

# Title 262 WAC

## HOUSING FINANCE COMMISSION

### Chapters

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### Chapter 262-01 WAC

#### ORGANIZATION AND PROCEDURES

#### WAC

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**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. 97-16-021 § 262-01-030, filed 7/28/97, effective 8/28/97; 84-04-042 (Resolution No. 84-1), § 262-01-030, filed 1/27/84.]

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

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

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

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

(g) 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 the requirements of the code. At a minimum, a project shall:

(a) Be rent restricted;

(b) 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;

(c) Be constructed for use by the general public;

(d) Be used on other than a transient basis; and

(e) Include separate and complete facilities for living, sleeping, eating, cooking and sanitation.

(5) For the purposes of ranking projects and allocating credit dollar amounts, the commission will give preference to projects serving the lowest income tenants and to projects obligated to serve low-income tenants for the longest periods. In determining housing priorities, 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) Are smaller projects;

(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 sponsored by local nonprofit organizations;

(i) Are located in targeted areas;

(j) Leverage public resources;

(k) Maximize the use of credits; and

(l) Demonstrate a readiness to proceed.

(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) Prohibit funding project reserves with equity derived from tax credit;

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

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

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

(h) 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:

(a) The applicant has either acquired the land or has a long term lease on the land;

(b) The applicant's basis in the project (as of the close of the calendar year of the tax credit allocation) is more than ten percent of the applicant's reasonably expected basis in the project; and

(c) The applicant has received a conditional commitment for financing.

(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). 97-20-086, § 262-01-130, filed 9/29/97, effective 10/30/97.]

**Chapter 262-02 WAC**

**EXECUTIVE CONFLICT OF INTEREST ACT**

**WAC**

262-02-020	Purpose.
262-02-030	Rules of conduct.

**WAC 262-02-020 Purpose.** (1) Certain provisions of chapter 154, Laws of 1994, "Ethics in public service" require interpretation through regulation to protect the Washington state housing finance commission (the "commission") and its commissioners and employees from violations of law. As provided in RCW 42.52.200, the commission may adopt rules consistent with law, for use within the commission.

(2) The legislature intended that commissioners appointed to the 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.

(3) The commission issues bonds to provide a secondary market for the financing of housing and nonprofit facilities. As a result, commissioners and commission employees work

closely with private sector lenders, underwriters, mortgage bankers, financial advisors, lawyers and accountants. While the commission is regularly engaged in private sector transactions, it is a public entity established by the legislature. The legislature has determined that certain activities that may be common to professional relationships in the private sector may be inappropriate or illegal when conducted by commissioners and commission employees. These regulations are intended to insure that the activities of commissioners and commission staff are consistent with the highest degree of professional conduct for public appointees and employees. Also, these regulations recognize the importance of maintaining public trust in the commission's unbiased expertise and impartial decision making. The regulations are intended to ensure that commissioners and commission staff exercise their discretion in a manner that does not create even a perception of bias.

[Statutory Authority: Chapters 43.180 and 42.52 RCW. 97-16-020, § 262-02-020, filed 7/28/97, effective 8/28/97. 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) Activities incompatible with public duties; financial interests in transactions. No commissioner or commission employee may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the commissioner or commission employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant.

No commissioner or commission employee may participate, in his or her official capacity, in a transaction involving the state with a partnership, association, corporation, firm or other entity of which the commissioner or commission employee is an officer, agent, employee or member, or in which the commissioner or commission employee owns a beneficial interest.

A commissioner may participate in a general discussion with respect to a method or system of financing for housing or nonprofit facilities which could benefit an industry or interest group which includes an entity of which the commissioner is an officer, agent, employee or member or in which the commissioner owns a beneficial interest: *Provided*, That such commissioner shall announce or otherwise make known such involvement at the time of such discussion, and: *Provided further*, That such commissioner's participation be limited to providing general expertise and not include any attempt to influence the votes of other commission members in favor of the entity with which such commissioner is so involved. A commissioner shall abstain from any vote taken by the commission to approve a transaction involving the commission with an entity with which the commissioner is so involved, and if a commissioner abstains from voting because of such involvement such commissioner shall announce for the record his or her reason for his or her abstention.

The commission may contract with a partnership, association, corporation, firm or other entity of which the commissioner is an officer, agent, employee or member or in which the commissioner owns a beneficial interest so long

as each commissioner so involved with such entity abstains from voting and the reason for such abstention is announced for the record at the time of such vote.

Example 1. A commissioner serves as an officer and member of the board of directors of a savings and loan company. The commission is considering a program involving the issuance of bonds to provide for the acquisition of mortgage loans originated by mortgage lenders across the state. The commissioner may participate in a general discussion of the commission's program for financing mortgage loans and the commission may enter into a contract for the origination and sale of mortgage loans with the savings and loan company on whose board the commissioner sits: *Provided*, That (a) at the time of the discussion, the commissioner informs the other commissioners of his/her involvement with the savings and loan company, (b) the commissioner abstains from any vote approving any contract between the commission and the savings and loan company, and (c) at the time of such vote, the commissioner explains the reason for his/her abstention.

Example 2. A commissioner and a commission employee serve without compensation on a housing advisory committee established by the Federal National Mortgage Association. The commissioner and the commission employee may participate fully in the consideration and approval of contracts between the Federal National Mortgage Association and the commission for the purchase and sale of commission bonds and for the credit enhancement of single-family and multifamily mortgages, because neither the commissioner nor the commission employee has any direct or indirect interest in the Federal National Mortgage Association as a member of an advisory committee and their participation in discussions and approval of such arrangements is in the public interest.

(2) Limitations of gifts. No commissioner or commission employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the commissioner or employee, or be considered as part of a reward for action or inaction.

No commissioner or commission employee may accept gifts other than those specified below:

(a) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(b) Unsolicited items received for the purpose of evaluation or review if the commissioner or commission employee has no personal beneficial interest in the eventual use or acquisition of the item by the commission;

(c) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(d) Food and beverages consumed at hosted receptions where attendance is related to the official duties of the commissioner or the commission employee;

(e) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;

(f) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(g) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(h) Items exchanged among commissioners and commission employees or a social event hosted or sponsored by a commissioner or commission employee for coworkers;

(i) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence with respect to the commission;

(j) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(k) Campaign contributions reported under chapter 42.17 RCW;

(l) Discounts available to an individual as a member of an employee group, occupation or similar broad-based group;

(m) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement; and

(n) Items a commissioner or commission employee is authorized to accept by law.

A commissioner or commission employee is specifically prohibited from accepting the following items from a person or entity who seeks to provide goods or services to the commission:

(i) Payments of expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide nonprofit professional, education, or trade association, or charitable institution; or

(iii) Flowers, plants and floral arrangements.

Example 1. Following the successful closing of a bond transaction, an underwriter, a bond attorney, a commissioner and two commission employees go to a restaurant to celebrate. Neither the commissioner nor the commission staff may permit the underwriter or the bond attorney to host the celebration, because the underwriter is potentially seeking to provide services to the commission and none of the exceptions applicable to accepting food or beverages, i.e., a hosted reception or a civic event, apply. The commissioner and commission employee may attend the closing celebration and, at their own expense (or, if appropriate, at the expense of the commission), may pay for their meals.

Example 2. During a recess in the commission's public meeting, an underwriter, a commissioner and two commission employees go to a restaurant for lunch and discuss, among other things, commission matters. Neither the commissioner nor the commission staff may permit the underwriter to buy their lunch.

Example 3. In the course of an all day session to review bond documents, bond counsel orders sandwiches for underwriters, attorneys, and commission staff. Commission staff may accept such lunch only if it is ultimately paid by the commission from bond proceeds as a cost of issuing the bonds or from an alternative source of commission funds.

Example 4. Commissioners and commission staff attend a national convention of state housing authorities. The commissioners, commission staff and their spouses are invited to a cocktail reception, followed by a sit-down dinner, for all convention attendees. The reception and

dinner are co-sponsored by several underwriters. At the cocktail reception, the co-hosts provide food and beverages, including substantial hors d'oeuvres. There are some tables where guests may be seated but most people stand. Commissioners and commission staff may attend the cocktail reception. Because the event is co-hosted, it does not create any perception that the attendees are favoring a particular business entity. Also, the event involves a diverse group of people, rather than solely commissioners, commission staff, and persons who provide goods and services to the commission. Finally, even though tables and chairs are provided, it is not a sit-down meal. Commissioners and commission staff may not attend the dinner following the cocktail reception (without compensating the hosts for the cost of the dinner) because it is a sit-down dinner rather than a hosted reception.

Example 5. An underwriter invites a commissioner with whom he has enjoyed a personal friendship to a holiday open house at his home. The commissioner and her spouse may attend the party and partake of food and beverage since the underwriter enjoys a friendship with the commissioner and it is clear beyond a reasonable doubt that the gift of food and beverage in the context of a holiday open house was not designed to gain or maintain influence.

Example 6. At a national convention for state housing authorities, a commission employee is invited to accept a T-shirt on which there is printed the logo of an underwriter. The employee may accept such gift because it is advertising material of nominal value.

Example 7. Fannie Mae offers a commission employee a scholarship to attend a series of educational classes. The class material is relevant to the employee's responsibilities. The employee cannot accept the scholarship because Fannie Mae is an entity who seeks to provide services to the commission.

Example 8. A commission employee is invited to participate in a panel discussion before a housing industry group. The lunch of each panel member is paid for by the host organization. The commission employee may not accept such lunch (without compensating the hosts for the cost of the lunch) because it is a sit-down lunch rather than a hosted reception. Because participation in such a panel discussion is likely to promote the interests of the commission, the commission employee is encouraged to seek reimbursement for the costs of such meal from the commission.

Discussion. The purpose of the rule and the statute on which it is based is to prevent the acceptance of gifts by commissioners and commission employees that could influence commission decision making. Thus, the rule recognizes the importance of ensuring the commission's impartiality.

The rule also ensures that commissioners and commission staff with experience and expertise in housing matters are able to contribute this experience and expertise to the commission's work in an unbiased manner.

Finally, the rule stresses the importance of maintaining the public trust in this impartiality. Therefore, the rule prohibits the acceptance of gifts that could be interpreted as influencing such decision making. Although it would be difficult to believe that any commissioner or commission employee would be influenced by the acceptance of gifts or

a sit-down meal, the commission seeks to regulate the acceptance of gifts that could be inappropriately interpreted as influencing commission decision making.

The rule is not designed to prevent commissioners, commission staff and those with whom the commission contracts from eating together, being social friends or in certain appropriate public situations attending as representatives of the commission hosted receptions at which refreshments are served.

[Statutory Authority: Chapters 43.180 and 42.52 RCW. 97-16-020, § 262-02-030, filed 7/28/97, effective 8/28/97. Statutory Authority: RCW 42.18.250. 85-18-031 (Resolution No. 85-55), § 262-02-030, filed 8/28/85.]

## Chapter 262-03 WAC DEBARMENT AND TEMPORARY DISQUALIFICATION

### WAC

262-03-010	Promulgation.
262-03-020	Purpose.
262-03-030	Definitions.
262-03-040	Temporary disqualification of participants.
262-03-050	Proposal to debar.
262-03-060	Debarment.
262-03-070	Debarment and disqualification procedures.
262-03-080	Hearing procedures.
262-03-090	Appeals procedures.

**WAC 262-03-010 Promulgation.** (This promulgation relates to WAC 262-03-010 through 262-03-090.)

I, Busse Nutley, chair, Washington State Housing Finance Commission, 1000 Second Avenue, Suite 2700, Seattle, Washington 98104-1046, after due notice as provided under chapter 34.05 RCW, and a public hearing held in Seattle, Washington on June 26, 1997, do hereby promulgate the following regulations relating to actions to debar or temporarily disqualify participants in commission programs where appropriate to further the commission's purposes and protect the public interest in doing business with responsible persons.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-010, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-020 Purpose.** (1) It is in the public interest that the commission provide affordable housing, as well as nonprofit cultural and social service facilities, administer orderly programs, and maximize use of the bond financing and low income housing tax credit (LIHTC) programs. To protect this public interest, it is the policy of the commission to conduct business only with responsible persons.

(2) These regulations provide debarment and temporary disqualification procedures to implement this policy. To ensure that program participants receive notice and an opportunity to be heard in any debarment or temporary disqualification action against such participants, these regulations adopt RCW 34.05.482 through 34.05.494 relating to brief adjudicative proceedings. Where these regulations are inconsistent with these procedures for brief adjudicative proceedings, the provisions of RCW 34.05.482 through 34.05.494 govern.

(3) These procedures may be extended to any new program administered by the commission.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-020, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-030 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout WAC 262-03-010 through 262-03-090.

(1) "Affiliate." Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities or equipment, common use of employees, or a business entity organized following the temporary disqualification or debarment of a person which has the same or similar management, ownership, professional contractors, or principal employees as the temporarily disqualified or debarred person, or any entity closely resembling or related to those outlined above whether or not either is a partnership, corporation, trust, or other legally defined person.

(2) "Covered transactions." These procedures apply to all persons who have participated, are currently participating, or may reasonably be expected to participate, in any commission program, including but not limited to the bond financing and LIHTC programs. For the purposes of these procedures, interactions with the commission with respect to any of such programs will be referred to as covered transactions. For example, covered transactions include applications, contracts, certifications, and reports with respect to commission programs.

(3) "Debarment" means an action taken by the debarment and disqualification officer in accordance with these procedures to exclude a person from participating in any covered transaction or limit such participation in any way that the debarment and disqualification officer deems appropriate for the period specified in the debarment order.

(4) "Debarment and disqualification officer" means the executive director of the housing finance commission or his or her designee.

(5) "Participant" means any person who submits a proposal for, enters into, or reasonably may be expected to enter into, a covered transaction. This term also includes any person who acts on behalf of, or is authorized to commit, a participant in a covered transaction.

(6) "Person" includes any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

(7) "Proposal" means a solicited or unsolicited bid, application, request, invitation to consider, or similar communication by or on behalf of a person presently involved in a commission program, seeking to participate in a commission program, or seeking to receive a benefit, directly or indirectly, under a commission program.

(8) "Respondent" means a person against whom a debarment or temporary disqualification action has been initiated.

(9) "Substantial and material noncompliance." A participant in a covered transaction is in substantial and material noncompliance if the participant has made a

misstatement or omission, or has failed to comply with any requirement, term, condition, or obligation of the covered transaction and if the misstatement, omission, or failure is substantial and material.

(10) "Temporary disqualification" means an action taken by the debarment and disqualification officer in accordance with these procedures that immediately excludes a person from participating in any covered transaction for a temporary period or limiting such participation in any way that the debarment and disqualification officer deems appropriate for a temporary period.

(11) "Professional contractors" includes but is not limited to consultants, attorneys, or law firms, accountants or accounting firms, architects, and engineers.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-030, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-040 Temporary disqualification of participants.** (1) Any participant in any covered transaction may be immediately and temporarily disqualified from such participation:

(a) If the debarment and disqualification officer determines that adequate evidence exists to support a reasonable belief that the participant is in substantial and material noncompliance sufficient to be cause for debarment; and

(b) If the debarment and disqualification officer determines that immediate action is necessary to protect the public interest in doing business with responsible persons. Consistent with the commission's purposes, the public interest includes providing affordable housing, administering orderly programs, and maximizing use of the bond financing and LIHTC programs.

(2) By way of example but not limitation, the debarment and disqualification officer may presume that the participant is in substantial and material noncompliance and that immediate action is necessary to protect the public interest where:

(a) The participant is delinquent in payment of any fees due under any commission program, including the LIHTC program;

(b) The participant has failed to meet any deadline under any commission program, including the LIHTC program;

(c) The participant has failed to comply with the terms, conditions, or obligations of one or more covered transactions;

(d) The participant has made material misstatements or omissions in proposals or any other communication to the commission;

(e) A state or other governmental agency reports that the participant is in substantial and material noncompliance in other jurisdictional programs; or

(f) The participant has supplied insufficient or incomplete information in conjunction with any commission program.

(3) Any decision by the debarment and disqualification officer to temporarily disqualify a participant is discretionary; however, no decision will be based on unsupported allegations. The existence of adequate evidence of substantial and material noncompliance does not necessarily require that the person be temporarily disqualified. The debarment

and disqualification officer may consider the seriousness of the participant's acts or omissions as well as any mitigating factors to determine whether temporary disqualification is necessary to protect the public interest.

(4) If debarment or legal proceedings are not initiated by the commission or the debarment and disqualification officer within twelve months after the date of the temporary disqualification notice, the temporary disqualification will be terminated.

(5) If the debarment and disqualification officer determines that temporary disqualification in accordance with subsections (1) or (2) of this section is appropriate, the debarment and disqualification officer will notify the respondent by personal service or certified mail of the temporary disqualification and the reasons therefor. Notice of temporary disqualification will include:

(a) A statement of the nature of the temporary disqualification action;

(b) A short and plain statement of, and the reasons for, the temporary disqualification action; and

(c) Information about the administrative review, hearings and appeals processes available to respondent pursuant to WAC 262-03-070 through 262-03-090.

(6) The temporary disqualification is effective immediately upon the respondent's receipt of the notice. Upon notification, the respondent will be entitled to the procedures set forth in WAC 262-03-070 through 262-03-090.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-040, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-050 Proposal to debar.** (1) If the debarment and disqualification officer determines that cause for the respondent's debarment can be established by a preponderance of the evidence, the debarment and disqualification officer may initiate proceedings pursuant to this section. Upon the decision to initiate proceedings pursuant to this section, the debarment and disqualification officer will notify the respondent of its proposal to debar by personal service or certified mail.

(2) The notice will inform the respondent that debarment is being considered, the effect of a debarment, and the reasons for the proposed debarment. The notice will also include information about the administrative review, hearings and appeals processes available to the respondent pursuant to WAC 262-03-070 through 262-03-090.

(3) A proposal to debar may, but need not, be preceded by a temporary disqualification. A proposal to debar by itself will not have any immediate effect on the respondent's status as a participant in any commission program.

(4) Upon notification of the commission's proposal to debar, the respondent will be entitled to the procedures set forth in WAC 262-03-070 through 262-03-090.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-050, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-060 Debarment.** (1) If the debarment and disqualification officer determines, by a preponderance of the evidence, that the respondent has committed any act, or made any omission, that constitutes substantial and material noncompliance, the debarment and disqualification officer may issue an order of debarment.

(2) By way of example but not limitation, the debarment and disqualification officer may presume that the participant is in substantial and material noncompliance if:

(a) The participant is delinquent in payment of any fees due under any commission program, including the LIHTC program, and payment of the delinquent amount has been demanded via certified mail to the last known address of the participant;

(b) The participant has failed to meet any deadline under any commission program, including the LIHTC program;

(c) The participant has failed to comply with the terms, conditions or obligations of one or more covered transactions;

(d) The participant has made material misstatements or omissions in proposals or any other communication to the commission.

(e) A state or other governmental agency reports that the participant is in substantial and material noncompliance in other jurisdictional programs; or

(f) The participant has supplied insufficient or incomplete information in conjunction with any commission program.

(3) An order of debarment disqualifies the respondent from participating in any commission program for the period specified in the order. The debarment term will be commensurate with the seriousness of the cause(s) but generally the debarment period should not exceed three years from the date that the debarment order is issued. Consideration may be given for any period of temporary disqualification already completed by the respondent.

(4) Debarment of a person under this section constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions. The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment pursuant to subsection (5) of this section and an opportunity to oppose the debarment pursuant to WAC 262-03-070 through 262-03-090. For the purposes of WAC 262-03-070 through 262-03-090, any named affiliate will be considered a respondent.

(5) The order of debarment will be served on the respondent by personal service or certified mail. It will include notification of the effect of debarment and the reasons debarment has been ordered as well as information about the administrative review, hearing and appeals processes available to respondent pursuant to WAC 262-03-070 through 262-03-090.

(6) Upon receipt of an order of debarment, the respondent will be entitled to the procedures set forth in WAC 262-03-070 through 262-03-090.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-060, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-070 Debarment and disqualification procedures.** (1) Within thirty days of receipt of notice of temporary disqualification, of a proposal to debar, or of an order of debarment, a respondent may submit to the commis-

sion, in person or in writing, personally or through a representative, any information or argument in opposition to debarment and/or disqualification. This information may dispute the debarment and disqualification officer's formal, written findings of substantial and material noncompliance, identify any remedial measure or mitigating factors, or both.

(2) If, within thirty days of receipt of the information submitted pursuant to subsection (1) of this section, the commission or its designee(s) determine that there is a dispute regarding one or more material facts, the commission will appoint a hearing officer to hold a hearing in accordance with WAC 262-03-080 and authorize the hearing officer to grant appropriate relief upon review. Such hearing will take place within ninety days of the receipt of the information submitted pursuant to subsection (1) of this section and the respondent will receive no less than seven days' advance written notice indicating the time and place for the hearing.

(3) If, within twenty days of receipt of the information submitted pursuant to subsection (1) of this section, the commission or its designee(s) determine that there is no dispute regarding any material facts, the commission or its designee(s) will issue a written order without appointing a hearing officer and without holding a hearing on the matter. The order will include a brief statement of the commission or its designee(s) reasons for the determination and a statement of the availability of hearings and appeals procedures and time limits pursuant to WAC 262-03-080 and 262-03-090.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-070, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-080 Hearing procedures.** (1) Any hearing pursuant to WAC 262-03-070(2) will be conducted by the hearing officer appointed by the commission.

(2) The respondent may personally appear at the hearing, appear through a duly authorized representative and/or be represented by legal counsel. The respondent, representative or legal counsel will be given a full opportunity to submit and respond to papers and pleadings, to present evidence and argument, and to conduct cross-examination of witnesses.

(3) Following the hearing, the hearing officer will determine the facts by a preponderance of the evidence, issue written findings of fact, and issue a written order. The order will include a brief statement of the hearing officer's findings and order and a statement about the availability and time limits of appeals procedures pursuant to WAC 262-03-090.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-080, filed 7/28/97, effective 8/28/97.]

**WAC 262-03-090 Appeals procedures.** Any order issued pursuant to WAC 262-03-070(3) or 262-03-090(3) may be appealed to the full commission in accordance with the following procedures:

(1) The appeal must be in writing, signed, and received by the chair of the commission no later than ten business days after the respondent receives an order pursuant to WAC 262-03-070(3) or 262-03-080(3).

(2) The appeal must describe why the respondent believes the order pursuant to WAC 262-03-070(3) or 262-

03-080(3) is erroneous, identify information in the record that the respondent would like the commission to consider, and specify a desired remedy. The commission will not entertain any claim on appeal that has not first been asserted under WAC 262-03-070 or 262-03-080. An order issued pursuant to WAC 262-03-070(3) or 262-03-080(3) will be presumed to be correct and the respondent has the burden of showing that the order is not supported by substantial evidence.

(3) The commission will schedule a meeting or set aside time during a scheduled meeting to hear appeals. Respondents appealing will receive at least seven days' advance written notice of the time and place of this meeting. The respondent may personally appear at the meeting, appear through a duly authorized representative and/or be represented by legal counsel. The respondent, representative or legal counsel will be given an opportunity to present oral argument to the commission. No witnesses may be examined.

(4) The commission will issue an appeals decision or a statement specifying the date that a decision will be issued, after hearing oral arguments, if any, but within forty-five days after receipt of the appeal. Any commission appeals decision announced orally will be confirmed in writing. The commission's written decision is a final order that is binding on the respondent and other parties. The decision will include notice that judicial review may be available.

(5) Judicial review of any final order of the commission is governed by RCW 34.05.570. In accordance with RCW 34.05.534, any person seeking judicial review first must exhaust the administrative remedies set forth in these procedures.

[Statutory Authority: Chapter 43.180 RCW. 97-16-019, § 262-03-090, filed 7/28/97, effective 8/28/97.]

## Title 275 WAC

### SOCIAL AND HEALTH SERVICES, DEPARTMENT OF (INSTITUTIONS)

#### Chapters

- 275-27 Division of developmental disabilities services rules.
- 275-30 Juvenile parole revocation.
- 275-33 Transfer of juvenile offender to the department of corrections.
- 275-46 Security classification.
- 275-48 Payments to persons released from correctional institutions.
- 275-60 Workshops in institutions of the mental health division.
- 275-76 Adult correctional institutions—Detainer.
- 275-80 Adult correctional institutions—Visits.
- 275-150 Referendum 37 funding of facilities for the care, training, and rehabilitation of persons with sensory, physical, or mental handicaps.