

AUSTIN HOUSING FINANCE CORPORATION

**RENTAL HOUSING DEVELOPMENT ASSISTANCE (RHDA)  
PROGRAM**

Program Guidelines for General Obligation (GO) Bond Funding,  
HOME Funds, CDBG, Housing Trust Fund,  
and  
Other Such Funding that may be Available to Develop Affordable Rental Housing.

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
CONSIDER SMOKE-FREE HOUSING	2
I. PURPOSE	3
II. DISCLAIMERS	3
III. DEFINITIONS	3
IV. FUNDING AND FINANCING MECHANISMS	6
V. ELIGIBILITY	6
VI. LIMITS OF ASSISTANCE	7
VII. AFFORDABILITY REQUIREMENTS	8
VIII. PROJECT UNDERWRITING, DEVELOPER CAPACITY, FISCAL SOUNDNESS, AND ASSESSMENT OF MARKET NEED	10
IX. FINANCING	11
X. APPLICATION AND REVIEW PROCESS	13
XI. LOAN DISBURSEMENTS	13
XII. REPORTING/RECORD KEEPING	14
XIII. INITIAL OCCUPANCY	14
XIV. LONG-TERM COMPLIANCE	14
XV. TENANT PROTECTIONS	15
XVI. ADDITIONAL REQUIREMENTS	16
XVII. DEFAULT ACTIONS AND SANCTIONS	18
XVIII. APPEALS/GRIEVANCE PROCESS	19

## ***CONSIDER SMOKE-FREE HOUSING***

The City of Austin encourages the development of smoke-free rental housing. Smoke-free housing protects the health of residents by decreasing exposure to harmful secondhand smoke. Also, apartment owners and managers reap the benefits of more efficient and less expensive unit turnovers, potentially lower insurance premiums, and reduced risk of fires.

Smoke-free policies are legally permissible and can be a marketing advantage for attracting and retaining residents. More than 80 percent of people living in the Austin area do not use tobacco, and a 2011 survey conducted by the Austin/Travis County Health and Human Services Department found that 77 percent of renters in Travis County would prefer to live in tobacco-free housing.

Find out how you can protect the health of residents, make your property safer, and save money by downloading a copy of “A Manager’s Guide to Smoke-Free Housing Policies” at:

<http://www.livetobaccofreeaustin.org/owners.php>.

## I. PURPOSE

The purpose of the Rental Housing Development Assistance (RHDA) Program (the "Program") is to:

- A. increase or maintain the community's supply of affordable rental housing for low-income households;
- B. increase the availability of permanent supportive housing and other units reserved for low-income households with special needs; and
- C. assist the City of Austin in meeting its stated affordable housing goals and objectives.

## II. DISCLAIMERS

- A. The Austin Housing Finance Corporation (AHFC) reserves the right to fund projects at a lower amount than requested, and the right to deny applications that do not coincide with the City's FY 2016-17 Action Plan goals and policy direction from the Austin City Council. The Program is under no obligation to consider or fund any proposed project that does not meet program requirements and assist in meeting the City's affordable housing policy goals and/or objectives.
- B. The City of Austin/AHFC reserves the right to determine project eligibility and the fund source to be used for any proposed project. Funding decisions will be based on a variety of factors, not just application scores. Other factors considered are:
  1. the applicant's current workload;
  2. financial capacity;
  3. the project's potential for transformative impact on residents and the surrounding community,
  4. repayment of funds borrowed from AHFC; and
  5. whether the request for funding is for a project that has previously been awarded RHDA funds.

Additional consideration is given to how the RHDA Program can best maximize the effect of RHDA funding and how that leverages other funds.

- C. These RHDA Program Guidelines are not intended to address every circumstance that may be encountered in the development process, nor are they intended to be a verbatim restatement of all regulatory requirements. Omission of any federal or local regulatory requirements in these RHDA Program Guidelines does not relieve the City of Austin, AHFC, or the recipient of RHDA Program funds from their respective obligations as may be required by the funding source involved.
- D. Once a Loan Agreement has been executed between AHFC and a Borrower for the purpose of developing rental housing according to these RHDA Program Guidelines, if there is a conflict between these RHDA Program Guidelines and the project's Loan Agreement, the terms of the Loan Agreement shall prevail.
- E. RHDA Program guideline changes required as the result of federal, state or local regulatory or legal requirements may be implemented immediately by the NHCD Director/AHFC Treasurer.
- F. Revision to these RHDA Program Guidelines usually takes place once annually. However, additional revisions can be initiated by the NHCD Director/AHFC Treasurer at any time.

## III. DEFINITIONS

The following definitions are utilized throughout these Program guidelines:

- **"Accessible"** means an individual dwelling unit, facility or a portion of a facility, when designed and constructed, can be approached, entered and/or used by individuals with physical disabilities.
- **"Adaptable"** means certain elements of a dwelling unit or facility can be added to, raised, lowered or altered to accommodate the needs of individuals with disabilities, or to accommodate the needs of persons with different types or degrees of disability.
- **"Affordable Rent" or "Eligible Rent"** means that the rent plus utilities paid by the tenant does not exceed rent limits according to household and unit size for properties developed with the following fund sources:

- **For projects utilizing HOME and CDBG grant funds, or local non-federal sources, such as Housing Trust Fund or General Obligation Bond Funding**, the HOME Program Rent Limits, published by HUD for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA) will be used.
- **For projects financed with Low Income Housing Tax Credits (LIHTC) and/or Multi-family Private Activity Bonds (PAB)**, the Rent Limits published by the Texas Department of Housing and Community Affairs (TDHCA) for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA) will be used.
- **If a combination of federal grant and/or local fund sources is used with LIHTC and/or PAB financing, AND if there is a difference between HOME and TDHCA rent limits**, the more restrictive rent limits (i.e., lower dollar amounts for rents according to bedroom counts) will be used in order to ensure that the rent limits do not exceed those of the more restrictive funding source.
- **If there is no difference between HOME and TDHCA rent limits**, the HOME rent limits will be used.
- **“AHFC”** means Austin Housing Finance Corporation, a Texas, public non-profit corporation organized and operated under Chapter 394, Texas Local Government Code.
- **“CHDOs” or “Community Housing Development Organizations”** means a type of non-profit, community-based service organization that has, as part of its mission, the development of affordable housing for low- to moderate-income households. The U. S. Department of Housing and Urban Development (HUD) requires that the organization meet certain requirements pertaining to its legal status, organizational structure, and relationship to other entities, capacity and experience. Further definition can be found at 24 CFR 92.300
- **“Debt Coverage Ratio (DCR)”** means the ratio of net operating income (NOI) to total debt service (DS) during a given time period ( $DCR = NOI \div DS$ ). Developments where financing is structured so as not to have debt on the property will not have a debt coverage ratio that can be calculated.
- **“Economic Feasibility”** for a for-profit developer is defined as a project’s ability to generate a minimum 10% return on equity to the investor(s) after all expenses and debt service have been paid; and **“Economic Feasibility”** for a non-profit organization is defined as a project in which projected returns are sufficient to reimburse actual expenses.
- **“Eligible Costs”** means project costs that can be paid with RHDA Program funds. Eligible costs include, but are not limited to, the costs or partial costs of acquisition and/or verifiable hard construction costs, reasonable soft costs, architectural and engineering fees, surveys, market studies and legal fees.
- **“Eligible Household”** means a household with a yearly income at or below 50% of the median family income (MFI) as published by HUD for the HOME Program or by TDHCA, as applicable to the source(s) of funding, for the Austin-Round Rock-San Marcos, TX MSA.
- **“Geographic Dispersion”** means locations or areas that provide greater opportunity for families in terms of education, economic, mobility and transportation, health and environment, and neighborhood quality as described in *“Geography of Opportunity: Austin Region”* by the Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, 2012. For the online version, Go to <http://www.opportunitymatterscentex.org/> and click on “go to online map.”
- **“Housing First”** is a housing model typically designed for individuals or families who have complex service needs, who are often turned away from other affordable housing settings, and/or who are least likely to be able to proactively seek and obtain housing on their own. Housing First approaches is often implemented in permanent supportive housing and rapid re-housing. The approach has evolved to encompass a community-level orientation to ending homelessness in which barriers to housing entry are removed and efforts are in place to prioritize the most vulnerable and high-need people for housing assistance. Core elements include: 1) Admission/tenant screening and selection practices promote the acceptance of applicants regardless of their sobriety or use of substances, completion of treatment, and participation in services. 2) Applicants are seldom rejected on the basis of poor credit or financial history, poor or lack of rental history, minor criminal convictions, or behaviors that indicate a lack of “housing readiness.” 3) Housing accepts referrals directly from shelters, street outreach, drop-in centers, and other parts of crisis response system frequented by vulnerable people experiencing homelessness. 4) Supportive services emphasize engagement and problem-solving over therapeutic goals. Services plans are highly tenant-driven without predetermined goals. Participation in services or program compliance is not a condition of permanent supportive housing tenancy. Rapid re-housing programs may require case management as condition of receiving rental assistance. 5) Use of alcohol or drugs in and of itself (without other lease violations) is not considered a reason for eviction.
- **“Median Family Income (MFI)”** means, for a given locality, the dollar amount separating ½ of the households with higher incomes from ½ of the households with lower incomes. In other words, at the median income level, there is an equal amount of households earning more than the median income and an equal number earning less the median income. The median income amount is adjusted based on the number of persons in a household.
- **“Net Operating Income”** means rent revenues or other income generated by the property(ies) with the exception of any project proceeds resulting from the long-term lease or sale of the property(ies).
- **“NOFA”** means Notice Of Funding Availability. A NOFA refers to a process that informs the public that funding is available for a specific purpose and can be requested through an application process.
- **“Non-profit Organization”** means a not-for-profit non-sectarian organization that is certified by the Internal Revenue Service (IRS) as either a 501(c)(3) or a 501(c)(4) entity established for the purpose of benefiting low- and moderate-income individuals.

- **“Organization in Good Standing”** means an organization under one or more contracts or agreements with the City or AHFC and which has in the past met, or currently is in compliance with, meeting minimum contractual and performance requirements. An organization must be considered in good standing as a condition for consideration for future or additional funding or to amend existing contractual conditions.
- **“Permanent Supportive Housing”** means affordable housing linked to a range of support services that enable tenants, especially the homeless, to live independently and participate in community life. PSH can be offered in diverse housing settings, but usually consisting of apartment units that are
  1. Targeted to households earning under 30% of Median Family Income with multiple barriers to housing stability;
  2. Deeply affordable. Rents are subsidized so that the tenant ideally pays no more than 30% of household income towards rent, even where tenants have extremely limited or no income;
  3. Lease-based. Tenancy is based on a legally-enforceable lease or similar form of occupancy agreement, and there are not limits on a person’s length of tenancy as long as they abide by the conditions of the lease or agreement;
  4. Supported by the availability of a flexible array of comprehensive services, but participation is typically voluntary. The tenant has access to a flexible array of comprehensive services, including, but not limited to, case management, medical, mental health, substance use treatment, employment, life skills, and tenant advocacy, but a lease will not be terminated solely because a tenant chooses not to participate; and
  5. Managed through a working partnership that includes ongoing communication between service providers, property owners/managers, and programs providing rent subsidies.

Permanent supportive housing is targeted to individuals or families headed by individuals that are:

1. Chronically homeless as established in the HEARTH Act (Homeless Emergency Assistance and Rapid Transition to Housing Act (24 CFR, Part 577)
  2. Households that would otherwise meet the HUD definition of chronically homeless as above, but have been in an institution for over 90 days, including a jail, prison, substance abuse facility, mental health treatment facility, hospital or other similar facility,
  3. Unaccompanied youth or families with children defined as homeless under other federal statutes, including but not limited to the Runaway and Homeless Youth Act, who:
    - a. have experienced a long term period without living independently in permanent housing;
    - b. have experienced persistent instability as measured by frequent moves over such period; and
    - c. can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.
  4. A single adult or household led by an adult “aging out of” or “under 22 years of age and aged out of” state custody of the foster care or juvenile probation system, where the head of household is homeless or at-risk of homelessness.
- **“Program Income”** means the gross income received by the grantee (City of Austin) or subgrantee (Austin Housing Finance Corporation) directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the grant period. To be considered program income, the grantee or a subgrantee must receive the income.
  - **“Project Proceeds”** means proceeds resulting from the long-term lease or sale of the property.
  - **“Rapid Re-Housing”** means Rapid re-housing is an intervention designed to help people to quickly exit homelessness and return to permanent housing. The core components of rapid re-housing are housing identification, financial assistance for rent or move-in costs, and housing stability case management and services. While a rapid re-housing program must have all three core components available, it is not required that a single entity provide all three services, nor that a household utilize them all.
  - **“Rent Buy-Down Assistance”** means financial assistance to facilitate occupancy of up to 10% of the total units in a high cost or “high-end” project by households with yearly incomes at or below 50% of MFI. The amount of assistance is determined by calculating the difference in the anticipated rent revenue generated by units occupied by households with yearly incomes at or below 80% of MFI to the total rent revenue anticipated from units occupied by households with yearly incomes at or below 50% of MFI, according to the number of units for a required period.

In other words:

**80% MFI Monthly Rent limit minus 50% MFI Monthly Rent limit;  
multiplied by the Number of Units to be Assisted [no more than 10% of total units];  
 multiplied by 12 Months;  
 multiplied by the Number of Years rents will be “bought down”;  
 = Rent Buy-Down Assistance Amount**

- **“Special Needs”** means people with disabilities, survivors of domestic abuse, homeless, and other vulnerable population categories as may be identified from time to time.
- **“Supportive Services”** means services provided to persons with special needs which enable individuals to achieve a greater level of independence and/or self-sufficiency such as case management, health services, housing counseling, employment counseling and referral, and other services as defined in federal regulations 24 CFR §882.802.
- **“Transitional Housing Project”** means a housing project that provides housing for up to 24 months and includes supportive services as defined above.
- **“Very Low-Income Household”** means a household whose gross income is at or below 50% of the MFI according to family size as published by HUD for the HOME Program or by TDHCA, as applicable to the source(s) of funding.

## IV. FUNDING AND FINANCING MECHANISMS

Subject to the requirements and limitations of RHDA Program funding sources, the Program is expected to provide financing for the acquisition, rehabilitation, new construction, debt relief, or rent “buy-downs” for affordable rental housing projects. Financing is provided to both for-profit and non-profit developers, including CHDOs. The RHDA Program is administered on behalf of the City of Austin by AHFC using a variety of funding sources, including:

### A. FEDERAL FUNDS

1. HOME (Home Investment Partnership Program);
2. CDBG (Community Development Block Grants); and
3. HOME or CDBG Program Income funds.

### B. NON-FEDERAL or LOCAL FUNDS

1. General Obligation (G.O.) Bond Funds
2. General Fund;
3. Housing Trust Fund; and
4. Other local funding that may be available from time to time.

### C. OTHER FINANCING MECHANISMS

1. Private Activity Bonds issued by AHFC, typically used in conjunction with non-competitive Low Income Housing Tax Credits awarded by the Texas Department of Housing and Community Affairs.

**NOTE: The Austin Housing Finance Corporation will be the issuer of Private Activity Bonds for any development seeking RHDA funding in addition to Private Activity Bonds and Low Income Housing Tax Credits. RHDA funding requests that propose to use a bond issuer other than AHFC will be denied, except for issuers affiliated with units of local government within Travis County, Texas.**

## V. ELIGIBILITY

### A. Eligible Projects

Eligible projects may include acquisition, rehabilitation, construction, debt relief, or “rent buy-down” projects for the development of affordable rental housing. For rehabilitation projects, funds may be used to make essential repairs or improvements to meet local code or federal housing quality standards (HQS), come into compliance with federal requirements of Section 504 or the Americans with Disabilities Act, abatement of lead-based paint, abatement of asbestos, essential energy-related repairs or improvements, and repair or replacement of major housing systems in danger of failure. Facilities considered to be homeless shelters are not eligible.

Projects assisted must be operated and maintained on a long-term basis in accordance with these program guidelines and contractual requirements based on applicable federal and local regulations.

#### **Minimum requirements for projects are as follows:**

1. Located within the corporate City-limits of Austin.
2. Projects must consist of one (1) or more residential units.
3. Units must be used for residential purposes only.
4. New construction projects must be certified for and meet the City of Austin’s S.M.A.R.T. Housing™ requirements.
5. Rehabilitation projects must have a minimum of one (1) condition that violates either the City’s Housing Code or federal Housing Quality Standards (HQS).

6. As determined applicable by the AHFC, assisted units must be made available to households with Housing Choice Vouchers from the Housing Authority of the City of Austin.
7. The project must be owned, developed or sponsored by a for-profit or non-profit organization in good standing with the City of Austin/AHFC.
8. If applicable, projects must meet HUD Environmental Review requirements.

**The following project types or characteristics are preferred (in no particular order):**

1. “Housing First” Permanent Supportive Housing as defined above.
2. Projects setting aside units for Rapid Rehousing.
3. Projects that address Geographic Dispersion of affordable housing, particularly those in Very High Opportunity areas or High Opportunity Areas according to the Opportunity Map.
4. Projects that meet the requirements of the City’s Vertical Mixed-Use (VMU) Ordinance, or are in a Planned-Unit Development (PUD) or a Transit-Oriented Development (TOD).
5. Rehabilitation projects that preserve existing affordable rental units as described by the City’s “*Preserving Affordable Housing in Austin: A Platform for Action*” completed in April 2008.
6. Projects that specifically reserve units for persons with disabilities above and beyond normal requirements.
7. Projects that will have affordability periods of 99 years.

**C. Eligible Costs**

Through the Program, applicants may receive financing for acquisition, rehabilitation or new construction of rental housing projects. RHDA funding may be used for the following as long as it is specifically related to the project:

1. **Hard Costs** such as purchase or “buy-down” of rental units, acquisition of undeveloped land for a specific project, acquisition of existing structures, site preparations or improvement including demolition, securing buildings, and construction materials and labor.
2. **Soft Costs** such as architectural and engineering fees (including specification and job progress inspections), financing costs, credit reports, title insurance, recording costs, transaction taxes, appraisals, environmental reviews, builders’ or developers’ fees, marketing costs, and management fees.

The successful applicant will be required to provide an accounting of expenditures made with funds on such periodic basis, as shall be determined by the AHFC or the City of Austin, to ensure that the expenditures are made in satisfaction of the public purposes approved by the voters at the November 2013 election.

**D. Ineligible Costs**

While the following list of ineligible items is not intended to be all inclusive, RHDA funding **may not** be used for the repair or construction of:

wet bars; barbecue pits; bathhouses; burglar bars; carpeting for kitchen, bathrooms, or patios; window treatments (*e.g.* draperies, shades, curtains, mini blinds); dumbwaiters; fireplaces (except repairs to existing); flower boxes; garage door openers; greenhouses; hot tubs or Jacuzzis; mobile homes; outdoor fireplaces or hearths; patios or decks (except repairs of existing); photo murals; swimming pools or swimming pool decks; television antennae; tennis courts; and permanently affixed kitchen appliances (appliances designed to be freestanding are acceptable). AHFC reserves the right to disallow other project costs deemed nonessential to furthering the purpose of the project.

Generally speaking, luxury items will be found ineligible, and AHFC reserves the right to disallow other project costs deemed non-essential to furthering the purpose of the project. Also, the RHDA program will not reimburse for any sales taxes paid on materials or labor.

**VI. LIMITS OF ASSISTANCE**

**A. Acquisition, Rehabilitation, New Construction, Debt Relief, and Rent Buy-down**

Assistance is available in the amount of \$2,500,000 per project and the per-unit limits stated below, or other such amounts as the AHFC Board may authorize, for:

1. **Acquisition of land for the development of affordable housing.**
  - a. Acquisitions must include existing units or vacant land that will facilitate the new construction of units. Assistance can be provided for the acquisition of land or existing rental properties, only if the acquisition price is equal to or less than the fair market value of the property. The applicant must demonstrate the fair market value of the property by supplying one of the following:
    - i. a pre-construction appraisal on the property to be acquired, conducted less than six months prior to receipt of a funding application by AHFC;

- ii. an appraisal for comparable properties within the same neighborhood, conducted less than six months prior to receipt of a funding application by AHFC or
- iii. a tax assessment (less than one year old) for the property or for comparable properties within the same neighborhood.

**2. Acquisition of property to be rehabilitated and used for affordable housing.**

- a. Property acquisition is described in the preceding Subsection VI.A.1. Rehabilitation costs for affordable rental units are limited to \$60,000 per unit in multi-family structures and \$90,000 per unit in single-family (i.e., 1 to 4 units) which is inclusive of the \$2,500,000 total project assistance limit in Section VI.A. above.
- b. For rehabilitation projects, funds may be used to make repairs or improvements to the property such that the property will:
  - i. meet local code or federal housing quality standards (HQS);
  - ii. come into compliance with federal requirements of Section 504 of the Rehabilitation Act of 1974, as amended,
  - iii. comply with the Americans with Disabilities Act,
  - iv. have been treated for identified lead-based paint hazards in properties constructed prior to 1978;
  - v. have proof that asbestos has been handled appropriately;
  - vi. have energy-saving repairs or improvements made and major housing systems repaired or replaced.

**3. New construction of affordable housing.**

- a. Hard and Soft Costs as defined previously will be limited to:
  - i. \$60,000 per unit in multi-unit structures, and
  - ii. \$90,000 per unit in single-family structures (1 to 4 units).
- b. Each of these amounts is inclusive of the \$2,500,000 total project assistance limit in Section VI.A. above.

**4. Debt Relief/Refinancing**

- a. In accordance with federal and state law, debt relief may be provided subject to the following:
  - i. Debt relief must facilitate the rehabilitation or replacement of existing affordable rental housing units as determined necessary and feasible by the City/AHFC.
  - ii. Financing for debt relief is limited to those projects in which the cost of the actual rehabilitation is greater than the amount of debt to be refinanced.
  - iii. The amount of debt relief cannot exceed \$60,000 per affordable unit.
  - iv. Debt relief assistance will be limited to projects in which AHFC, or one of its subsidiary corporations, shall have an equity ownership and/or superior lien position, the terms of which will be negotiated prior to the approval of financing.
- b. This amount is inclusive of the \$2,500,000 total project assistance limit in Section VI.A above.

**5. Rent Buy-Down Assistance for Market-Rate Projects.**

- a. Assistance is available to facilitate occupancy of up to 10% of the total units by households with yearly incomes at or below 50% of MFI in a high-cost or “high-end” project located in an area of High Opportunity or Very High Opportunity, according to the Kirwan Opportunity Map.
- b. The amount of assistance is determined by making the following calculation:
  - i. the difference between the anticipated annual rent revenue generated by units occupied by households with yearly incomes at or below 80% MFI and the anticipated annual rent revenue from units occupied by households with yearly incomes at or below 50% or 30% of MFI, depending on the income restrictions of the units.
  - ii. multiply that result by the number of units to be assisted [no greater than 10% of total units in the development]
  - iii. multiply that result by the number of years of affordability required.
- c. This amount is inclusive of the \$2,500,000 total project assistance limit in Section VI.A above.

**B. Developer Fee.** A Developer Fee is compensation to the developer for the time and risk involved to develop the project. It is typically based on the size of the project, the total development cost and the risk associated with the project. The maximum developer fee allowed by AHFC is 15% of total project costs. AHFC may require a lower percentage for the developer fee if the developer also holds an ownership stake in the project or stands to profit from managing the property. Project Management fees (i.e., those paid out on a monthly basis while the project is underway) are considered a part of the Developer Fee.

**VII. AFFORDABILITY REQUIREMENTS**



## **A. Assisted Units**

Projects may have a mix of RHDA-assisted and non-assisted units. The distinction between assisted and non-assisted units allows funds to be expended on mixed-income projects while targeting assistance to income-eligible households. At least 10% of all units in the project must be designated as RHDA-assisted. The applicant must designate in its project application the minimum number of RHDA-assisted units reserved for income-eligible households at required rent levels. Assisted units may be fixed or floating units.

## **B. Affordability Period**

When RHDA funds are used to assist rental projects, income and rent restrictions apply to the RHDA-assisted units for a defined period of time called the “affordability period.” A project’s affordability period is enforced using a legally binding document, a “Restrictive Covenant Running with the Land” that will be filed for record in the Official Public Records of Travis County, Texas.

An Affordability Period will be established for each rental project assisted with RHDA funding based on the following criteria:

1. Federal or Non-Federal Funds, depending on the amount of subsidy per RHDA-assisted unit:
  - a. \$1,000 to \$15,000 per unit – a period not less than 5 years
  - b. \$15,001 to \$40,000 per unit – a period not less than 10 years
  - c. More than \$40,000 per unit – a period of not less than 15 years
  - d. New Construction of Rental Housing using any amount per unit – a period of not less than 20 years.
2. General Obligation Bond Funds
  - a. 40-year minimum, regardless of amount.

AHFC, at its discretion, may require a project to utilize a longer affordability period than those stated above. Affordability requirements and restrictions will remain in force throughout the Affordability Period regardless of transfer of ownership unless ownership of the property is transferred through foreclosure proceedings.

## **C. Income and Occupancy Requirements**

Throughout the established Affordability Period, RHDA-assisted units in projects must be occupied by households with annual incomes at or below 50% of the MFI for the Austin-Round Rock-San Marcos, TX MSA. However, AHFC shall set the following goal to provide assistance targeted toward households with annual incomes at or below 30% MFI.

### **1. Income Determination Method**

The Applicant shall determine income eligibility of each household using the method established in 24 CFR Part 5, commonly referred to as the “Section 8” method of income determination. Guidance on determining whose income to count, what type of income must be included or is excluded, and the calculation of imputed income from assets is found in HUD’s *Technical Guide to Determining Income and Allowances for the HOME Program*, available from the AHFC or in PDF format from HUD’s website, currently located at: <https://www.onecpd.info/incomecalculator/>

### **2. Income Recertification Schedule**

Borrower shall adopt a schedule for annual recertification, a copy of which shall be provided to the AHFC/City, of tenant income either by recertifying income on the anniversary of the original income evaluation, at lease renewal, or on an annual schedule whereby all tenants are recertified during the same month. Borrower shall recertify income eligibility either by collecting source documentation as with the initial eligibility determination or by obtaining from each household a completed *Annual Tenant Information and Income Certification*. If the latter method is used, Borrower shall collect original source documentation for each tenant every sixth year during the Affordability Period.

### **3. Restrictive Covenant**

A project’s tenant income requirements for RHDA-assisted units will be enforced using the Restrictive Covenant Running with the Land.

## **D. Rent Limitations**

Rents are to be strictly controlled during the Affordability Period. The owner is responsible for obtaining the Affordable Rent and Income from AHFC. If the tenant pays any utilities, the maximum allowable rents must be reduced by the amount of the applicable utility allowance established annually by HUD for the Austin area. The current published income and rent limits, and utility allowances are included as **Attachments 1 & 2**, respectively.

**1. Temporary Exceptions:** Two temporary periods of noncompliance with the above occupancy and rent restrictions are acceptable. The exceptions are based on the principle that tenants should not be displaced if their income rises to a level higher than the eligible household income during the lease term. The temporary periods of acceptable noncompliance are as follows:

- If the project is occupied at the time the RHDA-assistance is awarded to the project, existing tenants who earn more than 50% MFI must pay no more than 30% of their adjusted income in rent. Similarly, an existing tenant in the designated 50% MFI unit whose income rises to more than 50% MFI must pay no more than 30% of their adjusted income in rent, and only when the tenant chooses to leave or not renew the lease, the unit must then be rented to a new tenant who earns no more than the 50% MFI limit.
- All new tenants must earn no more than 50% of MFI at initial certification. In the event that a tenant's household income increases above the 50% of MFI limit after initial occupancy, the rent must be adjusted at the annual recertification, to an amount at or below 30% of their adjusted income in rent and utilities.

## **E. Accessible and Adaptable Units**

Assistance may not be used for the purpose of building or acquiring rental units that will not allow an AHFC determined portion of the units to be made accessible to persons with disabilities (townhouses, walk-ups, structures on impractical sites, etc.). Projects must contribute to increasing the number of accessible and/or adaptable units available to persons with disabilities through the following minimum requirements:

### **1. Rehabilitation Projects**

- The greater of one (1) unit or 10% of all units rehabilitated must be made accessible for persons with mobility disabilities.
- In addition, the greater of one (1) unit or 2% of all units rehabilitated must also be made adaptable for persons with hearing and/or visual disabilities.

### **2. New Construction Projects**

- The greater of one (1) unit or 10% of all new units constructed must be accessible to persons with mobility disabilities, and all other ground floor units constructed must be adaptable to accommodate the needs of persons with mobility disabilities.
- In addition, the greater of one (1) unit or 2% of all new units constructed must also be accessible to accommodate the needs of persons with hearing and/or visual disabilities.
- All projects receiving assistance must comply with accessibility design standards established by the City's S.M.A.R.T. Housing™ Ordinance.

### **3. Distribution of Accessible Dwelling Units**

To the greatest extent possible, accessible dwelling units should be distributed on ground-floor units throughout the project and should be available in a sufficient range of sizes and amenities so that:

- an individual with disabilities' choice of dwelling units is comparable to that of other prospective tenants; and
- accessible dwelling units are not concentrated in one area of the property.

This should not be construed as a requirement to install an elevator for the sole purpose of allowing accessible units to be located above the ground floor.

### **4. Occupancy of Accessible Dwelling Units**

Owners/managers of multifamily projects that have accessible units should ensure that information regarding the availability of accessible units reaches individuals with disabilities. In addition, owners/managers of multifamily projects that have accessible units should take non-discriminatory steps to maximize the utilization of accessible units by qualified individuals with disabilities whose disability requires the accessibility features of a particular unit. This can be done by maintaining a waiting list for accessible units and offering vacant accessible units to applicants in the following order:

- First, to a current occupant of another unit in the same property, or other comparable property within the owner's/manager's control, who has a disability requiring the accessibility features of the vacant unit and who currently occupies a unit that does not have those features.
- Second, to a qualified applicant on the waiting list who has a disability requiring the accessibility features of the vacant unit.
- Third, to a qualified applicant who does not have a disability requiring the accessibility features of the unit. ; however, the owner/manager may incorporate language in the lease that the applicant will agree to move to a non-accessible unit when one becomes available.

## VIII. PROJECT UNDERWRITING, DEVELOPER CAPACITY, FISCAL SOUNDNESS, AND ASSESSMENT OF MARKET NEED

- A. Project Underwriting.** A project feasibility, underwriting, and compliance evaluation will be performed on each proposal as part of the initial application review process. If applicable, operating projections must generally meet HOME Subsidy Layering parameters outlined in HUD-CPD Notice 98-01.
- B. Developer Capacity.** The developer must have the organizational capacity to implement the project. Developer capacity will be evaluated based on information demonstrating experience and skills as provided in the AHFC funding application.
1. Experience. Factors to be considered include, but may not be limited to, the following types of experience:
    - a. Recent, Similar, and Successful experience;
    - b. Similar project location, size & scope;
    - c. Years of experience developing affordable (i.e., income-restricted) housing;
    - d. Managing affordable rental projects;
    - e. Using multiple funding sources;
    - f. Staffing; and
    - g. Previous working history with AHFC.
  2. Skills. Factors to be considered include, but may not be limited to, the following skills of the developer and the development team:
    - a. Project Management
    - b. Market Analysis
    - c. Site Selection & Control
    - d. Property Management
    - e. Planning and Construction
    - f. Design, Architecture, Engineering
    - g. Legal & Accounting
    - h. HOME funding rules
    - i. Other funding source rules (e.g. Low Income Housing Tax Credits)
- C. Fiscal Soundness.** The Applicant will be asked to provide evidence of financial ability to implement the project. Applicants will be required to provide current financial statements and proof of sufficient reserves or a Line of Credit available, if necessary, to complete the project.
- D. Market Need.** An analysis of the need for the type of proposed housing and the number of units being proposed in a project will be assessed by using one of the following methods:
1. an assessment will be conducted “in-house” using available economic data from a variety of sources;
  2. AHFC may elect to contract with a professional or a company specializing in marketing analysis; or
  3. AHFC may elect to review and verify a market analysis performed by others, such as a developer, development partner, or other funder (public or private).

## IX. FINANCING

### A. General

Assistance through the RHDA Program is provided primarily through loans made to the Applicant/Borrower. All loans are secured by a Deed of Trust or other acceptable collateral. Assistance generally will be non-recourse with recovery rights limited to the encumbered collateral and any income therefrom. Applications will be reviewed and underwritten and recommendations will be made as to eligibility, funding, terms and conditions. The amount of assistance will be determined on a case-by-case basis. Under no circumstances shall financing be used for any reason or cost other than for direct costs associated with and approved by the program

At its sole discretion, the AHFC may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable rental housing units, and/or achieves a more favorable interest rate on any superior loan. Under no circumstances will the Program consider a request to renegotiate loan terms and conditions if equity is anticipated to be taken from the project that will not be used directly in the project itself or places AHFC in a lesser lien position without resulting in a reasonable and direct affordable housing benefit.

### B. Grants

At its sole discretion, the AHFC may offer grants in amounts up to \$295,000 and are subject to funding availability. Grant awards are considered on a case-by-case basis and are always needs-based. Grants are not available for projects that are

considered completed. Although the grant itself will have no long-term monitoring requirement, grants will only be made for projects that will have a long-term monitoring requirement upon completion.

The following criteria must be met:

1. need (the project has exhausted its AHFC funding)  
AND
2. an extraordinary circumstance exists  
OR
3. there is an unanticipated opportunity to improve a project's sustainability features (water conservation, energy-efficiency, mobility, connectivity, etc.)

If approved, a Grant Agreement will be executed with specific performance measures to be carried out.

**C. Liens**

AHFC shall place a lien on the property for which a loan has been made. The lien shall remain in effect until all loan terms and conditions have been fulfilled. A release of lien will be issued upon full repayment of the loan and/or fulfillment of all contractual terms. A Release of Lien shall not be provided in the event the borrower/developer fails to comply with the terms and conditions of the Loan Agreement.

As a condition of providing construction financing (as an example), a lender providing construction financing may require that AHFC subordinate its lien position until the construction loan is paid off. With very few exceptions, AHFC will agree to subordinate its lien position through the use of a Subordination Agreement executed by the Borrower, the Senior Lender/Lienholder, and AHFC.

**D. Loans**

**1. Amortized Loans**

The loan is fully-amortizing and requires repayment over terms up to forty (40) years or more at interest rates ranging from 0% per annum to rates that will typically be lower than market lending rates in effect at the time the loan is made, plus allowable fees. Interest rates and terms on RHDA loans are determined by cash flow projections for projects and can be negotiated within the parameters of RHDA underwriting criteria..

**2. Deferred Payment Loans and Forgivable Deferred Payment Loans (DPLs)**

Deferred payment loans (DPLs) and forgivable DPLs are available to applicants if the project is not “economically feasible” with financing that requires full or partial repayment while the applicant owns and operates the project. Subject to RHDA restrictions, DPLs are provided at interest rates ranging from 0% per annum to rates that will typically be lower than market lending rates in effect at the time the loan is made, plus allowable fees. The loan term may vary based on the funding source(s) used for the project, but typically will be for a period of twenty (20) years, forty (40) years, or ninety-nine (99) years. DPLs and forgivable DPLs are contingent upon compliance with the terms and conditions of the loan agreement and deed restrictions for the required period. Should the property cease to be used as affordable housing during the loan term (or Affordability Period) as required under the Loan Agreement, the Note will remain in place until the sale, refinance, or other disposition of the property, at which time the principal, fees and any accrued interest will be due and payable.

**E. Project Proceeds**

If Borrower sells any portion of the subject property during the Affordability Period or acts as Lessor on a long-term lease for a RHDA-assisted property, a portion of the net proceeds on the sale or long-term lease would be considered Project Proceeds and must be tracked and handled according to the Project Proceeds requirements AHFC has established for the project. Net operating income generated from rent revenues or other income, with the exception of any project proceeds resulting from the long-term lease or sale of the property, is not considered Project Proceeds.

The AHFC Program Administrator may determine on a project-by-project basis whether the Borrower will be allowed to retain Project Proceeds on a given RHDA-assisted project or whether Project Proceeds must be returned to AHFC to pay down the Borrower's loan balance. Any Project Proceeds that AHFC allows a Borrower to retain must be used for eligible or other housing activities to benefit families earning 50% or less than the adjusted MFI in effect for the Austin-Round Rock-San Marcos, TX MSA. Affordable housing activities may include: emergency repairs, project operating costs and reserves, operating expenses, and homebuyer counseling. Borrowers are subject to Project Proceed Reporting and an Annual Risk Analysis to determine audit requirements for Project Proceeds.

**F. Program Income**

For federally-funded projects, Program Income is defined as gross income received by the recipient or a subrecipient directly generated from the use of the federal funds. When program income is generated by an activity that is only partially assisted

with federal funds, the income shall be prorated to reflect the percentage of federal funds used. Program Income must be tracked and handled according to the Program Income requirements AHFC has established for the project.

The AHFC may determine on a project-by-project basis whether the Borrower will be allowed to retain Program Income on a given RHDA-assisted project or whether Program Income must be returned to AHFC to pay down the Borrower's loan balance. Any Program Income that AHFC allows a Borrower to retain must be used for activities that are eligible under the original federal fund source. Eligible activities, depending on the federal fund source, may include: emergency repairs, project operating costs and reserves, operating expenses, and homebuyer counseling. As with Project Proceeds above, Borrowers are subject to Program Income Reporting and an Annual Risk Analysis to determine audit requirements for Program Income. AHFC will specify the manner in which program income is to be reported.

## **X. APPLICATION and REVIEW PROCESS**

Program assistance is made available through the review and evaluation of information outlined in the RHDA **Application for Rental Development Financing**. Projects are evaluated according to the application evaluation criteria and established AHFC procurement policies and procedures in place at the time of Application. Subject to available funds, projects determined to be the most responsive Austin City Council policy directives, the current fiscal year's HUD Action Plan, and which meet other Program criteria may be selected and approved to receive assistance.

The Program will notify the applicant in writing of a decision to approve or deny any application. Unless provided in writing by the Program, no person or organization shall construe any discussions held with Program staff or written information provided to constitute an acceptable application or an obligation or commitment for funding.

### **A. AHFC Staff Review**

Applications are given an initial review by a Single Point of Contact (SPOC) for completeness and to ensure the minimum threshold requirements are met. Applications must meet a minimum score in order to be considered further. **However, submission of an application that meets or exceeds the minimum score is not a guarantee that the proposed project will be funded.** Incomplete applications may be returned to the Applicant with deficiencies noted. In addition, the Program reserves the right to accept or reject in part or in whole any complete application.

Applications that meet the minimum threshold requirements are scored by a panel of management-level AHFC staff members knowledgeable in the development process. The panel is convened by the SPOC and uses the Scoring Criteria developed for the Program.

Applications that are likely to be recommended for funding will receive further consideration by a Project Review Team composed of NHCD and AHFC executive team and other key staff. The Project Review Team will discuss programmatic, regulatory, and administrative aspects of a proposed project before a final recommendation is made.

The Program may take up to 60 days from the date a complete application is accepted to determine whether the project may be recommended for funding or denied. Although not all inclusive, the Program may not provide any obligation or commitment for funding to any proposed project unless the project meets the following minimum consideration criteria and those stated in other sections of these guidelines:

1. All requested documentation and/or information by the Program has been provided;
2. If required, all applicable environmental review and assessment has been performed.

### **B. Housing Bond Review Committee (General Obligation Bond-Funded Projects Only)**

The Housing Bond Review Committee (HBRC) is a group of persons appointed by the NHCD Director and charged with reviewing applications to be funded with General Obligation Bond funds. The purpose of their review is to ensure that applications have been scored and are in compliance with the RHDA Program Guidelines. The role of the HBRC is advisory only. The HBRC does not have the authority to recommend or disapprove of applications, but can concur or not with staff's scoring of an application. Meetings of the HBRC are public meetings, but the HBRC is not subject to the requirements of Chapter 2-1 of the City of Austin Code of Ordinances.

## **XI. LOAN DISBURSEMENTS**

Payments will be made to Developers/Owners for eligible project costs according to the conditions described in the AHFC Loan Agreement. Eligible project costs must be documented with each request for payment for the purpose of supporting the amount

requested. AHFC will verify the work completed and determine the eligible amount to be paid. The method of invoicing AHFC for a disbursement of loan proceeds shall be described in each loan agreement.

The AHFC retains the right to withhold or temporarily suspend payments if the Borrower:

- A. has failed to perform on any existing loan (whether one or more) from AHFC in accordance with the terms and conditions of the Loan Agreement(s);
- B. is behind in submitting required, timely or incomplete reports, documents or information required or reasonably requested by AHFC,
- C. fails to comply with any RHDA loan agreement covenants; or
- D. has not resolved any outstanding monitoring findings or concerns identified by the AHFC within a specified time period.

At such time that the Borrower has adequately addressed the identified deficiencies, and in AHFC's sole discretion, AHFC may resume project payments.

The list above is not intended to be all-inclusive, and the terms and conditions of the Loan Agreement shall further describe penalties for non-performance or non-compliance by the Borrower.

## **XII. REPORTING/RECORD KEEPING**

Borrowers must maintain complete and accurate books of account and other records reflecting the results of the development of the property and shall furnish, or cause to be furnished, to AHFC:

- A. immediate notice of any material adverse change in the property's financial condition or business prospects or any lapse of coverage with respect to the Insurance Requirement;
- B. all reports required by the AHFC Loan Agreement and Statement of Work; and
- C. upon request of monitors, and at developer's expense, such other operating, financial, insurance coverage and credit information as may be reasonably requested with respect to the property.
- D. Any permanent supportive housing projects must participate in the Homeless Management Information System for permanent supportive housing tenants, or ensure that partner service providers are capturing all required data for the system.

The status of applications and recommendations will be updated regularly on the AHFC website, and through reports made to the Community Development Commission.

## **XIII. INITIAL OCCUPANCY**

The Borrower must provide the necessary documentation to demonstrate that all applicable initial occupancy requirements have been met. The documentation will be submitted in a form as prescribed by the Loan Agreement. Initial occupancy documentation must support and include, but may not be limited to the following:

- A. Designation of floating or fixed units.
- B. Income determination of all tenants in accordable with Part 5 requirements and/or S.M.A.R.T. Housing™ requirements (depending on use of HOME or CDBG funding).
- C. Submission of tenant roster.
- D. Identification of current Fair Market Rents and rents charged to occupying tenants.
- E. Identification and contact information of property manager or owner responsible for providing initial occupancy information and annual documentation submission.

## **XIV. LONG-TERM COMPLIANCE, MONITORING**

RHDA assisted projects require long-term commitments by the owner/developer. Reporting to demonstrate compliance with the terms of the loan agreement will include:

- A. Federal Housing Quality Standards (HQS) inspection reports.
- B. Income determinations for applicable tenants;
- C. Appropriate/applicable rents charged under existing lease agreements; and
- D. Total number of designated affordable units is being properly operated/managed.

The Loan Documents will identify the specific annual submission requirements and the timeframe for submission. It is the responsibility of the Borrower to ensure that all long-term compliance submissions are complete and submitted in a timely manner.

AHFC may provide notice in advance of the required submission date as a reminder. However, failure of the AHFC to notify the Borrower in advance of a submission date does not relieve the Borrower in any way of the long-term compliance responsibilities. Should the Borrower fail to produce the required long-term compliance documentation in a timely manner or as prescribed in the Loan Agreement, the AHFC may consider this an Event of Default as described in the Loan Agreement and may avail itself of the remedies as described in the Loan Agreement.

All RHDA funded projects will be monitored by AHFC staff for compliance with loan agreement requirements.

## **XV. TENANT PROTECTIONS**

### **A. Tenant Leases**

1. **Required Lease Provisions.** Property owners must use HUD-required provisions in tenant leases.
  - a. Property owners must offer a lease term of at least 1 year, unless tenant and owner mutually agree to a shorter lease term.
  - b. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted except for:
    - i. serious or repeated violation of the terms of the lease;
    - ii. for violation of applicable federal, state or local laws; and
    - iii. for violations of the tenant lease agreement.

Any termination or refusal to renew must be preceded by not less than 30 days written notice from the owner specifying the grounds for action.

2. **Prohibited Lease Provisions.** Certain lease terms are prohibited, including the following:
  - a. Agreement to be sued. Agreement by the Tenant to be sued, to admit guilt, or agreement to a judgment in favor of the Landlord in a lawsuit brought in connection with the lease.
  - b. Treatment of Property. Agreement by the Tenant that the Landlord may take, hold, or sell personal property of household members without notice to the Tenant. This does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the housing unit after the Tenant has vacated the unit. The Landlord may dispose of this personal property in accordance with State law.
  - c. Excusing the Landlord from responsibility. Agreement by the Tenant not to hold the Landlord or the Landlord's agents legally responsible for actions or failure to act, whether intentional or negligent.
  - d. Waiver of notice. Agreement by the Tenant that the Landlord may institute a lawsuit without notice to the Tenant.
  - e. Waiver of legal proceedings. Agreement by the Tenant that the Landlord may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
  - f. Waiver of jury trial. Agreement by the Tenant to waive any right to a jury trial.
  - g. Waiver of right to appeal court decision. Agreement by the Tenant to waive the Tenant's right to appeal or otherwise to challenge in court a decision in connection with the lease.
  - h. Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the Tenant to pay attorney's fees or other legal costs of the Landlord even if the Tenant wins the court proceeding by the Landlord against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.
  - i. Requirement to accept supportive services. Any and all provisions requiring agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

A Lease Addendum, which spells out these prohibited lease terms, will be provided as part of a loan document package. The Lease Addendum must be attached to all leases signed for occupancy in the Project.

### **B. Tenant Selection Policies and Procedures.** Property owners must have written tenant selection procedures and policies that:

1. Are consistent with the purpose of providing housing for very low- and low-income families;
2. Are reasonable, and comply with applicable eligibility and acceptance requirements;
3. Meet the housing needs of families and recipients of Housing Choice Voucher Program assistance (formerly "Section 8");
4. Give prompt written notification of rejection of an application for rental housing and the basis for the decision.
5. Select tenants from a written waiting list in chronological order, or in the case of units set aside for permanent supportive housing or rapid re-housing, accept referrals exclusively from the Coordinated Assessment system maintained by the Ending Community Homeless Coalition. If units set aside are not occupied for more than 30 days of notifying ECHO of the vacancy, they may be filled via a project waiting list for other low-income tenants.
6. For projects including permanent supportive housing or rapid-rehousing, include provisions for exercising discretion to waive certain screening criteria if and when the tenant can demonstrate the availability of case management services for a minimum of three months.

**C. Property Standards**

The owner must maintain the total project in compliance with federal Housing Quality Standards (HQS) and the City of Austin Building Code for the duration of the Affordability Period. The City of Austin will periodically inspect the property to ensure compliance with this requirement. Projects with one to four RHDA-assisted units must be inspected by the City of Austin or by a certified HQS inspector every three years within the Affordability Period or during the term of the Note with AHFC, whichever is longer. Projects of five (5) to twenty-five (25) RHDA-assisted units must be inspected every two years, and projects of 26 or more RHDA-assisted units will be inspected annually. For those properties under annual inspection requirements, each unit may not be inspected each year, but a representative sample of units (no more than 20%) will be inspected each year.

**XVI. ADDITIONAL REQUIREMENTS**

**A. S.M.A.R.T. Housing™**

All new construction projects will be required to obtain S.M.A.R.T. Housing™ certification prior to loan application. S.M.A.R.T. Housing™ is not applicable to rehabilitation projects.

**B. City of Austin Visitability Ordinance**

All single-family, duplex and triplex dwellings newly constructed with financial assistance provided through AHFC must be visitable in accordance with the City of Austin Visitability Ordinance No. 981007-A.

**C. City of Austin Good Neighbor Policy**

In response to Austin City Council Resolution 20110113-040, a Good Neighbor Policy was developed to foster a broad community dialogue that includes stakeholders from neighborhoods to establish successful approaches for integrating low-income housing throughout the City. For more information, please see the **City of Austin Good Neighbor Guidelines (Attachment 6)**.

**Prior** to submission of an RHDA **Application for Rental Development Financing (Attachment 5)**, the developer must:

1. Research the applicable City of Austin Neighborhood Plan for the area in which the project is to be located. If no adopted neighborhood plan exists, then this step is omitted.
2. Using written notice by letter or by flyer, notify:
  - A. property owners with properties no less than 500 feet from the proposed development site; and
  - B. registered neighborhood organizations whose boundaries include the proposed development site.
3. Engage with neighborhood organizations whose boundaries include the proposed development site in order to provide current information about the project.
4. Appoint a Single Point of Contact (SPOC) to serve as the liaison for exchanging information.

Submit **with** the completed **RHDA Application for Rental Development Financing**:

1. The developer's communication plan for engaging stakeholders and neighborhood organizations.
2. Documentation of written notice provided to property owners and neighborhood organizations.
3. A signed City of Austin Good Neighbor Checklist

**D. "Section 3" Compliance.** "Section 3" refers to Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u).

1. Section 3 becomes applicable for:
  - A. projects that receive over \$200,000 in RHDA funds, whether federal or non-federal funds, for the construction or rehabilitation of housing; **and/or**
  - B. projects where any contractor or subcontractor receives over \$100,000 in RHDA funds, whether federal or non-federal, for the construction or rehabilitation of housing.
2. The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
3. Because NHCD receives HUD funding, Section 3 requires NHCD to ensure that employment and other economic and business opportunities generated by the HUD funding will, to the greatest extent feasible, be directed to:



- a. Qualified low- and very low-income persons residing in the metropolitan area.
  - i. “Qualified” means the prospective employee has the proper qualifications for the work to be performed.
  - ii. “Low-income persons” means families (including single persons) whose total household incomes are at or below 80 percent of the Median Family Income (See Appendix A) for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA). (Hereafter referred to as “Section 3 Residents.”)
  - iii. “Very-low income persons” means families (including single persons) whose total household incomes do not exceed 50 percent of the Median Family Income (See Appendix A) for the Austin-Round Rock-San Marcos, TX MSA. (Hereafter referred to as “Section 3 Residents.”)
  - iv. “Metropolitan Area” means the 5-county Austin-Round Rock, San Marcos, and TX MSA which includes Bastrop, Caldwell, Hays, Travis, and Williamson counties.
- b. Businesses that employ low- to very-low income persons;
  - i. “Businesses that employ low- to very low-income persons” means a business that has at least 30% of its employees who are Section 3 Residents as defined in Subsection 1(b) and 1(c) above, or those that within three years of the date of first employment with the business were Section 3 Residents. (Hereafter referred to as “Section 3 Businesses.”)
- c. Businesses that are owned by low- to very low-income persons;
  - i. “Businesses Owned by low- to very-low income persons” means a business that is 51% or more owned by a Section 3 Resident as defined in Subsection 1(b) and 1(c) above. (Hereafter referred to as “Section 3 Businesses.”)
- d. Businesses that provide evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the following qualifications:
  - i. “Businesses that provide evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described in Subsections 3.b. and 3.c. (above) means businesses that provide a certification or actual proof that they have subcontracted or currently have subcontracts with businesses owned by Section 3 Residents as defined in Subsection 3.a.ii and 3.a.iii above. (Hereafter referred to as “Section 3 Businesses”)

Guidance on how to comply with the requirements of Section 3 can be found in the Neighborhood Housing and Community Development Office’s Section 3 Plan.

**E. Environmental Review**

AHFC may require the owner of a project to provide a Phase I Environmental Review prior to executing loan documents to ensure that no environmental hazards exist on or near the project site. For acquisition and/or rehabilitation of properties built prior to 1979, the project must include an inspection for asbestos prepared by a firm certified by the State of Texas.

**F. Lead-Based Paint**

All owners/developers using RHDA funds on a rental project are required to provide tenants of pre-1978 housing with the *Protect Your Family from Lead in Your Home* brochure and document receipt of the document. The Borrower is responsible for obtaining the brochure and the appropriate disclosure forms from AHFC.

If a Project has the potential for lead-based paint hazards, the owner/developer must ensure that the required procedures for testing of surfaces, completion of the rehab work, further testing and clearance examinations on the property are followed throughout the project, and that all personnel conducting those activities have obtained the appropriate state certifications to authorize their work. For any project involving non-exempt activities, the owner/developer must work closely with AHFC to design a detailed plan to abate the hazard.

**G. Contractor Selection**

Owners/developers shall provide to the AHFC/City construction specifications and costs estimates for work proposed. To ensure completeness, cost efficiency and market competitiveness, the AHFC/City will review the project specifications and associated costs that will be mutually agreed to by both parties. Owners/developers will select construction contractors most capable to complete the project in accordance with the approved specifications and costs. The AHFC/City will conduct on-site inspections at various intervals throughout the construction of the project to assure the project is completed as required.

**H. Debarment and Suspension**

Owners and contractors are prohibited from employing, awarding contracts, or funding any contractors or subcontractors that have been debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government, or by the City of Austin. In addition, any owners who are debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government will be prohibited from receiving RHDA funding. Developers

are required to screen the status of all contractors and subcontractors by consulting the “System for Award Management” or “SAM” website at [www.sam.gov](http://www.sam.gov).

**I. Fair Housing Opportunity**

The Borrower must comply with:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100: Executive Order 11063, as amended, (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (non-discrimination in Federally Assisted programs) and implementing regulations issued at 24 CFR Part 1;
2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146;
3. The prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; and
4. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
5. The prohibitions against discrimination based on actual or perceived sexual orientation, gender identity or marital status under the requirements of the Equal Access to Housing Rule, also known as the Lesbian, Gay, Bisexual, or Transgender (LGBT) Rule, published as additions and revisions to the non-discrimination provisions in 24 C.F.R. Part 5.

**J. Fair Housing in Marketing**

In projects of five (5) or more units, project developers/owners/sponsors will be required to use affirmative fair housing marketing practices in soliciting tenants in determining eligibility and concluding all transactions. Each participating entity must affirmatively further fair housing in the same manner as a project that is required to comply with 24 CFR 92.351. These requirements include:

1. The City/AHFC will require the project owner to solicit applications for vacant units from persons in the housing market who are least likely to apply for the rehabilitated housing without benefit of special outreach effort.
2. Advertising for vacant units must include the equal housing opportunity logo or statement. Advertising media may include newspapers, radio, television, brochures, leaflets, etc.
3. The project owner must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letter, etc.) to be available for inspection at least annually by the City/AHFC.
4. The project owner shall maintain a listing of all tenants residing in each unit at the time of requesting assistance throughout the entire compliance period.

Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions the City/AHFC deems necessary.

**K. Insurance Requirements**

Project developers/owners shall obtain, maintain and keep in full force and effect insurance coverages for general liability, auto, and property hazard insurance in such amounts and in such manner as required by the AHFC’s Loan Agreement. RHDA program funds may not be used in connection with the rehabilitation of a property located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless flood insurance is obtained and maintained throughout the term of the loan.

**L. Audit Requirements for Non-Profit Developers**

Non-profit developers/owners must submit to the AHFC a complete set of audited financial statements and the auditor's opinion and management letters in accordance with 24 CFR 84.21, and the Single Audit Act of 1984, as amended, covering each fiscal year until the termination of this Loan Agreement. Developer must use the procedures outlined in the Loan Agreement for securing the audit.

**M. Non-Discrimination**

The City of Austin/AHFC is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance. For a sign language interpreter, please call 974-3100 at least four to five days in advance. The City of Austin/AHFC does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities.

**XVII. DEFAULT ACTIONS AND SANCTIONS**

- A. The AHFC/City retains the right to determine, in its/their sole discretion, whether a default has taken place in a RHDA funded project. The AHFC may exercise default actions if the AHFC determines that the default or violation(s) of the terms and conditions of the executed agreement has or may take place by the developer of the developer project. A default or violation may be facilitated as a result of action or inaction taken by the project developer, organization, agency, contractor, individual or duly appointed representative of the developer or developer project. A default or violation may include, but not be limited to the following:
1. Developer or developer's project fails to address adequately the applicable local, state or federal rules and/or regulations governing the acquisition, construction and/or initial occupancy requirements of the project, or
  2. Any breach of any provision contained in the loan document , or
  3. If RHDA Program funds are used for any purpose other than authorized in the RHDA Program contract, or
  4. The appropriate proportion of assisted-units are not maintained for the term of the loan, or
  5. There is a change in use of property prior to repayment of AHFC/City assistance without AHFC/City review and written approval, or
  6. Developer fails to respond to AHFC's, City of Austin's, HUD's, or IRS' requests for occupant and rental information during the life of the loan, or
  7. Property is not maintained in compliance with City of Austin Code of Ordinances and/or to federal Housing Quality Standards, or
  8. Developer fails to comply with information submitted by the developer to the AHFC/City through the project selection process, or
  9. Developer or developer's project violates local, state or federal law, or
  10. Developer or developer's project fails to maintain adequate documentation in support of project requirements.
- B. Default sanctions available to AHFC may include, but not be limited any one or any combination of the following:
1. Call the project note due and payable in accordance with the terms and conditions of the note;
  2. Call the note due and payable for the full amount of the AHFC funds provided to the project;
  3. Temporarily suspend the project until corrective action is taken;
  4. Terminate the agreement and associated documents with the project;
  5. Request a review or investigation by local or federal authorities if applicable;
  6. Debar the project organization or individual from consideration of any future funding opportunities from the AHFC.

According to the terms of the Loan Documents, should the AHFC exercise any of the above referenced sanctions, the AHFC will provide written notice at the Borrower's address as stated in the Loan Agreement. The AHFC shall make the final determination as to whether any proposed corrective action undertaken as the result of an event of default is sufficient to cure the default.

## **XVIII. APPEALS/GRIEVANCE PROCESS**

Persons aggrieved by any action or inactions of the RHDA program which occurs in the implementation of these guidelines, and who wish to appeal said action or inaction, must do so by submitting an appeal in writing to the AHFC Real Estate Development Manager within 30 days of the action or inaction deemed aggrieving by said person(s).

The AHFC Real Estate Development Manager is charged with the administration for reviewing an appeal or grievance. The Real Estate Development Manager shall submit to the AHFC Treasurer a written summary of each grievance received along with explanations of the administrative action taken or recommended, within 15 days of his/her receipt of a written grievance. The AHFC Treasurer shall constitute the highest administrative personnel in the process.

David Ondich is the City's ADA/Section 504 Coordinator. His office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your ADA/Section 504 rights, please call the ADA/Section 504 Coordinator at 512-974-3256 (voice) or call 7-1-1 (Relay Texas).

This publication is available in alternative formats. Please call 974-3100 (voice) 7-1-1 (Relay Texas) for assistance.