

MINUTES OF THE REGULAR MEETING  
OF THE  
BOARD OF DIRECTORS  
WEST VIRGINIA HOUSING DEVELOPMENT FUND  
April 22, 2020

The regular meeting of the Board of Directors of the West Virginia Housing Development Fund (the "Fund") was held on Wednesday, April 22, 2020 via telephone. The telephone number was made available to the public in the Notice of Meeting of the Board of Directors posted on the Secretary of State website and at the gate of the West Virginia Housing Development Fund. The Chair called the meeting to order at 9:04 a.m. with the following members present throughout, except where noted.

Ann Urling, Chair  
Norman Bailey, Representative for the Honorable Kent Leonhardt, Commissioner of Agriculture  
David Gardner, Member  
John Gianola, Member  
Patrick Martin, Member  
Wendy McCuskey, Member  
Bob Nistendirk, Member  
Josh Stowers, Representative for the Honorable John Perdue, Treasurer  
Steven Travis, Representative for the Honorable Patrick Morrissey, Attorney General

Members Absent:

Sam Kapourales, Member

Staff present:

Erica Boggess, Executive Director  
Cathy Colby, Senior Manager - HOME and HTF Programs  
Julie Davis, Deputy Director - Production  
George Gannon, Communications Administrator  
Chad Le port, Division Manager -Accounting and Finance  
Martha Lilly, Legal Assistant  
Lori Ryan, Executive Assistant  
Kristin Shaffer, Senior Legal Counsel  
Nathan Testman, Division Manager- Multifamily Lending  
Crystal Toney, Deputy Director-Administration  
Dorothy White, Federal Compliance Officer {  
Michelle Wilshire, Senior Manager - Low Income Housing Tax Credit Program

Others Present:

Sam me Gee, Jackson Kelly PLLC  
Kelley Goes, Jackson Kelly PLLC

APPROVAL OF THE MINUTES OF FEBRUARY 26, MEETING

Member Bob Nistendirk moved the approval of the minutes of the February 26, 2020 meeting. His motion was seconded by Representative Norm Bailey, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

CONSIDERATION OF BOND AUTHORIZING RESOLUTION FOR  
CONDUIT FINANCING OF UP TO \$9,500,000 IN BONDS FOR  
THE REHABILITATION OF POTOMAC HEIGHTS APARTMENTS

Julie Davis requested the Board's approval of the Bond Authorizing Resolution for the Potomac Heights Apartments project and explained that the Board approved a Bond Inducement Resolution on behalf of Potomac Heights, LLC at the July 31, 2019 meeting.

Ms. Davis stated that the bond issuance will be in an amount not to exceed \$9,500,000 and that the bonds are required to qualify the project for 4% tax credits. The Fund will serve as the conduit issuer, which will provide Potomac Heights, LLC, the Borrower, access to the tax-exempt market. The bond proceeds, along with other funds, will provide the Borrower with financing for the acquisition and rehabilitation of Potomac Heights Apartments, a 141-unit residential housing project for individuals and families located in Keyser, WV. The rehabilitation of Potomac Heights will preserve the long-term affordability of this property. The bonds have an expected maturity of December 1, 2022. The maximum interest rate will not exceed 12%.

Ms. Davis informed the Board that a TEFRA hearing notice for the bond issuance was published in the Keyser and Charleston newspapers on March 20<sup>th</sup> and 21<sup>st</sup>. The TEFRA hearing allows for public participation, is required by the IRS requirement to issue bonds, and is part of the Governor's approval. The Fund held the hearing on April 2, 2020 at its Charleston office. However, the Governor issued stay at home orders on March 24, making it necessary to hold a supplemental hearing for public participation by phone. The Fund is awaiting guidance from the IRS on public hearings during the COVID-19 crisis, but due to the time sensitivity of the project, believes the best course of action is to move forward with a supplemental TEFRA hearing process and supplemental TEFRA approval from the Governor. Once the IRS issues guidance, the Fund is hopeful that the supplemental hearing and supplemental approval by the Governor will be compliant with the IRS guidance. Ms. Davis stated that the Fund's bond counsel will confirm compliance with IRS guidance prior to the closing of this transaction.

Ms. Davis stated that staff is asking the Board's approval of the Bond Authorizing Resolution for the project approving the following: The issuance of the Bonds in an amount not to exceed \$9,500,000, the execution and delivery of the Bonds, providing parameters for establishing the provisions for redemption, maturity and interest rate and other terms of the Bonds, appointing the Executive Director as the issuer representative to approve final terms and bond pricing within such parameters, the execution and delivery of a Trust Indenture, the execution and delivery of a Loan Agreement, the execution and delivery of a Bond Purchase Agreement, approving a preliminary official statement and authorizing an official statement, appointing bond counsel, general counsel, underwriter, financial advisor, trustee, registrar and paying agent, the approval of the allocation of Bond Volume Cap to the Bonds, authorizing the execution and delivery of other documents, and, all other actions relating to such financing in substantially the form presented.



Member John Gianola moved the approval of the Bond Authorizing Resolution and bond documents in substantially the form presented. His motion was seconded by Member Nistendirk, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

A copy of the Bond Authorizing Resolution along with supporting documents is attached as Exhibit A.

CONSIDERATION OF MULTIFAMILY PERMANENT LOAN AND  
HOME LOAN TO POTOMAC HEIGHTS

Nathan Testman presented a loan request from Potomac Heights, LLC to finance the rehabilitation of the one hundred forty-one (141) unit Low-Income Housing Tax Credit Program ("LIHTCP") Project located in Keyser, West Virginia known as Potomac Heights.

Mr. Testman stated that the Project consists of five (5) buildings, one (1) eight-story high-rise and four (4) two-story townhouses. Thirty-six (36) units are designated for tenants with income at or below 40% of Area Median Income (AMI) and one hundred five (105) units are designated for tenants with an income at or below 60% of AMI.

Mr. Testman informed the Board that the Developer for the Project is Heritage Developer, LLC, which is owned by Heritage Housing Holdings, LLC. Staff has a high level of confidence in Heritage Developer, LLC's ability to develop the proposed Project, given that David McCarthy, President and Founder of the Heritage companies, has thirteen years of experience in affordable housing, public housing and multifamily development.

Mr. Testman explained additional strengths of the Project include Project-Based Rental Assistance for 140 units in the Project for a term of 32 years, and the Project will not require a separate construction loan because the Developer will perform 5-7 rehabilitations at a time, which will limit the number of displaced tenants and keep occupancy high. This will allow the Fund to obtain a USDA 538 loan guarantee that will cover 90% of the Fund's permanent loan balance immediately instead of waiting until the construction period is over and property stabilization occurs.

Mr. Testman also stated that the Project will utilize 4% Low-Income Housing Tax Credits, and that the development team chose a short-term collateral bond structure. Under this structure, the bonds will be secured by a cash collateral account funded by the permanent loan proceeds.

Mr. Testman stated that staff is requesting approval of the WVHDF Permanent Loan financing of up to \$11,160,000 with interest at the rate of up to 4% for a term of 40 years. The permanent loan will include a USDA 538 guarantee and will be secured by a first lien deed of trust on the land and improvements known as Potomac Heights Apartments and the operating and replacement reserves associated with the Project. During the rehabilitation period, the Fund will also be secured by Payment and Performance bonds equal to 100% of the construction contract.

Member Nistendirk moved to approve the request for the WVHDF Permanent loan for the rehabilitation Potomac Heights Apartments as presented. His motion was seconded by Member Gianola, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

Mr. Testman stated that staff is requesting approval of the HOME loan financing of up to \$1,070,000 with interest at the rate of up to 1% for a term of 20 years. The loan will be secured by a second lien deed of trust on the land and improvements known as Potomac Heights Apartments and the operating and replacement reserves associated with the Project. During the construction period, the Fund will also be secured by Payment and Performance bonds equal to 100% of the construction contract and the corporate guarantees of Heritage Housing Holdings, LLC, Heritage Developer, LLC, and Heritage Guarantor, LLC.

Representative Josh Stowers moved to approve the request for the HOME loan for the rehabilitation of Potomac Heights Apartments as presented. His motion was seconded by Member Nistendirk, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

#### AUTHORIZATION FOR REALLOCATION OF AFFORDABLE HOUSING FUND PROGRAM FUNDING

Mr. Testman informed the Board that the Affordable Housing Fund Program (AHFP) is designed to provide financial assistance to certain organizations which focus on providing and preserving affordable housing in West Virginia. Revenues that fund the AHFP are split between two accounts within the AHFP - a forgivable account (funded by 90% of the revenue received) and a revolving account (funded by 10% of the revenue received). The forgivable account funds the AHFP's forgivable loan products, and the revolving account funds the AHFP's repayable products.

Due to the large balance in the revolving account and the lack of activity related to the repayable AHFP product, staff is recommending a transfer of \$500,000 from the revolving loan account to the forgivable loan account. Mr. Testman also stated staff is requesting the ability to perform future transfers between the accounts in the amount of up to \$300,000 annually.

Member Patrick Martin moved the one-time transfer of \$500,000 from the revolving loan account to the forgivable loan account. His motion was seconded by Member David Gardner, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

Member Martin moved the approval of future transfers between the accounts in the amount of up to \$300,000 annually. His motion was seconded by Member Gardner, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

#### APPROVAL TO MODIFY FEDERAL HOME BANK HOME4GOOD PROGRAM

Mr. Testman reminded the Board that for the past two years, the Board authorized the Fund to partner with the Federal Home Loan Bank of Pittsburgh (FHLB) to administer the Home4Good program (H4G or Program), which provides a flexible source of funding for organizations working to address homelessness. H4G was structured in partnership with FHLB's district housing and finance agencies (HFAs). H4G has been administered through an RFP process coordinated by the State's four Continuum of Care (CoC) organizations.

Mr. Testman informed the Board that during a planning meeting for the 2020 Program year, FHLB and the three HFAs decided to pursue a different program structure as a result of the COVID-19 pandemic. It is proposed that the H4G funds be directed to the CoCs to use as "emergency funds", to allow the CoCs to be

as quick and flexible as possible in responding to the needs in their region. Staff proposes to continue its administrative support of the Program, which will help facilitate FHLB's \$1.1M investment in the State.

Mr. Testman stated that staff is requesting the Board's approval of the Fund's continued administrative involvement with the Program, and to enter into a new agreement with FHLB which would reflect the new structure. Staff is also requesting the Executive Director be authorized to approve such awards in excess of the current \$300,000 Executive Director limit without individual Board approval of awards since the Program is funded with the FHLB's money and not with the Fund's money.

Member Nistendirk moved the approval of the Fund's continued administrative involvement with the Program and to enter into a new agreement with FHLB which would reflect the new structure. His motion was seconded by Representative Bailey, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

Member Gardner moved the approval of the request to authorize the Executive Director to approve H4G awards in excess of the current \$300,000 Executive Director limit without individual Board approval of awards. His motion was seconded by Member Martin, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

#### APPROVAL OF PROPOSED PROCUREMENT RULES AND AUTHORIZATION TO FILE RULES.

Erica Boggess informed the Board that during the 2020 Legislative session, HB 4042 was passed requiring agencies exempt from procurement requirements to either file procedural rules establishing purchasing procedures prior to September 1, 2020 or become subject to the procurement requirements established by the State Purchasing Division.

Ms. Boggess stated that staff is requesting the Board's approval of the proposed procurement rules and the authority to take the necessary actions to finalize the rules as required by the Secretary of State.

Representative Bailey moved the approval of the procurement rules and the authority to take the necessary actions to finalize the rules as required by the Secretary of State. His motion was seconded by Member Martin, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

A copy of Proposed Procurement Rules is attached as Exhibit B

#### EXECUTIVE SESSION

Member Gianola moved that the Board enter Executive Session to discuss matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision pursuant to W. Va. Code §6-9A-4(b)(9), as well as to discuss legal matters pursuant to W. Va. Code §6-9A-4(b)(7). His motion was seconded by Member Martin, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted. The Board adjourned into Executive Session at 9:56 a.m.

The Executive Session concluded at 10:40 a.m. Chair Urling stated that no action took place during the Executive Session.

**ADJOURNMENT**

There being no further business, Member Gardner moved to adjourn the meeting. His motion was seconded by Representative Bailey. Meeting adjourned at 10:41 a.m.

  
Martha Lilly, Assistant Secretary



**WEST VIRGINIA HOUSING DEVELOPMENT FUND  
BOND AUTHORIZING RESOLUTION**

RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, EXECUTION AND DELIVERY OF NOT TO EXCEED \$9,500,000 AGGREGATE PRINCIPAL AMOUNT OF THE ISSUER'S MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2020 (POTOMAC HEIGHTS); PROVIDING PARAMETERS FOR ESTABLISHING THE PRINCIPAL AMOUNT, PROVISIONS FOR REDEMPTION AND MATURITY OF, AND RATE OF INTEREST ON AND OTHER TERMS AND PROVISIONS OF SUCH BONDS; APPOINTING THE EXECUTIVE DIRECTOR AS THE REPRESENTATIVE OF THE ISSUER TO APPROVE THE FINAL TERMS AND PRICING OF THE BONDS WITHIN SUCH PARAMETERS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE, A LOAN AGREEMENT AND A BOND PURCHASE AGREEMENT WITH RESPECT TO THE BONDS; APPROVING A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING AN OFFICIAL STATEMENT WITH RESPECT TO THE BONDS; APPOINTING BOND COUNSEL, GENERAL COUNSEL, AN UNDERWRITER, A FINANCIAL ADVISOR AND A TRUSTEE, REGISTRAR AND PAYING AGENT FOR THE BONDS; APPROVING THE ALLOCATION OF THE ISSUER'S PRIVATE ACTIVITY BOND VOLUME CAP TO THE BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS AND THE TAKING OF ALL OTHER ACTIONS RELATING TO SUCH FINANCING.

WHEREAS, the West Virginia Housing Development Fund (the "Issuer"), under Chapter 31, Article 18 of the Code of West Virginia, 1931, as amended (the "Act"), has plenary power and authority to issue revenue bonds to finance the cost of the acquisition, rehabilitation and equipping of residential housing projects;

WHEREAS, Potomac Heights, LLC, a West Virginia limited liability company (the "Borrower"), has requested that the Issuer assist the Borrower in the acquiring, constructing and equipping of privately owned real and personal property known as Potomac Heights and containing approximately 141 affordable living units in a multi-family rental housing building for seniors and families, located at 500 Carskadon Lane, Keyser, West Virginia, and the payment of certain costs and expenses related thereto (collectively, the "Project");

WHEREAS, the Issuer has found and determined and does hereby find and determine that, in order to provide adequate and improved residential housing for citizens of the State of West Virginia, at reasonable cost, it is desirable and appropriate for the Issuer to assist in the financing of the Project;

WHEREAS, the Borrower has requested that the Issuer issue not to exceed \$9,500,000 aggregate principal amount of Multifamily Housing Revenue Bonds, Series 2020 (Potomac Heights) (collectively, the "Bonds") for the purpose of assisting in the financing of the Project;

WHEREAS, the Issuer's private activity bond volume cap is required to be allocated to the Bonds, and the Issuer desires that such allocation be made as described herein;

WHEREAS, the Bonds will be issued by the Issuer and will be secured under and pursuant to a Trust Indenture (the "Indenture") between the Issuer and Zions Bancorporation, National Association, as trustee (the "Trustee");

WHEREAS, the Borrower has requested that the Issuer lend the proceeds of the Bonds to the Borrower pursuant to the terms of a Loan Agreement between the Issuer and the Borrower (the "Loan Agreement"), and the proceeds of the Bonds will be used to accomplish the Project;

WHEREAS, as security for the Loan Agreement, the Borrower shall execute a Note and such other documents as reasonably requested by the Issuer as security therefor;

WHEREAS, the Bonds will be sold pursuant to a Bond Purchase Agreement (the "Purchase Agreement"), among the Issuer, the Borrower and Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), to be dated as of the date of execution and delivery of the Certificate of Determinations, as hereinafter defined;

WHEREAS, it is anticipated that the Issuer will deliver and the Underwriter will distribute a preliminary official statement (the "Preliminary Official Statement") and an official statement (the "Official Statement") in connection with the marketing and sale of the Bonds;

WHEREAS, the Governor of the State of West Virginia has given his direction to the Issuer, pursuant to and in accordance with §5-1-28 of the Code of West Virginia, 1931, as amended, to issue the Bonds, and has given his approval for the issuance of the Bonds after a public hearing following reasonable public notice as required by the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, certain actions are required to be taken by the Issuer as a prerequisite to the issuance and sale of the Bonds, and the Issuer desires to take such actions; and

WHEREAS, the enactment of this Resolution constitutes action giving final approval for the issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE WEST VIRGINIA HOUSING DEVELOPMENT FUND (THE "BOARD OF DIRECTORS") AS FOLLOWS:

Section 1. Approval of the Project and the Bonds. It is hereby found and determined that the Bonds should be issued, that the financing of the Project for the Borrower is a public purpose of the Issuer, promotes the public purposes under the Act and is in the public interest and that the Project satisfies the requirements of the Act.

Section 2. Approval of Allocation of Volume Cap to Bonds. The allocation to the Bonds of a portion of the Issuer's unused private activity bond volume cap for calendar year 2017 is hereby approved.



Section 3. Approval of Bond Documents. Draft forms of the Indenture, the Loan Agreement, the Purchase Agreement and the Preliminary Official Statement (hereinafter collectively referred to as the “Bond Documents”) have been prepared and presented to the Issuer. The Bond Documents substantially in the form submitted at this meeting shall be and the same are hereby approved. The Executive Director is authorized to negotiate and approve the final forms and content of the Bond Documents under such terms and conditions as are acceptable to the Executive Director and the Borrower, with such changes, insertions and omissions as may be approved by the Executive Director. The Executive Director and Assistant Secretary are hereby authorized, empowered and directed to execute (as applicable) and deliver the appropriate Bond Documents prior to or simultaneously with the issuance of the Bonds for and on behalf of the Issuer, in the forms and upon those terms and conditions as approved by the Executive Director, and such approval shall be conclusively evidenced by the execution and/or delivery, as applicable, of the Bond Documents by the Executive Director, Assistant Secretary or other authorized officer of the Issuer.

Section 4. Issuance of and Terms of Bonds. To accomplish the purpose of the Act, and to assist in the financing of the Project, the issuance of the Bonds in the principal amount of not to exceed \$9,500,000 is hereby authorized and directed. The Bonds shall be dated their date of original issuance, shall mature no later than December 1, 2022, and shall bear interest at a fixed rate to be established in accordance with the Indenture, not to exceed 12%, with the final principal amount, dated date, maturity date, interest rate, redemption provisions and other terms of the Bonds to be approved by the Executive Director and set forth in a Certificate of Determinations (the “Certificate of Determinations”) to be dated the date of the Purchase Agreement and delivered the date of delivery of the Bonds, such approval to be evidenced by the execution by the Executive Director of the Certificate of Determinations. The Bonds shall be in the denominations and in registered form, be payable in the medium of payment and at such places, be subject to redemption prior to maturity and be entitled to payment pursuant to the Indenture, all as provided in the Indenture as finally approved by the Executive Director as described above. The Bonds shall be sold to the Underwriter pursuant to the Purchase Agreement at such price as may be approved by the Executive Director of the Issuer and by the Borrower, such approval to be evidenced by the execution by the Executive Director and by the Borrower of the Purchase Agreement setting forth such price. All of the provisions of the Indenture and the Certificate of Determinations, when executed and delivered as authorized herein, shall be deemed to be part of this Resolution as fully and to the same extent as if incorporated herein and shall be in force and effect from the date of the execution thereof.

Section 5. Bonds to Constitute Limited Obligations. The Bonds are secured by and payable from payments made by the Borrower under the Loan Agreement that are available to the Trustee pursuant to the Indenture, and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Bonds are further secured by an assignment to the Trustee of the right, title and interest of the Issuer in the Loan Agreement and the Note. The Bonds are special, limited obligations of the Issuer and are not a lien or charge upon the funds or property of the Issuer, except to the extent of the aforementioned pledge and assignment under the Indenture. The Bonds shall not constitute general obligations of the Issuer or the State of West Virginia and under no circumstances shall the Bonds be payable from, nor shall the holders thereof have any rightful claim to, any income, revenues, funds or assets of the

Issuer other than those pledged under the Indenture as security for the payment of the Bonds. The Bonds shall not be a moral obligation of the Issuer or in any way be secured by any assets of the Issuer other than as set forth in the Indenture.

Section 6.     Appointments. At the request of the Borrower, the Issuer hereby appoints the following:

(a)     Stifel, Nicolaus & Company, Incorporated is hereby appointed as the underwriter for the Bonds. The Executive Director is hereby authorized and directed, upon advice of counsel, to enter into the Purchase Agreement with the Underwriter and the Borrower. It is understood by the Issuer that the Underwriter will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(b)     Hawkins Delafield & Wood LLP (“Bond Counsel”) is hereby appointed as bond counsel to the Issuer in connection with the issuance of the Bonds. It is understood by the Issuer that Bond Counsel will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(c)     Jackson Kelly PLLC (“General Counsel”) is hereby appointed as general counsel to the Issuer in connection with the issuance of the Bonds. It is understood by the Issuer that General Counsel will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(d)     Piper Sandler & Co. (the “Financial Advisor”) is hereby appointed as financial advisor to the Issuer in connection with the issuance of the Bonds. It is understood by the Issuer that the Financial Advisor will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(e)     Zions Bancorporation, National Association, is hereby appointed as trustee, registrar and paying agent for the Bonds under the Indenture.

Section 7.     Authentication of Bonds. The Trustee is hereby requested to authenticate and register the Bonds in accordance with the Indenture and to deliver them upon the order of the Executive Director.

Section 8.     Investment of Funds. The Trustee shall be, by virtue of this Resolution and without further authorization from the Issuer, authorized, directed and requested to invest and reinvest all moneys available therefor pursuant to the Indenture, which by the terms of the Indenture may be invested, or to deposit and redeposit such moneys in such accounts as may be permitted by the Indenture at the direction of the Borrower, all subject to the terms and limitations contained in the Indenture.

Section 9.     Continuing Disclosure. The Issuer shall have no responsibility to undertake or complete any continuing disclosure related to the Bonds, and such responsibility shall be solely that of the Borrower or its designated agent.

Section 10.    Official Statement.

(a)     The distribution by the Underwriter of a Preliminary Official Statement in such form as shall be approved and “deemed final” by the Executive Director in accordance with

Rule 15c2-12 promulgated by the Securities and Exchange Commission is hereby authorized and approved.

(b) The preparation and distribution of the final Official Statement relating to the Bonds is hereby authorized in such form as may be approved by the Executive Director, such approval to be evidenced by the execution by the Executive Director of such final Official Statement; and the delivery by the Underwriter to prospective purchasers of the Bonds of the final Official Statement is hereby authorized and approved. The Executive Director shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Executive Director. In executing the Official Statement, the Executive Director shall with respect to all matters, other than that portion of the Official Statement which relates to the Issuer, be entitled to rely upon the certificate of the Borrower with respect to such Official Statement. The execution of the Official Statement by the Executive Director in reliance upon the certificate of the Borrower shall be conclusive evidence of any approval required by this Section.

Section 11. Indemnification. Subject to the provisions of, and as set forth in, the Indenture and the Loan Agreement, the Borrower shall defend, indemnify and hold the Issuer and its officials harmless from and against any and all loss, cost, expense, claim or action arising out of or connected with the adoption of this Resolution and the consummation of the transactions provided for herein and contemplated hereunder.

Section 12. Personal Liability. None of the present or future employees, officers or Board of Directors of the Issuer, or any person executing the Bonds or the documents relating thereto, shall be personally liable for the Bonds or any other obligation relating to the issuance of the Bonds or be subject to any personal liability by reason of the issuance of the Bonds.

Section 13. Formal Actions. The Issuer hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in open meetings of the Issuer, and that all deliberations of the Issuer which resulted in formal action were taken in meetings open to the public, in full compliance with all applicable notice and other legal requirements.

Section 14. Incidental Actions. The Executive Director, Assistant Secretary or other authorized officer of the Issuer are hereby authorized and directed to execute and deliver a tax certificate (the "Tax Certificate"), a regulatory agreement by and among the Issuer, the Borrower and the Trustee (the "Regulatory Agreement"), and such other documents, agreements, instruments and certificates and to take such other actions as may be necessary or appropriate in order to effectuate the execution, delivery and receipt, or any thereof, of the Bond Documents and the issuance and sale of the Bonds, and for carrying out the transactions contemplated therein, all in accordance with the Act, the Code and this Resolution, including any action necessary with respect to The Depository Trust Company or the blue sky laws of any state. The execution, delivery and due performance, as applicable, of the Bond Documents, the Tax Certificate, the Regulatory Agreement and such other documents, agreements, instruments and certificates as noted above are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the issuance of the Bonds.

Section 15. Expenses and Fees. All expenses incurred by the Issuer in connection with the issuance of the Bonds, including any administrative fees of the Issuer and the

issuance fee as specified in the Issuer's then current Debt Management Policy, shall be paid to or reimbursed to the Issuer from the proceeds of the Bonds or other funds available to the Borrower.

Section 16. Governing Law. The laws of the State of West Virginia shall govern the construction of this Resolution and of all Bonds issued under the Indenture.

Section 17. Severability. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution.

Section 18. Effective Date; Repeal of Inconsistent Resolutions. This Resolution shall take effect immediately upon its adoption, and all prior resolutions or parts thereof inconsistent herewith are hereby repealed.

Adopted this 22<sup>nd</sup> day of April, 2020.

WEST VIRGINIA HOUSING DEVELOPMENT  
FUND

By: \_\_\_\_\_  
Executive Director



CERTIFICATION

I, \_\_\_\_\_, duly appointed Assistant Secretary of the West Virginia Housing Development Fund, do hereby certify that the foregoing is a true and accurate copy of a Resolution adopted by the Board of Directors of the West Virginia Housing Development Fund at its meeting of the Board of Directors on April 22, 2020.

Dated: \_\_\_\_\_, 2020

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Assistant Secretary

**MEMORANDUM**

**TO:** Erica L Boggess, Executive Director, West Virginia Housing Development Fund

**FROM:** Mark A. Imbrogno, Esq.  
Samme L. Gee, Esq.

**RE:** Procedure for Adoption of Procedural Rules

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Pursuant to HB 4042 (2020), agencies exempt from some of the purchasing requirements of Chapter 5A of the W. Va. Code, including the West Virginia Housing Development Fund (“Fund”), are required to file procedural rules establishing purchasing procedures with the Department of Administration by September 1, 2020, or become subject to the Purchasing Division’s procurement requirements. In order for a procedural rule to be effective, it must be filed with the Secretary of State, pursuant to the provisions of Chapter 29A, Article 3 of the W. Va. Code, and in a manner that allows such rule to be effective prior to September 1, 2020. The following describes the required procedure for the adoption of procedural rules.

Once the Fund prepares a proposed procedural rule, a notice is required to be filed in the State Register of the proposed adoption of such rule.<sup>1</sup> The notice must (1) contain the text of the proposed rule, (2) include a fiscal note, and (3) fix a date, time and place for receipt of general public comment on the proposed rule, which may be through either (i) a public hearing, or (ii) public written comment period.<sup>2</sup> The foregoing notice is required to be filed not less than 30 and not more than 60 days prior to the public hearing date or last day to receive written comments.<sup>3</sup>

Once the public comment period has ended, the Fund has six months to consider the proposed procedural rule for adoption, and within such six-month period must file with a notice of adoption or withdrawal of the proposed rule in the State Register.<sup>4</sup> In the case at hand, the proposed rule must be adopted by July 31, 2020, to allow sufficient time for the rule to become effective, as described below, prior to the September 1 requirement of HB 4042. The proposed rule may be amended by the Fund prior to final adoption without further public hearing or comment, so long as such amendments do not change the main purpose of the rule.<sup>5</sup>

Upon adoption of the procedural rule by the Fund, a notice of adoption must be filed in the State Register.<sup>6</sup> The notice of adoption is required to include (1) the final text of the rule, (2) responses to the public comments received during the public hearing or public comment period and explaining the reasoning for comments being incorporated or not incorporated into the rule; (3) the effective date of the rule; and (4) if the fiscal implications have changed since the rule was proposed, a new fiscal note.<sup>7</sup> The effective date of the rule is the later of the date specified in the rule or 30 days after filing.<sup>8</sup> Once the rule is effective, it must be filed with the Department of Administration by September 1, 2020, to comply with HB 4042.

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<sup>1</sup> W. Va. Code §29A-3-4, -5.

<sup>2</sup> W. Va. Code §29A-3-5.

<sup>3</sup> W. Va. Code §29A-3-7.

<sup>4</sup> W. Va. Code §29A-3-8(a). Further, if no notice of adoption or withdrawal is filed within the six-month period, the proposed rule will be treated as withdrawn and the Secretary of State will note the failure to file in the State Register. *Id.*

<sup>5</sup> W. Va. Code §29A-3-8(b).

<sup>6</sup> W. Va. Code §29A-3-8(a).

<sup>7</sup> W. Va. Code §29A-3-5, -8.

<sup>8</sup> W. Va. Code §29A-3-8(b).

### **Timeline for Adoption of Procedural Rule**

<b>Day</b>	<b>Action</b>
1	File Notice of Proposed Rule with Secretary of State for publication in State Register
1-30	Hold written comment period (30 days)
1-30	Respond to any comments received; amend rule as appropriate
30	Adopt Rule
30	File Notice of Adoption with Secretary of State for publication in State Register
60	Rule becomes effective (30 days after filing Notice of Adoption)

**TITLE 88  
PROCEDURAL RULE  
WEST VIRGINIA HOUSING DEVELOPMENT FUND**

**SERIES 3  
PURCHASING PROCEDURE**

**§88-3-1. General.**

1.1. Scope. -- This rule is to ensure certain controls and accountabilities are in place for the purchase of goods and services by the Fund. This rule identifies procurement guidelines based on the monetary amount of the good or service. This rule applies only to the purchase of goods and services for the administrative functions of the Fund and is not applicable to housing programs.

1.2. Authority. -- W. Va. Code §31-18-6.

1.3. Filing Date. --

1.4. Effective Date. --

**§88-3-2. Definitions.**

2.1. "Authorized Designee" means anyone designated in writing by the Executive Director to perform a specific task or function.

2.2. "Board" means the Board of Directors of the Fund.

2.3. "Executive Director" means the Executive Director of the Fund.

2.4. "Fund" means the West Virginia Housing Development Fund created and established under W. Va. Code §31-18-1 *et seq.*

2.5. "RFP" means Request for Proposal.

2.6. "State" means the State of West Virginia.

**§88-3-3. Overview.**

3.1. The Fund is a public body corporate and government instrumentality of the State established to increase the supply of residential housing for persons and families of low or moderate income and to provide construction and permanent mortgage financing to public and private sponsors of such housing. In addition, the Fund serves as a pass-through entity or administrator of money allocated by the Federal Government. The Fund does not spend the federal award but instead passes it on to the end user, which is a developer of affordable housing. As such, the Uniform Guidance Procurement Policies and the updates under the National Defense Authorization Act (NDAA) do not directly apply to the Fund's operations.

The Fund receives no appropriations from the State, is not a state spending unit, is not subject to an appropriated budget by the State, is not required to adopt a legally authorized budget and is not subject to the State's procurement process. However, for sound financial management and oversight purposes an annual administrative budget is presented to, and approved by, the Board. Monthly, the Board reviews



a comparison of actual to budgeted expenses to monitor the Fund's compliance with its administrative budget. Goods and services purchased for the administrative functions of the Fund are approved as part of the annual administrative budget.

#### **§88-3-4. Purchasing Requirements.**

4.1. All purchases of goods and services are subject to expenditure approval. Documentation of the evaluation and decision will be imaged with the executed contract, if applicable. If the purchase does not involve a contract, documentation should be included as backup to the request for payment and imaged with the payable/voucher.

4.2. Requirements for purchases up to \$5,000:

4.2.1. No formal bid process is required.

4.2.2. The authorized approval(s) on the request for payment will serve as documentation of the decision of reasonableness and will be imaged with the payable.

4.3. Requirements for purchases greater than \$5,000 but not more than \$10,000:

4.3.1. No formal bid process required if prices obtained through research and inquiry are considered to be reasonable.

4.3.2. Reasonableness will be determined by comparing prices to previous purchases, other published prices or prices obtained from more than one (1) vendor.

4.3.3. The proposed purchase must receive the approval of an Authorized Designee or the Executive Director.

4.4. Requirements for purchases greater than \$10,000 but not more than \$75,000:

4.4.1. Prices or quotes will be obtained from a minimum of two (2) separate sources.

4.4.2. Price is not required to be the final deciding factor.

4.4.3. The proposed purchase must receive the approval of an Authorized Designee or the Executive Director.

4.5. Requirements for purchases greater than \$75,000:

4.5.1. Bids or price quotes must be solicited from an adequate number of known qualified suppliers with sufficient response time permitted. This may be done in the form of an RFP or price solicitation.

4.5.2. The RFP invitation or price solicitation must define the items or services to allow consistency and comparability of bids or price quotes submitted, if applicable.

4.5.3. Bids or price quotes will be opened at a time and place prescribed in the RFP invitation or price solicitation, if applicable. Price is not required to be the final deciding factor.

4.5.4. All bidders will be notified of either successful or unsuccessful bid or quote in writing, which may be via e-mail.

4.5.5. Any or all bids and/or quotes may be rejected if there is a sound, documented reason for such rejection.

4.5.6. The proposed purchase must receive the approval of the Executive Director or other officer or employee with full signature authority as authorized by the Board.

4.6. Consultants and Contracts. The Executive Director, or other officers or employees with full signature authority as authorized by the Board, may engage consultants and execute contracts for services or software within budgets approved by the Board.

4.7. Protests. Protests apply only to bids, price quotes and awards made under Section 4.5.

4.7.1. Submission of Protest.

4.7.1.a. Protests based on bid or price quote specifications must be submitted no later than five (5) working days prior to the bid or price quote opening. Protest of a purchase order or contract award must be submitted no later than five (5) working days after the award. The vendor is responsible for knowing the bid or price quote opening and award dates. Protests received after these dates may be rejected at the option of the Executive Director.

4.7.1.b. All protests must be submitted in writing to the Fund and contain the following information:

4.7.1.b.1. The name and address of the protestor;

4.7.1.b.2. The requisition, solicitation, purchase order or contract numbers;

4.7.1.b.3. A statement of the grounds of protest;

4.7.1.b.4. Supporting documentation, if necessary; and

4.7.1.b.5. The resolution or relief sought.

4.7.1.c. Failure to submit the information required by Subdivision 4.7.1.b. shall be grounds for rejection of the protest by the Executive Director.

4.7.2. Protest Review.

4.7.2.a. The Executive Director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Executive Director or assigned designee. Continuation or delay of a purchase order or contract award is at the discretion of the Executive Director.

4.7.2.b. The Fund may refuse to review any protests when the matter involved has been decided in a previous protest by the Fund.

#### **§88-3-5. Permitted Exceptions.**

5.1. Sole-Source Provider. Exceptions may be made to the provisions of this rule in instances where there is a “sole-source” provider.

5.2. Software Purchases. It is the practice of the Fund to evaluate various software applications through research and vendor product demonstrations and then select the software that best meets the needs of the organization through a cost/benefit analysis. In these instances, a formal RFP need not be issued.

5.3. Emergencies. Exceptions may be made in the event of federally declared emergencies or State declared emergencies affecting the Fund or its programs.

5.4. Board Approved Exceptions. Case-by-case exceptions may be made to the provisions of this rule in instances approved by the Board.

5.5. Documentation of Exceptions. The reasoning for and approval of exceptions should be noted in the supporting documentation and/or the payment/voucher request. Any exception shall require the written approval of the Executive Director or other officers or employees with full signature authority as authorized by the Board.

**§88-3-6. Severability.**

6.1. If any word, phrase, or provision of this rule is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.