

San Diego Housing Commission
POLICY

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

Number: **PO300.301**

Effective Date: 10/16/89

Page 1 of 8

1. SUMMARY

- 1.1 Federal, state and local legislation authorize issuance of mortgage revenue bonds by local governments to finance the development, acquisition and rehabilitation of multifamily rental projects. The interest on the bonds can be exempt from federal and state taxation. As a result, bonds provide below market financing for qualified rental projects located in the City of San Diego (the "City"). In addition, the bonds issued under the program can qualify projects for allocations of federal low-income housing tax credits, which can provide a significant portion of the funding necessary to develop affordable housing. The program is administered by the San Diego Housing Commission (the "Housing Commission") and uses tax-exempt mortgage revenue bonds issued by the Housing Authority of the City of San Diego (the "Housing Authority").
- 1.2 There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds; there is no pledge of the City's or the Housing Authority's faith, credit or taxing power and the bonds do not constitute general obligations of the issuer because the security for repayment of bonds is limited to project revenue and other sources specified under each financing. Project loans are, in most cases, secured by a first deed of trust on the bond-financed property. The program is completely self-supporting; developers must secure funding to pay for costs of issuance of the bonds and all other costs under each financing.
- 1.3 Bonds issued under the program should generally be privately placed with a financial institution or rated "AAA", or its equivalent, with a minimum rating being "A", or its equivalent, by the nationally recognized rating agencies listed in Section 4.1. The bonds may be used for both construction or rehabilitation and permanent financing. The effective mortgage rate is the aggregate of the applicable bond rate and the add-on fees charged under the program, such as lender, trustee, issuer's fee, etc. The bond rate, for fixed rate bonds, is determined at the time of a bond sale and the resulting mortgage rate is approximately 1.5% - 2% below conventional mortgage rates. The project loans generally have a 30-year amortization schedule.
- 1.4 The goals of the program include: increase and preserve the supply of affordable rental housing; encourage economic integration within residential communities; maintain a quality living environment for residents of assisted projects and surrounding properties; and, in the event of provision of public funds towards the project, optimize the effectiveness of Housing Commission, Redevelopment Agency, or other public funding by maximizing the leveraging of private sector funds.
- 1.5 There is no limit on the maximum loan amount; however, the minimum loan amount is determined by the overall cost effectiveness of the financing, which includes payment for the costs of issuance, services of the financing team members, rating fees, etc. The bond issuance amount for individual projects is based upon project costs, interest rates, and revenues available to pay debt service. The Housing Authority will consider multiple properties as part of a single bond financing on a case by case basis.
- 1.6 Projects must consist of complete rental units, including kitchens and bathrooms. Loan funds may be used for costs of property acquisition (up to 25% of bond proceeds), construction, rehabilitation, improvements, architectural and engineering services, construction interest, loan fees and other capital costs of the project incurred after the bond inducement date specified in Section 7.3. Loan funds cannot be used to acquire property from a party related to the buyer. No more than 2% of any tax-exempt bond loan can be used to finance costs of issuance, such as the services of the financing team members, rating and printing of bonds, bond allocation, etc. Pursuant to federal requirements, if bonds are used for acquisition and rehabilitation, at least 15 percent of the portion of the acquisition cost of the building and related equipment financed with the proceeds of bonds must

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

Number: **PO300.301**

Effective Date: 10/16/89

Page 2 of 8

be used for rehabilitation of the project. The loans are assumable upon transfer of the project with the approval of the credit enhancement provider or bond purchaser, and the President and Chief Executive Officer of the San Diego Housing Commission (the "President and CEO").

- 1.7 The Housing Commission receives compensation for its services in preparing bond issuances by charging an up-front fee payable at the bond closing. In addition, the Housing Commission also receives as compensation for compliance monitoring of regulatory restrictions and the administration of outstanding bonds an annual administrative fee payable in arrears in semiannual or annual installments. The up-front fee and the annual ongoing administrative fee are each equal to 23 basis points (0.23%) of the initial amount of bonds issued. For small projects, a minimum ongoing fee may be charged to recover administrative and monitoring costs.

2. TYPES OF BONDS

- 2.1 The Housing Authority may issue either tax-exempt or taxable bonds. Taxable bonds would generally be issued only in combination with tax-exempt bonds. Taxable bonds do not require an allocation of bond authority from the California Debt Limit Allocation Committee ("CDLAC").
- 2.2 Tax-Exempt Private Activity Bonds (Non-Refunding) require an allocation of bond authority from CDLAC. To obtain the allocation, the Housing Authority must submit an application to CDLAC on behalf of the developer. Submittal of the application is at the discretion of the Housing Authority, not the developer. The developer must pay all required CDLAC fees when due.
- 2.3 The Housing Authority may issue 501(c)(3) bonds on behalf of qualified nonprofit organizations. 501(c)(3) bonds are tax-exempt and do not require an allocation from CDLAC, but cannot be used with the Low Income Housing Tax Credit Program.
- 2.4 The interest on taxable bonds is not exempt from federal taxation. These bonds are not subject to federal volume "cap" limitations and therefore do not require allocation authority from CDLAC. Taxable bonds can be used in combination with low-income housing tax credits awarded by the Tax Credit Allocation Committee. Taxable bond issues must meet all applicable requirements of this Policy (including rating requirements) and any additional regulations that may be promulgated, from time to time, by the Housing Commission.
- 2.5 The Housing Authority will allow refunding of bond issues that meet the following conditions:
 - A. The project sponsor agrees to cover all costs of the issuer.
 - B. Projects originally financed by tax-exempt bonds prior to the 1986 Tax Act will have to make a minimum ten percent of the units affordable to persons earning 50 percent of median area income with the rents affordable at the same level.
 - C. The affordability restrictions of the existing bond regulatory agreement are subject to extension. The Housing Commission reserves the right to impose additional requirements on a case by case basis. All specifics of refunding proposals must be approved by the Housing Authority.
 - D. Default refunding applications require a default refunding analysis (to determine the eligibility for a default refunding). The Housing Commission shall choose the firm to conduct the analysis.

San Diego Housing Commission
POLICY

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

Number: **PO300.301**

Effective Date: 10/16/89

Page 3 of 8

The project applicant will deposit the cost for the study with the Housing Commission before the study begins.

3. AFFORDABILITY REQUIREMENTS

- 3.1 Term of Rental and Affordability Restrictions—The project must remain as rental housing and continuously meet the affordability requirements as provided in Sections 3.2, 3.3 and 3.4 for the longer of (a) 15 years from the date of the original issuance or refunding, as applicable, (b) as long as the bonds remain outstanding, (c) such period as may be required in the opinion of Bond Counsel to satisfy applicable federal or State law, or (d) such period as may be required by CDLAC (typically 55 years). The rent of "in-place" tenants at the conclusion of the required affordability period will continue to be governed by the applicable affordability restriction, so long as those tenants continue to live in the development. The Housing Authority reserves the right to impose additional affordability restrictions.

A Regulatory Agreement containing the rental and affordability restrictions will be recorded against the property and must be complied with by subsequent owners. The Regulatory Agreement will be terminated upon expiration of restrictions or in the event of casualty loss or foreclosure, and the subsequent retirement of bonds as a result of foreclosure.

State law requires advance notice and other requirements upon termination of affordability requirements, some of which also place restrictions on the sale of previously affordable housing projects.

- 3.2 Income Restrictions—To be eligible for tax-exempt bond financing, **federal law** requires that the project meet one of the following conditions:

- A. A minimum of 20% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size; or
- B. A minimum of 40% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 60% of area median income, as adjusted by family size.

At the same time, **state law** requires that a minimum of 10% of the units in the project be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, at specified rent levels.

Project owners must certify their tenant's eligibility annually. If a tenant is no longer eligible, the next available unit in the project must be rented to a new eligible tenant and the current tenant's rent can be raised to a market level. A unit occupied only by full time students does not count towards the set-aside requirement.

Affordability definitions are based on the area median income for the County of San Diego as established by the US Department of Housing and Urban Development. The median income is subject to change annually. Household size is determined by adding one person to the bedroom size of the unit.

- 3.3 Rent Restrictions—The maximum rent for one-half of the set-aside units may not exceed 30% of one-twelfth of 50% of area median income, or 30% of one-twelfth of 60% of area median income (as the case may be, depending on the selected set-aside). The maximum rent amounts are further

San Diego Housing Commission
POLICY

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

Number: **PO300.301**

Effective Date: 10/16/89

Page 4 of 8

reduced by a utility allowance for tenant-paid utilities in the amounts determined by the President and CEO. In the event tax-exempt bonds are used with Low Income Housing Tax Credits, or any other public funds, the most restrictive rents of the applicable programs shall apply. The affordability of restricted units in relation to the project's market rents will be considered as part of the Housing Commission's approval of the financing. The maximum rent amounts will also apply if the set-aside units are occupied by Section 8 tenants.

- 3.4 Unit Distribution—The set-aside units must proportionately reflect the mix of all units in the project, be distributed throughout the project and have the same floor area, amenities, and access to project facilities as market-rate units. The objective of the program is to provide a set-aside of units with lower rents, not to create special "low-income sections" within larger developments.
- 3.5 Additional Affordability Restrictions under Restructuring of Existing Bond Issues—Additional public benefit in the form of deeper income targeting; additional rent restrictions; extension of the term of restrictions; additional number of restricted units; or any combination thereof, will be negotiated in connection with refundings or debt restructurings of existing bond issues. The level of additional restrictions will be determined in the context of the overall financial feasibility of each financing. The maximum rent amounts will also apply if the set-aside units are occupied by Section 8 tenants. Should the bond restructuring result in an extension of the maturity of the bonds, a minimum of 10% of the units in the project will be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, with rents set at the corresponding affordability level, for the term of the restructured bond.

4. CREDIT CONSIDERATIONS

- 4.1 Required Rating on the Bonds—Any bonds issued under the program that are sold to the public should generally be rated "A", or its equivalent, or better from the following nationally recognized rating agencies: Moody's Investors Service, Standard & Poors Corporation, or Fitch Ratings. The same rating requirement applies in the case of a substitution of existing credit facility for bonds which are outstanding.
- 4.2 Credit Enhancement—A preferred way of obtaining the required rating on the bonds in accordance with Section 4.1 is through the provision of additional, outside credit support for the bond issue provided by rated, financially strong private institutions, such as bond insurance companies; domestic and foreign banks and insurance companies; savings and loans and smaller commercial banks willing to pledge ratable collateral to bond trustee; FHA mortgage insurance or co-insurance, etc. The rating on the bonds is determined based on the credit worthiness of the participating credit enhancement provider. The applicant is required to identify and obtain credit enhancement for each bond issuance. As the primary source of security for the repayment of bonds, the credit enhancement provider reviews and approves the borrower (credit, financial capability, experience, etc.) and the project and its feasibility, including the size of the loan and the terms of repayment, using their own underwriting criteria.
- 4.3 Rated Bonds Without Credit Enhancement—Fixed rate bonds, or their portion, can be issued without credit enhancement if the proposed financing structure results in the required minimum rating on the bonds by a rating agency as provided in Section 4.1. Bonds issued without credit enhancement will be sold to institutional investors in minimum \$100,000 denominations.
- 4.4 Privately Placed Bonds—The rating requirement specified in Section 4.1 is waived under the following conditions:

San Diego Housing Commission
POLICY

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

Number: **PO300.301**

Effective Date: 10/16/89

Page 5 of 8

- A. The bonds are privately placed with "qualified institutional buyers" as defined under Rule 144A of the Securities Act of 1933, or "accredited investors," as generally defined under Regulation D of the Securities Act of 1933.
- B. The bonds must be sold in minimum \$100,000 denominations.
- C. All initial and subsequent purchasers must be willing to sign a sophisticated investor letter (Investor Letter) in a form approved by the Housing Commission. While the bonds remain unrated, their transferability will be restricted to qualified institutional buyers or accredited investors who sign an Investor Letter.
- D. Unless otherwise approved by the Housing Commission, the bonds must be sold to 15 or fewer investors.
- E. Upon terms acceptable to the Housing Commission, bonds may be placed in a trust or custodial arrangement with participations sold to investors.

The purpose of these conditions is to assure that the bonds are placed with investors who are experienced in municipal securities investing and analysis or real estate credit underwriting. Bond funds and affordable lending banks are the types of entities this condition anticipates.

5. OTHER ISSUERS

- 5.1 The Housing Authority, in very limited situations, will allow "other issuers" than the Housing Authority to issue bonds for multifamily housing projects located within the City of San Diego. Any applicant considering the use of any "other issuer" should contact Housing Commission staff prior to proceeding with the project. The required City approvals of bond issuances by "other issuers" will be recommended only if the financing proposal is part of a pooled issuance involving projects located in multiple jurisdictions and the overall cost effectiveness of the financing proposal is increased. All Housing Authority affordability requirements, procedures and requirements will apply to projects using "outside issuers," including an issuance fee of 0.23 percent of the bond issuance amount to be paid to the Authority upon issuance of the bonds. A TEFRA hearing and approval by the City Council, as described in Section 7.4, on behalf of another issuer will include a provision that the owner, operator or manager of the project considered for financing by tax-exempt debt will not change without the prior approval of the President and CEO.

6. SELECTION OF THE FINANCING TEAM

- 6.1 Through separate Requests for Qualifications ("RFQ"), a pool of bond counsels, and a pool of financial advisors, will be established to serve as financing team participants on individual bond transactions. The RFQ process is a fair and competitive process which includes advertising, a competitive selection process and interviewing, if necessary. Firms will be selected in accordance with the Housing Commission's applicable equal opportunity policies.
- 6.2 The establishment of each pool will be made by a selection committee with the approval of the Housing Commission Board. The selection committee will consist of Housing Commission staff and representatives from other City departments, such as the City Attorney's Office, City Auditor, and Debt Management. Generally, the selection will be made for a two-year period. The term may be extended for two additional one-year periods by the President and CEO.

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**Number: **PO300.301**

Effective Date: 10/16/89

Page 6 of 8

- 6.3 The bond counsel and financial advisor specifically represent the interests and concerns of the Housing Commission, the Housing Authority and the City of San Diego in ensuring the integrity of the bond transaction. The project sponsor may, at its own expense, add additional members to the finance team to represent its interests.
- 6.4 The Financial Advisor for each transaction will be designated by the President and CEO from the selected pool for approval by the Housing Commission Board on a rotating basis. The Financial Advisor will prepare a feasibility study on whether it is economically advisable to proceed with the financing, including: evaluation of the financial strength of the project; assumptions regarding income and expenses; sources of security for bonds in addition to the project; developer's financial situation and experience in operating and managing rental projects; marketability of the bonds; rights and resources of parties to the transaction in the event of default; and provide financial advice on all relevant issues to best protect the interests of the City and the Housing Authority. The compensation for financial advisory services to determine whether it is advisable to proceed with a financing will not be contingent on the sale of the bonds.
- 6.5 Bond Counsel will be designated for each financing by the President and CEO from the selected pool on a rotating basis subject to approval by the Housing Commission Board. Bond Counsel will prepare the necessary legal documentation, including provisions regarding compliance with any applicable continuing disclosure requirements, provide an opinion regarding the validity of the bonds and their tax exemption, and provide legal advice on all relevant issues to best protect the interests of the City and the Housing Authority.
- 6.6 Bond Underwriter/Remarketing Agent/Private Placement Purchaser—The developer shall select the debt provider and method of selling the bonds for a given transaction subject to the approval of the Housing Commission. The practice of allowing the developer to propose the debt provider and bond structure is intended to create an incentive for qualified financial firms to actively work with developers to structure and present feasible financing proposals that meet program requirements.
- 6.7 In the event the developer has not identified a proposed financing structure for a given transaction, the Housing Commission will select an underwriter or private placement purchaser through a request for proposals process.
- 6.8 The Bond Trustee (a bank designated by the Housing Authority as the custodian of funds and official representative of bondholders), if required by the bond structure for the financing, will be approved by the President and CEO based upon a Request for Proposals process.

7. THE FINANCING PROCESS

- 7.1 Application—A developer interested in new-money financing must submit an application for bond financing or, in the case of an existing financing, a request for bond refunding or restructuring to the Housing Commission. Part of the required information is a disclosure statement on each of the parties involved in the developer/ownership entity. Housing Commission staff will review the application for feasibility.
- 7.2 Deposit—At the time of the application, the developer must pay an application fee to cover the cost of the feasibility analysis of the proposed bond issuance, reissuance or restructuring. If the financing goes ahead, the fee will be subject to reimbursement as a required cost of issuance at the bond closing. The application fee may be waived by the President and CEO.

POLICYSubject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**Number: **PO300.301**

Effective Date: 10/16/89

Page 7 of 8

- 7.3 Inducement Resolution—In conjunction with the City Attorney’s Office and Bond Counsel, a bond inducement resolution will be drafted and approved by the Housing Authority. All new-money projects must be induced. An inducement resolution is a conditional expression of the Housing Authority’s “official intent” to issue bonds for a given project and is required under Treasury Regulation Section 1.150-2(e) 1.150-2(e). Approval of the inducement resolution establishes, through the public record, the date from which project costs incurred may be determined to be eligible for financing under the program. Therefore, applicants are encouraged to induce their projects as soon as practicable to clearly identify the project, its location, maximum number of units, the maximum amount of financing, and the proposed ownership entity.
- A. Application to CDLAC—The inducement resolution also authorizes Housing Commission staff to submit an application to CDLAC, on behalf of the developer/project sponsor, for a private activity bond allocation.
- B. No Binding Financial Commitment—Adoption of the inducement resolution does not represent any commitment by the Housing Commission, Housing Authority, or the developer to proceed with the financing. The approval of the inducement resolution, by itself, does not authorize any subordinate financing by the Housing Authority or any other entity of the City. The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a resolution authorizing such issuance.
- C. No Land Use or Building Code Approval—Approval of the inducement resolution shall not be construed to signify that the project complies with the planning, zoning, subdivision and building laws and ordinances of the City or suggest that the Housing Authority, the City, or any officer or agent of the Housing Authority or the City will grant any such approval, consent or permit that may be required in connection with the development of a given project.
- 7.4 TEFRA Hearing and Approval—In order for interest on the bonds to be tax-exempt and in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, Section 147(f) of the Internal Revenue Code of 1986, the issuance of bonds must be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located, after a public hearing for which a reasonable public notice was given. As the legislative body for the City of San Diego, federal regulations require that the issuance of bonds by the Housing Authority be approved by the City Council. The purpose of the public hearing is to provide an opportunity for interested persons to provide their views on the proposed bond issuance and on the nature and location of the project. The TEFRA hearing will be conducted by City Council at the date and time specified in the TEFRA notice. The TEFRA notice shall be published in a newspaper of general circulation within the City.
- 7.5 Bond Allocation—Prior to the issuance of private activity, tax exempt bonds, the Housing Authority must apply for, and receive an allocation of bond issuing authority from CDLAC. To receive such an allocation, the Housing Authority and the developer must document their readiness to proceed with the bond financing.
- 7.6 Performance Deposit—At the time of the application to CDLAC, the developer must deposit with the Housing Authority one half of one percent of the requested allocation amount as a performance deposit. The deposit will be returned to the developer according to the CDLAC procedures; the deposit is subject to reversion to the CDLAC if the financing does not close according to the CDLAC procedures.

San Diego Housing Commission
POLICY

Subject: **MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM**

Number: **PO300.301**


Effective Date: 10/16/89

Page 8 of 8

- 7.7 Local Review—All projects must be in compliance with the City's land use requirements and the adopted community plans. Prior to requesting Housing Authority's approval of new-money bond issuance, the project must undergo all planning procedures, discretionary reviews and land use approvals, including review by the local planning group and environmental analysis, as required.
- 7.8 Coordination with City Finance Representatives—Housing Commission staff will work with the City Attorney's Office, the Debt Management Department, and other City departments, as necessary, in preparing bond issuances for affordable housing projects.
- A. Compliance with City's Disclosure Ordinance—As a related entity of the City, the Housing Commission will adhere to the City disclosure ordinance (O-19320) as it may be amended from time to time. The Housing Commission will present offering statements and disclosure documents for review and approval, as appropriate, by the City's Disclosure Practices Working Group.
- 7.9 Housing Commission/Housing Authority Final Approval—Housing Commission staff's recommendation to proceed with a proposed bond issuance, reissuance, or bond restructuring will be presented for approval by the Housing Commission. If approved, staff will work with the approved financing team to structure the financing and to prepare the necessary bond documents. The resulting bond documents, authorizing resolution, staff report, and other relevant docket materials will be submitted for final approval by the Housing Authority.

[Supersedes PO300.301, effective June 4, 1999]

Authorized:


Carrol M. Vaughan,
Executive Vice President and COO


Cissy Fisher, Director
Housing Finance

10/6/08
Date

10/6/2008
Date

History:

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