

# TAX-EXEMPT 501(C)(3) BONDS FOR MULTIFAMILY RENTAL HOUSING IN THE DISTRICT OF COLUMBIA



501(c)(3) organizations may finance affordable rental housing projects (“**Projects**”) in the District of Columbia (the “**District**”) using **tax-exempt “qualified 501(c)(3) bonds” without volume cap (“PABs”)** issued through the District’s Revenue Bond Program administered by the Office of the Deputy Mayor for Planning and Economic Development (“**DMPED**”). The PABs may be combined with subordinate Housing Production Trust Fund (“**HPTF**”) gap loan funding from the District’s Department of Housing and Community Development (“**DHCD**”) and housing assistance payments from the District of Columbia Housing Authority (“**DCHA**”) under the Local Rent Supplement Program (“**LRSP**”). Projects financed with PABS may also qualify for real property tax exemption in the District. Contact an Orrick team member for additional information.<sup>1</sup>

## Tax-exempt PABs for Multifamily Rental Housing in the District (General Requirements)

<b>Issuer</b>	District of Columbia (acting through DMPED’s Revenue Bond Program)
<b>Form of Legal Entity</b>	A 501(c)(3) organization (or disregarded entity) with a charitable purpose to provide affordable housing (an “ <b>Organization</b> ”).
<b>Ownership Requirements</b>	The Organization (or a governmental unit) must own <u>all</u> property financed with the PABs. For-profit ownership (directly or indirectly) is <u>not</u> permitted.
<b>State Ceiling/Volume Cap</b>	A volume cap allocation is <u>not</u> required.
<b>TEFRA and District Approval</b>	Subject to a public hearing and approval by the Council and Mayor of the District.
<b>Private Use and Security Limitations</b>	5% limit on private business use and private payments or security of the PABs.
<b>Costs of Issuance Limitations</b>	Issuance costs financed by the PABs cannot exceed 2% of the proceeds of the PABs.
<b>Project Set-Aside and Rental Restrictions (Generally)</b>	<p><b>Federal:</b></p> <ul style="list-style-type: none"> <li><b>Acquisitions:</b> Based on the Organization’s charitable purpose - but regardless of requirements imposed by the Organization’s charitable purposes - 20% of the units at 50% or less of area median gross income for the Washington Metropolitan Statistical Area provided by the United States Department of Housing and Urban Development (“<b>AMI</b>”) or 40% of the units at 60% or less of AMI; <u>or</u> the property is “substantially rehabilitated” beginning within the two-year period ending one year after the date of the acquisition of the property.</li> <li><b>New Construction:</b> Based on the Organization’s charitable purpose but must ensure that the housing is “affordable” to residents occupying the set-aside units in the Project.<sup>2</sup></li> </ul> <p><b>DHCD:</b> A minimum of 20% of the total housing units in the Project must have rents affordable to “low,” “very low” and “extremely low” income households for at least 40 years under a recordable rent regulatory agreement.<sup>3</sup> The percentage of all units receiving HPTF funds cannot be less than the percentage of the Project’s total development costs financed with HPTF Funds. HPTF funds cannot exceed 49% of the total development costs of the Project.</p> <p><b>DCHA:</b> Projects may qualify for a 15-year long-term subsidy contract providing housing assistance payments from DCHA for units for households at or below 30% of AMI, adjusted for family size. Rent for LRSP units cannot exceed 30% of household income.</p>
<b>PABs Maturity Limitation</b>	120% of the average reasonably expected economic life of the Project financed with the PABs.
<b>Management Contract</b>	Any “management contract” must meet the criteria of Rev. Proc. 2017-13.
<b>Alternative Minimum Tax</b>	Interest on the PABS is <u>not</u> an item of tax preference for purposes of the alternative minimum tax.
<b>LIHTC Ineligibility</b>	PABs do not qualify the Project for federal or District low-income housing tax credits.
<b>Real Property Tax Exemption</b>	Available if at least 50% of the units are at or below 80% of AMI (the remainder units may be up to 120% of AMI). Rents cannot exceed 30% of 80% or 120% of AMI (as applicable). The Organization must maintain an indigency reserve for tenants who become unable to pay rent because of financial hardship.

<sup>1</sup> *Disclaimer: Nothing in this brochure should be construed or relied upon as legal or financial advice. This brochure is provided for informational purposes only and should not be considered by anyone to establish an attorney-client or other fiduciary relationship of any kind. This brochure is a summary and additional legal requirements may apply to any Project.*

<sup>2</sup> Most commonly (in accordance with Rev. Proc. 96-32) (a) at least 75 % of the units at or below 80% of AMI and (b) either (i) at least 20% of at or below 50% of AMI or (ii) 40% of units at or below 60% of AMI. Up to 25% of the units may be provided at market rates. Also, the Organization must adopt a rental policy that complies with government-imposed rental restrictions or that otherwise limits the tenant’s portion of the rent to ensure that the housing is affordable to low-income and very low-income residents.

<sup>3</sup> Adjusted for family size, “low income” means 80% of AMI; “very low income” means greater than 30% but less than 50% of AMI; and “extremely low income” means less than 30% of AMI.

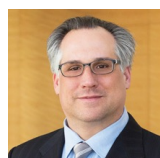
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