

Title 262 WAC

HOUSING FINANCE COMMISSION

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Chapter 262-01 WAC

ORGANIZATION AND PROCEDURES

WAC

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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. 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. 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 may appoint a designee to act on his or her behalf until the next public meeting of the commission with full authority to vote or carry out the duties of his or her office.

[Statutory Authority: Chapter 43.180 RCW. 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. 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.

(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. 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;
- (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. 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 multi-family 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;
- (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. 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. 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.

(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, 83-24-001 (Resolution No. 83-12), § 262-01-090, filed 11/28/83.]

WAC 262-01-100 Financing energy efficiency improvements. (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 shall 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 shall consider such plans in determining whether or not bond proceeds may be used for such purposes.

[Statutory Authority: 1983 c 161, 83-24-001 (Resolution No. 83-12), § 262-01-100, filed 11/28/83.]

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: (i) Serving the lowest income tenants; and (ii) obligated to serve qualified tenants for the longest periods; and (c) provide a procedure which the commission shall follow in monitoring projects for compliance with section 42 of the code and for notifying the Internal Revenue Service of noncompliance which the commission shall become aware of.

(2) The plan shall include the following selection criteria among others, for allocating housing credit dollar amounts: Project location, housing needs characteristics, project characteristics, sponsor characteristics, participation of local tax-exempt organizations, tenant populations with special needs, use of public housing waiting lists, project feasibility, and viability as a low-income housing project.

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

Chapter 262-02 WAC

EXECUTIVE CONFLICT OF INTEREST ACT

WAC

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WAC 262-02-010 Promulgation. (This promulgation relates to WAC 262-02-010 through 262-02-030).

I, James L. Kirschbaum, Chair, Washington State Housing Finance Commission, P.O. Box 2665, Spokane, Washington 99550, by virtue of the authority vested in me under chapter 42.18 RCW and Executive Order 80-16, after due notice as provided under chapters 42.32 and 34.04 RCW, and a public hearing held in Seattle, Washington on July 24, 1985, do hereby promulgate the following regulations relating to conflict of interest appropriate to the specific needs of the Washington state housing finance commission.

[Statutory Authority: RCW 42.18.250, 85-18-031 (Resolution No. 85-55), § 262-02-010, filed 8/28/85.]

WAC 262-02-020 Purpose. (1) As provided in RCW 42.18.250, "The Executive Conflict of Interest Act," the chair of the Washington state housing finance commission (the "commission") may promulgate, for the guidance of its commissioners and employees, regulations relating to conflict of interest which are appropriate to the specific needs of the commission.

(2) The legislature intended that commissioners appointed to the Washington state housing finance commission have experience with and expertise in housing matters, including housing construction and finance, and that they represent various industry and consumer groups. RCW 43.180.040(2). The commission intends that its commissioners actively participate in and lend their expertise to the deliberations of the commission. These regulations are intended to insure that decisions of the commission are based on the expertise

and unbiased judgment of these commissioners and not on their self-interest.

[Statutory Authority: RCW 42.18.250, 85-18-031 (Resolution No. 85-55), § 262-02-020, filed 8/28/85.]

WAC 262-02-030 Rules of conduct. (1) For any matter connected with, or related to, the discharge of official duties for the commission, no commissioner or employee shall, directly or indirectly, solicit or accept any gift or loan of money, goods, or services (other than compensation from the state), or other thing of economic value for the personal benefit of any person, which gift or loan would be considered as an inducement to neglect or improperly perform official duties or to influence official judgment. A commissioner or employee may accept services such as food and lodging when such services are provided to support and further commission business, and when such services cannot reasonably be construed to influence the substance or manner of commission decisions. A commissioner may accept unsolicited advertising or promotional material or items of nominal value such as mementos commemorating the issuance of commission bonds.

Example. Underwriter X, who is under contract to provide underwriting and financial services to the commission, hosts a seminar for a subcommittee of commissioners to discuss the structuring of future bond issues. Underwriter X rents a room to hold the seminar and pays for a meal served prior to the seminar. The commissioners may accept such a meal and use such meeting room so long as the process for the selection of underwriters pursuant to RCW 43.180.100 is not in progress. Such expenditures by X while the selection process is underway might give rise to an appearance that such services were provided to influence the selection of underwriters.

(2) For any matter connected with, or related to, the discharge of official duties for the commission, no commissioner or employee shall grant special treatment or favors to any person doing business with, or associated with a person doing business with, the commission, for the purpose of obtaining personal gain. A commissioner or commission employee shall not use his or her status of employment and position with the commission to gain a personal advantage for himself or any other individual in any personal financial transaction.

(3) A commissioner or commission employee shall not participate in any commission decision or transaction in which the commissioner or employee, or a family member, may directly or indirectly profit, except to the extent that such commissioner or employee benefits as a member of the general public or as a member of a specific interest group related to housing construction or finance and receives the same treatment as all similarly situated persons. A commissioner may participate in a commission decision with respect to a general method or system of financing for housing which could benefit an industry with which the commissioner has a direct or indirect financial or personal interest. A commissioner may not vote to approve a contract between the commission and a company with which the commissioner has a financial or personal interest, but may participate in preliminary discussions or decisions with respect to which such company will be treated like all other similarly situated

companies. If a commissioner does not vote under such circumstances, he shall announce for the record his reason for not voting.

The commission may not contract with a company in which a commissioner has a personal or financial interest unless (1) that company is the only company able to provide the services required by the commission, or (2)(a) other similarly situated and qualified companies have had the opportunity to enter into contracts with the same terms and conditions as the contract between the commission and the commissioner's company, (b) the decision to approve the contract does not involve a discretionary decision by the commission to choose among qualified companies, and (c) the relationship of the commissioner to such company is disclosed at the time the contract is approved by the commission.

Example. Commissioner A is an experienced mortgage lender and is the vice president of mortgage lending Company X. The commission is considering a multi-family financing program which will probably involve many lenders throughout the state, including Company X. Commissioner A may participate fully in the structuring of the financing program so long as the terms and conditions of the program apply equally to all of the eligible lending institutions in the state. Ultimately, three qualified lenders, including Company X, seek to participate in the program and agree to sign identical contracts. Commissioner A may not vote to approve the contract with Company X because the commissioner would directly benefit and may not vote to approve the contract with the other two lenders because the commissioner may indirectly benefit from the decision. The commissioner must identify for the record that he has a potential conflict. The commission may proceed to approve all three contracts.

(4) A commissioner or commission employee shall not disclose confidential information or use confidential information gained by reason of service to or employment with the commission to further any private financial transaction.

(5) In the event that a commissioner has been disqualified from voting on a commission issue due to a conflict of interest, the commission may proceed to vote on such issue unless it finds that despite such disqualification the conflict of interest would inappropriately influence its decision.

(6) Within two years after the termination of service or employment, no commissioner or commission employee shall request that the commission take a discretionary action. This provision shall not prohibit a former commissioner from becoming involved in a transaction with the commission if he is a member of the general public or a specific interest group related to the housing construction or finance, and he receives the same treatment as all similarly situated persons. At no time following the termination of service or employment may a commissioner or commission employee receive compensation for any services rendered on behalf of any person in relation to any case, proceeding, or application with respect to which the commissioner voted or employee personally participated during the period of the service or employment.

Example. The term of Commissioner X expires on June 1, 1985. On October 15, 1985 the commission is requested to adopt "official action" resolutions with respect to 10 multifamily rental projects, one of which is being developed

by former Commissioner X. The policy of the commission is to adopt all "official action" resolutions requested, so it may adopt the resolution benefitting former Commissioner X. On March 1, 1986 former Commissioner X requests that the commission engage his underwriting company to be one of four underwriters from a pool of 10 applicant underwriters. Since this request is within 2 years of his tenure as a commissioner and such commission action requires a discretionary decision by the commission to choose among competing underwriters, former Commissioner X must withdraw his request.

[Statutory Authority: RCW 42.18.250. 85-18-031 (Resolution No. 85-55), § 262-02-030, filed 8/28/85.]