

# Chapter 262-01 WAC

## ORGANIZATION AND PROCEDURES

### WAC

262-01-010	Purpose.
262-01-020	Definitions.
262-01-030	Description of organization.
262-01-040	Meetings.
262-01-050	Public records.
262-01-060	Selection of bond counsel.
262-01-070	Selection of underwriters.
262-01-080	Use of proceeds consistent with plan.
262-01-090	Fair and equitable distribution of bond proceeds.
262-01-100	Financing energy efficiency improvements.
262-01-110	Contents of the qualified allocation plan.
262-01-120	Procedures for adopting the plan.
262-01-130	Tax credit program.
262-01-140	Private activity bond allocation.

**WAC 262-01-010 Purpose.** This rule is promulgated pursuant to (section 4(3), chapter 161, Laws of 1983) which directs that the Washington state housing finance commission has authority to implement the provisions of chapter 161, Laws of 1983. The purpose of these rules is to insure compliance by the Washington state housing finance commission with the provisions of chapters 34.04 and 42.17 RCW.

[Statutory Authority: Chapter 43.180 RCW. WSR 84-04-042 (Resolution No. 84-1), § 262-01-010, filed 1/27/84.]

**WAC 262-01-020 Definitions.** (1) "Act" means chapter 161, Laws of 1983.

(2) "Commission" means the Washington housing finance commission.

(3) The terms defined in the act shall have the same meaning when used in these rules.

[Statutory Authority: Chapter 43.180 RCW. WSR 84-04-042 (Resolution No. 84-1), § 262-01-020, filed 1/27/84.]

**WAC 262-01-030 Description of organization.** (1) The commission is a public body, corporate and politic, with perpetual corporate succession. The commission is an instrumentality of the state of Washington, exercising essential government functions and, for the purposes of the United States Internal Revenue Code, acts as a constituted authority on behalf of the state of Washington when it issues bonds pursuant to chapter 161, Laws of 1983.

(2) Members. The commission shall consist of the members provided for and appointed in accordance with section 4(2), chapter 161, Laws of 1983.

(3) Officers. The officers of the commission shall be:

(a) A chair of the commission, who shall be appointed by the governor as chair and who shall serve on the commission and as chair of the commission at the pleasure of the governor;

(b) A vice chair, who shall be selected by the commission from among its membership and shall serve as chair in the absence of the appointed chair;

(c) A secretary, who shall be the state treasurer, who is a member of the commission ex officio, and who shall serve as secretary of the commission by virtue of his or her office;

(d) A treasurer, who shall be selected by the commission from its membership. The treasurer shall have custody of and be responsible for all moneys and obligations of the commission and shall deposit such moneys in such banks or other financial institutions as the commission may designate from time to time; or shall invest such moneys not required for immediate disbursement, as the commission may direct from time to time.

(4) Staff services. The commission may employ such staff or temporary staff as it may from time to time direct by motion or by resolution. The commission may from time to time, by motion or by resolution, employ, contract with, or engage engineers, architects, attorneys, financial advisors, bond underwriters, mortgage lenders, mortgage administrators, housing construction or financing experts, other technical or professional assistants, and such other personnel as are necessary. The commission may delegate to the appropriate persons the power to execute legal instruments on its behalf.

(5) Powers. Except as provided in subsection (6) of this section, the commission may by motion or by resolution exercise any or all of the powers specified in chapter 161, Laws of 1983.

(6) The commission may exercise its powers under section 5, chapter 161, Laws of 1983, only by resolution. In order to be effective, each resolution must be adopted by a majority of the commission present and voting at a duly constituted meeting in accordance with WAC 262-01-040, and must be signed by the chair and attested to by the secretary of the commission.

(7) Minutes. In order to be effective, the minutes of any meeting of the commission must be adopted by a majority of the members of the commission present and voting at a duly constituted meeting of the commission in accordance with WAC 262-01-040, and signed and attested to by the secretary of the commission.

(8) Designees. Subject to the approval of a majority of the commission present and voting at a duly constituted meeting in accordance with WAC 262-01-040, an ex officio member of the commission identified in RCW 43.180.040 (2)(a) or (b) may appoint a designee in writing to act on his or her behalf. Upon such approval of the commission, the designee shall serve as a member of the commission with full authority to vote or carry out the duties of the office of the ex officio member until the expiration of the designee's written appointment or the ex officio member appoints a temporary or permanent successor to such designee. The term of an appointee shall automatically expire upon replacement of the designating ex officio member. Nothing herein shall prevent the ex officio member from carrying out his or her duties himself or herself during the term of such appointment, in

which case the authority of the designee shall be temporarily suspended.

[Statutory Authority: Chapter 43.180 RCW. WSR 97-16-021 § 262-01-030, filed 7/28/97, effective 8/28/97; WSR 84-04-042 (Resolution No. 84-1), § 262-01-030, filed 1/27/84.]

**WAC 262-01-040 Meetings.** (1) The meetings of the commission shall be "special meetings" as that designation is applied in chapter 42.30 RCW. They may be called at any time and place by the chair or by a majority of the members of the commission. At least seven days' notice of all special meetings shall be given by delivering personally or by mail to each member a written notice specifying the time and place of the meeting, and by giving such notice to the public as may be required by law. If the chair deems that an emergency exists, the chair may shorten the notice to not less than twenty-four hours. An executive session may be called by the chair or by a majority of the members of the commission for such purposes as are permitted under chapter 4.30 RCW.

(2) Quorum. A majority of the commission constitutes a quorum.

(3) Meeting procedures. Meetings of the commission shall be held in accordance with *Roberts' Rules of Order*, current revised edition, whenever requested by any member of the commission. Any contested case before the commission shall be governed by the uniform procedural rules codified in WAC 1-08-005 through 1-08-590, as now or hereafter amended, subject to any additional or revised rules the commission may add from time to time. The commission reserves the right to make whatever determination is fair and equitable should any question not covered by its rules come before the commission, so long as such determination is in accordance with the spirit and intent of the act and conforms to applicable law.

(4) Public participation. Any person or organization may be granted permission by the chair to make a presentation at any public meeting of the commission. The chair may limit remarks by any individual speaking to the commission.

[Statutory Authority: Chapter 43.180 RCW. WSR 84-04-042 (Resolution No. 84-1), § 262-01-040, filed 1/27/84.]

**WAC 262-01-050 Public records.** (1) Public records available. All public records of the commission shall be available for public inspection and copying unless exempt from disclosure under chapter 42.17 or 42.30 RCW.

(2) Public records officer. The commission's public records shall be under the charge of a public records officer designated by the chair. The public records officer shall be responsible for implementing the commission's rules and regulations regarding release of public records.

(3) Request for public records. Any member of the public may examine public records of the commission by directing a request to the public records officer. The public records officer shall comply with such request, unless he or she finds that the requested public records should not be disclosed for a reason permissible under chapter 42.17 RCW.

(4) Office hours. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, at the office of the commission, or, if no such office exists, at the office of the secretary.

[Ch. 262-01 WAC p. 2]

(5) Copying. No fee shall be charged for the inspection of public records. The commission shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for the use of the commission's copying equipment. This charge is the amount necessary to reimburse the commission for its actual costs incident to such copying.

(6) Access to public records. The commission reserves the right to determine that a requested public record is exempt from disclosure under the provisions of chapter 42.17 RCW. In addition, the commission reserves the right to delete identifying details when it makes available or publishes any record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. All denials of public records shall be accompanied by a written statement specifying the reason for withholding the record and a brief explanation of how the exemption applies to the record withheld.

(7) Records index. The secretary, or such staff of the commission designated by the chair, shall make available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated by the commission. The index shall contain such information as is required by RCW 42.17.260.

[Statutory Authority: Chapter 43.180 RCW. WSR 84-04-042 (Resolution No. 84-1), § 262-01-050, filed 1/27/84.]

**WAC 262-01-060 Selection of bond counsel.** (1) For purposes of selecting counsel to provide bond counsel services, the commission shall maintain a roster of bond counsel qualified to issue opinions that will be accepted by underwriting firms, bondholders, and rating agencies. Such roster shall include all firms from the state of Washington listed as municipal bond attorneys in the most recent edition of *The Directory of Municipal Bond Dealers* published by The Bond Buyer.

(2) Any bond counsel may at any time apply to the secretary of the commission to have the name of his or her firm placed on the roster or removed from the roster.

(3) Whenever the commission determines the need to retain bond counsel, it shall request proposals for bond counsel services from each bond counsel on its roster.

(4) The commission may, in its discretion, retain bond counsel (a) for the services required for the issuance of a particular bond issue, or (b) for the services required during a fixed term not to exceed two years. Where the commission has retained bond counsel for a fixed term, the commission reserves the right to select other bond counsel for a particular bond issue during the fixed term.

(5) The commission may, after reasonable notice, terminate the services of a bond counsel at any time.

(6) Upon the conclusion of a contract with any bond counsel, the chairman or the chairman's designee shall prepare a written evaluation of the firm's performance for inclusion in the commission's files.

(7) The commission shall retain and terminate bond counsel by resolution passed according to WAC 262-01-030(6).

(8) In selecting bond counsel, the commission shall consider each of the following factors:

- (a) Bond counsel's experience in public finance law;
- (b) Bond counsel's experience in housing finance law;

(7/28/14)

- (c) Bond counsel's familiarity with Washington state constitutional and municipal law;
- (d) Bond counsel's fee schedule for services;
- (e) Bond counsel's regional and/or national reputation with respect to the recognition of its bond opinion;
- (f) The qualifications of individual attorneys designated by bond counsel to work with the commission;
- (g) Bond counsel's ability to work with the commissioners and the commission staff;
- (h) Bond counsel's availability to the commissioners and the commission staff;
- (i) Bond counsel's expertise in the areas of real estate tax and securities laws, and financing transactions;
- (j) Bond counsel's responsiveness to requests for proposals by the commission;
- (k) Other qualifications of bond counsel that the commission may, by resolution, find relevant to the hiring of bond counsel to carry out lawful purposes of the commission.

[Statutory Authority: 1983 c 161. WSR 83-24-001 (Resolution No. 83-12), § 262-01-060, filed 11/28/83.]

**WAC 262-01-070 Selection of underwriters.** (1) For purposes of selecting underwriters to provide underwriting and other financial services, the commission shall maintain a roster of underwriters qualified to manage or co-manage single-family and/or multifamily bond issues.

(2) Any underwriter may at any time apply to the secretary of the commission to have the underwriter's name placed on the roster or removed from the roster.

(3) Whenever the commission determines the need to retain underwriters, it shall request proposals for underwriter services from each underwriter on its roster.

(4) The commission may, in its discretion, retain a senior managing underwriter:

(a) For the services required during a particular bond issue; or

(b) For the services required during a fixed term not to exceed two years.

Where the commission has retained a senior managing underwriter for a fixed term the commission reserves the right to select other senior managing underwriters for a particular bond issue during the fixed term.

(5) The commission shall select co-managers of the bond issue from the roster and with the advice of the financial advisor, if any, and the senior managing underwriter selected for the particular bond issue.

(6) The commission may, after reasonable notice, terminate the services of an underwriter at any time.

(7) Upon conclusion of a contract with any underwriter, the chairman or the chairman's designee shall prepare a written evaluation of the underwriter's performance for inclusion in the commission's files.

(8) The commission shall retain and terminate the underwriter by resolutions passed according to WAC 262-01-030 (6).

(9) In selecting an underwriter, the commission shall consider each of the following factors:

(a) The underwriter's technical competence, expertise and innovative capability;

(b) The underwriter's success in structuring and/or marketing housing bond issues;

(7/28/14)

(c) The underwriter's familiarity with insured housing programs administered by the Federal Housing Administration, Farmers Home Administration, the Veterans Administration and private insurers and other state and federal housing programs;

(d) The underwriter's fee schedule for services;

(e) The underwriter's regional and/or national reputation with respect to financial and underwriting services;

(f) The qualifications of individuals designated by the underwriter to work with the commission;

(g) The underwriter's ability to work with the commissioners and the commission staff;

(h) The underwriter's availability to the commissioners and the commission staff;

(i) Underwriter's responsiveness to requests for proposals by the commission;

(j) Other qualifications of the underwriter that the commission may, by resolution, find relevant to the hiring of an underwriter to carry out lawful purposes of the commission.

[Statutory Authority: 1983 c 161. WSR 83-24-001 (Resolution No. 83-12), § 262-01-070, filed 11/28/83.]

**WAC 262-01-080 Use of proceeds consistent with plan.** The commission shall expend bond proceeds in furtherance of the goals and priorities identified in its plan of housing finance. To ensure that bond proceeds are used in a manner consistent with the plan, the commission shall:

(1) Make specific findings in each resolution authorizing the issuance of bonds that the purposes for which such bonds are issued are in furtherance of its plan; and

(2) Prepare or cause to be prepared every six months from the date of issuance of any bonds until the proceeds of such bonds are expended, a report describing the manner in which bond proceeds have been used in light of the objectives of the plan.

[Statutory Authority: 1983 c 161. WSR 83-24-001 (Resolution No. 83-12), § 262-01-080, filed 11/28/83.]

**WAC 262-01-090 Fair and equitable distribution of bond proceeds.** (1) The commission shall distribute the proceeds of single family mortgage purchase bonds in a manner consistent with its plan of housing finance to insure, among other things, the fair geographical distribution of such proceeds throughout the state.

(2) The commission shall purchase eligible single family mortgage loans from mortgage lenders who provide such mortgage loans to eligible borrowers on a first come, first served basis following adequate public notice. Each mortgage lender shall provide a plan for commission approval which outlines how it will receive and process applications from prospective mortgagors so that the commission's funds will be distributed fairly and equitably. Such plan should address the manner by which the mortgage lender will publish the availability of such loans and how it will insure a fair and equitable process of application review. The commission reserves the right to modify such plans in consultation with mortgage lenders, in order to insure that all of its proceeds will be equitably and fairly distributed. Alternatively the commission may promulgate a plan or plans with which mortgage lenders must comply.

[Ch. 262-01 WAC p. 3]

(3) The commission reserves the right as an alternative to subsection (2) of this section to institute a system of random allocation or drawing to assure the equitable distribution of mortgage loans.

[Statutory Authority: 1983 c 161. WSR 83-24-001 (Resolution No. 83-12), § 262-01-090, filed 11/28/83.]

**WAC 262-01-100 [(Financing energy efficiency improvements)] as follows:[].** (1) The commission, in developing its plan of housing finance, shall consider energy efficiency improvements that may reasonably be achieved through the housing finance programs of the commission.

(2) The commission may, as part of a particular single family mortgage purchase bond issue, require minimum energy efficiency standards as a condition of eligibility for housing finance assistance or the commission may make bond proceeds available for rehabilitation or home improvement loans for energy efficiency enhancement.

(3) The commission may require applicants for multi-family housing financing to specify what steps will be taken to insure energy efficiency in the project to be financed. The commission may consider such plans in determining whether or not bond proceeds may be used for such purposes.

(4) In administering a sustainable energy trust program pursuant to RCW 43.180.260, the commission may (a) provide loan financing for qualified energy efficiency and renewable energy improvements by making loans or by buying or investing in loans or participations therein, and (b) establish eligibility criteria for projects and borrowers.

[Statutory Authority: RCW 43.180.140, 43.180.260. WSR 14-16-037, § 262-01-100, filed 7/28/14, effective 8/28/14. Statutory Authority: 1983 c 161. WSR 83-24-001 (Resolution No. 83-12), § 262-01-100, filed 11/28/83.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 262-01-110 Contents of the qualified allocation plan.** (1) The commission shall adopt a qualified allocation plan as required under section 42 of the code (the "plan"), which shall:

(a) Set forth selection criteria to be used to determine housing priorities of the commission which are appropriate to local conditions;

(b) Give preference in allocating housing credit dollar amounts among projects that:

(i) Serve the lowest income tenants;

(ii) Are obligated to serve qualified tenants for the longest periods; and

(iii) Are located in qualified census tracts and the development of which will contribute to a concerted community revitalization plan; and

(c) Provide a procedure which the commission shall follow in monitoring projects for noncompliance and for notifying the Internal Revenue Service of such noncompliance and in monitoring for noncompliance with habitability standards through regular site visits.

(2) The plan shall include the following selection criteria among others, for allocating housing credit dollar amounts: Project location, housing needs characteristics, project characteristics (including whether the project includes the use of

existing housing as part of a community revitalization plan), sponsor characteristics, tenant populations with special needs, use of public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, project feasibility, and viability as a low-income housing project.

[Statutory Authority: RCW 43.180.040(3). WSR 01-11-034, § 262-01-110, filed 5/8/01, effective 6/8/01. Statutory Authority: RCW 43.180.040. WSR 93-01-122, § 262-01-110, filed 12/21/92, effective 1/21/93.]

**WAC 262-01-120 Procedures for adopting the plan.**

(1) Before adoption of the plan, the commission shall hold at least one public hearing after giving at least fourteen days notice to the public by means of publication in a newspaper of general circulation. The plan shall thereafter be adopted by resolution at a special meeting of the commission, under the procedures described in WAC 262-01-040. Public comment shall be received in writing any time up to the commencement of the special meeting, and verbal comments shall be received at all public hearing(s).

(2) The plan as adopted by the commission shall become effective upon approval by the governor. Once approved by the governor, the plan shall be made available for public review under the procedure outlined in WAC 262-01-050.

(3) The commission may amend the plan from time to time by resolution, through the procedure described above. The plan shall be amended from time to time so as to ensure that tax credit allocations comply with the requirements of the code and treasury regulations promulgated thereunder, as amended and in effect from time to time.

(4) The commission shall make copies of the plan available upon request directed to the Washington State Housing Finance Commission, 1111 Third Avenue, Suite 2240, Seattle, WA 98101.

[Statutory Authority: RCW 43.180.040. WSR 93-01-122, § 262-01-120, filed 12/21/92, effective 1/21/93.]

**WAC 262-01-130 Tax credit program.** (1) Applicants for tax credit shall submit a completed application in the form prescribed by the commission and the required application fee by the deadline or deadlines set by the commission each year. The commission will not accept additional information or material changes to an application except as allowed during a prescribed correction period.

(2) As part of its application, each applicant shall submit, among other things:

(a) Its federal identification number or, if the applicant is an individual, its Social Security number;

(b) Evidence that it has control of all land necessary for completion of the project;

(c) A comprehensive market study of the housing needs of low-income individuals in the area to be served by the project;

(d) If applicable, a relocation plan for residents approved by the appropriate governmental authority;

(e) Evidence that the project is consistent with the applicable state or local consolidated plan;

(f) A written commitment to notify the relevant local public housing authority of the availability of units in the project;

(g) Evidence of the financial capacity and experience of the development team; and

(h) Evidence of the experience of the property management team.

(3)(a) The commission will rank projects proposed by tax credit applicants based upon the degree to which they meet the criteria set forth by the commission in subsection (5) of this section. The commission may decline to consider a project that fails to meet minimum standards established by the commission for such an evaluation.

(b) Notwithstanding applicant characterization, the commission may determine the scope of or otherwise define a "project" or "projects" for purposes of ranking applications and reserving and allocating tax credit.

(4) In order to qualify to receive tax credit, a project shall meet all of the requirements of section 42 of the code.

(5) For the purposes of ranking projects and allocating credit dollar amounts, the commission will give preference to projects that serve the lowest income tenants, that are obligated to serve low-income tenants for the longest periods, and that are located in qualified census tracts and the development of which will contribute to a concerted community revitalization plan. In determining housing priorities, the commission will consider sponsor and project characteristics. The commission will give weight to those projects which, among other things:

(a) Are located in areas of special need as demonstrated by location, population, income levels, availability of affordable housing and public housing waiting lists;

(b) Set aside units for special needs populations, such as large households, the elderly, the homeless and/or the disabled;

(c) Preserve federally assisted projects as low-income housing units;

(d) Rehabilitate buildings for residential use;

(e) Include the use of existing housing as part of a community revitalization plan;

(f) Have received written authorization to proceed as a United States Department of Agriculture - Rural Housing Service multifamily new construction project approved by the commission;

(g) Are historic properties;

(h) Are located in targeted areas;

(i) Leverage public resources;

(j) Maximize the use of credits;

(k) Demonstrate a readiness to proceed;

(l) Serve tenant populations of individuals with children;

(m) Are intended for eventual tenant ownership; and

(n) Promote energy efficiency.

(6)(a) The commission will reserve at least ten percent of the state housing credit ceiling for a calendar year for projects in which qualified nonprofit organizations have an ownership interest and materially participate in the development and operation of the projects throughout the compliance period, all as described in the code. A qualified nonprofit organization is an organization described in section 501 (c)(3) or (4) of the code, which is determined by the commission not to be affiliated with or controlled by a for-profit organization and one of whose exempt purposes includes the fostering of low-income housing.

(b) The commission may also reserve a portion or portions of its state housing credit ceiling for other types of projects or sponsors.

(7) The commission will determine the amount of tax credit necessary for the project's financial feasibility and viability as a qualified low-income housing project. The commission will not allocate or award to a project more than the minimum amount of tax credit required to ensure a project's financial feasibility and viability.

(8) The commission may:

(a) Restrict the maximum amount of development costs on a per unit basis;

(b) Limit the maximum rehabilitation contingency and the maximum construction contingency;

(c) Restrict the maximum annual amount of tax credit for each low-income housing unit;

(d) Establish a maximum amount of credit an applicant may receive;

(e) Establish a maximum amount of tax credit a project may receive;

(f) Establish maximum developer fees and consultant fees; and

(g) Limit the amount of contractor's profit and overhead.

The commission may also limit the amount of credit received or establish other limits for other reasons.

(9)(a) As a condition of receiving tax credit, an applicant shall enter into agreements with the commission, in forms acceptable to the commission, which contain the terms under which the commission reserves credit for a project and, if applicable, provides a carryover allocation for a project.

(b) As a condition to receiving tax credit, an owner shall enter into an extended use agreement with the commission, in a form acceptable to the commission, which restricts the use of the project for a minimum of thirty years and which describes the applicable commitments and covenants made by the owner. The extended use agreement shall be recorded in a first lien position as a restrictive covenant running with the land.

(10) In order to qualify for a carryover allocation, an applicant shall demonstrate, among other things, that the applicant's basis in the project is more than ten percent of the applicant's reasonably expected basis in the project.

(11) An applicant that has received a carryover allocation of tax credit shall demonstrate to the commission's satisfaction that the applicant has made substantial progress towards completion of the project.

(12) An applicant shall demonstrate to the commission's satisfaction substantial compliance with all contractual obligations to the commission before the commission issues an Internal Revenue Service low-income housing credit certificate.

(13) Unless the commission makes an exception, a transfer of an interest in a project shall require the prior approval of the commission. A transfer or assignment without the commission's prior approval may result in a cancellation of tax credit for a project.

(14) To participate in the tax credit program, an applicant shall pay all required commission fees and comply with all applicable requirements and deadlines. Failure to do so may result in disqualification or cancellation of the project, application or tax credit reservation, allocation or award.

(15) For purposes of awarding tax credit, certain rules in this section do not apply to tax credit projects financed with tax-exempt bonds.

(16)(a) The commission may perform on-site inspections of projects, interview residents, review residents' applications and financial information, and review an applicant's or an owner's books and records. The applicant or owner shall provide the commission with all requested documentation, including periodic reports and certificates; shall provide the commission access to the project; and shall retain records as required by the code and the extended use agreement.

(b) The commission will monitor compliance of the projects receiving credit with the code and with contractual commitments to the commission. The commission will notify the Internal Revenue Service when instances of noncompliance come to its attention.

[Statutory Authority: RCW 43.180.040(3), WSR 09-02-061, § 262-01-130, filed 1/5/09, effective 2/5/09; WSR 01-11-034, § 262-01-130, filed 5/8/01, effective 6/8/01; WSR 97-20-086, § 262-01-130, filed 9/29/97, effective 10/30/97.]

**WAC 262-01-140 Private activity bond allocation.** (1)

Applicants for the commission's portion of the state's private activity bond allocation shall submit a completed application in the form prescribed by the commission and the required application fee by the deadline set by the commission each application round.

(2) As part of its application, each applicant shall demonstrate to the commission's satisfaction that it is ready to proceed with the financing of its project.

(3) In order to qualify to receive an allocation from the commission, a project shall meet the requirements of the code and shall be in compliance with local land-use, zoning and permitting processes. To comply with the code, at minimum, a project shall:

(a) Have:

(i) Twenty percent of the units set aside for individuals whose income is fifty percent or less of area median gross income; or

(ii) Forty percent of the units set aside for individuals whose income is sixty percent or less of area median gross income;

(b) Be available for use by the general public;

(c) Be used on other than a transient basis;

(d) Include separate and complete facilities for living, sleeping, eating, cooking and sanitation;

(e) Have been the subject of a public hearing.

(4) For the purposes of ranking projects and making allocations, the commission will give weight to those projects which, among other things:

(a) Promote the development of affordable housing in underserved areas;

(b) Execute a regulatory agreement with the commission having terms that exceed the minimum code requirement;

(c) Reserve units for special-needs populations;

(d) Preserve federally assisted projects as low-income units;

(e) Have sought and received financial assistance from federal, state or local governments;

(f) Opt to leverage the tax-exempt bonds with other sources of funds including taxable bonds.

(5) As a condition of receiving an allocation, an owner shall enter into a regulatory agreement with the commission, in a form acceptable to the commission, which restricts the use of the project for a period of time and which describes the applicable commitments and covenants made by the owner. The agreement shall be recorded as a restrictive covenant running with the land.

(6) Upon receiving an allocation, an applicant shall pay all required commission fees and comply with all applicable requirements and deadlines. Failure to do so may result in withdrawal of the allocation.

(7)(a) The commission may perform on-site inspections of projects, interview residents, review residents' applications and financial information and review an applicant's or an owner's books and records. The applicant or owner shall provide the commission with all requested documentation, including periodic reports and certificates; shall provide the commission access to the project; and shall retain records as required by the code and the regulatory agreement.

(b) The commission will monitor the projects receiving an allocation to verify compliance with the code and with contractual commitments to the commission. The commission will notify the Internal Revenue Service when instances of noncompliance come to its attention.

(8) Unless the commission makes an exception, a transfer of an interest in a project shall require the prior approval of the commission.

(9) Decisions regarding allocations will be made on behalf of the commission by the director of the capital projects division and will be appealable solely to the executive director of the commission.

[Statutory Authority: RCW 43.180.040(3), WSR 00-06-030, § 262-01-140, filed 2/25/00, effective 3/27/00.]