

TAX-EXEMPT MULTIFAMILY HOUSING FINANCING PROGRAM

Summary of Key Steps, Sequence and Timing

The Fairfax County Redevelopment and Housing Authority (FCRHA), under authority granted by state and federal law, began a tax-exempt financing program in the late 1970s to facilitate the development and preservation of affordable housing. Through tax-exempt financing, the FCRHA is able to provide a vehicle for private developers to obtain below-market interest rate mortgages to acquire, construct and rehabilitate multifamily developments. In return for this favorable financing, developers are required to rent a specified percentage of the units in the project to low-to-moderate-income persons in accordance with the requirements of federal law pertaining to tax-exempt bonds.

The FCRHA Tax-Exempt Multifamily Housing Financing Program is intended, among other things, to:

- Encourage the creation of new rental housing units, as well as the preservation of existing rental units; and
- Ensure that not less than 20 percent of the units in a rental development are rented to lower-income households.

Under the requirements of the Tax Reform Act of 1986, multifamily rental projects financed with tax-exempt bonds must be rented to tenants in one of two categories:

1. 20 percent of the units must be rented to tenants whose income does not exceed 50 percent of the Metropolitan Statistical Area (MSA) median income, adjusted for family size; or
2. 40 percent of the units must be rented to tenants whose income does not exceed 60 percent of the MSA median income, adjusted for family size.

At the time the bonds are issued, the Developer/Owner of the project must elect which of the two income limitations will apply to the project. That election is irrevocable and will apply to the project for the duration of the “qualified project period” as specified under federal law and any additional time period that may be required by FCRHA.

Multifamily projects initially financed with tax-exempt bonds issued prior to the effective date of the Tax Reform Act of 1986 (August 16, 1986) remain subject to the income limitations in place prior to the Tax Reform Act of 1986 – namely, 20 percent of the units must be rented to tenants whose income does not exceed 80 percent of the MSA median income, with no adjustment for family size. Bonds issued to finance these projects may be refunded with the issuance of new tax-exempt bonds without becoming subject to the more restrictive income limitations of the Tax Reform Act of 1986.

The following is a summary of the key steps to apply for tax-exempt multi-family housing bonds:

1. **Pre-application Meeting:** Meeting to be held between Developer/Owner and staff of the Fairfax County Department of Housing and Community Development (HCD) to discuss the project and the requirements of the FCRHA.
2. **Application Submission:** Developer/Owner submits Application Form and Application Materials and non-refundable application fee of \$5,000 to FCRHA. In addition, the Developer/Owner executes an engagement letter with Bond Counsel pursuant to which the Developer/Owner is obligated to pay Bond Counsel's fees and expenses (whether or not the bonds are issued) and deposits a \$10,000 retainer with Bond Counsel which will be applied as a credit against the total fee at closing (or if the financing does not close, at the time the balance of the fee is due).
3. **Staff Analysis and HCD Loan Underwriting Committee Review:** Once the entire application is received, HCD will finalize its analysis and it will be reviewed by the HCD Loan Underwriting Committee.
4. **Declaration of Intent Executed:** The Declaration of Intent (sometimes referred to as an "inducement resolution") is a conditional statement of the intent by the FCRHA to consider the future issuance of tax-exempt bonds for a given project. A Declaration of Intent is not required under federal tax law and is not applicable to the issuance of refunding bonds for existing projects. However, a Declaration of Intent is important in the case of new construction financings because only those development costs incurred on or after 60 days prior to the Declaration of Intent are eligible for reimbursement with proceeds of the tax-exempt bonds.
5. **Formal Project Presentation by Developer/Owner to FCRHA:** The Developer/Owner will make a presentation to the FCRHA at the next regular meeting (or at a special meeting) following the Declaration of Intent (if applicable) and prior to the TEFRA Hearing.
6. **Publication of Notice of TEFRA Hearing and TEFRA Hearing Held at Regular or Special Meeting of FCRHA:** As required by law, FCRHA will hold the federally required TEFRA Public Hearing. The Internal Revenue Code requires issuing agencies to hold Tax Equity and Fiscal Responsibility Act (TEFRA) hearings to provide the public the opportunity to comment on projects. At the conclusion of the TEFRA hearing, the FCRHA will authorize submitting the proposal for tax-exempt bond financing to the Fairfax County Board of Supervisors.
7. **Board of Supervisors Resolution:** Consistent with the requirements of TEFRA, the Board of Supervisors will be asked to approve the bond issuance. Under state law, approval by the Board of Supervisors Resolution is required to occur within 60 days after the TEFRA Hearing. Comments, if any, received at the hearing will be incorporated into the Board Item for consideration.
8. **Supplemental Application Materials Submission:** The Developer submits all Supplemental Application Materials. These will be reviewed by HCD staff following complete and acceptable package.

9. **Bond Financing Document Production:** One week prior to the FCRHA meeting at which the final Bond Resolution will be considered, Bond Counsel will deliver to HCD bond financing documents in substantially final form.
10. **Final Bond Resolution:** At a FCRHA meeting, the FCRHA Commissioners will act on a final Bond Resolution to approve (i) the issuance of the Bonds, (ii) the execution and delivery of the bond documents, (iii) the execution and delivery of a bond purchase agreement, (iv) the form of the Official Statement (if the bonds are publicly offered) and (v) the Underwriter for the bonds.
11. **Bond Closing:** The Bond Closing is held in the offices of Bond Counsel. At the closing, the Bonds are issued and all documentation is executed and delivered, including delivery of the credit rating on the bonds if the bond issue is publicly offered.