

GUIDELINES FOR ISSUANCE OF BONDS

THE HOUSING AUTHORITY OF THE CITY OF DURHAM

*Authorized on October 25, 2006
at the Regularly Scheduled Monthly Meeting of the
Housing Authority of the City of Durham*

- I. Background and Purpose
- A. The Housing Authority of the City of Durham (DHA) is a public body organized and existing under the Housing Authorities Law of the State of North Carolina, Article I of Chapter 157 of the General Statutes of North Carolina. As such, DHA has a principal purpose overcoming the shortage of decent, safe and sanitary housing that can be afforded by persons of low and moderate income.
 - B. DHA's stated mission is to *"provide a superior level of service to those served and to maintain a high level of resident, employee and public satisfaction by equitably and professionally administering policies, procedures and benefits"* and *"to provide these families with safe, decent and affordable housing while encouraging them to achieve economic independence and self-sufficiency"*.
 - C. DHA has the statutory power to *"provide grants, loans, interest supplements and other programs of financial assistance to public and private developers of housing for persons of low income, or moderate income, or low and moderate income"*.
 - D. DHA will provide assistance only if at least twenty percent (20%) of the residential units in the development are set aside for at least fifteen (15) years for the exclusive use of persons of low income (meaning persons in households having annual income, adjusted for family size, which is not more than sixty percent (60%) of the local area median family income as defined by HUD).
 - E. DHA, from time to time, has issued and intends to issue its bonds and other obligations to finance developments:
 - (i) in which it has a direct interest (as owner, partner, lessee, manager, or otherwise); and
 - (ii) in which it does not have a direct interest (as a "conduit lender").
 - F. The following guidelines have been adopted:
 - (i) to provide procedural and substantive guidance to developers applying to DHA for financial assistance through the issuance of DHA's mortgage revenue bonds; and
 - (ii) to guide DHA in its review and evaluation of such applications.
 - G. These Guidelines do not establish mandatory or exclusive standards or procedures. No person shall be entitled to maintain an action against DHA for its actions in approving or disapproving applications based on its adherence to or departure from the provisions hereof.
 - H. The cost of issuing bonds with DHA will generally be:
 - (a) A non-refundable application fee of \$2,500;

- (b) A \$10,000 fee for financial review that will be refunded if a review by a financial consultant is not directed by the Development Committee of DHA Board of Commissioners;
- (c) An issuance fee of the greater of 1% of the face value of the Bonds or \$75,000 upon issuance of the bonds; and,
- (d) An annual monitoring fee after issuance of the bonds equal to 0.125% of the outstanding (unpaid) principal balance.

II. Application

Persons requesting that DHA issue mortgage revenue bonds or other obligations to provide financial assistance for a qualified residential development must apply in writing to DHA. The application form and fees are described below:

- A. Application. The application consists of two parts: Financial Assistance Request (Appendix A) and the Comprehensive Pro Forma (Appendix B). All applicable information requested on the forms must be provided before the evaluation process can begin.
- B. Application Fee. The application fee is required at the time the application is submitted for consideration. The fee consists of two components: a non-refundable processing fee (\$2,500) and a financial evaluation (\$10,000) fee. Should the application be withdrawn or the Development Committee of DHA Board of Commissioners find the proposed development to be inconsistent with purposes of DHA prior to the commencement of the financial review, the financial evaluation fee will be refunded to the Applicant. The above fees may be adjusted from time to time and Applicants should contact DHA offices to obtain information on the current fee structure.

III. Application Evaluation Process

The application evaluation process will be completed in three phases. In the first phase DHA will determine the completeness of the application and its consistency with the purposes of DHA. In the second phase a consultant will perform financial review of the proposed development Pro Forma. The third phase is consideration of the request by DHA Board of Commissioners. The process map at Appendix C outlines the application evaluation process.

A. Phase I – Completeness & Consistence Review

- (a) Staff Review. DHA’s staff will review each application for completeness and then for merit based on how well the proposed development serves the corporate purposes and stated mission of DHA. Factors considered include:
 - (i) The number of new, affordable residential units the development provides for low-income families;
 - (ii) The mechanisms that will assure availability to low-income families;
 - (iii) The development’s effect on patterns of minority residential concentration and compliance with the City of Durham’s adopted locational policies;
 - (iv) The development’s compliance with zoning and permitting requirements or the ability to obtain the rezoning or variances required;
 - (v) The extent persons on DHA’s waiting lists will be afforded priority over other Applicants;
 - (vi) The ways in which the development serves the purposes and mission of DHA;
 - (vii) The potential adverse consequences for existing or future developments involving DHA. This includes:

1. The impact the request will have on DHA's annual \$10 million allowance for "bank-qualified" or "qualified tax-exempt obligations" (traditional government and 501(c)(3) obligations) under section 265(b) of the Internal Revenue Code, thus affecting existing or future designations.
 2. The impact of the request on the State's Volume Cap for a "qualified residential housing rental project" (with an "automatic" allocation of 4% low-income housing tax credits) for other applications by DHA involving either the 4% or 9% low-income housing tax credits; and,
 3. Other ways in which the development or the requested financial assistance may adversely affect DHA.
- (viii) The direct financial benefits DHA will realize from issuance of the bonds or the construction and operation of the development;
- (ix) The apparent quality of the proposed development with respect to function, design, location and durability;
- (x) The financial capacity of the Applicant and other participants in the development and their experience in the proposed development model;
- (xi) The criticality of the requested financial assistance to the development's success; and,
- (xii) The impact on the community served by DHA if the development does not proceed or subsequently fails, because of DHA's failure to issue the requested bonds.
- b. Development Committee Review. Once the Staff has completed its review of the application, it will forward the application, with a staff recommendation, to the Development Committee of DHA Board of Commissioners. The Development Committee can decide on one of three courses of action: (i) refer the Financial Assistance Request and Comprehensive Pro Forma for financial review by an outside consultant or DHA designee; (ii) request additional information needed to complete its evaluation; (iii) deny the application; or (iv) refer the application for Board action (an inducement resolution). If the:
- (i) DHA staff recommends that an outside consultant or DHA designee conduct a financial review of the application and the Development Committee adopts the recommendation. The application then will be referred to the Board for action (an inducement resolution). Once the review is conducted that component of the application fee becomes non-refundable. If DHA staff does not recommend a financial review, but the Development Committee believes an outside financial review is needed, DHA staff will forward the Comprehensive Pro Forma to an outside consultant or DHA designee for review and that component of the application fee becomes non-refundable.
 - (ii) Committee requests additional information from the Applicant. The staff will forward the request and the application.
 - (iii) Committee denies the application. The staff will notify the Applicant in writing of the denial and the reasons therefore, and refund to the Applicant that component of the application fee designed for the financial review, if financial review has not been undertaken.
 - (iv) Committee refers the application for Board action without further financial review. DHA staff will take the necessary action to include the application on the agenda of the next regularly scheduled Board meeting for passage of an inducement resolution, and refund to the Applicant that component of the application fee designed for the financial review.

B. Phase II – Financial Review

- (a) Financial Review. DHA may select a consultant or DHA designee to conduct the financial review or elect to perform the review internally. DHA staff will provide the Development Committee with any developed or delivered work product of the financial analysis whether internally or externally conducted.
- (b) Development Committee Recommendation. After the financial review is complete, the Development Committee will make a recommendation. The Development Committee will consider the staff recommendation and consultant’s analysis of the project. The Development Committee may then: (i) refer the application to DHA Board with a recommendation to adopt an inducement resolution; (ii) refer the application to the DHA Board with a recommendation not to adopt an inducement resolution; or (iii) request the Applicant make modification to the Comprehensive Pro Forma to address any noted deficiencies and/or recommendations by DHA staff.
- (c) Actions by Applicant. If the Committee requests modification to the Comprehensive Pro Forma, the Applicant may choose to: (i) make the modifications requested and resubmit the Comprehensive Pro Forma to the Development Committee; (ii) submit an alternative Comprehensive Pro Forma for consideration by the Development Committee; or (iii) request that the current application be forwarded for consideration by the DHA Board despite any noted deficiencies.
- (d) Actions by Development Committee. At the next regularly scheduled meeting of the Development Committee, the Development Committee will generally refer the matter for consideration by the DHA Board at the Board’s next regular meeting.

C. Phase III – Consideration by DHA Board of Commissioners for Inducement Resolution. DHA Board will consider the information provided by the Applicant, the consultant’s analysis, and the recommendations of the Development Committee in deciding whether to give preliminary approval to the requested financing. The Executive director or his designee will provide the Board a proposed “inducement resolution” or “resolution of intent” approved as to form by DHA’s counsel. If DHA’s Board adopts an inducement resolution or resolution of intent, the Applicant will be responsible for the preparation and submission of all of the proposed bond documents, and for the reasonable legal expenses of DHA’s counsel (“Issuer’s Counsel”) for the transaction (to be paid no later than the closing of the transaction).

D. Applicant Representation. A knowledgeable representative of the Applicant should appear at each meeting of the Development Committee and Board of Commissioners where the application is considered.

IV. Bond Issuance Process

- A. Bond Counsel. DHA will select a bond counsel (“Bond Counsel”) to represent the Bondholder’s interests in the financing along with Issuer’s Counsel. Applicant will be responsible for all reasonable Bond Counsel and Issuer’s Counsel legal expenses and costs.
- B. Public Approval. (TEFRA Hearing). If the DHA Board adopts an inducement resolution or resolution of intent and the Applicant is successful in receiving a Volume Cap allocation, DHA will hold a public hearing (the “TEFRA hearing”) pursuant to section 147(f) of the Internal Revenue Code. The Applicant shall be responsible for assuring the preparation and publication of the appropriate notice of hearing.

A report of the hearing will be given to the Mayor and City Council of the City of Durham. The Mayor will be asked to give the required public approval based on the City Council's formal vote.

- C. Resolutions. After the inducement resolution or resolution of intent, the DHA Board must adopt a "findings resolution." in which it makes certain findings required by the Local Government Commission. The findings include the following:
- (a) That the financing is necessary and expedient to further DHA's purpose of promoting low and moderate income housing in Durham, and that the acquisition and construction of the proposed development are necessary and sufficient to accomplish DHA's purposes with respect to the proposed development.
 - (b) That the Applicant has demonstrated that the amount of debt to be incurred in connection with the proposed development and the fees to be paid in connection therewith are sufficient but not excessive for the purpose of acquiring and constructing the proposed development.
 - (c) That the Applicant has demonstrated that (i) it is financially responsible and capable of fulfilling its obligations to make loan repayments and other payments in connection with the indebtedness, and (ii) the proposed site will generate sufficient revenues to make loan repayments and other payments in connection with the indebtedness to operate, repair and maintain the proposed site, and its own expense, and to discharge such other responsibilities as may be imposed under the transaction documents. Factors include the Applicant's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties or property to be pledged to secure the indebtedness or financing arrangement.
 - (d) That the use of the proceeds of the bonds for a loan to finance the costs of the development and for other applicable purposes will accomplish public purposes as required by the North Carolina Housing Authorities Law, Article I or Chapter 157 of the General Statutes of North Carolina, and that it approves such use of proceeds.

In addition, the DHA Board will adopt a final authorizing resolution approving the issuance of the bonds and execution of the bond documents. Resolutions may be passed at separate meetings or simultaneously, depending on timing considerations.

- D. Issuance Fee. Upon the delivery of the bonds, the Applicant will be required to pay an issuance fee equal to the greater of 1% of the aggregate principal amount of the bonds or \$75,000, and an annual fee thereafter equal to 0.125% of the outstanding principal amount of the bonds. This fee shall not exceed the amount allowed under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor provision. DHA may waive portions of these fees if there are offsetting financial benefits in the transaction. Additionally, the Applicant shall ensure that all pro formas and/or budgets accurately reflect DHA's bond issuance and monitoring fees as well as fees (Bond Counsel and Issuer's Counsel) incurred by DHA in connection with the issuance of the bonds. The Applicant shall execute a commitment letter acknowledging and agreeing to promptly pay said fees.
- E. Local Government Commission Approval. DHA will seek to obtain the Local Government Commission's approval of the financing. DHA will commence this process at the earliest practical date following Volume Cap allocation and receipt of all necessary information from the Applicant.
- F. Financing Documentation. All financing documents must be submitted to DHA in hard copy and digital formats.

- G. Bond Closing. The closing for the financing will be held at a convenient time and location for DHA, the trustee of the bonds, and the Applicant.

Financial Assistance Request

1. Action Requested: Provide a general description of the proposed project to include location, description of the neighborhood, targeted population, description of final site design and bonding amount request.
2. Amount and Type of Loan or Investment: Describe all sources of funding for the proposed development.
3. Credit Enhancements and Guarantees.
4. Location of Development: A map of the proposed development location that includes current zoning.
5. Ownership Structure: Describe the ownership structure and participants.
6. Developer: Name the Developer or Development Team.
7. Development Budget:
 - A. Funding Sources
 - B. Funding Uses
 - C. Operating Budget
8. Development Schedule: the schedule should begin with financing activities and end at the anticipated lease-up date.
9. Readiness to proceed.

Comprehensive Pro Forma Requirements

Operating Projections Statement

- Minimum 10 year (tax credit period) presented – for each year present;
- Revenue detail includes gross potential rental revenue, vacancy loss, bad debt write-offs and other non-rental income;
- Expenses categories include Advertising/Marketing, G& A, Insurance, Maintenance, staffing, outside services, property taxes and utilities;
- Clearly identify annual replacement reserve;
- Report Debt Service costs separately;
- Calculate NOI and Debt Coverage Ratio; and,
- Total Net Cash Flow after operating expenses, replacement reserve and debt service.

Appendix C – Conduit Bond Process

