

Virginia Private Activity Bond Allocation Guidelines

Local Housing Authority Allocation

State Allocation

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§ 1.1. Definitions.

The following words and terms, when used in these guidelines, shall have the following meaning, unless the context clearly indicates otherwise.

"Allocation" or "award" means the notice given by the Commonwealth to provide a project with a specified amount from the state ceiling for a specific issue of bonds.

"Carry forward purpose" means certain projects that are eligible to receive an allocation during a calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the Internal Revenue Code of 1986, as amended.

"Chief appointed official" means the chief administrator of the locality and includes the city manager, the town manager, the county administrator, the county executive, and others.

"Code" means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings issued pursuant thereto.

"Consolidated Plan" means the plan required by the United States Department of Housing and Urban Development (HUD) for State and Entitlement jurisdictions that receive funding for any of the following HUD formula programs: Community Development Block Grant (CDBG), HOME Investments Partnerships (HOME), Emergency Solutions Grant (ESG) and Housing Opportunities for Persons with AIDS (HOPWA).

"DHCD" means Department of Housing and Community Development

"Eligibility" means, with respect to any project seeking an allocation of private activity bonds from the local housing authority allocation, that the rents for the units subject to restrictions on the incomes of residents under the Code will meet rent affordability standards. Rent affordability standards can be met by allocation to the project of low-income housing tax credits under Section 42 of the Code or participation in other federal, state or local housing affordability programs that include legally enforceable rent affordability standards.

DHCD reserves the right to waive this eligibility requirement in the case of a housing project that addresses another compelling local or state objective.

"Exempt facility" means a project requiring allocation from the state ceiling for financing of any of the following:

1. Sewage, solid waste, and qualified hazardous waste disposal facilities;
2. Facilities for the local furnishing of electric energy or gas;
3. Facilities for the furnishing of water (including irrigation systems);
4. Mass commuting facilities; and
5. Local district heating and cooling facilities.

"Governing body" means the board of supervisors of each county and the council of each city and of each town.

"Housing bonds" means multifamily housing bonds and single family housing bonds requiring allocation from the state ceiling.

"Industrial development bond" means any obligation requiring allocation from the state ceiling for financing any of the following:

1. Manufacturing facility;
2. Exempt facility.

"Issued" means that the private activity bonds have been issued within the meaning of §§ 103 and 141-150 of the Code.

"Issuing authority" means any political subdivision, governmental unit, authority, or other entity of the Commonwealth which is empowered to issue private activity bonds.

"Local housing authority" means any issuer of multifamily housing bonds or single family housing bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing Development Authority (VHDA).

"Locality" or "localities" means the individual and collective cities, towns, and counties of the Commonwealth.

"Manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such property. within the meaning of §144(a) (12)(c) of the Code.

"Multifamily housing bond" means any obligation which constitutes an exempt facility bond under federal law for the financing of a qualified residential rental project within the meaning of § 142 of the Code.

"Population" means the most recent estimate of resident population for Virginia and the counties, cities, and towns published by the United States Bureau of the Census or the Weldon Cooper Center for Public Service of the University of Virginia before January 1 of each calendar year.

"Private activity bond" means a part or all of any bond (or other instrument) required to obtain an allocation from the Commonwealth's volume cap pursuant to § 146 of the Code in order to be tax exempt, including but not limited to the following:

1. Exempt facility bonds;
2. Manufacturing facility bonds;
3. Industrial development bonds;
4. Multifamily housing bonds;

5. Single family housing bonds;
6. Any other bond eligible for a tax exemption as a private activity bond pursuant to §141 of the Code.

"Project" means the facility (as described in the application) proposed to be financed, in whole or in part, by an issue of bonds and that meets all of the requirements for eligibility set forth in these Guidelines.

"Rent affordability standards" means that the rent and any estimated cost of utilities (except telephone) payable by residents shall not exceed 30 percent of the applicable income limits under the Code during the period of time that the bonds issued to finance the project will be outstanding.

"Single family housing bond" means any obligation described as a qualified mortgage bond under § 143 of the Code.

"State Allocation" means the portion of the state ceiling set aside for projects of state issuing authorities and for projects of state or regional interest as determined by the Governor.

"State ceiling" means the amount of private activity bonds that the Commonwealth may issue in any calendar year under the provisions of the Code.

"Supplemental allocation" means an allocation of private activity bonds that is supplemental to a previous year's allocation (regardless of issuer). A supplemental allocation is for a project that has previously closed and is seeking additional allocation for the same project. A supplemental allocation is not an allocation for a separate phase of a larger development.

§ 2 Administration.

§ 2.1. Virginia Department of Housing and Community Development.

Beginning on July 1, 2008, DHCD shall administer the private activity bond program in the Commonwealth as specified in Chapter 50 Section 15.2-5003 of the Code of Virginia. In administering the program, DHCD's activities shall include, but are not limited to, the following:

- A. To determine the state ceiling on private activity bonds each year beyond 2008 based on the federal per capita limitation on private activity bonds and the population.
- B. To set aside the proper amount of the state ceiling on private activity bonds for each project type as specified in state legislation, Chapter 50 (§§ 15.2-5000 through 15.2-5005) of Title 15.2 of the Code of Virginia each year beyond 2008.
- C. To receive and review project applications for private activity bond authority to be awarded from the portion of the state ceiling allocated to local housing authorities and the State Allocation.
- D. To allocate private activity bond authority to projects requesting bond authority from the portion of the state ceiling allocated to local housing authorities and the State Allocation.

§ 2.2. State Allocation.

A portion of the annual state ceiling on private activity bonds will be reserved for allocations to projects of state issuing authorities and projects of state or regional interest as determined by the

Governor. The Governor may transfer any portion of the State Allocation to DHCD for allocation to specific projects or for allocation to specific project types in accordance with the provisions of these guidelines.

§ 2.3. Program Dates.

The following is a listing of important application and allocation dates and deadlines concerning the portion of the state ceiling administered by DHCD. DHCD will accept applications at any time during the year and they will be ordered as described below.

January 1 - December 15

Specified amounts of the state ceiling are reserved for different project types in the Commonwealth by either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond authority will be awarded by DHCD to projects in accordance with state law or Governor's Executive Order and these guidelines. The set-aside for specified project types ends on December 15 of each calendar year.

July 1 - Earliest date on which an allocation in excess of \$20 million may be awarded to a local housing authority project

December 1 - Last day applications will be accepted for year-end carryforward purposes.

December 15 - Last day for the issuance of private activity bonds for projects that received allocations from the state ceiling prior to this date.

December 20 - 31 - Allocations will be made to year-end carryforward purposes in accordance with the priority system established by these guidelines.

§ 2.4. Weekend and Holiday Dates.

Except where federal or state law precludes an extension to a later date, if any date specified in these guidelines falls on a weekend or a state holiday, the date shall be moved to the next following regular state working day.

§ 2.5. State Guidelines to Change as Federal Law Determines Eligibility.

If federal law terminates the eligibility or terminates and reauthorizes the eligibility for private activity bond financing for any "private activity bond" as defined in § 1.1 of these guidelines, the effect shall be to exclude or include, as the case may be, that portion of the "private activity bond" from these guidelines.

§ 3 Allocations to Individual Projects by DHCD.

§ 3.1. State Private Activity Bond Legislation.

Chapter 50 (§§ 15.2-5000 through 15.2-5005) of Title 15.2 of the Code of Virginia sets aside specified amounts of the Commonwealth's limited private activity bond issuing authority for different types of projects. DHCD will allocate private activity bond authority to projects requesting bond authority for the portion of the state ceiling allocated to local housing authorities and the State Allocation.

§ 3.2 Order in which the bond authority reserved for local housing authority projects shall be awarded.

Any bond authority reserved for local housing authority projects that is unallocated, that is returned to DHCD, or that otherwise becomes available to DHCD during each calendar year shall be awarded to local housing authority projects in chronological order of the receipt by DHCD of complete applications (including all documentation specified in § 5.3 of these guidelines).

§ 3.3. Limitation on size of allocations.

From January 1 to June 30, all allocations awarded by DHCD from the portion of the state ceiling reserved for local housing authority projects shall be limited to \$20 million per project. On and after July 1 of each year, allocations from the portion of the state ceiling reserved for local housing authority projects shall not be limited in amounts with respect to any local housing authority project (including a project which received a partial allocation earlier in the year).

§ 3.4 Effective period of allocations.

An allocation of private activity bond authority awarded by DHCD from the portion of the state ceiling reserved for local housing authority projects shall be effective for 120 days after the allocation award date or until December 15, whichever is earlier.

§ 3.5. Reapplying for a second allocation for the same project.

A project that receives an allocation and is unable to issue bonds within the effective period of the award may reapply for a second allocation upon the expiration or return of the original allocation. This second allocation must be accompanied by a fee of 0.1 percent (one tenth of one percent) of the amount of the requested private activity bonds. The reapplication will be dated by DHCD as received on the date the reapplication request is submitted and no portion of the original allocation is outstanding. This allocation period shall be effective for 90 days after the allocation award date or until December 15, whichever is earlier. If the project closes within the 90 day allocation period, one-half of the fee will be refunded to the applicant, with the other half being directed to the Virginia Housing Trust Fund. If the project does not close within the 90 day allocation period the entire amount will be directed to the Virginia Housing Trust Fund.

Each project shall be limited to two allocations during any calendar year.

§ 3.6. Addressing same date submissions that exceed the available local housing authority allocation

Should DHCD receive multiple properly completed allocation requests on the same date, the total of which exceeds the amount of bonds available in the local housing authority allocation, DHCD shall use a random lottery process to determine which requests will receive an allocation.

§ 4 Year-end Allocations to Carryforward Purposes.

§ 4.1. Local Housing Authorities.

Any bond issuing authority remaining in the portion of the state ceiling reserved for local housing authorities after December 15 shall be transferred to the Virginia Housing Development Authority (VHDA) upon its written request, after notification by DHCD of the amount of bond authority available.

Any bond authority that remains with DHCD and is not requested by VHDA shall be allocated to other carryforward purposes.

§ 5 Application Procedure.

§ 5.1. Project Approval.

Projects of local issuing authorities must be approved by the governing body having jurisdiction over the authority as well as by the governing body having jurisdiction over the locality in which the project is located. This is often the same governing body. Projects of state issuing authorities must be approved by the Governor.

§ 5.2. Application Submission.

Housing projects to be financed from the state ceiling allocated to local housing authorities will be submitted to DHCD. Requests for private activity bond authority from the State Allocation will be submitted to DHCD and forwarded to the Governor's Office.

§ 5.3. Application Forms for Local Housing Authority Allocation.

All projects seeking an allocation of private activity bond authority from DHCD must file an application. Application forms are available from DHCD.

Local housing authorities seeking an allocation of bond authority for housing projects shall file Form LHA.

Applicants are strongly encouraged to notify DHCD of their intent to make application for allocation as soon as possible after January 1 of each year. Applicants (or their representative) that intend to submit an application must notify DHCD of their intent to submit an application within 14 days of their public hearing. For projects that held a public hearing in the previous calendar year, they must submit notice by January 31.

The notification will be provided on a template as made available by DHCD. If notification is not provided, the application may not receive an allocation in the calendar year it submits an application.

All applications and requests for private activity bond authority from DHCD shall be accompanied by the following documentation for each project:

1. Inducement or official intent resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law;
2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or elected official's approval of the project, in conformity with applicable federal and state law;
3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required;

4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project, or if the bonds are to be sold competitively, a letter from the financial advisor for the project;
5. Certification that the project's financing package will include low-income housing tax credits under Section 42 of the Code. If such credits are not a part of the project's financing package, then documentation on participation in another federal, state or local housing program with legally enforceable rent affordability standards must be included; and
6. All applications from local housing authorities requesting an allocation of bond authority for housing projects shall be accompanied by a letter from the chief appointed official of the locality in which the project is located, endorsing the project and stating that the project is in conformity with the Consolidated Plan covering the locality. If the locality is subject to the State's Consolidated Plan, DHCD will determine if the project is in conformity with the plan.
7. Supplemental allocation only. Supplemental allocations must certify that the allocation addresses project costs that have no alternative but to utilize additional tax-exempt bond financing. Provide detailed explanation of use of additional allocation and why it was not included in original application

§ 5.4. Application Forms for State Allocation.

All projects seeking an allocation of private activity bond authority from the state allocation must file an application. Application forms are available from DHCD.

Issuing authorities seeking an allocation of bond authority from the state allocation shall file Form SA.

Applicants are strongly encouraged to notify DHCD of their intent to make application for allocation as soon as possible after January 1 of each year. Applicants (or their representative) that intend to submit an application must notify DHCD of their intent to submit an application within 14 days of their public hearing. For projects that held a public hearing in the previous calendar year, they must submit notice by January 31.

The notification will be provided on a template as made available by DHCD. If notification is not provided, the application may not receive an allocation in the calendar year it submits an application.

All applications and requests for private activity bond authority from the state allocation shall be accompanied by the following documentation for each project:

1. Inducement or official intent resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law;
2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or elected official's approval of the project, in conformity with applicable federal and state law;
3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required;

4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project, or if the bonds are to be sold competitively, a letter from the financial advisor for the project; and
5. Such other information as DHCD may require to provide a description and analysis of the project to the Governor for review and consideration.
6. Supplemental allocation only. Supplemental allocations must certify that the allocation addresses project costs that have no alternative but to utilize additional tax-exempt bond financing. Provide detailed explanation of use of additional allocation and why it was not included in original application.

§ 5.5. When to Apply.

Project applications for current-year allocation may be submitted to DHCD at any time prior to December 15 of each year. Applications for year-end allocations for carryforward purposes will be accepted by DHCD through December 1 of each calendar year.

§ 6 Reporting Requirements for Allocations.

§ 6.1. Reporting Bond Issuance.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling allocated to local housing authorities and the State Allocation during any calendar year, a copy of the filed federal Internal Revenue Service (IRS) Form 8038 must be received by DHCD no later than 5:00 p.m. on the expiration date of the allocation award. Bond authority that has not been documented as having been issued by the filing of IRS Form 8038 with DHCD by this deadline will revert to DHCD for reallocation to other projects.

For all allocations to carryforward purposes, a copy of the filed IRS Form 8328 must be filed with DHCD by January 15 following the calendar year in which the carryforward award was received. In order to document the amount of bonds issued, a copy of IRS Form 8038 must be sent to DHCD when the bond(s) are issued.