

GUIDELINES FOR ISSUANCE OF BONDS  
OF  
AIKEN HOUSING AUTHORITY

September 2021

**Section I - Background and Purpose**

The Authority is a public body organized and existing under the Housing Authorities Law of the State of South Carolina, S.C. Code Ann. Section 31-3-10, et seq (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 “provide quality affordable housing that serves as a foundation to improve lives” in the City of Aikens and Aiken County.”

In 1986, the South Carolina Legislature granted city, county, and regional housing authorities (“Housing Authority”), the same powers that the State Housing Finance and Development Authority (the “State Housing Authority”) has to issue multifamily housing revenue bonds on behalf of for-profit and nonprofit developers. (Act No. 369 of 1986; S.C. Code Section 31-13-90). In order fulfill this purpose, the Authority 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 Aiken 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,
- at least twenty percent (20%) of the units must be leased to residents whose income is fifty percent (50%) or less of AMI.

State law requires with respect to the remaining units:

- such units be leased to residents whose combined gross income does not exceed 150% of the State's median income, adjusted by the addition of an amount equal to the personal exemption for federal income tax purposes for each household member,

**or**

- the Authority shall regulate the rentals, charges, profits, and income from such units during the term of the Bonds,

**or**

- a combination of such income restrictions and rent regulation for such units.

If the Bonds are to be issued to finance a non-competitive ( 4%) Low Income Housing Tax Credit ("LIHTC") project, the terms and duration of the LURA will be amended for compliance with Section 42 of the Code.

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 federal and State law restrictions set forth above, and additionally the requirements set forth in Revenue Procedure 96-32 that at least 75% of total units will be leased to residents whose income is 80% or less of AMI.

**Servicing:** Once the development is placed in service, the Authority will have certain reporting and monitoring requirements. The LURA 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 closing fee of 0.75% of the principal amount of the Bond issue payable at the Bond closing.

(d) Because SCSHFDA has responsibility for monitoring the LIHTC program in South Carolina, it will charge the developer an annual monitoring fee of \$50.00 per unit for that service.

(e) An annual reporting fee due on January 15<sup>th</sup> of each year after issuance of the Bonds equal to the greater of \$50 per unit or 0.125% of the outstanding (unpaid) principal balance of the Bonds for the 15-year tax credit compliance period.

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

### **Section III – Initial Application, Project Proposal, and Bond Issuance Process**

**Initial 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 submit an Initial Application, along with requested documents and the initial application fee, to the Authority. The purpose of the Initial Application is to obtain a general picture of the proposed development and of the Developer's capacity to carry out the project as envisioned. The Initial Application (further described in **Appendix A**) requests information about the Developer, including initial financial data and a history of similar complete projects; a description of the proposed project; evidence of site control; preliminary site plan, floor plans, and elevation (if available); a pro forma indicating projected total development costs, including construction and financing costs, rental rates, and all expected sources of funding, including the total amount of bond financing anticipated; the expected type of bond financing (such as short-term cash collateralized, long-term institutionally placed, or long-term credit enhanced); and any operational enhancements (such as vouchers). Following receipt of the Initial Application, staff will review it and, if appropriate, recommend it to the Board of Commissioners of the Authority for approval of an inducement resolution with respect to the financing of the development (the "Inducement Resolution").

The Initial Application **MUST** be submitted to the Authority not less than thirty (30) 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 fourth Tuesday of each month; however, the applicant should check with the Authority to confirm that schedule as meeting times can change. The Authority will make every effort to complete its review within a 3-day period. However, the Authority may, in its discretion, extend the review period as it deems necessary to ensure the project complies with the requirements of these Guidelines.

**Initial Application Fee:** The non-refundable application fee in the amount of \$2,500 or \$20.00 per unit, whichever is greater, is required at the time the Initial Application is submitted for consideration. This fee is current as of November 2020, but may be adjusted from time to time and applicants should contact the Authority offices to obtain information on the current fee structure.

**Project Proposal:** Following a positive review and approval of the Initial Application and Inducement Resolution by the Authority, the Developer will be invited to complete and submit a full Project Proposal. The purpose of the Project Proposal is to enable the Authority Staff to conduct a thorough and in-depth evaluation of the Developer and the proposed project. It is the responsibility of the Developer to satisfy the Authority Staff, at the Authority's sole discretion, that the project is viable and will provide the benefits described. To accomplish this, the Developer may be asked to provide additional information or to elaborate on information requested.

For projects applying for non-competitive (4%) Low Income Housing Tax Credits ("LIHTCs") with SCSHFDA, the Project Proposal shall consist of a copy of the entire Tax Credit Application submitted to SCSHFDA. The Authority requires one hard copy and a thumb drive version. For those projects not seeking LIHTCs (usually non-profit 501(c)(3) organizations), the Project Proposal shall consist of the Project Proposal and associated documents set forth in **Appendix E**.

The Developer will also be required to include with the Project Proposal all documentation and information that will be required to be submitted as part of the agenda package for the State Fiscal Accountability Authority (the "SFAA") to allocate State Volume Cap and give State law approval for the issuance of the Bonds. A list of those items is set forth in **Appendix F**.

The Authority Staff will make every effort to complete its review of the Project Proposal within a 30-day period. But Authority Staff approval is not final until SCSHFDA's approval of the LIHTC application. Upon a positive review and approval by Authority Staff, the Chief Executive Officer of the

Authority may submit the agenda package to the SF AA for its review, State law approval, and allocation of Volume Cap for the Bonds (if required).

**Protect Proposal Fee:** A Project Proposal shall be accompanied by a non-refundable fee in the amount of \$10,000. This fee is to cover costs associated with the evaluation process, including but not limited to staff evaluation; attorneys, consultants, and bond counsel fee; fees and expenses for the third-party financial review (if any); publication and other costs associated with the TEFRA public hearing; long-distance telephone, fax, photocopying, travel, and printing charges. In the event the Authority's direct costs exceed \$10,000, the Developer will be required to reimburse the Authority for those additional costs upon receipt of an invoice. 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), there will be no refund of the Project Proposal Fee.

**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 local regulations such as zoning and permitting requirements or a plan of action to address any changes needed to achieve compliance;
4. The extent to which any Authority or affiliate's wait list may be utilized to achieve project sustainability;
5. The ways in which the Authority's strategic goals are being met;
6. The financial benefits to the Authority;
7. The apparent quality of design;
8. The experience and capacity of the developer;
9. The function of the financial structure;
10. The impact on the community if the bond issuance does not proceed;
11. The Authority will require evidence as to the feasibility of the proposed development to pay operating expenses and repay the Bonds.

**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 Chanosha Lawton, Chief Executive Officer, [clawton@aikenhousing.org](mailto:clawton@aikenhousing.org), (803) 617-7978.

**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**

The timeline of the Authority's issuance process is largely set by (i) the timing of the Developer's submission of the Initial Application to the Authority, (ii) approval of the Tax Credit Application by SCSHFDA, (iii) the meeting schedule of the SF AA, and (iv) timing of approvals and closings for the Developer's other sources of financing, including any construction loans, permanent loans, and equity financing.

1. Bond Counsel. The applicant, in consultation with the Authority, will select Bond Counsel for the financing. The applicant will be responsible for all Bond Counsel and Authority legal expenses and costs.

2. Inducement Resolution. The Inducement Resolution serves as the first step in the issuance process. The Authority will consider adoption of an Inducement Resolution following a positive review of the Initial Application by the Authority Staff. The Inducement Resolution is intended to satisfy the reimbursement requirements under United States Treasury Regulation 1-150.2. The Initial Application should be filed at least THIRTY (30) days prior to the applicable Board meeting. A representative of the applicant should attend this meeting to answer any questions about the development.

3. Public Approval (TEFRA Hearing). After submission of the Project Proposal, the Developer, working with Bond Counsel, the Authority's Counsel, and Authority Staff, shall be responsible for scheduling the TEFRA approval by the Aiken's City or County Council. Publication of the appropriate notice of hearing (to be prepared by Bond Counsel) must occur at least 7 days prior to the hearing. The Project Proposal Fee will be used to pay for the costs of publication. Following the public hearing, the City Council of the City of Aiken must adopt a resolution approving in principle the issuance of the Bonds. A representative of the Developer should be prepared to attend this meeting if requested. Authority Staff approval of the Project Proposal may not be given prior to the completion of the TEFRA public approval process.

4. SFAA State Law Approval and Volume Cap Allocation. After (a) Staff Approval of the Project Proposal and (b) SCSHFDA approval of the LIHTC Application (if applicable), the Developer, working with Bond Counsel, may schedule submitting the agenda package for SF AA State law approval and, for Bonds requiring an allocation of State Volume Cap, the Preliminary Volume Cap Allocation for the Bonds. The SFAA typically meets only approximately seven (7) times per year. There is also a relatively early agenda deadline for the SFAA meetings (usually more than 30 days), by which deadline all documents required for the agenda package must be submitted to the SF AA. A representative of the applicant usually does not need to attend the SF AA meeting. See <https://sfaa.sc.gov/meetings> for information regarding the SF AA meeting schedule. See **Appendix F** for a list of documents and information to be included in the SF AA agenda package. The Authority reserves the right to prioritize its own projects for submission to the SFAA over those of the applicant.

5. Authority Bond Resolution. In all financings, the Authority's Board must adopt a final Bond Resolution approving the issuance of the Bonds and execution of the Bond documents. The Bond Resolution will be adopted at a regular meeting of the Authority after the bond documents are in substantially final form, and typically following the approvals by the City Council of the City of Aiken and the SFAA, and preliminary allocation of Volume Cap, as described above.

6. State Treasurer's Final Approval of Terms of the Bonds. The SFAA approvals described in paragraph 4 above are given conditioned upon final approval of the terms of the Bonds, including interest rates, by the State Treasurer. After the terms of the Bonds are finalized (typically following pricing of the

Bonds or firm commitment by an institutional lender of the final interest rate), the Developer must update the schedules of debt service and pro formas that were submitted as a part of the SFAA agenda package to reflect the actual final rates and other terms of the Bonds. Bond Counsel will submit those updated schedules, together with appropriate legal documents and certifications, to the State Treasurer for his review and approval.

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

8. Bond Closing. Upon successful completion of all actions described above, 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, usually in conjunction with closing on the Developer's other sources of funding, including other construction and permanent loans and LIHTC and other equity funding.

9. Applicant Cooperation. A knowledgeable representative of the Developer 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. The Developer shall assist the Authority and Bond Counsel in obtaining any approvals required for the Bond issuance.

10. Post-Closing. Applicant will provide annually, at the Authority's request, a schedule showing a) annual debt service requirements for the bonds, and b) the amount and source of revenues available annually for the payment of the annual debt service on the bonds.

## Appendix C

### Sample Timeline for Bond Issuance (Tax Exempt Bond/4% Tax Credits)

Note that in this sample timeline, 60 days have been allowed between adoption of the Inducement Resolution and submission of the Tax Credit Application to SCSHFDA and the Authority; if less time is needed by the Developer to prepare the Tax Credit application, it may be submitted sooner, thereby shortening the Bond Issuance Process.

<u>Event</u>	<u>Date</u>
Developer submits Initial Application to Aiken Housing Authority	January 15
Aiken Housing Authority adopts Inducement Resolution <i>(Usually 1<sup>st</sup> meeting following 30-day review period)</i>	February 23
Developer submits Project Proposal to Aiken Housing Authority <i>(Usually on same day as LIHTC Application is submitted to SCSHFDA)</i>	April 23
Publish TEFRA notice <i>(Must be at least 14 days prior to the public hearing)</i>	May 1
Public Hearing and Aiken City Council Approval <i>(Aiken City Council holds its business meetings on the second and fourth Mondays of each month)</i>	May 24
Authority staff Approval of Project Proposal <i>(May not occur until after SCSHFDA approval of LIHTC Application)</i>	May 25
Distribute first draft of documents and Authority Bond Resolution	June 21
Submit SFAA Agenda Package <i>(Approximately one month prior to the SFAA meeting)</i>	July 9
Distribute second draft of documents	July 21
Submit agenda package to Authority for final Bond Resolution	August 17
SFAA Meeting to Approve Bonds and Preliminary Volume Cap Allocation	August 17
Aiken Housing Authority Adopts Bond Resolution <i>(The Authority's Board meets on the third Tuesday each month)</i>	August 24
Bond Pricing	September 7
State Treasurer's Approval of Final Terms of Bonds	September 10
Final Volume Cap Allocation by SFAA staff	September 13
Pre-closing	September 21
Closing	September 22



## **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.

**Appendix E**  
**Project Proposal Application**  
**(For 501(c)(3) Bonds only)**

**The 501(c)(3) Bond Application is available in electronic format upon request.**

## Appendix F

### Materials & Information Required for SFAA Approval

<b>Item</b>
Project description
Complete sources and uses of funds
Copy of Verification Report (only for short-term) cash-backed bonds
Description of Manger's experience and copy of Management Agreement
[For Public Offering of Bonds: Evidence of Investment Grade Rating, Federal Guarantee, Insured Mortgage, or Adequate reserves or insurance]
[For Private Placement of Bonds: Avoidance of default language]
[Evidence of Mandatory redemption at par in the event of taxability]
[Copy of Offering document disclaimer, if applicable]
Two copies of Borrower's audited financial statements
Copy of Market Study
SFAA's Disclosure Form for each Private Participant

<p>Pro Forma Schedules for the entire term of bonds:</p> <p>annual revenues and expenditures;</p> <p>net revenues available for debt service;</p> <p>debt service on the bonds (including interest rate(s);</p> <p>and debt service coverage ratios</p>
<p>Schedules for all bonds and other obligations of the Authority showing annual net revenues available for debt service and debt service payments</p>
<p>Commitment letters (or comparable evidence) for all funding sources, including credit enhancement for bonds</p>
<p>Filing Fee - \$3,000</p>