



PROCEDURES FOR POST-ISSUANCE BOND COMPLIANCE

I. GENERAL

The purpose of these Procedures for Post-issuance Bond Compliance (these “Procedures”) is to assist the Texas Department of Housing and Community Affairs (the “Department”) in maintaining and evidencing compliance with the federal tax requirements that apply to its bond financings for “qualified residential rental housing” (the “Multifamily Bonds”). In furthering such purposes, the Department has implemented these Procedures with respect to the following:

- General recordkeeping & record retention
- Timely tax return filings
- Proper and timely use of bond proceeds
- Arbitrage - yield restriction and rebate
- Property compliance and tenant eligibility
- Reissuance requirements
- Corrective action

The purpose of these Procedures is to (i) improve the Department’s ability to prevent violations from occurring and (ii) in instances where violations have occurred, ensure that such violations are corrected so that the tax-exempt status of the bonds is not affected. These Procedures apply to any obligations to which Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 (the “Code”) apply, whether or not such obligations are in fact tax-exempt. For example, these Procedures will be followed with respect to any issue of tax credit bonds to which such sections of the Code apply. Moreover, the Department is responsible for compliance with any requirements set forth in subsequent rulings and other advice published by the Internal Revenue Service (the “IRS”) as such authorities may apply to the Department and its obligations.

II. RESPONSIBLE PARTIES

The Department acts as a conduit issuer of multifamily bonds and, upon issuance, proceeds of the bonds are immediately loaned to a multifamily residential housing developer (each, a “Borrower”) that is responsible for the acquisition, construction or rehabilitation and equipping of the applicable qualified residential rental development (each, a “Development”). The bonds do not constitute an obligation, debt or liability of the Department, but are instead payable from revenues on the mortgage note. As part of its compliance efforts, the Department contractually requires each Borrower to take actions to maintain

compliance with the requirements in the Code relating to the Multifamily Bonds. In addition to the compliance efforts required of a Borrower, multiple divisions within the Department are involved in various aspects of overall compliance and may request documentation from a Borrower as appropriate to fulfill its responsibilities, specifically in the following capacities:

Multifamily Bond Division – This division is responsible for the issuance of multifamily bonds, including the coordination of the inducement, certificate of bond reservation, and substantially final bond documents for Board consideration and bond closing. This division coordinates with the Multifamily Finance and Real Estate Analysis divisions for the application review and underwriting analysis, respectively.

Bond Finance Division – This division is responsible for the ongoing post-closing bond compliance monitoring of the Department's Multifamily Bond issues. Specifically, this division monitors the overall transaction to ensure they are compliant with the bond covenants, as further described in the bond documents.

Financial Services Division – This division is responsible for the ongoing administration of the financial status of the bonds and accounts for the monthly reporting activity and reconciliation of the fund accounts based on information provided by the trustee for each issue of Multifamily Bonds.

Compliance Division - This division is responsible for ensuring housing program compliance with federal and state regulatory mandates through established oversight and monitoring procedures. Onsite monitoring visits and desk reviews are mechanisms used for in-depth reviews and overall assessment, respectively.

The Department will seek to identify training programs and materials regarding compliance requirements of the Code to the parties responsible for the oversight of bond-financed properties.

In recognition of the role a Borrower plays in assisting the Department in monitoring for the continuing compliance of the Development and the related Multifamily Bonds, the Department will post these Procedures on the Department's website in a location that is accessible to Borrowers. A Borrower's signature on the Tax Exemption Agreement will constitute acknowledgement of access to, and the review of, these Procedures.

III. GENERAL RECORDKEEPING & RECORD RETENTION

The Department (as further specified in parentheses below) will maintain a copy of the following documents on file at all times:

- Audited Financial Statements (as uploaded by each Borrower through the Compliance Monitoring and Tracking System (“CMTS”)); and
- Reports of any examinations by the IRS regarding the Department's Multifamily Bond issues (maintained by Multifamily Bond Division).

With respect to each issue of obligations, the Department will retain, or will require a third party to retain, the following for the life of the obligations (including the life of any obligations issued to refund the original debt) plus three years:

- Bond transcript, including authorizing documents, offering document, the federal tax documents (including certificates regarding issue price);
- Minutes and resolution(s) authorizing the issue;
- Appraisals, environmental site assessments and feasibility studies for the bond-financed property;
- Any formal elections (*e.g.*, election to employ an accounting methodology other than specific tracing);
- Records relating to the payment of debt service (including credit enhancement);
- Documentation relating to arbitrage compliance, as described in Section V “Arbitrage – Yield Restriction and Rebate - Recordkeeping”;
- Documentation relating to the use of the Development, including Tenant Income Certifications and the Quarterly Unit Status Reports;
- Documentation relating to the investment of any bond proceeds (*e.g.* trustee statements, trade confirmations);
- Rebate compliance reports;
- Related IRS filings (*e.g.* Form 8038-T Rebate, Form 8703 Annual Certification);
- IRS correspondence regarding such property; and
- Other documentation that is material to the particular requirements applicable to the tax status of the financing.

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in an organized, accessible format that preserves the accuracy of such documents.

IV. EXPENDITURE OF BOND PROCEEDS

General

Pursuant to the bond documents for each issue of Multifamily Bonds, the Department delegates general day-to-day oversight of the expenditure of bond proceeds (including investment earnings) to the Trustee, in which expenditures are to be made in accordance with disbursement requests from a Borrower in the form provided in the bond documents. Pursuant to the bond documents, the Trustee will make available statements regarding expenditures of bond proceeds that are reviewed by the Financial Services division of the Department. The Financial Services Division will request any clarification regarding the statements and expenditures from the Trustee and/or Borrower, as appropriate.

Upon receipt of statements from the Trustee, the Financial Services Division will track expenditures from the various accounts to monitor whether such expenditures are made in a timely manner for the purposes

for which the bonds were authorized to be issued. In connection therewith, all proceeds of a bond issue (including investment earnings) are to be allocated to expenditures by the later of 18 months after the expenditure was made or the date the property is placed in service (and in no event, later than 60 days after [i] the fifth anniversary of the issuance date or [ii] retirement of the issue). With respect to the reimbursement of any expenditure paid prior to the issuance date of the bonds, such reimbursement allocation to bond proceeds is to be made not later than 18 months after the later of (i) the date the original expenditure is made or (ii) the date the project is placed in service, but in no event more than three (3) years after the original expenditure is paid and for the reimbursement of expenditures paid on or after 60 days prior to the date of a reimbursement resolution (including for this purpose an inducement resolution).

The Financial Services Division will provide the Bond Finance and Multifamily Bond Divisions with a report detailing the spending levels relating to bond proceeds at least six months prior to the third anniversary of the issuance date. Any clarification that may need to be made regarding the spending levels of bond proceeds will be made by the Bond Finance Division with the Trustee and/or Borrower, as appropriate.

Recordkeeping

With respect to each issue of obligations, the bond documents require a Borrower to retain and make accessible to the Department, upon request, the following for the life of the obligations plus three years:

- Documentation of allocations of bond proceeds to expenditures (*e.g.*, allocation of bond proceeds for expenditures relating to the cost of acquisition, construction and equipping of a qualified residential rental property);
- Documentation of allocations of bond proceeds to bond issuance costs;
- Copies of all requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to bond proceeds spent during the construction period;
- Copies of all contracts entered into for the cost of acquisition, construction and equipping of the property;
- Records of expenditure reimbursements incurred prior to issuing bonds for the bond-financed property;
- List or schedule of all bond-financed properties or equipment;
- Depreciation schedules for bond-financed depreciable property; and
- Documentation of any purchase or sale of bond-financed assets.

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in an organized, accessible format that preserves the accuracy of such documents.

V. ARBITRAGE – YIELD RESTRICTION & REBATE

General

The Department has contractually delegated responsibility for the timely computation and remittance of any arbitrage liability owned to the IRS in connection with the obligations by obligating each Borrower and Trustee to comply with the yield restriction requirements of section 148(a) of the Code and the rebate requirements of section 148(f) of the Code.

Pursuant to the terms of the bond documents, a Borrower must hire a rebate analyst to monitor compliance with rebate and yield restriction rules and will pay when due the reasonable fees and expenses in connection with the computations relating to arbitrage rebate. The bond documents require that a Borrower timely file the Form 8038-T information report (or such other series 8038 form as may be applicable to a specific issue of bonds) with the IRS and to provide a copy of the filed form to the Department. If no rebatable arbitrage has been earned in connection with the bond issue then the bond documents require a Borrower to provide the Department (as Issuer) with a signed statement to such effect not later than the required deadline as stated in the Tax Exemption Agreement.

Recordkeeping

With respect to each issue of obligations, the bond documents require that the Trustee and the Borrower retain the following for the life of the obligations plus three years and that such parties will make the documents available to the Department:

- Documentation of allocations of investments and calculations of investment earnings
- Documentation for investments of the bond proceeds related to:
 - a) Investment contracts (*e.g.*, guaranteed investment contracts)
 - b) Credit enhancement transactions (*e.g.*, bond insurance contracts)
 - c) Financial derivatives (*e.g.*, swaps, caps, etc.)
 - d) Bidding of financial products
- Documentation regarding arbitrage compliance, including:
 - a) Computation of bond yield
 - b) Computation of rebate and yield reduction payments
 - c) Form 8038-T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*
 - d) Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents.

VI. PAYMENTS ON THE BONDS

The Trustee is responsible for documenting the amount of principal and interest payable on each payment date for the bonds, based on the amortization schedule or other form provided in the bond documents for the issue. Periodically, and no less frequently than annually, the Financial Services division of the Department will review the amount of the principal and interest payments against existing sinking fund schedules to verify that proper payments have been made and that the flow of funds conform to the requirements in the Trust Indenture or Funding Loan Agreement, as applicable to the Multifamily Bond issue. The Financial Services division will communicate any deviations with respect to the amount or flow of payments made to the Multifamily Bond Division and Bond Finance Division. Such deviations will then be discussed and/or clarified with the Trustee and/or Borrower and documented in the Department's records accordingly.

VIII. DEVELOPMENT, TENANT ELIGIBILITY AND OTHER REQUIREMENTS

General

Pursuant to the bond documents, each Borrower has covenanted and agreed that the Development will be operated and maintained on a continuous basis during the qualified project period in a manner that will preserve the tax-exempt status of the related issue of Multifamily Bonds. A Borrower¹ is responsible for ensuring the residential units in the property are occupied by individuals whose income does not exceed the applicable income limit for the elected set-aside test as identified in the Bond Regulatory and Land Use Restriction Agreement. Moreover, a Borrower is responsible for ensuring the property includes the required amenities and supportive services as identified in the Bond Regulatory and Land Use Restriction Agreement. Borrowers are required to maintain sufficient documentation to evidence that services are being provided.

Lease requirements, annual recertifications and student requirements are explained in more detail in Chapter 10 Subchapter F of the Texas Administrative Code, as amended from time to time, relating to the Department's Compliance Monitoring rules. Moreover, Borrowers must provide housing that is decent, safe, sanitary, in good repair and suitable for occupancy throughout the State Restrictive Period. The Department will use the Department of Housing and Urban Development's ("HUD") Uniform Physical Condition Standards ("UPCS") to determine compliance with property condition standards. Additionally, the property must comply with all local health, safety and building codes. For properties that also have been awarded Housing Tax Credits, the Department is required to report any property that fails to comply with any of the UPCS requirements or local codes at any time to the IRS via Form 8823 regardless of whether such finding is corrected.

¹ While ultimately it is the Borrower's responsibility to maintain compliance with occupancy requirements, the Department acknowledges the Borrower may hire and subsequently designate a property management company to perform this function on their behalf.

As part of its oversight responsibility, the Compliance Division of the Department will perform on-site monitoring inspections confirming the presence of such amenities and services in addition to overall compliance with the Multifamily Revenue Bond Program and Housing Tax Credit programs, as applicable, regarding tenant eligibility as well as other applicable state and federal requirements. Further the Compliance Division of the Department will review the following, as received:

1. Annual Owner Compliance Report

Every property is required to submit an Annual Owner's Compliance Report ("AOCR") to the Department no later than the last day of April of each year. The submission of the first AOCR is due the second year following the allocation (*e.g.* for an allocation in calendar year 2020, the first AOCR is due in 2022). Part of the AOCR includes the submission of IRS Form 8703. Properties must submit the Form 8703 each calendar year of the qualified project period to the IRS by March 31 after the close of the calendar year for which the certification is made; such Form 8703 must be submitted to the Department as part of the AOCR. Requirements regarding the AOCR can be found in 10 TAC Chapter 10 relating to the Department's Compliance Monitoring Rules.

2. Quarterly Unit Status Report

Each Development must submit a Quarterly Unit Status report to the Department through the Department's online reporting system (*i.e.* CMTS). Such quarterly reports are due in January, April, July and October on the 10th day of the month and must report vacancy as of the last day of the previous month for the reporting period. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

3. Notices to the Department

Borrowers are required to notify the Department of the date 10% of the units are occupied and the date 50% of the units are occupied within 90 days of such dates pursuant to 10 TAC §10.609(3) of the Department's Compliance Monitoring rules. This form (*i.e.* Qualified Project Period form) is provided as an Exhibit to the Bond Regulatory and Land Use Restriction Agreement.

Recordkeeping

With respect to a Development, the bond documents require that a Borrower retain the following until the date that is three years after the end of the qualified project period and that such Borrower will make the documents available to the Department:

- Tenant Income Certifications and all related tenant eligibility documents;
- Form 8703, *Annual Certification of a Residential Rental Project*;
- Annual Owner's Compliance Report; and
- Quarterly Unit Status Report.

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents. A Borrower must submit the aforementioned documents to the Department to the extent required under the Bond Regulatory and Land Use Restriction Agreement and 10 TAC Chapter 10, Subchapter F, relating to the Department's Compliance Monitoring Rules.

IX. REISSUANCE

Prior to making any changes to the terms of an existing obligation, including its underlying security, the Department will consult with its bond counsel to determine whether such change will result in the reissuance of such obligation under state law as well as for federal tax law purposes. If it is determined that a change will result in a reissuance, the Department's bond counsel will draft the necessary bond documents for consideration by the Department's Board. A Borrower will be responsible for coordinating the recalculation of yield, the filing of a new Form 8038-G and the payment of rebate obligations, as is necessary to maintain the tax status of the bonds.

X. CORRECTIVE ACTION

Reports regarding the aforementioned compliance policies with respect to any issue of bonds will be created by each of the Department divisions as identified in Section II "Responsible Parties" at the end of each calendar year. At such time, the Department divisions, collectively, will determine whether any corrective action is required with respect to the applicable issue. To the extent violations with any of the aforementioned compliance policies are identified and corrective action requires immediate action, then the Department divisions noted in Section II, with assistance from the applicable Borrower and/or Trustee, as applicable, will work cooperatively and diligently to resolve the outstanding issue.

A corrective action may be required if, for example, it is determined and the Department has been made aware that bond proceeds were not properly expended, the issue of bonds is not in compliance with the arbitrage requirements imposed by the Code or a Borrower has taken a deliberate action that results in impermissible private business use. If the Department determines or is advised that corrective action is necessary with respect to any issue of its obligations, the Department will, as may be applicable, in a timely manner:

- Seek to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31 (or any successor notice thereto);
- Take remedial action described under 26 CFR 1.142-2;
- Take such other action as recommended by its bond counsel; and/or
- Work with the applicable Borrower to resolve the identified non-compliance.