**R990. Workforce Services, Housing and Community Development.**

**R990-200. Private Activity Bonds.**

**R990-200-1. Purpose.**

The purpose of this rule is to establish criteria for allocating private activity bond volume cap to a qualified applicant, whether an allocation of private activity bond volume cap may be extended, and related matters.

**R990-200-2. Authority.**

Section 35A-8-2104 requires the Private Activity Bond Review Board (Board of Review) to make rules for the allocation of volume cap for private activity bonds.

**R990-200-3. Definitions.**

Terms used in this rule are defined in Sections 35A-8-101 and 35A-8-2102. Terms not defined in that section or in this rule shall be defined as used in the Private Activity Bond Program - Policies and Procedures (Policies), adopted October 2022, which is incorporated by reference. In addition:

(1) "Affordable" means at least 20% of the residential units in the project are set aside for families whose incomes do not exceed 50% of Area Median Income (AMI), adjusted for family size; or at least 40% of the residential units in the project are set aside for families whose incomes do not exceed 60% of AMI, adjusted for family size.

(2) "Applicant" means a borrower or issuing authority submitting an application for an allocation of volume cap or a project sponsor submitting an application on behalf of an issuing authority for an allocation of volume cap.

(3) "Available volume cap" means the unencumbered volume cap.

(4) "Application" means:

(a) the electronic federal Low-Income Housing Tax Credit consolidated application for multi-family applicants;

(b) the private activity bond authority manufacturing facility application for the manufacturing, redevelopment or exempt facility applicants; or

(c) the private activity bond authority application for single family or student loan applicants.

(5) "Closed" or "close" means the time at which bonds are exchanged for funds.

(6)(a) "Good standing" means the applicant or recipient:

(i) has remitted all required fees and payments to the Board of Review at the time of application;

(ii) has submitted all required reports to the Board of Review at the time of application; and

(iii) for the five years preceding the submission of the request for an allocation or extension, has not made any misrepresentations to the Board of Review about an application for allocation or any previous or current project.

(b) If an applicant or recipient has previously received an allocation from the Board of Review for one or more multi-family projects, "good standing" means the applicant or recipient meets the requirements of Subsection (6)(a) and the applicant or recipient:

(i) has not exceeded rent or income limits at any time in the immediately preceding five years;

(ii) has not converted any affordable unit into a market rate unit at any time in the immediately preceding five years;

(iii) has rented designated affordable units only to qualified low- and moderate-income tenants for the immediately preceding five years; and

(iv) is in good standing with the Utah Housing Corporation at the time of application.

(7) "Project" means the applicant's plan for which the private activity bonds are being sought.

(8) "Recipient" means a borrower or issuing authority that has been awarded an allocation of volume cap.

(9) "Low- and moderate- income" means a household whose income upon initial occupancy does not exceed 140% of AMI adjusted for family size.

(10) "Market rate" means housing units that are not affordable.

(11) "Legislative occurrence" means federal or state legislation that becomes legally effective within one year of a project's fifth bond extension approval and which substantially affects the project and its ability to close.

**R990-200-4. Applicant Qualifications.**

(1) An initial application will be presented to the Board of Review only if each project applicant, owner, developer, and manager:

(a) is in good standing;

(b) has not been in default or breach of any mortgage or project-related contract within the previous five years;

(c) is not the subject, in either a personal or professional capacity as a partner, director, or other officer exercising managerial control over any business entity, of a pending fair-housing or civil-rights investigation; and

(d) in the ten years preceding the filing date of the application, has not been:

(i) the subject of a negative fair-housing or civil-rights determination;

(ii) disbarred or otherwise sanctioned in any way by any state or federal agency or professional self-regulatory body; or

(iii) a partner, director, or other officer exercising managerial control over any business entity, including a corporation, limited liability company, or professional limited liability company, when the business entity initiated bankruptcy proceedings.

(2) An application shall include documentation:

(a) executed by each applicant, owner, developer, and manager certifying that each signatory meets each requirement identified in Subsection R990-200-4(1); and

(b) supporting and verifying the accuracy of each certification.

(3)(i) The Board of Review shall publish a meeting and application submission schedule annually.

(ii) The Board of Review shall publish changes to the meeting and application submission schedule on the division website.

(iii) The Board of Review may schedule an ad hoc meeting to consider extension requests within the 90-day period under Section 35A-8-2107.

(iv) An applicant shall timely provide all required materials and supporting documents before the Board of Review meeting at which the application will be considered.

(4) Application forms and materials are available on the Department of Workforce Services Housing and Community Development website.

(5) A partial application will be denied.

(6) Upon review of a complete application, staff will work with the applicant to ensure documentation accuracy.

(a) Program staff may request that the applicant correct defects or provide additional documentation within a timeline specified by staff.

(b) An applicant may not submit corrections or additional documentation after the deadline in Subsection R990-200-4(3) unless requested to do so by program staff.

**R990-200-5. Criteria for Allocating Volume Cap.**

(1) Private activity bond volume cap allocations are made each calendar year based upon available volume cap.

(a) The decision whether to allocate volume cap to an applicant shall be determined by the Board of Review, in its sole discretion.

(b) Allocations are not made on a first-come-first-served basis.

(c) Each complete application submitted before the deadline will be evaluated and scored in comparison with other applications for the same type of project use. The Board of Review has adopted Policies governing program administration and application scoring. The Policies may be amended from time to time and may be found on the Department of Workforce Services Housing and Community Development website. Applicants and recipients must be aware of and comply with the Policies.

(d) The private activity bond program staff and consultants under contract with the Board of Review will evaluate and score each application. In the event demand for funding exceeds the available volume cap, applications will be numerically ranked for allocation.

(e) When considering multiple applications at a meeting, the Board of Review may choose to award each applicant an equal share, pro rata share, priority for multi-family housing or other classification, or other division of available volume cap.

(2) When deciding to allocate volume cap to an applicant, the Board of Review shall consider the criteria outlined in Section 35A-8-2105 and the following additional criteria:

(a) timely submission of completed application;

(b) timely payment of applicable fees;

(c) applicant's experience in successfully completing projects utilizing private activity bonds;

(d) project financing, including executed letters of intent for debt and equity funding;

(e) project readiness, including required public entity approvals, site ownership, and architect and construction contracts;

(f) timely response to any questions raised by the Board of Review and private activity bond program staff;

(g) status of project's financing at time of application;

(h) appointment of bond counsel;

(i) letter from bond counsel opining the project qualifies for private activity bonds;

(j) appointment of investment banker or, if private placement, buyer of the bonds;

(k) detailed commitment letters from financial entities involved;

(l) ability to cause bonds to be issued within 12 months of allocation;

(m) past history of forfeited allocation commitments;

(n) length of tax-exempt bond amortization; and

(o) other factors considered appropriate by the Board of Review.

(3) Multi-family housing applicants must meet the criteria of the Low-Income Housing Tax Credit program administered by the Utah Housing Corporation. In addition to the criteria in Subsection R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to multi-family housing applicants:

(a) bond amount per unit;

(b) bond amount per affordable unit;

(c) the percentage, in relation to the group of applications currently being evaluated, of the private activity bond allocation being requested;

(d) percentage of public financing, including the value of grants, loans, fee waivers, and concessions, but excluding housing tax credits;

(e) total cost per unit and per unit square footage;

(f) percentage of developer fee contributed to project;

(g) percentage of affordable units;

(h) percentage of special needs units;

(i) cash flow per unit;

(j) percentage of taxable bonds;

(k) location, with preference for projects located in:

(i) underserved areas;

(ii) communities without the same type of projects; and

(iii) difficult to develop areas as defined by HUD;

(l) project characteristics, including:

(i) day care;

(ii) education center;

(iii) mixed income projects, with both affordable and market rate units; and

(iv) size of proposed project;

(m) mitigation of environmental issues, including installing radon gas extraction fans or removing the source of radon; and

(n) acquisition, rehabilitation, and remediation of buildings with Utah or federal historic designation, including removal of hazards and including appraisals and a relocation plan for current residents.

(4) In addition to the criteria in Subsection R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to manufacturing facility, redevelopment and exempt facilities applicants:

(a) new full-time-equivalent job creation, including a list of new positions and wages, and excluding construction and other temporary jobs;

(b) retention of jobs;

(c) training and education of employees;

(d) bond amount to permanent full-time-equivalent jobs ratio;

(e) permanent full-time-equivalent jobs created or retained that provide above average wages when compared to other applicants' average wages and the community average wage;

(f) demonstrated need for tax-exempt financing, including:

(i) projected cash flow for the first three years of operation, including supporting documentation, and

(ii) explanation for selecting variable or fixed rates;

(g) community support, including:

(i) financial support;

(ii) zoning approval;

(iii) tax increment financing; and

(iv) deferral of fees;

(h) competitive costs for construction and equipment related expenses; and

(i) ready-to-go status, including:

(i) manufacturing facility zoned for use;

(ii) proximity of infrastructure to site;

(iii) need for special infrastructure;

(iv) environmental study, if required by lender;

(v) current title report and site plan of project; and

(vi) building description.

(5) Before considering an application, a Board of Review member shall disclose the substance of any communication the member has had outside of a public meeting with an applicant or other interested party regarding the project.

(6) The allocation certificate issued for multi-family housing volume cap shall restrict the occupancy of market rate rental units to families whose incomes do not exceed 150% of AMI, adjusted for family size, for at least 51 years from the date on which at least 50% of the residential units in the project are first occupied.

(a) Recipients and owners shall comply with any terms of the Certificate of Allocation, including any additional conditions approved by the Board of Review.

(b) Recipients and owners shall submit documentation to private activity bond program staff within 15 days after the issuance of bonds, and at other times upon request, to verify compliance with the terms of the Certificate of Allocation.

(7) Subject to Subsection R990-200-5(7)(e), if a recipient undergoes any change in ownership or management after an allocation is awarded to it, the Board of Review may, in its discretion, require that the allocation be relinquished. Such change includes the addition or removal of one or more directors or managing partners. For purposes of Subsection R990-200-5(7), "removal" or "removed" shall apply to any director, partner, or other official whose association with the recipient ends voluntarily or involuntarily, by resignation or discharge.

(a) Recipients shall be required to notify the Board of Review, in writing and at least 30 business days in advance, of any changes or anticipated changes in the recipient's ownership or management. Such notice shall include, at a minimum, the effective date of the change or anticipated change and the full names and current business addresses of each additional or removed director, managing partner, or other official.

(b) In determining whether to require relinquishment of the previously awarded allocation, the Board of Review shall evaluate the recipient's new ownership or management composition based on the qualifications and criteria detailed in Subsections R990-200-5(1)(a) through (e) as well as any additional factors it deems relevant.

(c) The Board of Review will make every effort to hold a meeting before the effective date of the change in ownership. At said meeting, the Board of Review shall decide, in its sole discretion, whether to require relinquishment of the recipient's allocation. The previously awarded allocation shall remain effective until the effective date of the change in ownership or until the first Board of Review meeting following the recipient's advance written notice to the Board of Review, whichever is sooner. If the effective date of the change in ownership occurs before the Board of Review can hold a meeting, the recipient's allocation will be paused from the effective date until the Board of Review has held a meeting and decided whether to require relinquishment.

(i) If the Board of Review votes to require relinquishment, the relinquishment shall become effective on a date specified by the Board of Review on the record at the meeting at which it votes.

(ii) If the Board of Review votes not to require relinquishment, the allocation shall remain in effect. Within ten business days of the Board of Review's vote, each new owner or manager shall provide to the chair a signed acknowledgement that the recipient is bound by all terms and conditions in the Certificate of Allocation. If any new owner or manager fails to submit such an acknowledgement as required, the Board of Review reserves the right to vote at the next Board of Review meeting to require relinquishment of the allocation.

(d) If a recipient fails to make the Board of Review aware of a change or anticipated change in ownership in keeping with Subsection R990-200-205(7)(a), the Board of Review reserves the right, in its sole discretion, to take either or both of the following actions:

(i) revoke the recipient's allocation at the first Board of Review meeting following the date on which the Board of Review became aware of the change or anticipated change in ownership; or

(ii) prohibit the recipient from applying for any additional volume cap allocations for one year following the date on which the Board of Review became aware of the change or anticipated change in ownership.

(e) Subsection R990-200-5(7) shall not apply when the recipient is one of the following:

(i) the state or any of the state's agencies, institutions, or divisions; or

(iii) any county, city, or town in the state or any of a county, city, or town's agencies, institutions, or divisions.

**R990-200-6. Fees.**

(1) An application fee shall be submitted together with the application.

(2) An extension fee shall be submitted together with the extension request.

(3) A certificate fee shall be submitted upon award of allocation and before issuance of a certificate.

(4) An application, extension request, or other action may not be processed or added to the Board of Review agenda until required fees are paid.

(5) Fees are non-refundable.

(6) The Board shall ensure that the dollar amounts for the fees described in Subsections R990-200-6(1) through (5) shall be clearly listed on a fee schedule adopted by the Board of Review and posted on the Utah Department of Workforce Services' website.

**R990-200-7. Extensions.**

(1) A recipient that has not closed its volume cap allocation within the 90-day period under Section 35A-8-2107 may request an extension from the Board of Review.

(a) A recipient requesting an extension shall submit an application for an extension to the Board of Review as soon as practicable, but no later than the 90th calendar day after the date of the Board of Review's approval of the initial allocation.

(i) The counting of the 90-day period shall be paused from the date of submission, pending the Board of Review's review of the application for extension, and the Certificate of Allocation shall remain effective until the Board of Review has voted whether to approve or deny the application for extension.

(ii) The application for extension shall be approved or denied in the Board of Review's sole discretion.

(b) Manufacturing projects, qualified redevelopment projects, and exempt facility projects are not eligible to carry forward their volume cap allocation beyond the end of the calendar year in which they received the allocation. Such bonds must close by the third Saturday in December in the same year the recipient received the allocation. Any volume cap not issued by this date is automatically relinquished back to the Board of Review.

(c) The Board of Review makes no representation as to whether an issuer will allow the allocation to be transferred to another project if the previously approved transaction fails.

(2) Unless program staff agree to a different deadline, a recipient requesting an extension of a previously approved and current volume cap allocation shall submit a completed extension form to the private activity bond program staff no later than the published due date under Subsection R990-200-4(3) before the Board of Review meeting at which the extension request is to be considered.

(3) An extension request will not be presented to the Board of Review unless the recipient's account is in good standing.

(4) An extension request for a second or more extension will be evaluated, scored, and considered by the Board of Review, subject to Subsection R990-200-7(6).

(5) An extension approval may not exceed 90 calendar days from the date of approval or until the Board of Review holds its next meeting, whichever is sooner.

(6) Unless program staff agree to a different deadline, no later than the published due date under Subsection R990-200-4(3) before the Board of Review meeting at which the extension is to be considered, a recipient requesting an extension shall submit a completed extension request status report and extension fee on the form provided on the website of the Board of Review, together with each request.

(a) Private activity bond program staff shall perform a comprehensive progress review before the Board of Review meeting where an extension will be considered, and shall prepare a recommendation.

(b) The applicant may be required to reapply after the third extension review if there is no substantial evidence of being able to close the bonds.

(7)(a) Absent a legislative occurrence, a recipient may not receive more than five extensions.

(i) In the event of a legislative occurrence, a recipient may submit a sixth extension application. A sixth extension application shall include a written explanation of why a sixth extension is necessary and how the legislative occurrence substantially affects the project's ability to close. In its sole discretion, the Board of Review may grant or deny a sixth extension.

(ii) A request for a sixth extension that omits the written explanation required in Subsection (7)(a)(i) will not be presented to the Board of Review, and the previously allocated volume cap shall be revoked.

(b) A request for a seventh extension for any reason will not be presented to the Board of Review, and the previously allocated volume cap shall be revoked.

(8)(a) Except as provided in Subsection R990-200-7(8)(c), a recipient requesting an extension shall attend, either virtually or in person, the Board of Review meeting at which the extension is considered, prepared to update the Board of Review on the progress of the development and answer any questions. If the recipient does not attend, the Board of Review will table consideration of the extension. Within 48 hours of the Board meeting at which the extension was to be considered, the recipient shall submit to the Board of Review a written explanation of its failure to attend. The extension will be considered at the following Board of Review meeting, and the Board of Review, in its sole discretion, shall approve or deny the extension request at that time.

(b) When a recipient fails to attend a meeting, the Board of Review shall treat such a missed meeting as a granted extension request, such that the missed meeting will count as one of the five extensions a recipient is allowed under this rule.

(c) Subsections R990-200-7(8)(a) and (b) shall not apply when the Board of Review determines, in its sole discretion, that the recipient's failure to attend a meeting is the result of extraordinary circumstances beyond the recipient's control. Even in such extraordinary circumstances, though, a recipient shall make every effort to send a designee to attend and provide updates at the meeting. Any such designee shall speak on behalf of the recipient, and the recipient will be bound by the designee's representations to the Board of Review.

(9) A City or County issuer may submit a request for a Carryforward Certificate no later than 21 calendar days before the December Board of Review meeting.

(10) A City or County issued a Carryforward Certificate shall comply with the extension request requirements for each three-month period after an allocation has been made to a project, including:

(a) attendance at each Board of Review meeting, prepared to update the Board of Review on the progress of the development and answer any questions; and

(b) submission of a complete comprehensive progress report.

(11) The Board of Review reserves the right to approve or reject an extension or Carryforward Certificate in accordance with the criteria established by this rule.

(12) In the event an extension or Carryforward Certificate request is untimely, denied by the Board of Review in its sole discretion, or otherwise not presented to the Board of Review in accordance with this rule, the allocation shall be revoked.

**R990-200-8. Revocation of Private Activity Bond Allocation.**

(1) The Board of Review reserves the right to revoke a recipient's allocation and authority to issue the bonds if there is credible information that a material misrepresentation was presented to the Board of Review or any of its members.

(2) The Board of Review reserves the right to revoke a recipient's allocation if:

(a) the project's total number of affordable units is reduced by 10% or more from the projection on which the recipient received the allocation;

(b) the project's total number of units is reduced by 15% or more from the projection on which the recipient received the allocation;

(c) the site location of the project is changed from the site the Board of Review considered when it approved the allocation;

(d) total costs per unit are increased by 15% or more over the cost projection on which the recipient received the allocation;

(e) total project costs are increased by 20% or more over the cost projection based on which the recipient received the allocation; or

(f) the Board of Review---at any time, based on the totality of circumstances, and in its sole discretion---determines there is no substantial evidence the recipient will be able to timely close the bonds.

(3) If the recipient is in good standing, a recipient that has had its allocation revoked based on one or more of the factors listed at Subsections R990-200-8(2)(a) through (e) may submit a new application with updated information for a volume cap allocation, and the application will be considered on equal footing with all other new applications. A voluntary relinquishment shall not be considered a failure to close under Subsection R990-200-3(6) and shall not count against a recipient in determining a recipient's good standing.

**KEY: allocation, private activity bond, volume cap**

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