

**CAPITAL AREA HOUSING FINANCE CORPORATION**

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**APPLICATION FOR FINANCING  
QUALIFIED RESIDENTIAL RENTAL PROJECT**

*INSTRUCTIONS AND APPLICATION FORM*

**Effective October 1, 2011**

## **INTRODUCTION**

These Instructions explain how to apply to the Capital Area Housing Finance Corporation for financing qualified residential rental projects. They also summarize the requirements an Applicant must satisfy to qualify for financing. Detailed requirements are set out in the Texas Housing Finance Corporations Act; the Texas state ceiling allocation statute and Texas Bond Review Board's regulations; and in the Internal Revenue Code and Treasury Regulations, rulings, and procedures implementing the Code. No attempt is made to treat these requirements comprehensively or in detail in these Instructions, and prospective Applicants are urged to consult their own legal counsel about the detailed requirements.

## **THE CORPORATION**

The Capital Area Housing Finance Corporation was created in 1981 under the Texas Housing Finance Corporations Act of 1979, chapter 394 of the Local Government Code, as amended, by the counties of Bastrop, Blanco, Caldwell, Fayette, Hays, Llano, and Williamson and the City of San Marcos, Texas. In 1998 the Corporation's Articles of Incorporation were amended to admit Burnet and Lee Counties as members of the Corporation. The Corporation's primary purpose is to assist individuals of low and moderate income to obtain decent, safe, sanitary, and affordable housing located within the boundaries of one of the member local governments. The Corporation is authorized by the Act to issue special revenue bonds to finance qualified residential rental projects for this purpose.

## **TENANT INCOME AND OCCUPANCY REQUIREMENTS**

Under the Housing Finance Corporations Act at least 90% of the rental units must be occupied by individuals of low and moderate income. The Corporation's Board of Directors is required by the Act to determine this income standard.

The Act also requires the Applicant to set aside at least 5% of the rental units—if there are 20 or more in the project—for elderly individuals of low income or families of low or moderate income in which an elderly individual is head of the household. ("Elderly" means 60 or older. "Low income" and "low or moderate income" have the same meaning as "low and moderate income" in the Act.) As an alternative to the set-aside, the Applicant may pay the Texas Department of Aging and Disability Services at closing a one-time fee equal to 0.10% of the total principal amount of the bond issue.

Section 103 of the Internal Revenue Code of 1986, as amended, provides that interest on fully registered, qualified bonds issued by the Corporation to finance residential rental projects is excludable from the gross income of the bondholders if at least 95% of the net proceeds of the issue are used to provide qualified residential rental projects, the required percentage of units in the project will be occupied by individuals of low income within the meaning and for the period specified in section 142(d) of the Code, and if other applicable requirements of sections 141 - 150 of the Code are met.

## **OFFICIAL INTENT**

U.S. Treasury Regulations permit the Corporation to declare its official intent to issue its bonds so that certain project costs may be paid from a portion of the issue proceeds. If the Corporation's Executive Director and Issuer's Counsel find that the Application is correct and complete and that the Applicant requests this action, the Executive Director will schedule a Board of Directors' meeting to consider the Application and adoption of an official intent resolution. The Executive Director will notify the Applicant's contact person of the date, time, and place of the meeting.

A representative of the Applicant should appear at the Board meeting to answer questions about the project.

Adoption of an official intent resolution is solely at the Corporation's discretion and adoption does not obligate the Corporation to issue the bonds.

No person may represent, directly or indirectly, to a potential purchaser of the bonds, or to anyone else, that the Corporation has agreed to finance the Applicant's project until the Corporation adopts a resolution authorizing the issuance of its bonds.

An official intent resolution expires when the Application expires.

## **STATE CEILING ALLOCATION FOR PRIVATE ACTIVITY BONDS**

Unless the Applicant is a 501(c)(3) corporation, the Applicant must receive from the Texas Bond Review Board a reservation of the state's private activity bond allocation in an amount equal to the total principal amount of the private activity bond issue requested of the Corporation. The Corporation's Bond Counsel, Chapman and Cutler of Chicago, will prepare and file the application with the Bond Review Board for the Corporation on behalf of the Applicant, and the Applicant must cooperate fully with Bond Counsel in preparing the application and must certify that all information in the application is correct and complete before it is filed with the Bond Review Board.

## **PRIORITY ELECTION FOR ALLOCATION RESERVATION**

Unless the Applicant is a 501(c)(3) corporation, the Applicant must elect, by checking one of the boxes in item 6 on the Application form front page, one of three priorities for reservation of the private activity bond allocation. The Applicant who elects Priority 1 or 2 must also apply for a 4% Low Income Housing Tax Credit award from the Texas Department of Housing and Community Affairs.

## **ACQUISITION/REHABILITATION PROJECTS**

The Corporation will not finance an acquisition/rehabilitation project unless the Applicant demonstrates compliance with the following specific requirements:

- The project to be acquired and rehabilitated must be adequately capitalized with adequate reserves.
- If an exemption from ad valorem taxes is requested, the Applicant must prove that the transaction will not underwrite but for the exemption. The Applicant must also describe in detail the proposed uses of the funds generated by the tax exemption.
- The Corporation usually requires a PILOT program for each project requesting exemption from ad valorem taxes. Each project will be evaluated separately and the requirement and terms of the PILOT program will be determined by the Board of Directors of the Corporation.
- If a nonprofit entity will own the project and the Applicant requests an exemption from ad valorem taxes, the Applicant must make arrangements satisfactory to the Corporation limiting the percentage of excess cash flow from the project that will be transferred out of the region. The excess cash flow should be used for PILOT payments and to provide services to residents.
- The project must meet, at a minimum, the IRS “safe harbor” test of 20% of the units occupied by tenants earning no more than 50% of the Area Medium Income or 40% of the units occupied by tenants earning no more than 60% of the Area Median Income. The Corporation may also place additional restrictions on the project to ensure that it satisfies a public purpose with at least 90% of the units being affordable as defined by the Board of Directors of the Corporation.

## **PUBLIC HEARING AND APPROVAL**

Section 147 of the Internal Revenue Code requires the Corporation to conduct a public hearing on the project at a location convenient to members of the public likely to be interested in the project. The Corporation's Bond Counsel will schedule and advertise the hearing and notify the Applicant's contact person of its date, time, and place. The Corporation will designate a Hearing Officer to conduct the hearing.

A representative of the Applicant should appear at the hearing and be prepared to answer questions about the project.

Section 147 of the Code also requires approval of the project by the chief elected executive officer of the local government in whose jurisdiction it will be located. For locations outside the City of San Marcos, the chief elected executive officer is the county judge. For projects located in the City of San Marcos, the chief elected executive officer is the Mayor of San Marcos.

The Corporation's Issuer's Counsel will prepare the certificate of approval and present it to the appropriate official for signature. It is the Applicant's responsibility to secure the approval, however.

### **THIRD-PARTY REPORTS**

The Corporation may obtain underwriting, marketing, appraisal, and physical needs assessment reports on the project from independent third parties and pay all or part of the cost of these reports with the advance against the Issuance Fee described on page 6.

### **REGULATORY APPROVALS AND PAYMENT IN LIEU OF TAXES**

The Applicant is responsible for obtaining all regulatory approvals (zoning, special permits, utility connections, etc.) necessary for development of the project. If the Applicant proposes to seek exemption of its project in whole or part from ad valorem taxes, the Corporation typically requires the Applicant to make arrangements, satisfactory to the Corporation, for payment in lieu of taxes to the governmental entities with taxing jurisdiction over the project.

### **RATING OR PRIVATE PLACEMENT**

The Corporation will not issue bonds to finance a qualified residential rental project unless the bonds receive a rating in at least the A category from Standard and Poor's Ratings Services or Moody's Investors Service Inc, or unless the bonds are sold for investment purposes by private placement.

If the Applicant plans a private placement sale, the Applicant must furnish the Corporation with an investment letter from the prospective purchaser of the bonds that is satisfactory to the Corporation and Bond Counsel. In addition, the bonds must be in denominations of \$100,000 or more and the bonds must be transferable only by physical delivery.

### **ISSUER'S COUNSEL, BOND COUNSEL, AND FINANCIAL ADVISER**

The Corporation has retained Seth S. Searcy III as its Issuer's Counsel and Chapman and Cutler LLP of Chicago as its Bond Counsel and rebate analyst for its bond issues. The Corporation will also retain a Financial Adviser for the bond issue. The Applicant (or a related entity) must sign the engagement letters of the Issuer's Counsel and Bond Counsel, and pay their required retainers, before the public (TEFRA) hearing is scheduled. The engagement letters must be executed by an existing entity acceptable to the Issuer's Counsel and Bond Counsel, respectively.

### **UNDERWRITER/PLACEMENT AGENT AND TRUSTEE**

The Corporation will select an experienced underwriter or private placement agent, and a qualified bank or trust company to serve as trustee, for the issue.

## **BOND ISSUANCE RESOLUTION**

If the Applicant satisfies all of the requirements for issuance of the Corporation's bonds, the Board of Directors of the Corporation will adopt a resolution authorizing the issuance of its bonds to finance the Applicant's qualified residential rental project. After adoption of the resolution, Bond Counsel will schedule the closing and notify the Applicant's contact person and other interested parties of the date, time, and place of the closing.

### **TAX COMPLIANCE**

The Applicant agrees to sign a Tax Compliance Procedures Agreement, prepared by Bond Counsel, before the bonds are issued.

### **FEES AND COSTS**

*Application fee.* \$4,500 for a private activity bond issue, \$3,000 for a 501(c)(3) Applicant. \$3,000 of the application fee covers staff time for reviewing the Application. \$1,500 of the private activity bond application fee compensates Bond Counsel for preparing and filing the Bond Review Board application. In addition, a private activity bond Applicant must submit with the Application a check in the amount of \$5,000 payable to the Texas Bond Review Board for its filing fee. If the Corporation does not adopt a resolution of official intent for the Applicant's project, the Corporation will return the \$5,000 Bond Review Board fee check and Bond Counsel fee (if these fees were paid) to the Applicant. Whether or not the Corporation adopts an official intent resolution, however, the \$3,000 portion of the application fee earmarked for the Corporation is not refundable.

*Issuance fee.* 0.75% of the total principal amount of bonds issued, payable at closing. The Corporation will require an advance against the Issuance Fee of 10% of the estimated Issuance Fee if it orders one or more of the Third-Party Reports described on page 4. This advance will be used to pay for any Third-Party Reports ordered by the Corporation, staff time for reviewing the Third-Party Reports, and any other expenses incurred by the Corporation. The advance is payable by the Applicant to the Corporation before the public (TEFRA) hearing is scheduled. If the total cost of the Third-Party Reports, staff time, and expenses is less than the advance and the bonds are not issued, the Corporation will refund the difference to the Applicant. If the bonds are issued, none of the advance is refundable but the total advance is credited against the balance of the Issuance Fee due at closing and any amounts expended for Third-Party Reports, staff time, and expenses will be reimbursed to the Corporation at closing by the Applicant.

*Annual administrative fee.* 0.15% of the total principal amount of the bonds issued. The fee is payable to the Corporation on each anniversary of the closing, beginning on the second anniversary, so long as any of the bonds are outstanding. If the Corporation agrees that the annual administrative fee will not be secured by the mortgage on the project, the first three years of the fee are payable to the Corporation at closing and the remaining annual administrative fee is payable beginning on the fourth anniversary of the closing and on each subsequent anniversary so long as any of the bonds are outstanding.

*Early-Redemption Fee.* An amount equal to two years of the annual administrative fee. The early-redemption fee is payable to the Corporation when the Corporation adopts the early-redemption resolution.

*Closing fees and costs.* The Applicant is responsible for Issuer's Counsel's, Bond Counsel's, and the Financial Adviser's fees and expenses; the rating agency's, lender's, underwriter's/ placement agent's, rebate analyst's, and trustee's fees and expenses; bond printing costs, placement costs, and insurance premiums; filing and recording fees; the Bond Review Board's closing fee; the Texas Department of Aging and Disability Services' fee (if elected); the costs of transcript preparation and distribution; and any other fees and costs of closing.

*Fees due upon expiration of application.* If a resolution of official intent is adopted by the Corporation but the Application expires without the bonds having been issued, the Applicant is responsible for all fees and expenses incurred by Issuer's Counsel and Bond Counsel through the expiration date, and the Applicant agrees to pay counsel these fees and expenses within 30 days after the expiration of the application.

**FEES OF BOND COUNSEL, ISSUER'S COUNSEL, AND FINANCIAL ADVISER**

The fees set out below for Bond Counsel and Issuer's Counsel have been approved by the Corporation for its multifamily bond issues. The fees do *not* cover the extra work required when the Corporation will serve as general partner in a multifamily project, and Bond Counsel and Issuer's Counsel will negotiate additional fees with the Applicant to compensate for this work. The fees do *not* include expenses.

	ISSUE AMOUNT	FEE
Bond Counsel	\$8,000,000 or less	\$70,000
	\$8,000,001 - \$11,999,999	\$80,000
	\$12,000,000 - \$14,999,999	\$85,000
	\$15,000,000 - \$19,999,999	\$90,000
	\$20,000,000 or more	Negotiated
Issuer's Counsel	Any amount	\$12,000
Financial Adviser	Any amount	Negotiated

## APPLICATION FORM

You must complete the application form, which is available on the Corporation's web site, [www.cahfc.org](http://www.cahfc.org), and may be completed online. Please answer all questions completely and accurately. If you need additional space for an answer, or the question requires an attachment, attach letter-size continuation sheets, reduce or fold required attachments to letter size if possible, and insert each continuation sheet or attachment following the form page it supplements. Include the question number(s) on the continuation sheet and attachment and number the sheets in sequence—for example, the continuation sheets answering question 1.10 on form page 2 would be numbered 2-1, 2-2, etc.

The Corporation may request additional information, not required by the application form, from the Applicant, and the Applicant agrees to furnish it in writing within a reasonable time after it is requested. The Corporation may also vary the requirements of the application form if necessary to accommodate changes in the law or to obtain a complete and accurate understanding of the Applicant's project.

The Corporation is subject to the Texas Public Information Act, and all information in its files, including the completed application, is subject to disclosure unless made confidential by the Act.

The individual signing the application represents that he or she read and understands the Instructions and Application Form, that the information contained in the Application Form is correct and complete, that the Applicant agrees to the terms and conditions set out in the Instructions and Application Form, and that he or she is legally authorized to sign on behalf of the Applicant.

When the application is completed, sign, date and submit it electronically to: James E. Shaw, Executive Director, [jeshaw@cahfc.org](mailto:jeshaw@cahfc.org) with a copy to Lori Fisher, Director of Operations, [lfisher@cahfc.org](mailto:lfisher@cahfc.org). Please include with the application the following checks: \$3,000 payable to Capital Area Housing Finance Corporation, \$1,500 payable to Chapman and Cutler, LLC, and \$5,000 payable to the Texas Bond Review Board (if applicable). The application will not be processed until funds are received.

## REJECTION OF APPLICATION

The Corporation may reject an application if it is not received by the Corporation on or before the application deadline; if it is not accompanied by the full application fee; or if the application is incomplete and the Applicant fails to complete it within a reasonable time after the Corporation's request for completion.

## **EXPIRATION OF APPLICATION**

An application expires if it is withdrawn by the Applicant; if the Corporation does not adopt a resolution of official intent within 90 days from the date of the application; if the Applicant does not receive an allocation reservation from the Texas Bond Review Board (if required) or the Low Income Housing Tax Credits applied for from the Texas Department of Housing and Community Affairs; if the reservation or tax credits are withdrawn, cancelled, or expire; or if the Corporation does not issue the requested bonds within 150 days from the later of (i) the date of the adoption of the resolution of official intent, or (ii) if applicable, the date of the allocation reservation from the Texas Bond Review Board. All action taken by the Corporation on an application becomes void when the application expires.