

GUIDELINES FOR ISSUANCE OF BONDS  
OF THE  
HOUSING AUTHORITY OF THE CITY OF CHARLOTTE, N.C.

August 2016

**Section I - Background and Purpose**

The Authority 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 (the “Act”). As such, the Authority has as a principal purpose overcoming the shortage of decent, safe and sanitary housing that can be afforded by persons of low and moderate income. The Authority’s stated mission is to “serve those families for whom conventional housing is not affordable” and “to provide these families with safe, decent and sanitary housing while encouraging them to achieve economic independence and self-sufficiency.”

The Authority 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.” In order fulfill this purpose, the Authority from time to time has issued, and intends to issue, its bonds and other obligations (referred to in this policy as “Bonds”) 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”).

These guidelines have been adopted (i) to provide procedural and substantive guidance to developers applying to the Authority for financial assistance through the issuance of the Authority’s multifamily housing revenue bonds and (ii) to guide the Authority in its review and evaluation of such applications. The Authority’s primary focus in making a decision as to whether to participate in a financing will be the affordability of the units and the feasibility of the development. These Guidelines do not establish mandatory or exclusive standards or procedures. No person shall be entitled to maintain an action against the Authority for its actions in approving or disapproving applications based on its adherence to or departure from the provisions hereof.

The Authority may refuse to pursue the financing of any development or the issuance of its multifamily housing revenue bonds for any reason in its sole and absolute discretion.

**Section II – Affordability Requirements and Authority Fees**

**Affordability:** In order to meet the requirements of Section 142 of the Internal Revenue Code of 1986, as amended (the “Code”), for Bonds issued by the Authority to be tax exempt, and in order to meet the Authority’s mission to provide affordable housing, the owner of the development financed with the Authority’s Bonds must agree that at a certain percentage of the units will be rented to persons of low or low and moderate income, defined as persons in households having annual income, adjusted for family size that does not exceed a certain percentage of area median income (AMI). These restrictions will be included in restrictive covenants contained in a regulatory agreement (the “Regulatory Agreement”) filed in the Mecklenburg County real estate records and applicable for the longer of 15 years or the period of time during which the Bonds are outstanding. The applicable restrictions are:

- at least forty percent (40%) of the units must be leased to residents whose income is sixty percent (60%) or less of AMI,

or

- at least twenty percent (20%) of the units must be leased to residents whose income is fifty percent (50%) or less of AMI.
- If the owner is a nonprofit organization and the Bonds are to be issued under Section 145 of the Code, the owner will covenant to comply with the affordability restrictions set forth above

**Monitoring:** Once the development is placed in service, the Authority will monitor compliance with the income restrictions set forth in the Regulatory Agreement, as well as the general condition of the development. The Regulatory Agreement will include annual (or more frequent) filing requirements. The Authority’s monitoring will include both receipt of reports and on-site inspections annually or more often at the Authority’s discretion. See **Appendix D**.

**Fees and Expenses:** The cost of issuing Bonds with the Authority will generally include:

(a) A non-refundable application fee of \$5,000, due upon submission of the application. See **Section II**.

(b) If the owner of the development is a nonprofit and no volume cap is required for the issuance of the Bonds, the applicant must pay the fee for the financial review of the application to be conducted by a third-party financial consultant selected by the Authority (this fee is payable by the applicant directly to such financial consultant and is typically less than \$10,000).

(c) Upon issuance of the Bonds, the Authority will charge a fee for its work in monitoring compliance with the affordability restrictions. Such fee will be payable upon the issuance of the Bonds, and will be the greater of (i) 1.25% of the face amount of the Bonds (which shall be the maximum amount of Bonds in the case of draw down Bonds), or (ii) the per unit fee charged by the North Carolina Housing Finance Agency for monitoring compliance with the tax credit affordability restrictions (currently \$840/unit), as set forth in the applicable Qualified Allocation Plan; provided, however, in the event that the structure of the bond transaction does not permit the payment obligations of the borrower to meet the requirements for a “program investment” under Treasury Regulations Section 1.148-1(b), the fee will be determined as set forth in (c)(ii).

(d) An annual fee after issuance of the Bonds equal to 0.125% of the outstanding (unpaid) principal balance of the Bonds.

(e) The Authority may waive portions of the foregoing fees in its sole discretion if there are offsetting financial benefits in the transaction.

### **Section III - Application**

Persons requesting that the Authority issue multifamily housing revenue bonds or other obligations to provide a portion of the financing for a qualified residential development must apply in writing to the Authority. Following receipt of an application, staff will review it and, if appropriate, recommend it to the Board of Commissioners of the Authority for approval of an inducement or preliminary approval resolution with respect to the financing of the development (the “Inducement Resolution”). The application is described below:

**Application:** The application consists of two parts: (a) the submission of an Application for Issuance of Bonds (which will provide the information outlined in **Appendix A**) and (b) pro forma

financial information about the development. All applicable information requested on the form must be provided before the evaluation process can begin.

The application MUST be submitted to the Authority not less than forty-five (45) days prior to the date of the meeting at which the applicant wishes the Board of Commissioners of the Authority to consider the Inducement Resolution. The Board generally meets on the third Tuesday of each month; however, the applicant should check with the Authority to confirm that schedule as meeting times can change.

**Application Fee:** The non-refundable application fee in the amount of \$5,000 is required at the time the application is submitted for consideration. This fee is current as of August, 2016, but may be adjusted from time to time and applicants should contact the Authority offices to obtain information on the current fee structure.

For transactions in which a third party financial review is required, the fee for the third-party financial review (typically less than \$10,000) is paid directly to the financial consultant upon receipt of the invoice from such consultant. Should the application be withdrawn or the Authority determine not to proceed with the financing of the proposed development (for any reason, in its sole discretion) prior to the commencement of the financial review, the financial evaluation fee will not be required.

**Feasibility:** The following items will be considered in the project analysis:

1. The number of affordable units in the development;
2. The mechanisms to assure availability of the affordable units;
3. Compliance with City Locational Policy or evidence that a waiver is being pursued;
4. Compliance with local regulations such as zoning and permitting requirements or a plan of action to address any changes needed to achieve compliance;
5. The extent to which any Authority or affiliate's wait list may be utilized to achieve project sustainability;
6. The ways in which the Authority's strategic goals are being met;
7. The availability of volume cap or allowance for bond capacity;
8. The financial benefits to the Authority;
9. The apparent quality of design;
10. The experience and capacity of the developer;
11. The function of the financial structure;
12. The impact on the community if the bond issuance does not proceed;
13. The Authority will require evidence as to the feasibility of the proposed development to pay operating expenses and repay the Bonds. To the extent the Bonds require volume cap from the North Carolina Housing Finance Agency and the Tax Reform

Allocation Committee (e.g. Bonds issued under Section 142 of the Code), the Authority will rely on the market and feasibility studies prepared by the applicant in connection with the application for volume cap. The Authority may require copies of such studies be provided to the Authority; and

14. For transactions in which the owner will be a nonprofit organization and the Bonds will be issued under Section 145 of the Code or otherwise not subject to volume cap, the Authority requires a financial review prepared by a third party consultant selected by the Authority; the applicant will be responsible for the cost of such financial review (typically less than \$10,000).

**Bond Issuance Process:** A summary of the process by which the Authority will issue its multifamily housing revenue bonds or other obligations to finance a qualified residential development and the approvals required in connection therewith is set forth in **Appendix B**.

**Timeline for Bond Issuance:** A sample timeline for the issuance of Bonds by the Authority and the required approvals is attached as **Appendix C**.

**Contact at the Authority:** Any questions regarding an application for bond financing should be directed to Jeff Meadows, Senior Development Officer, [jmeadows@cha-nc.org](mailto:jmeadows@cha-nc.org), (704) 353-0324.

**Appendix A**  
**Application for Issuance of Bonds**

1. General Description of Transaction: Provide a general description of the proposed development, including location, description of the neighborhood, targeted population, and description of final site design. Indicate whether it is new construction or rehabilitation. Include the maximum amount of bond financings requested.
2. Developer: Name the Developer or Development team
3. Ownership Structure: Describe the ownership structure and participants
4. Location of Development: Provide a map of the proposed development location that includes current zoning.
5. Financing Structure: To the extent known, describe the proposed financing structure, including any credit enhancements or guarantees, name of director purchaser, construction lender, short bonds, etc.
6. Development Budget: Provide a budget for the proposed development, including:
  - (a) Funding Sources (e.g. bonds, construction lending, tax credits, subordinate and soft loans, deferred developer fees)
  - (b) Funding Uses
  - (c) Operating Budget and pro forma
7. Development Schedule: Provide a schedule for the completion of the proposed development. The schedule should begin with financing activities and end at the anticipated lease-up date.
8. Readiness to proceed: Provide a description of the current status of the proposed development and your readiness to proceed with the proposed development, including status of permits, design, construction, etc.

## **Appendix B**

### **Bond Issuance Process**

1. Bond Counsel. The Authority will select Bond Counsel for the financing along with the Authority's outside counsel. The applicant will be responsible for all Bond Counsel and Authority legal expenses and costs.

2. Volume Cap Application. The applicant is solely responsible for obtaining volume cap from the North Carolina Tax Reform Allocation Committee ("TRAC") for the financing. TRAC bases its allocation awards based on the recommendations of the North Carolina Housing Finance Agency ("NCHFA"). See [www.nchfa.com](http://www.nchfa.com) for information, application and time lines for approval of tax exempt bond financings.

3. Inducement Resolution. The Authority will consider adoption of an inducement resolution following receipt of the application from the applicant. Typically such resolution is adopted between the filing of the initial application with the NCHFA and the final application, but the Authority will consider adoption of such resolution on a different timeline when required so long as an application has been filed with the Authority. The Authority will consider a resolution at its regular meeting on the 3<sup>rd</sup> Tuesday of each month. The application should be filed at least FORTY FIVE (45) days prior to the applicable Board meeting. The applicant should attend this meeting to answer any questions about the development.

4. Public Approval (TEFRA Hearing). After the applicant has received an allocation of bond volume cap from NCHFA and TRAC, the Authority's designated hearing officer will hold a public hearing (the "TEFRA Hearing") as required by Section 147(f) of the Internal Revenue Code. The Authority has designated the Chief Executive Officer (or his designee) as the hearing officer for the purpose of conducting such TEFRA Hearings. The timing of the TEFRA hearing should be coordinated with staff of the Authority; it does not have to be held in conjunction with a board meeting. The applicant is not required to attend this hearing.

The applicant, working with Bond Counsel, shall be responsible for assuring the preparation and publication of the appropriate notice of hearing at least 14 days prior to the hearing and will be responsible for the costs of publication. A report of the hearing will be prepared and given to the City of Charlotte. Following the public hearing by the Authority or its designated hearing officer, the City Council of the City of Charlotte must adopt a resolution approving in principle the issuance of the Bonds. The Authority's counsel, Bond Counsel and Authority staff will coordinate with the City to get on the City Council agenda for this approval. The applicant should be prepared to attend this meeting if requested.

5. Authority Resolutions. In deals in which Local Government Commission approval is required (see item 6 below), the Authority's Board must adopt a "findings resolution," in which it makes certain findings required by the Local Government Commission. This resolution will be adopted at a regularly scheduled meeting of the Authority. The findings that the Authority must make are:

- (a) Whether the undertaking is necessary or expedient.
- (b) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.
- (c) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this

determination, the Local Government Commission may consider the operating entity'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) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State of North Carolina or any political subdivision or by any agency of either of them.

(e) The local government unit's debt management procedures and policies.

(f) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(g) Whether the local government unit is in default in any of its debt service obligations.

In all financings, the Authority's Board will adopt a final authorizing resolution approving the issuance of the Bonds and execution of the bond documents. This resolution will be adopted at a regular meeting of the Authority once the bond documents are in substantially final form and typically following the approval in principle by the City of Charlotte.

In deals requiring Local Government Commission approval, the Findings and Final Resolutions will be passed at the same meeting.

6. Local Government Commission Approval. If needed, the Authority will seek to obtain the Local Government Commission's approval of the financing. The Authority will commence this process at the earliest practical date following Volume Cap allocation and receipt of all necessary information from the applicant. This approval will take place after the Authority adopts its findings and final resolutions and the City Council adopts the approval in principle resolution. Local Government Commission approval is needed if the term of the Bonds is five years or more.

7. Financing Documentation. All financing documents must be submitted to the Authority in hard copy and digital formats.

8. Bond Closing. The closing for the financing will be held at a convenient time and location for the Authority and the other parties to the financing transaction.

9. Applicant Cooperation. A knowledgeable representative of the applicant should appear at each meeting of the Authority and the Authority's Board of Commissioners where the application is considered or an action relating thereto is proposed (other than the public hearing unless specifically requested to do so). The Applicant shall assist the Authority in obtaining any approvals required for the Bond issuance.

**Appendix C**  
**Sample Timeline for Bond Issuance (Tax Exempt Bond/4% Tax Credits)**

<u>Event</u>	<u>Date</u>
Developer submits preliminary application to the NCHFA	Prior to NCHFA Deadline (January)
Charlotte Housing Authority adopts Inducement Resolution	Between submission of preliminary and full application
Developer submits full application to NCHFA	Typically mid May.
Developer receives award of bond volume cap from NCHFA	Mid August
Publish TEFRA notice <i>(Must be at least 14 days prior to the public hearing)</i>	No later than September 1
Public Hearing before Charlotte Housing Authority designated hearing officer	September 15, 2016
Charlotte City Council Approval <i>(The Charlotte City Council holds its business meetings on the second and fourth Monday of each month)</i>	September 26, 2016
Distribute first draft of documents and Authority Resolutions	Week of October 3 <sup>rd</sup>
Distribute second draft of documents and identify Contractor; submit resolution and documents for CHA agenda packet, including identity of contractor	Week of October 24 <sup>th</sup>
Submit LGC Application (if LGC approval required) <i>(Approximately one month prior to the LGC meeting)</i>	Week of October 31 <sup>st</sup>
Charlotte Housing Authority Adopts Findings & Final Resolutions <i>(The Authority's Board meets on the third Tuesday of each month )</i>	November 17, 2016
Local Government Commission Agenda Deadline (documents substantially final) <i>(Approximately 10 days prior to the LGC meeting)</i>	Week of November 21
Local Government Commission Meeting to Approve Bonds <i>(LGC meets the first Tuesday of each month)</i>	December 6, 2016
Pre-closing	December 2016
Closing <i>(Must be at least one week after LGC approval if the meeting at which the LGC approved was an Executive Committee meeting)</i>	December 2016

\* This schedule assumes an award of volume cap in the August 2016 round and that the proposed financing requires the approval of the Local Government Commission. There is a second round of volume cap application in July for a reward in January of the following year. See [www.nchfa.com](http://www.nchfa.com).

**Appendix D**  
**Monitoring Compliance with Affordability Requirements**

1. Annual Certification. The Authority will require that a regulatory agreement containing restrictive covenants obligating the owner to comply with the affordability requirements of the Code (the “Regulatory Agreement”) be filed in the office of the county Register of Deeds. The Regulatory Agreement will require the owner to obtain eligibility information from each tenant, and to provide reports at least annually (or more frequently, at the Authority’s discretion) that include the following information:

- (1) The total number of low income tenants (i.e. tenants whose income does not exceed 60% of AMI, adjusted for family size or 50% of AMI, adjusted for family size, as applicable, and as determined by the Secretary of Housing and Urban Development in a manner consistent with determinations of low income families under Section 8(f)(3) of the United States Housing Act of 1937, as amended).
- (2) The number of units in the development rented and the number of units that are either occupied or available for occupancy, and the number and percentage of such units that are occupied by low income tenants
- (3) A certification that the development has met the applicable percentage of low income tenants as required by the Regulatory Agreement.
- (4) Evidence that all new tenants of the development and all low income tenants whose incomes are subject to annual verification since the date of the immediately preceding report and certification have executed an income
- (5) A rent roll designating the date of initial occupancy, the number of bedrooms, the unit number, the tenant name, the household size (if applicable), and whether the tenant is a low income tenant

2. Inspection rights. The Authority will conduct on-site inspections of the development from time to time, including physical inspection of units and review of the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in the development, including in particular the units occupied by low income tenants. The Authority will randomly select low-income units and tenant records to be inspected and reviewed. The Authority’s inspections will generally occur at least annually.

3. Noncompliance. The Authority will provide prompt written notice to the owner if the Authority does not receive the certification described in (1), or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in (2), or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of the Regulatory Agreement. The owner will have 90 days after receipt of notice of non-compliance to supply any missing certifications and bring the development into compliance with the Regulatory Agreement and the provisions of the Code. The Authority may extend the correction period for up to six (6) months for good cause.