. All Regulatory Agreements are recorded as first-position liens against the property, except for FHA-insured projects and projects using Low Income Housing Tax Credits. In these cases, the Regulatory Agreement is subordinated to the other programs' first position liens.

4.1.6.1 Regulatory Agreement's Term

Set-aside requirements are in effect for the longer of the regulatory period elected by the Owner (generally 15 or 20 years) or as long as the bonds (or any refunding bonds) are outstanding. Even if bonds are no longer outstanding the project must comply with the conditions of the Regulatory Agreement for a minimum of 15 years or one half of the original bond term, whichever is greater. The Regulatory Agreement may be extended at the applicant's option. The regulatory period may be longer than the period for which bonds are outstanding for a particular project.

If currently outstanding bonds receive new credit enhancement that does not affect the term of the bonds, the Commission does not require an amendment or extension of the Regulatory Agreement.

If, after substantial time has passed, bonds issued by the Commission are redeemed by the issuance of refunding bonds of the Commission, then the Regulatory Agreement continues in full force and effect until (i) not less than 10 years after the expiration date of the Regulatory Agreement in force, or (ii) the date which is the first date on which the refunding bonds are no longer outstanding, whichever is greater.

4.2 Compliance Monitoring

4.2.1 When residents are certified

For low-income set-aside units, owners are required to verify incomes of all prospective residents at move-in. For acquisition/rehab projects with existing residents, owners have up to one year to verify the income of existing residents who inhabit low-income set-aside units.

4.2.2 Monitoring of Projects

The Commission reviews documents submitted as evidence of compliance, periodically visits project sites, and carries out other monitoring activities. The owner is expected to cooperate fully. The Commission reports non-compliance to the Treasury Department as required by the Code. In addition, the Internal Revenue Service may from time to time audit the projects.

4.2.3 Consequences of Non-compliance

- Bonds could lose their tax-exempt status retroactively to the date of non- compliance.
- The project loan could be declared in default by the Commission and foreclosure proceedings initiated.
- The Commission may take legal action against non-complying project owners. The owner is responsible for all costs of such legal action.

- In some cases the owner must pay all rents received from non-complying units to the trustee during the period of non-compliance.

5 Bond Transactions (With or Without LIHTCs)

5.1 Official Intent Declaration

Under section 1.150-2 of the Treasury regulations, a borrower is permitted to use tax-exempt bond proceeds to reimburse certain expenditures paid before the date of bond issuance subject to certain requirements. One requirement for projects financed with Multifamily Housing Bonds is that the Commission must adopt an Official Intent Declaration ("OID") to meet the Treasury regulations for projects applying under this program. This marks the time from which future bond proceeds may be used to reimburse some expenditures.

The OID also serves as an internal tracking number for the bond issue; therefore, all projects applying for financing receive an OID. The Commission issues an Official Intent Declaration upon receipt of either an OID Request Form or an Application for financing. The date the OID is signed by the Commission's Executive Director or his designee marks the period (which begins 60 days prior to the OID date) from which eligible costs may be reimbursed from the proceeds of tax-exempt bonds.

The Commission recommends submitting an OID application as soon as the sponsor intends to seek financing with Commission-issued bonds. However, the Commission's adoption of an OID does not commit the Commission to proceed with financing or limit the sponsor to seeking financing only through the Commission. The OID indicates the intention to use tax-exempt bonds for a particular project. The Commission requires that an OID be site specific. If a project has more than one non-contiguous location, an OID is required for each site.

Generally, the OID remains valid unless the project substantially changes. Borrowers should alert Commission staff if their project changes to determine if a new OID is required.

5.2 Application for Financing

Applicants may be eligible to apply for financing either for themselves or on behalf of the project owner. The ultimate owner, or ownership entity legally responsible under contract, must be in place by the time of loan closing. Nonprofit sponsors of projects who have material participation in the project are encouraged to apply.

There are two distinct application forms for bond-financed Multifamily Housing:

- Multifamily Bonds with 4% Tax Credits Application
- Multifamily "80/20" Bonds Application

An application for financing should be submitted to the Commission approximately 90 days before the borrower anticipates closing on the financing. An application should not be submitted until all parties to the financing have been engaged by the borrower.

The Commission is authorized under **WAC 262-01-140 “Private activity bond allocation”** to “rank projects and make an allocation” of Bond Cap.

The Commission retains the right not to accept an application for financing.

5.2.1 Bond Cap

All projects financed through this program use private activity bond allocation (“Bond Cap”). Although a developer may apply any time for an allocation of Bond Cap, it is not always available. At times when demand exceeds available supply, the Commission may elect to have a competitive application round or rounds. The Commission may develop special criteria for these rounds. Projects seeking Bond Cap which are able to close financing within the specified time, will be eligible to apply.

The Commission may open special application rounds from time to time, depending on demand, Bond Cap availability and market conditions.

Projects that apply during a Bond Cap round and do not receive an allocation or close within the required time may be asked to reapply and may be required to pay a new fee to be eligible for a future allocation round.

5.3 Scoping Meeting

After an application for bond financing has been reviewed, the Commission will set up a scoping meeting with the Commission’s bond counsel, the borrower, the borrower’s counsel, and all of the parties involved in the financing. The purpose of the meeting is to discuss the scope of the project being proposed; to identify any issues that need to be resolved; to outline and agree on the structure of the transaction; to identify each party’s responsibilities; and to develop the timeline for closing on the financing.

5.4 Public Hearing and Governor Approval

A public hearing is required by the Federal tax code for almost all bond financings. These hearings are sometimes referred to as “TEFRA hearings,” because the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1986 first required them. The public hearing is typically held at the next, regularly scheduled monthly Commission meeting after the scoping meeting has been held.

The public hearing notice identifies a project's potential owner, its location, the type of project proposed, the number of units, the population the project will serve, the approximate amount of total project costs, and the amount of requested bond financing. The public hearing notice must be published in the local paper at least 14 days before the date of the public hearing. The notice is also forwarded to the executive of the local jurisdiction in which the project is located. The applicant is expected to pay the costs of publication for the public hearing associated with the project. If the public hearing is held at the Commission meeting then a copy of the notice is mailed out with the initial notice of the special meeting, (All Commission meetings are special meetings) and a copy is posted on the Commission’s website. For the rare hearing not held at a Commission meeting. A copy of the public hearing is mailed to the Commission’s meeting list and a copy is posted on the Commission’s website.

A representative of the project owner is expected to attend the public hearing and present information about the project. Prior to the hearing, staff will discuss the expectations for the presentation of project specifics. The presentations typically include the project's nature and scope, the population to be served and affirmative marketing activities (if applicable). The Commission considers public opinion in approving projects for bond financing; however, issues unrelated to the financing, such as the environmental impact of the project, or land use and zoning, are not considered by the Commission. Such issues are appropriately raised with the applicable land use jurisdiction.

The Commission sends a summary of the public hearing to the Governor for review. The Governor must approve the bonds based on a review of the public hearing record for the bonds to be issued.

If an application is amended or resubmitted, or the project materially changes after the public hearing notification has been published, a new public hearing may be required. Examples of material changes would be an increase in project size or bond amount, ownership change, a change in location, etc. The Commission may require a new public hearing if the project fails to close within one year of the initial public hearing.

5.5 Document Preparation and Review

After the scoping meeting, Bond Counsel and the other attorneys engaged by the various financial institutions involved with the transaction will draft documents and distribute them via email to all parties. The documents are generally commented upon via email, but two or more conference calls will be scheduled during this phase to discuss the status of the financing approvals, any pending issues, any major changes to the documents, and any roadblocks to closing.

5.6 Finance Resolution

The Commission must adopt a financing resolution to approve the financing documents and the sale of bonds. It also sets a maximum bond par amount. The adoption of the financing resolution occurs at a regularly scheduled monthly Commission meeting and does not typically occur at the same meeting as the public hearing. In order for the Commission to consider approval of a financing resolution, all parties to the financing must agree that the documents for the transaction are in substantially final form, and all of the financing components must be fully committed and approved.

If the issuance is to be a private placement with a lender, a bond purchase letter must be received prior to the Commission meeting to adopt the resolution. If a public sale, all commitments must be in place. If tax credits or other funders are involved, the Commission must be reasonably sure of the timing and commitment of those funds.

The Commission retains the right not to approve a resolution for financing.

5.7 Pre-Closing and Closing

Once the financing resolution has passed and all parties are ready to close, the pre-closing meeting is most often held in person at the offices of the Commission's bond counsel. All authorized signers must be present to sign the final documents. Generally, the pre-closing and closing are scheduled with a day or two in-between. On the day of closing, funds are transferred and documents are recorded. All

Commission fees related to the issuance of the bonds, the allocation of tax credits, and pre-paid annual fees are due at closing.

6 Financing Requirements for Bond Transactions

As a statewide issuer of bonds, it is important for the Commission to maintain its reputation as a prudent issuer of debt among investors and those in Washington State government. Although the Commission's bonds are nonrecourse to the Commission and the State, a default of Commission bonds could jeopardize the reputation of the Commission in the marketplace and with the Legislature, and thus diminish the ability of the Commission to provide low-cost financing for its programs and borrowers in the future. The Commission's bonds generally fall into the following categories:

1. Publicly sold bonds with an A rating
2. Bonds privately placed with a single financial institution
3. Private placement programs with national banks
4. Publicly sold unrated bonds

The Commission reserves the right not to approve a particular financing structure. It also reserves the right in special circumstances to approve an exception to the requirements.

6.1 Publicly Sold Bonds with an A Rating

The Commission requires that bonds sold to the general public have a bond credit rating in at least the A category at the time of issuance from Standard & Poor's Corporation, Moody's Investors Service, or Fitch. Short-term or variable rate bonds must have at least a short-term rating of A-1 from Standard & Poor's Corporation or VMIG1 or P-1 from Moody's Investors Service or an equivalent rating from Fitch.

Types of credit enhancements that have been used by conduit borrowers to achieve the required rating include FHA insurance, a letter of credit, a contingent loan agreement and bond insurance.

6.2 Private Placement Bond Issues with a Single Financial Institution

The Commission will issue bonds without a credit rating if those bonds are privately placed with a single financial institution that intends to hold the bonds to their term, e.g. bonds issued through the Commission's STEP program.

Bonds must be structured so that a failure to make timely payment of principal or interest can be expeditiously addressed with minimal involvement of the Commission and minimal risk to its reputation or implications for its financial accounting.

6.3 Private Placement Programs with National Banks

Some national banks have developed their own private placement programs with forms of bond documents that usually include a trust indenture and loan agreement. These programs often allow for changes to the bonds to provide many options for borrowers, including the resetting of interest rate modes and indices. These programs also allow for downstream sale of the bonds, often with no limitations.

The Commission will issue bonds using these programs, provided that downstream sales of the bonds are appropriately limited. Usually, this would mean that the bonds must either be (1) A-rated or (2) limited in number, sold in high denominations and subject to a travelling investor letter. The considerations described in Section 6.4 related to the ability of an investor to assess its risk would be relevant to determining what limitations the Commission staff might require.

6.4 Publicly Sold Unrated Bonds

In rare instances the Commission has been asked to issue publicly sold unrated bonds. The Commission recognizes that it has a responsibility to provide cost-effective and responsive financing options that meet borrower needs and that there are circumstances where a bond credit rating is impractical or impossible. In limited circumstances, when the bond issue can be structured to meet the objectives of the Commission, the Commission may choose to provide borrowers with an opportunity to finance projects with bonds that do not meet the requirements of 6.1, 6.2 or 6.3 above. The Commission has encountered this type of situation with large nonprofit bonds issued for senior facilities.

For the purposes of this policy, "unrated bonds" are bonds that either (1) do not have a rating and do not fall into the Bond type described under Section 6.2 or 6.3 or (2) have a rating below the A category (i.e., Baa1/BBB+ or lower).

6.4.1 The Publicly Sold Unrated Bond Policy

This policy is a statement of principles identifying the basic goals of the Commission relating to publicly sold unrated bonds in order to provide a foundation on which to base decisions regarding individual unrated bond transactions. Since the Commission issues a range of bonds to a variety of investors in a changing marketplace, it is impossible to establish a single, unchanging set of guidelines to assure compliance with these essential principles. Instead, the Commission delegates to the Executive Director the discretion, to be exercised by reference to staff-developed guidelines, to assure that these essential principles with respect to unrated bonds are met on each transaction.

6.4.2 Process

At least several months prior to the submission of an application for a proposed unrated bond transaction, the borrower shall present to Commission staff a written request for the approval of such a transaction. This request must address the manner in which the proposed transaction will address the policy concerns identified in Sections 6.4.2.1, 6.4.2.2 and 6.4.2.3, and if appropriate include a feasibility study with respect to the financed project demonstrating that the risk of default is remote. The proposal shall provide a rationale for the request to issue unrated bonds and demonstrate that a rated transaction or a private placement is not possible or practicable.

At the discretion of the Executive Director, staff will review the proposal for the issuance of unrated bonds and evaluate it to determine if it reasonably meets the criteria set forth in the policy with respect to the remoteness of risk, the assumption of risk by bondholders and the mechanisms to resolve defaults. The Executive Director will act on the recommendation and may (i) approve the proposal or (ii) approve the proposal with modifications if he/she determines that the criteria set forth in the policies can be met with reasonable assurance, or (iii) reject the proposal. If the proposal is accepted, the Executive Director will notify the Board of the Commission prior to its consideration of the bond resolution. If the Executive Director seeks to recommend that unrated bonds be issued but determines that the criteria in the policy cannot be met with reasonable assurance, he/she may request a waiver of the criteria.

The Commission may engage its own financial advisor at the cost of the borrower who will prepare a written recommendation that demonstrates that each of the unrated bond criteria have been met to the satisfaction of staff and the Executive Director.

The Executive Director and staff will review the written recommendation and may consult other members of the Commission's finance team. The decision to accept the proposed financing structure rests with the Executive Director.

6.4.2.1 Unrated Bond Criteria 1: The risk of default on the bonds is low.

The project sponsor must be very likely to make timely payments of principal and interest on the bonds and to comply with all bond covenants. In determining the nature of the risk, it may be decided that a third-party feasibility consultant should be engaged to analyze how well the project and financing proposal meet the intent of the unrated bond criteria, particularly with respect to the risk of default. The party who analyzes the project's feasibility must have recent and extensive experience in the type of project and investment proposed. The feasibility consultant may determine such risk by providing an analysis of, but not limited to, the following:

- the capacity and track record of the sponsor ;
- the experience of the management team;
- the construction risk and market the project serves; and
- project cost and revenue projections and pro formas.

6.4.2.2 Unrated Bond Criteria 2: The potential bond holders are capable of assessing the risk of their investment.

The dissemination of unrated bonds should be limited to investors who are capable of assessing, assuming and acknowledging the risk of bond default based on the facts of the underlying project. The determination of whether a bondholder is qualified should be based on the bondholder's capability to assess the transaction as a business loan to the borrower and to internalize the risk. This may be satisfied in one or more of the following ways:

- Limiting the pool of investors to a single investor or a limited group of investors, each of whom has taken full responsibility for analyzing the transaction and the risk and who are:
    a. Lending institutions that will originate and intend to service the loan, thus internalizing a share of the risk;
    b. Sophisticated investors who have a unique interest in the project and who have the resources to evaluate their investment in the project or who are parties with substantial experience in real estate or tax-exempt investment and the means to undertake the risk; or

c. Qualified Institutional Buyers (QIBs), as defined in Rule 144(a) of the Securities Act of 1933, as amended

- Offering bonds in minimum denominations, e.g. $250,000 or more;
- Requiring collateral or some form of guarantee to the bondholder;
- Requiring trustee procedures that regulate downstream transfers;
- Requiring a "sophisticated investor letter" and Traveling Letter;
- Requiring an Offering Statement or Private Placement Memorandum with appropriate cautionary disclosure language; and
- Prohibiting book-entry bonds while unrated.

6.4.2.3 Unrated Bond Criteria 3: There is an acceptable strategy to monitor bond covenants and make decisions in case of default.

- The bonds must be structured so that a failure to pay timely principal or interest or a failure to comply with other covenants can be expeditiously addressed with minimal involvement of the Commission, minimal risk to the Commission's reputation or implications for its financial accounting. This may be satisfied in one or more of the following ways:
  - There is a bond trustee experienced with workouts engaged to monitor the bond covenants;
  - There is a required majority bond holder at all times responsible for all workout decisions and actions; or
  - There is a previously agreed upon lead lender/investor responsible for all workout decisions and actions.

6.5 Additional Financing Requirements

6.5.1 SWAP Policy

The Commission has adopted a SWAP Policy that governs its activities regarding the Commission's Single-Family Bond issues. Following is an excerpt from that policy regarding conduit bond issuances:

> Borrowers in the Commission's Multifamily Housing and Community Facility programs may enter into payment agreements to manage interest rate risk, often at the prompting of, or as required by, credit enhancers and lenders. They may enter into payment agreements at bond closing or prior to or subsequent to a bond issue. Such payment agreements are not subject to the Swap Act. The Commission has no financial or other interest in such payment agreements, except in situations where the agreement is integrated with the bonds for tax purposes, e.g., to establish a fixed bond yield on swapped variable rate bonds.[1] Where there are no tax concerns,

[1] The Commission understands that, (1) if payments on and receipts from any payment agreement, including any Swap, are to be taken into account in computing the yield on the related bonds, the agreement must meet the requirements for a "qualified hedge" under federal tax law (sometimes referred to as an "integrated swap"); and (2) if one of the goals of entering into the payment agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a "super integrated swap"), then certain additional requirements must be met. In both

the Commission does not manage or dictate the terms of the payment agreement, although the Commission should be assured that the borrower and credit enhancer have assessed the risks inherent with payment agreements. Where the payment agreement is integrated for tax purposes, the agreement shall be reviewed by the Commission's bond and tax counsel and the Commission should follow the selection procedures described in Section XII, Other Criteria and Considerations, of the SWAP Policy.

6.5.2 Indemnification

The borrower will indemnify the Commission as a condition of the financing.

7 Fees

The Commission is a self-supporting organization and receives no State appropriation to support its operations. The Commission depends on fees collected from its financings for the administration of its programs. Commission fees are *not* negotiable.

7.1 Application Fee

There are two distinct application fees:

- Multifamily Bonds with 4% Tax Credits Application: the fee is $7,500.
- Multifamily "80/20" Bonds Application fee is calculated on the requested bond amount as follows:
  - $400 for bond issues up to $1.5 million
  - for bond issues above $1.5 million, the fee is $400 plus .03% of the amount above $1.5 million to a cap of $5,000.

7.1.1 Application Fee for Bond Refunding or Reissuance Transactions

If bonds previously issued by the Commission are reissued or refunded and no additional bonds are being requested, a new application fee will not be required for the refunding transaction. If a new public hearing is required, the borrower will pay the cost of the public hearing. If the transaction is not completed, the borrower will be responsible for any costs incurred by the Commission, including counsel, financial advisor, arbitrage calculation and payment, and trustee fees. The borrower may be charged for staff time according to the then current hourly rate charged by the Commission.

7.2 Issuance Fee

The initial Commission fee for bond issuance is 25 basis points (.0025) on the total bond amount at the time of issuance. This fee is payable upon issuance of the bonds, and may be paid from bond proceeds, with the 2% limit.

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of these situations, the terms of the payment agreement and the process for entering into the payment agreement must be reviewed and approved in advance by the Commission's tax counsel.

7.2.1 Issuance Fee for Reissued or Refunded Bonds

For private placements that are reissued or refunded and retain the same bondholder, the following fee schedule will apply:

- For bond issues under $1,000,000, fees will be charged on an hourly basis for staff time spent according to the Commission's hourly rate.

- For bond issues over $1,000,000, the Commission fee for refunding or reissuance will be $5,000 or 5 basis points, whichever is greater.

For bonds reissued or refunded through a public sale or for private placements placed with a new bondholder, the customary 25 basis points cost of issuance fee will apply.

Bond counsel and financial advisor fees will be charged pursuant to separate fee schedules negotiated by the Commission.

7.2.2 Amendment of Documents

For transactions that involve the amendment of bond documents but bonds are not reissued or refunded, the Commission reserves the right to charge a transaction fee based on the then current Commission hourly fee calculated on the basis of staff time expended. This would include substitutions of credit enhancement that do not involve the reissuance of bonds. Bond counsel and financial advisor fees are separately negotiated by the Commission.

The Commission reserves the right to charge a fee based on a percentage of the bond amount for complex transactions.

7.3 Annual Commission Fee

The Commission charges an annual fee on all outstanding bond amounts. It is a prepaid semi-annual fee. It is calculated on the outstanding bond amount as of July 1 and payable in two installments generally on July 1 and January 1. Currently there is a 5 basis point fee waiver in effect on the 30 basis points fee. There is an additional fee waiver for bonds with tax credits. There is also a separate fee schedule for large bond transactions that do not use tax credits. The fee in effect at bond closing will be in place to the end of the bond term, providing the project remains in conformance with Commission policy.

7.3.1 Multifamily "80/20" Bonds

The Commission charges an annual fee based on the following schedule for multifamily projects that do not use low-income housing tax credits (Please see fee table for an alternative explanation):

- For projects with bond balances of $15 million and below, the ongoing fee is .0030 (30 basis points) of the outstanding bond amount (.05 – fee waiver in effect; net = .0025)
- For projects with bond balances above $15 million and up to $20 million, a fee of $37,500 + .0021 of the bond amount over $15 million
- For projects with bond balances above $20 million and up to $25 million, a fee of $48,000 + .0014 of the bond amount over $20 million

- For projects with bond balances above $25 million and up to $30 million, a fee of $55,000 + .001 of the bond amount over $25 million
- For projects with bond balances above $30 million and up to $55 million, a fee of $60,000 + .0006 of the bond amount over $30 million
- For projects with bond balances above $55 million, a fee of $75,000 + .00005 over $55 million

Fee Table			
Bond Amount		***Commission Annual Fee***	
$0	$15,000,000	0.25% of bond amount	
$15,000,000	$20,000,000	$37,500 plus .21% of amount over	$15,000,000
$20,000,000	$25,000,000	$48,000 plus .14% of amount over	$20,000,000
$25,000,000	$30,000,000	$55,000 plus .10% of amount over	$25,000,000
$30,000,000	$55,000,000	$60,000 plus .06% of amount over	$30,000,000
$55,000,000	and above	$75,000 plus .005% of amount over	$55,000,000

Compliance monitoring fees are included.

If all, or any portion, of the bonds are redeemed prior to the end of the regulatory period, Commission and/or monitoring fees must be paid or guaranteed for the balance of the regulatory period. This may be calculated as the present value of the amount of annual fees owing from the date of prepayment to the end of the regulatory period.

7.3.2 Multifamily Bonds with 4% Tax Credits - Ongoing Fee Waiver

All projects that will use 4% Low-Income Housing Tax Credits will have 12.5 basis points waived from the 30 basis point ongoing annual fee resulting in an adjusted annual fee of 17.5 basis points. Tax credit compliance monitoring fees will apply and be billed separately.

This Fee Waiver Policy will apply to all future participants in the program until the Commission amends it. The Commission reserves the right to change the criteria at any time for future projects, and to revoke the implementation of the criteria for those projects that fail to abide by the terms of the Regulatory Agreement.

7.4 Costs of Issuance

The Borrower is responsible for paying all fees related to the costs of bond issuance. Fees are generally based on the size of the bond issue and can be affected by the structure of the financing. For convenience, below is a list of the types of Commission fees typically associated with a bond issue:

All Bond Issues:
Commission Issuance Fee
Bond Counsel Fees & Expenses
Trustee or Fiscal Agent Fees
Public Hearing Notice
Financial Advisor (if required)
Multifamily Bond Issues:
Bond Cap Fee (0.00277 of the Bond Cap Amount)
Annual Bond Fee (prorated)
Trustee/Fiscal Agent Annual Fee (prorated)
Tax Credit Issuance Fee (if applicable)

7.4.1 Prorated Annual Fee

The prorated annual fee is due at closing. After closing, the annual fees will be collected monthly as part of the mortgage payment, escrowed by the trustee or fiscal agent, and remitted on the semi-annual payment dates of July 1 and January 1. Prorated fees are collected to allow for the proper funding of the escrow accounts. Generally, projects closing after July 1 and before January 1 will have fees collected to the following July. Projects closing after January 1 and before July 1 will have fees collected to the following January. This fee is based on the previously noted schedule (80/20 bonds) or the bond/4% tax credit fee waiver. It is based on the total bond amount at issuance and is computed on the actual days (including the date of bond closing) for partial months. Whole months are calculated on a 360 day basis. Annual fees for the trustee are also to be collected at closing. Fees are generally collected no more than 12 months in advance from the date of closing.

7.4.2 Deposits and Special Circumstances

Before the Commission is able to proceed with the development of bond documents, the owner must pay a cost of issuance deposit of ½ of 1% of the proposed bond issue up to a maximum of $150,000. The deposit may go toward paying the costs of issuance or, if the cost of issuance account is adequately funded, be either returned to the depositor or used to pay other costs at closing.

If the bond transaction is not completed due to circumstances beyond the ownership entity's control, costs incurred by the Commission; e.g., bond counsel, financial advisor, as well as other applicable costs of the bonds such as staff time and publication costs will be deducted from the cost of issuance deposit. The Commission may opt to charge its 25 basis point fee plus additional costs incurred. Remaining funds will be returned to the applicant or additional payment will be due, as applicable. If the deposit is insufficient the ownership entity will be billed to cover the additional costs.

All cost of issuance deposits are due no later than the time of the scoping meeting. Bond counsel will not be permitted to commence work on bond documents until the cost of issuance deposit is received.

During periods of scarce Bond Cap availability and during competitive rounds, the Division Director may require a reservation fee of 1% of the requested bond amount, not to exceed $150,000. This fee will be due within a reasonable period at the time of notification of a Bond Cap reservation. The deposit may go toward paying the costs of issuance or, if the cost of issuance account is adequately funded, be either returned to the depositor or used to pay other costs at closing.

8 Out of State Issuers

Effective with the passage of SHB 1761 (RCWs 39.46 and 39.86), the Commission must review any bond-financed project that could be financed by the Commission but that is proposed to be financed with bonds issued by an issuer formed or organized under the laws of another state. The Commission is required to determine whether the proposed financing submitted by an Out-of-State Issuer is "consistent with the laws and public policy of the state and is in the best interest of the state." The Commission will make its evaluation based on its established policies and goals for each program operated by the Commission. The Commission may approve or deny the proposed financing by the Out-of-State Issuer based on whether the proposal meets the policy objectives and goals of the state, as embodied in Commission policies.