MINNESOTA HOUSING

Tax-Exempt Bonds Informational Guide

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Table of Contents

Introduction 4

Statutory Requirements....... 4

What are tax-exempt bonds?....... 4

What types of tax-exempt bonds does Minnesota Housing currently use to finance multifamily construction?. 4

What is Minnesota Housing's annual bonding authority for tax-exempt volume limited bonds, and how is it determined?....... 5

How do bonds interact with other Minnesota Housing funding sources?....... 5

What is the process for securing 4% tax credits?....... 6

Chapter 1 – Selection Underwriting....... 8

1.01 Deal Structure....... 8

1.02 Analysis and Bond Tests....... 8

Chapter 2 – Post-Selection Process....... 11

2.01 Reimbursement Declaration....... 11

2.02 TEFRA Hearing....... 11

2.03 Bond Fees....... 11

2.04 Underwriting....... 12

2.05 Bond Team Communications and Process....... 12

Chapter 3 – Approvals....... 15

3.01 Mortgage Credit Committee....... 15

3.02 Board....... 15

3.03 42M Application and Preliminary Determination Letter....... 15

Important: Confidentiality and Requests for Information....... 16

4.01 Loan Commitment....... 16

4.02 Preliminary Official Statement (POS)....... 16

4.03 Pricing and Closing on the Bonds....... 16

4.04 Post-Closing....... 17

Chapter 5 – Housing Infrastructure Bonds (HIB)....... 18

5.01 Types of HIB loans....... 18

5.02 Underwriting and Process....... 18

5.03 Post-Closing....... 19

Appendix A: Terms....... 21

Appendix B: Sample Documents....... 25

1. Sample Organizational Charts....... 25

Introduction [1]

Statutory Requirements

Tax-exempt bonds are regulated by Internal Revenue Code Sections 103 and 141 through 150 and tax-exempt volume limited bonds for residential rental housing projects are regulated by Minnesota Statutes Section 474A.047.

What are tax-exempt bonds?

Tax-exempt bonds are municipal bonds and are different from most other securities because of the federal tax exemption on interest earned. Interest income is not included in gross income for purposes of federal income taxation. Municipal bonds are often referred to as tax-exempt bonds. If, as in Minnesota, municipal bonds are exempt from state income tax, they are known as double exempt. Many Minnesota Housing obligations are exempt from federal and Minnesota personal income tax to residents of Minnesota.

What types of tax-exempt bonds does Minnesota Housing currently use to finance multifamily construction?

Minnesota Housing issues several types of tax-exempt bonds for multifamily housing, including:

General Obligation (GO) Bonds: Minnesota Housing's GO bonds are payable from any of Minnesota Housing's funds not specifically pledged to other obligations and are secured by a pledge of full faith and credit of Minnesota Housing for timely payment of principal and interest to the bondholder. Minnesota Housing does not currently issue any tax-exempt bonds that are secured solely by its full faith and credit pledge.

- **Rental Housing Bonds** fall under this category, even though they are also secured by, and repayment is expected from, revenues received from repayment of the loans made with the proceeds of the bonds. Minnesota Housing issues Rental Housing Bonds to finance loans for multifamily developments.

  Rental Housing Bonds must be tax-exempt volume limited bonds (i.e. required to be allocated from a portion of the state's volume cap for private activity bonds to be tax-exempt) in order to qualify a development for 4% housing tax credits.

Revenue Bonds: Revenue bonds are payable from, and secured only by, the earnings of a revenue-producing enterprise, a mortgage loan or a portfolio of loans.

- **Conduit Bonds** fall under this category. Minnesota Housing issues conduit revenue bonds when the development does not have a first mortgage loan from Minnesota Housing. Short-term conduit bonds may also be cash collateralized; the repayment of the loan to the borrower is secured solely by cash advanced from other permanent funding sources as the borrower incurs development costs.

[1] This manual is provided solely for general informational purposes. It is not providing legal or financial advice. Minnesota Housing is not responsible for any decision making based on the information set forth in this guide. Interested parties wishing to utilize tax exempt bonds should obtain advice from independent sources, including consultation with knowledgeable legal counsel and bond professionals.

State Appropriation Bonds

- **Housing Infrastructure Bonds (HIB)** are neither revenue nor General Obligation bonds. They are payable from the amount the state has promised to appropriate each year for debt service.

    There are several types of Housing Infrastructure Bonds. Some are volume limited, qualifying a development for 4% housing tax credits when used to fund 50% or more of eligible development costs, while other types are not volume limited.

What is Minnesota Housing's annual bonding authority for tax-exempt volume limited bonds, and how is it determined?

Federal tax law governs how much the state as a whole is allocated each year in bonding authority (volume cap) for certain types of tax-exempt private activity bonds (tax-exempt volume limited bonds) and by when any allocated authority must be used. It is determined for each state by a multiplier of population. For example, in 2018 it will be $105 times the state population. State law determines how the state cap on the amount of tax-exempt volume limited bonds that may be issued each year is allocated between different state issuers of bonds. Minnesota Statutes Chapter 474A describes the allocation process.

Minnesota Housing is both an "entitlement issuer" under state law, receiving a designated percentage of the state volume cap each year, and the transferee at the end of each year of all unused state volume cap.

Minnesota Housing's bonding authority for tax-exempt volume limited bonds varies from year to year. For 2018, Minnesota Housing was allocated $134,800,581 through its entitlement portion, which increases each year if the state's population increases. The additional amount, which automatically transfers to Minnesota Housing at the beginning of December of each year if no other issuer has requested it, has varied greatly. The amount depends on how active other issuers in the state are. Minnesota Management and Budget monitors state volume cap allocation for issuers in the state, including Minnesota Housing.

How do bonds interact with other Minnesota Housing funding sources?

Low and Moderate Income Rental (LMIR) First Mortgage. In a tax-exempt bond transaction with Minnesota Housing that finances a LMIR mortgage, either one or two series of bonds are issued. Long-term bonds fund the permanent LMIR end loan. Short-term bonds, when issued simultaneously with long-term bonds, fund a LMIR Bridge Loan. The bridge loan typically bridges a portion of the tax credit equity. Together, both bond series should be in an amount sufficient to fund at least 50% of the aggregate basis of the building and land in order for the development to be eligible to receive 4% housing tax credits. (For additional information on how to qualify for tax credits refer to Article 8 of the Qualified Allocation Plan (QAP) and Chapter 7 of the Housing Tax Credit (HTC) Manual).

Over the recent past, Minnesota Housing has only issued short-term Rental Housing Bonds to fund LMIR Bridge Loans. LMIR end loans are funded from other Minnesota Housing sources. In addition to a LMIR loan, Minnesota Housing may also make a deferred loan with this structure.

NOTE: LMIR Bridge Loans are not HUD-insured, and LMIR end loans are not typically HUD-insured until the end loan closing occurs, after construction completion.

Non-HIB Deferred Loan Only. Conduit bonds may be issued, either by Minnesota Housing, or by another issuer, when Minnesota Housing does not make a first mortgage loan to the development but the first mortgage loan is made by another lender. The development may be financed with conduit bonds and a deferred subordinate lien loan from Minnesota Housing. Minnesota Housing does not provide conduit bond financing currently for developments that do not also qualify for Minnesota Housing deferred funding.

HIB. HIB may be used in place of, or in addition to, other tax-exempt bonds, to finance mortgage loans for qualifying developments. If a development is to qualify for 4% housing tax credits, it may require additional tax-exempt bond financing to meet the 50% test. Minnesota Housing usually issues HIB for multiple projects at one time. The proceeds of the HIB are used to make a long-term deferred loan to, and source of permanent financing for, each development.

What is the process for securing 4% tax credits?

In addition to competitive 9% housing tax credits, Minnesota Housing allocates 4% tax credits that are available in connection with the issuance of tax exempt volume limited bonds (i.e. residential rental housing bonds). Initial eligibility is based upon the tax-exempt volume limited bonds being issued sufficient to meet the 50% test; however, Section 42 of the Internal Revenue Code requires the tax credit allocating agency to establish a set of procedures to qualify for those 4% tax credits. See the QAP and HTC manual for additional details. The development must comply with the QAP that is in effect for the calendar year in which the tax-exempt volume limited bonds are first issued.

Each of Minneapolis, Saint Paul, Washington County and Dakota County is a sub-allocator that has the authority to allocate tax credits, including 4% tax credits, in its respective jurisdiction. This includes 4% tax credits that may be available in connection with tax-exempt bond financing. Please refer to each sub-allocator QAP for additional details.

Other Minnesota cities and counties have the authority to issue tax-exempt bonds, but Minnesota Housing is the allocator of 4% tax credits pursuant to a 42(m)(1)(D) letter if the project is not in the jurisdiction of one of the housing tax credit suballocators identified above. In order to receive the letter, the developer must submit all the documents required for an application for 4% tax credits as established by Minnesota Housing in the QAP and HTC Procedural Manual and any additional information requested by Minnesota Housing. The 42(m)(2)(D) letter from the issuer of the bonds is a requirement in the application. If the bond issuer is Minnesota Housing, it will provide both the 42(m)(1)(D) and 42(m)(2)(D) letters following Minnesota Housing Board commitment. If the bond issuer is a city or county and is not in the jurisdiction of one of the housing tax credit sub-allocators listed above, that entity must perform the 42(m)(2)(D) review and provide the 42(m)(2)(D) letter. Minnesota Housing then performs its review and provides the 42(m)(1)(D) letter. See QAP and HTC manual for additional details.

Applicants seeking financing from Minnesota Housing through the issuance of tax-exempt bonds can apply via the annual Request for Proposals (RFP) or on a pipeline basis with a LMIR loan application. Minnesota Housing's policy is to not consider requests for the issuance of conduit bonds unless the development has also been awarded a deferred loan from Minnesota Housing.

Projects located in the jurisdiction of an entitlement issuer (i.e. City of Minneapolis, City of Saint Paul, and Dakota County) must apply for bonds from that entitlement issuer. Additionally, cities and counties that are not entitlement issuers can apply for bonding authority for tax-exempt volume limited bonds from Minnesota Department of Management and Budget (MMB). The application for a portion of the state's volume cap may be made on behalf of a particular development beginning in January of each year from the "housing pool" with the possibility of additional bonding authority being available from the "unified pool" each August. These non-entitlement issuers must issue the tax-exempt volume limited bonds using the allocation within 120 days of the allocation. If the development is eligible for 4% tax credits by reason of the tax-exempt volume limited bonds funding at least 50% of the aggregate basis of the building and land, the developer must submit an application for a preliminary determination "42m" letter to either its tax credit sub-allocator or Minnesota Housing prior to issuance of the tax-exempt volume limited bonds.

Chapter 1 – Selection Underwriting

1.01 Deal Structure

Loan Amount. For short-term Rental Housing Bonds, the bridge loan should be sized to cover both the LMIR permanent mortgage and the portion of tax credit equity that requires bridging. Bonds are issued in $5,000 increments; round up to the nearest $5,000. The borrower should determine the appropriate bridge loan sizing so that the project will meet the 50% test for 4% tax credits.

Ultimately the borrower's counsel and the tax credit syndicator's counsel, with the assistance of their accountants, will make the final determination of the amount of bonds needed to satisfy the 50% test. The borrower should size the bonds including a buffer of up to, but not in excess of, 3 percent to ensure that the development satisfies the 50% test.

Bridge Loan Term. The bridge loan will have a minimum loan term of approximately 18 months and will mature one month prior to maturity of the bonds. The loan may be prepaid at the option of the borrower, but not earlier than one month prior to the first date that the bonds can be redeemed at the option of Minnesota Housing (approximately 12 months after bond issuance); this should be discussed with Minnesota Housing if this option is desired. The loan term may be longer based on the construction schedule and schedule of equity installments.

NOTE: The bridge loan may have a different minimum term if long term bonds are also issued for the same development.

Interest Rate. The interest rate on the bonds will be determined at the time of the bond sale. The interest rate on the bridge loan will equal the interest rate on the bonds, plus 1.0 percent. For example, if the interest rate on the bonds is 2.25 percent, the interest rate on the bridge loan will be 3.25 percent. Once the development has been selected and the loan is near closing, the investment banker underwriting Minnesota Housing's bonds will provide an estimated interest rate until the bonds are priced.

NOTE: The borrower must pay interest on the total amount of the loan from the time the loan is closed, but will receive a credit for interest earned on proceeds of the bonds until expended for development costs.

1.02 Analysis and Bond Tests

Scattered Site Projects. For a scattered site development, each separate site must meet the income set-aside, 50% test, rehab test and Minnesota's Fair Market Rent (FMR) test.

Ownership Assessment. Organizational charts for the current and future ownership entities showing the ownership percentage of cash flow and residuals must be sent to Minnesota Housing post-selection. Minnesota Housing's Finance counsel will determine what, if any, additional costs are ineligible to be bond financed ("bad costs") because of the relationships between the parties and if there are sufficient eligible costs ("good costs") to support the loan amount. Refer to Appendix B for sample organizational charts pre- and post-sale.

50% Test. The threshold requirement for a development to qualify for 4% housing tax credits is the use of volume-limited tax-exempt private activity bonds to pay for at least 50% of the aggregate basis of the building and land through the construction period. To initially estimate the bond amount required, use this equation:

Bonds required for 50% test = 0.50*((eligible basis – sales tax rebates) + land)

This is a rough estimate that may be used during initial selection. The developer should consult with their accountant to ensure that the project meets the 50% test as required by Section 42.

Good Costs/Bad Costs. Certain development costs ("eligible costs" or "good costs"), may be paid with the proceeds of tax-exempt bonds, while other costs ("bad costs") may not. There must be enough good costs to support the final loan amount.

Good costs and bad costs are listed on the Bond Tests Analysis spreadsheet under the Bond Costs from Workbook tab. Some bad costs will not automatically categorize and will need to be adjusted manually. For example, development fees, general contractor fees and overhead, or architect's fees are considered bad costs when there is an identity of interest between the borrower and these parties, since payments to related parties (as defined by federal tax law) may not be bond financed. Complete the Ownership Assessment described above to help determine good/bad costs.

The Bond Tests Analysis, Bond Costs from Workbook tab calculates the anticipated amount of good costs. Not less than 95 percent of the proceeds of the bonds must be used to finance good costs. The maximum bond amount shown should be compared to the amount of bonds needed to meet the 50% test (0.50*((the total basis – sales tax rebates) + land amount). If the former is not at least equal to the latter, there are not enough good costs to support the amount of bonds needed to meet the 50% test.

If a development contains commercial or non-residential space, costs related to those portions of the development are considered bad costs.

If at any time during post-selection there are updates to good/bad costs, please send that information to the Minnesota Housing underwriter. Minnesota Housing's finance and bond counsel make the final determination of good costs. Minnesota Housing's counsel must determine if there are adequate good costs to support the amount of bonds; however, Minnesota Housing finance and bond counsel make no determination as to satisfaction of the 50% test. The borrower's accountant determines this.

Rehab/Acquisition Ratio. Rehab costs must be greater than or equal to 15 percent of the acquisition amount financed by bonds.

$$\frac{\text{Rehab costs}}{\text{(Building acquisition – land cost) financed by bonds}}$$

This calculation is included in the Bond Tests Analysis, Bond Costs from Workbook tab.

Income Restrictions. Units must be restricted to Section 42 and Section 142(d) income requirements, with a minimum set-aside of either 40 percent of units at 60 percent AMI or 20 percent of units at 50 percent AMI.

State Requirements.

- FMR Rents – 20 Percent of Units: At least 20 percent of units must have rents at or below Fair Market Rent (FMR) or Exception FMR for existing housing. Units that have project-based federal rental assistance (e.g., Section 8) are deemed to meet this condition.
- Extend Affordability/Rental Assistance: The owner must agree to extend any existing affordability restrictions and any rental assistance agreements for the maximum term permitted.
- Developments with project based rental assistance must have project reserves at the time of bond issuance and maintained in future years at the lesser of (1) the greater of 40% of the outstanding first mortgage or $5,000 per unit or (2) the amount of reserves at the time of bond issuance, provided funds must be available at bond issuance to complete immediate repairs.

Chapter 2 – Post-Selection Process

2.01 Reimbursement Declaration

Minnesota Housing will execute a declaration of the intent to reimburse costs with the proceeds of tax-exempt bonds after selection. This allows eligible costs incurred up to 60 days prior to execution of the reimbursement declaration to be later reimbursed with the bond proceeds. There are some costs that may be covered prior to the 60 day period (architect, engineering, soil testing, etc), but not land acquisition or site prep. The reimbursement declaration does not expire.

2.02 TEFRA Hearing

A Tax Equity and Fiscal Responsibility Act (TEFRA) hearing is required for all projects financed with private activity bonds. The bonds must be issued within one year of the TEFRA hearing or another TEFRA hearing must be held. Notice must be published at least two weeks prior to the hearing.

The hearing, which is held at Minnesota Housing's offices if Minnesota Housing is issuing the bonds, gives the public the opportunity to comment. If there are attendees, Minnesota Housing's underwriter records all comments made by the public about the proposed project.

The bond amount stated in the TEFRA hearing may be greater than the anticipated amount of the bonds. If the final bond amount increases more than 10 percent above the amount stated in the TEFRA notice, the TEFRA hearing must be held again.

2.03 Bond Fees

The borrower and the Minnesota Housing underwriter must ensure that appropriate bond fees are included in the Workbook. The fees are preliminary estimates and are subject to change once the investment banker completes her or his analysis and until the bonds are issued.

Bond fees in conjunction with a Minnesota Housing Rental Housing Bonds:

Issuance Fee (covers, among other things, fees of bond counsel, bond underwriting, rating agencies, bond trustee):

- $100,000 plus
- 0.75 percent of short-term bond amount

LMIR Bridge/Construction Loan Origination Fee:

- 0.50 percent of bridge loan amount

A first mortgage origination fee for the LMIR end loan and a Minnesota Housing Inspection Fee should also be included in the Workbook.

Conduit Bond Fees (bonds with deferred loan only or no Minnesota Housing first mortgage):

Fees and costs will vary depending on the structure of the bonds being issued, but may include:

Issuance Fee

Financial Advisor:

Bond Counsel:

Semiannual fee during term of bonds

HIB:

There are no fees associated with HIB.

2.04 Underwriting

From selection to closing, the borrower must submit an updated Workbook to the Minnesota Housing underwriter whenever there are changes. **The borrower and Minnesota Housing underwriter must monitor changes to ensure they do not affect the Bond Tests/Analysis completed previously, especially good costs.** Additionally as the amount of bonds changes, fees must be adjusted accordingly.

Prior to Mortgage Credit Committee approval, the borrower must provide a letter from her or his accountant verifying that the amount of the tax-exempt volume limited bonds is sufficient to meet the 50% test. A sample letter is available in the Portal due diligence checklist.

NOTE: Minnesota Housing will not issue bonds in a principal amount greater than 53 percent of aggregate basis of building and land.

The date tax-exempt volume limited bonds are issued affects the following:

Applicable Percentage: The tax credit applicable percentage is based on the month in which the tax-exempt volume limited bonds are issued or the placed in service date. In order to lock in the applicable percentage for the month the tax-exempt volume limited bonds are issued, the borrower must sign and submit an Election of Applicable Percentage Agreement. This election must be made no later than the 5th day of the month following the month the tax-exempt volume limited bonds are issued.

QAP Scoring: The development must meet the minimum score for the QAP in the year in which tax-exempt volume limited bonds sufficient to meet the 50% test are issued. See HTC Self-Scoring worksheet for additional information.

Declaration of Land Use Restrictive Agreement (LURA): The development must adhere to the tax credit LURA for the year in which the tax-exempt volume limited bonds are issued. See QAP and HTC Procedural Manual for additional information.

2.05 Bond Team Communications and Process

Individual development bond issue with a Minnesota Housing first mortgage. Beginning after selection, Minnesota Housing's underwriter works with the Minnesota Housing's in-house finance counsel on a number of tasks. At least eight weeks prior to closing, the Minnesota Housing underwriter will send the current Workbook and proposed timeline for closing to the investment banker for Minnesota Housing's bonds.

The investment banker will coordinate regular conference calls with Minnesota Housing's bond team, beginning at least one month prior to mailing of the Preliminary Official Statement (POS) for the bonds. The investment banker will submit cash flows to credit rating agencies three to four weeks prior to mailing the POS.

Minnesota Housing's underwriter must communicate to the bond team any changes made to the project timeline, including changes to the costs of the development that may affect the amount of bonds requested. The borrower must keep Minnesota Housing's underwriter informed of any changes, as changes may cause a delay in loan closing.

Conduit bond issue with a Minnesota Housing deferred loan. The conduit bond financing structure is determined by investment banker selected by the borrower, in consultation with Minnesota Housing, instead of by Minnesota Housing's investment banker. The borrower's investment banker leads the bond calls, manages the distribution list, and sends out the closing timeline. Minnesota Housing's bond counsel and financial advisor participate with the borrower's investment banker on the bond calls.

Prior to placing a resolution approving the issuance of conduit bonds on Minnesota Housing's Board meeting agenda, the following must be completed:

- Deposit to be applied to Minnesota Housing's costs (contact Minnesota Housing's underwriter for amount and where to submit)
- Signed Agreement and Indemnification from sponsor (not the single asset entity that will own the project)
- Review of 50% test
- Review good costs/bad costs
- Review buyer and seller ownership structures
- Mortgage Credit Committee approval of the project

Prior to the Board meeting at which the resolution will be considered, the following must be completed:

- TEFRA hearing held
- Drafts of all financing agreements to be executed by Minnesota Housing and bond offering documents substantially reflecting the financing structure, and acceptable to Minnesota Housing, provided to Minnesota Housing.
- Both the board resolution (prepared by Minnesota Housing's bond counsel) and the Preliminary Official Statement (prepared by the investment banker's counsel) need to be sent to the Board secretary, in accordance with the schedule for mailing of Board materials. The resolution must be in final form; the POS should be close to a final version.

HIB issue (multiple projects issued together). For projects with HIB and no additional tax-exempt volume limited bonds, Minnesota Housing's HIB program manager coordinates the issuance of bonds to finance multiple projects, one or more times during each year. The borrower must keep Minnesota Housing's underwriter updated on the project's timeline.

Bond Team for Each Type of Transaction

	LMIR Bridge Loan	**Conduit Bonds**	**HIB only**
Borrower's Primary Point of Contact	Minnesota Housing Underwriter	Minnesota Housing Underwriter	Minnesota Housing Underwriter
Markets and Sells Bonds	Minnesota Housing's investment banker	Borrower's / first mortgage lender's investment banker, in consultation with Minnesota Housing	N/A – larger bond issue for multiple projects
Reviews Good/Bad Costs	Minnesota Housing's in-house finance counsel and outside bond counsel	Minnesota Housing's in-house finance counsel and outside bond counsel	Minnesota Housing's in-house finance counsel and outside bond counsel
Determines Final Amount of Bonds for 50% Test	Borrower's accountant	Borrower's accountant	Borrower's accountant
Drafts Preliminary Official Statement	Minnesota Housing's in-house finance counsel	Borrower's / first mortgage lender's investment banker's counsel	N/A – larger bond issue for multiple projects
Drafts Series Resolution for Board Meeting	Minnesota Housing's outside bond counsel	Minnesota Housing's outside bond counsel	N/A – larger bond issue for multiple projects
Presents Board Report for Bridge Loan	Minnesota Housing Underwriter	N/A	N/A

Chapter 3 – Approvals

3.01 Mortgage Credit Committee

Once Minnesota Housing receives applicable due diligence items from the borrower and final construction bids are in, Minnesota Housing's underwriter will complete a mortgage credit report and present it to the Mortgage Credit Committee for approval. The interest rate for the bridge loan will be determined closer to closing.

NOTE: Minnesota Housing's Mortgage Credit Committee is an internal, decision-making committee.

3.02 Board

Board approval is required for the LMIR end loan as well as the bridge loan. The amount of each loan set forth in the Board report and accompanying resolution may be expressed as a "not to exceed" amount. The amount of the bonds to be authorized as set forth in the Board report and accompanying resolution will be expressed as a maximum principal amount.

The POS must set forth the anticipated principal amount of the bonds and the loan amount.

3.03 42M Application and Preliminary Determination Letter

Information and application requirements are found in Article 8 of Minnesota Housing's Tax Credit Qualified Allocation Plan (QAP) and Chapter 7 of the Housing Tax Credit Program Procedural Manual (Manual).

The application for a 4% tax credit Preliminary Determination and all required submissions must be submitted to and approved by Minnesota Housing **prior to issuance of tax-exempt volume limited bonds.** Please allow **six weeks** from the time the full application package is submitted for processing.

Application Materials

Use of the RFP/HTC application documentation that was submitted with your dual application is permitted; however, some of the documentation will need to be updated after the project has been underwritten prior to the issuance of bonds and closing. If you would like to use documentation from the RFP/HTC application, please indicate on the applicable tab of your preliminary determination application and include where the document can be found in the RFP application.

Refer to Chapter 6, 7, and 8 of the Housing Tax Credit Manual for a full list of required application documentation.

Preliminary Determination Letter

Based upon the submission of documents, Minnesota Housing will prepare a letter with its preliminary determinations pursuant to Section 42(m)(1)(D) and, if issuing the tax-exempt volume limited bonds, Section 42(m)(2)(D) of the Internal Revenue Code. The letter will address whether the project satisfies the requirements for allocation of a housing credit dollar amount under the Qualified Allocation Plan, the tax credit dollar amount and project costs.

Chapter 4 – Closing of Minnesota Housing Bridge Loans

Important: Confidentiality and Requests for Information

Minnesota Housing does not include the borrower in the bond documentation process except in the case of conduit bond transactions. If the borrower or her or his counsel requests information, Minnesota Housing's underwriter refers the borrower to the Agency's finance counsel. Minnesota Housing's finance counsel is the only party that can release information to the borrower, outside investors or other parties.

4.01 Loan Commitment

Minnesota Housing's underwriter transfers the file to closing as soon as possible after Mortgage Credit Committee approval. Loan documents can be emailed to the borrower after Mortgage Credit Committee approval. All due diligence items (including the first draw) must be approved, and all loan document comments must be final, prior to executing the loan commitment. The POS for the bonds will not be mailed, and the bonds cannot be priced, until the loan commitment has been executed. At the time of signing the loan commitment, the borrower must also pay, by check, the bridge loan origination fee.

Additionally, the following must occur prior to executing the loan commitment:

- HUD firm approval received
- Section 8 or rental assistance contract executed, if applicable
- Minnesota Housing Board approval for the LMIR loan, bridge loan, bond resolution and POS
- All funding committed
- No other outstanding items

The Minnesota Housing underwriter will notify the bond team once the commitment has been executed.

4.02 Preliminary Official Statement (POS)

Within a few days of executing the loan commitment, the POS describing the bonds being offeredfor sale by Minnesota Housing will be posted.

4.03 Pricing and Closing on the Bonds

Approximately one week after the POS is posted, the bonds will be priced and the investment banker purchasing the bonds will execute a contract of purchase with Minnesota Housing. The investment banker schedules the bond pricing and closing. Bonds are not typically priced on a Monday, Friday, or a day before or after a holiday.

Once the bonds have been priced and sold, Minnesota Housing's bond counsel is required to obtain written approval from the Governor's office in order to render its opinion that interest on private activity bonds is tax exempt. The Governor's office receives a copy of the TEFRA hearing minutes, notices of publication, minutes reflecting Board approval and a copy of the final Official Statement. The Governor's office typically takes between a few days and a week to deliver the Governor's approval of the issuance of the bonds.

Approximately one to two weeks after the bonds are priced, the bond closing occurs. Closings do not typically occur on a Monday, Friday, or a day before or after a holiday.

Minnesota Housing's closer schedules a pre-closing meeting with the borrower on the business day immediately prior to the bond closing. All remaining documents are executed during or prior to the pre-closing. Syndication proceeds must be received by the title company prior to the pre-closing.

4.04 Post-Closing

Bond Compliance Agreement. The provisions of the bond compliance agreement relating to income and rent requirements begin on the date 10 percent of units are first occupied and continue through the later of:

Maturity of the bonds, or

15 years from date 50 percent of units are first occupied, or

Termination of the Section 8 contract.

Minnesota Housing's Housing Management Officer (HMO) monitors the property for compliance under the Bond Compliance Agreement. The Bond Compliance Agreement is an attachment to the Management Agreement, and the Management Agreement must contain a provision referencingthe Bond Compliance Agreement. Additional monitoring requirements include:

Exhibit B of the Bond Compliance Agreement
Exhibit B is an attachment to the Bond Compliance Agreement. The document is required to be filled out when the property is 50% occupied. Exhibit B is used to document the bond compliance agreement's:
- Commencement date
- End dates of occupancy restriction and rental restrictions

Annual Certifications
During the compliance period, the following forms may need to be submitted annually to Minnesota Housing (see Bond Compliance Agreement)
- IRS Form 8703
- Certification of Compliance form 474A.047

Financial Reporting and Annual Inspections
In addition to the annual certification, the following financial reporting and oversight may be required by Minnesota Housing:
- Submit monthly operating reports
- Annual budget approvals
- Annual inspections by Minnesota Housing asset manager

Chapter 5 – Housing Infrastructure Bonds (HIB)

5.01 Types of HIB loans

Loans to be made from the proceeds of HIB are awarded in the annual RFP and generally may be structured as either a repayable deferred loan or as a forgivable deferred loan with a 30 year term and 0% interest. There are two program types under which HIB loans may be made. Economic Development and Housing Challenge (EDHC) HIB loans are used for preservation of federally assisted housing. Housing Trust Fund (HTF) HIB loans are used for permanent supportive housing projects. The types of bond issues that finance HIB loans are listed below:

Private Activity. Loans are structured as deferred, repayable loans, with a 30 year term. HIB issued to finance these loans are tax-exempt volume limited bonds. HIB proceeds count towards the 50% test for 4% housing tax credits. The development must satisfy all of the bond tests discussed in *1.02 Analysis and Bond Tests.* The borrower can be any type of entity except for a governmental entity. These bonds count against Minnesota Housing's bonding authority for tax-exempt volume limited bonds.

Governmental. Loans are structured as deferred, forgivable loans with a 30 year term. The borrower can be any type of entity. HIB issued to finance these loans are not tax-exempt volume limited bonds; therefore, proceeds do **not** count towards the 50% test for 4% housing tax credits or against Minnesota Housing's bonding authority for volume limited bonds. A TEFRA hearing is not necessary for HIB issued to finance these loans; however, to allow Minnesota Housing flexibility in the use of proceeds of HIB to finance loans for developments, Minnesota Housing may choose to have a TEFRA hearing and obtain the necessary approval.

501(c)3. Loans are made to a 501(c)3 and are deferred, repayable loans with a 30 year term. HIB issued to finance these loans are not tax-exempt volume limited bonds; therefore, proceeds do **not** count towards the 50% test for 4% housing tax credits or against Minnesota Housing's bonding authority for volume limited bonds. A TEFRA hearing and approval is necessary for HIB that finance these loans.

More information about HIB is available in the EDHC and HTF program guides.

5.02 Underwriting and Process

Fees. There are no bond fees or additional costs for HIB loans. Some projects may be financed with both a HIB loan and another loan funded by the proceeds of other tax-exempt bonds issued by Minnesota Housing. In such cases, fees will be charged on the other loans but not on the HIB loan.

Reimbursement Declaration and TEFRA Hearing. For all HIB projects, the process is the same as discussed in 2.01 and 2.02. If the project is financed by another type of tax-exempt bonds and HIB, the reimbursement declaration and TEFRA amounts should cover the total amount of both bond types.

Bond Issuance. For HIB, bond issues usually will finance loans for multiple developments. Bonds generally are not issued for each development separately, and the loans and property financed are not security for the bonds. For approval purposes, a HIB loan is treated in the same manner as a deferred loan. Mortgage Credit Committee approval is required for the HIB loan but, after the initial selection, additional Minnesota Housing Board approval is not necessary.

Minnesota Housing's Board resolution approving the issuance of bonds will list each HIB loan that may be financed with the proceeds of those bonds. Because bonds are not issued individually for each project, the Minnesota Housing underwriter will not be working with the investment banker purchasing the bonds on these developments unless another type of tax exempt bonds is also a funding source.

The timing of bond issuance affects the following for HIB that are tax-exempt volume limited bonds qualifying a development for 4% housing tax credits:

Applicable Percentage: The tax credit applicable percentage is based on the month the tax-exempt volume limited bonds are issued or the placed in service date. In the case of projects funded with multiple HIB issues in different months, the borrower's counsel elects which applicable percentage to use. In order to lock in the applicable percentage for the month the tax-exempt volume limited bonds are issued, the borrower must sign and submit an Election of Applicable Percentage Agreement. This election must be made no later than the 5th day of the month following the month the tax-exempt volume limited bonds are issued.

QAP Scoring: The development must meet the minimum score for the QAP in the year in which the tax-exempt volume limited bonds are issued. If a development is funded with multiple issues of tax-exempt volume limited bonds issued in different years, use the QAP for the year tax-exempt volume limited bonds sufficient for the development to meet the 50% test were issued. See HTC Self-Scoring worksheet for additional information.

Declaration of Land Use Restriction Agreement (LURA): The development must adhere to the tax credit LURA for the year in which the tax-exempt volume limited bonds are issued. In the case of developments funded with multiple issues of tax-exempt volume limited bonds issued in different years, use the LURA in the year tax-exempt volume limited bonds sufficient for the development to meet the 50% test were issued. See QAP and HTC Program Procedural Manual for additional information.

5.03 Post-Closing

Bond Compliance Agreement or Tax Exemption Agreement. The provisions of the bond compliance agreement relating to income and rent requirements begin on the date 10 percent of units are first occupied and continue through the later of:

Maturity of the bonds, or

15 years from date 50 percent of units are first occupied, or

Termination of the Section 8 contract.

The Bond Compliance Agreement is used with loans made from the proceeds of private activity bonds and certain HIB loans to a 501(c)3 . The Tax Exemption Agreement is used for developments that receive a HIB governmental loans or certain 501(c)3 loans and terminates when the bonds have been paid in full.

Minnesota Housing's asset manager monitors the property for compliance under the Bond Compliance Agreement. The Bond Compliance Agreement is an attachment to the Management Agreement, and the Management Agreement must contain a provision referencing the Bond Compliance Agreement. Additional monitoring requirements include:

Exhibit B of the Bond Compliance Agreement
Exhibit B is an attachment to the Bond Compliance Agreement. The document is required to be filled out when the property is 50% occupied. Exhibit B is used to document the bond compliance agreement's:

- Commencement date
- End dates of occupancy restriction and rental restrictions

Annual Certifications
During the compliance period, the following forms may need to be submitted annually to Minnesota Housing (see Bond Compliance Agreement)

- IRS Form 8703
- Certification of Compliance form 474A.047

Financial Reporting and Annual Inspections
In addition to the annual certification, the following financial reporting and oversight may be required by Minnesota Housing:

- Submit monthly operating reports
- Annual budget approvals
- Annual inspections by Minnesota Housing asset manager

Appendix A: Terms

4% tax credits	Non-competitive low-income housing tax credits (LIHTC) that developments qualify for if tax-exempt volume limited bonds finance at least 50 percent of the aggregate basis of the building and land and are outstanding at least until the development's placed in service date. Developments also must meet the requirements of the applicable Qualified Allocation Plan (QAP).
42(m)(1)(D)	Section 42(m)(1)(D) requires the tax credit allocator to determine that the development complies with the applicable QAP. The applicable QAP is that of the allocating agency responsible for the 42(m)(1)(D) tax credit review. In most jurisdictions, the QAP includes the HTC Manual, which in most cases requires the development comply with underwriting benchmarks contained in the manuals.
42(m)(2)(D)	Section 42(m)(2)(D) requires that the tax-exempt bond issuer make a determination that the development is financially feasible and that no excess credits are awarded. The applicable underwriting criteria and benchmarks are those of the tax credit allocating agency responsible for the 42(m)(1)(D) determination.
501c(3)	To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.
Bond	A bond is a debt investment in which an investor loans money to an entity (typically corporate or governmental) that borrows the funds for a defined period of time at a variable or fixed interest rate. Bonds are used by companies, municipalities, states and sovereign governments to raise money and finance a variety of projects and activities. Owners of bonds are debtholders, or creditors, of the issuer.
Cash collateralized	Conduit bond transactions in which the bonds are cash-collateralized by funds from other lenders, including from an outside MAP first mortgage.
Conduit bonds	A bond issued by a governmental entity but repaid by another entity benefiting from the financing generated by the issuance of the bond. For example, a business might be the borrower using the proceeds of the bonds issued by the governmental entity to raise capital for a real estate development project. The governmental entity would have no obligation to pay the bondholders except from loan repayments made by the borrower and would bear no responsibility for repayment if the borrower defaulted.
EDHC	Economic Development and Housing Challenge deferred loan program.
FMR	Fair Market Rent.
Governmental bonds	Tax-exempt bonds that finance HIB loans that are deferred, forgivable loans with a 30 year term. The borrower can be any type of entity. Proceeds do **not** count

	towards the 50% test for 4% housing tax credits. Bonds issued are not tax-exempt volume limited bonds and do not count against Minnesota Housing's bonding authority for tax-exempt volume limited bonds.
HIB	Housing Infrastructure Bonds are a funding source awarded through Minnesota Housing's annual consolidated RFP. Typically new HIB is available for legislative appropriation in state bonding years that are even numbered years. HIB includes several program types, some of which are tax-exempt volume limited bonds that qualify a project for 4% housing tax credits, while others are governmental bonds that are issued to fund forgivable loans and do not qualify a project for 4% housing tax credits. Typically HIB is structured as a deferred, 30 year loan.
HTF	Housing Trust Fund. HTF Housing Infrastructure Bond proceeds can be used for the cost of construction, acquisition, preservation and rehabilitation of supportive housing.
LMIR	Low and Moderate Income Rental first mortgage program. LMIR loans are typically insured by HUD through its risk-sharing program.
POS	Preliminary Official Statement. The official statement, in near final form, that will provide investors with all of the details regarding the bonds being issued. Issuers who prepare an official statement must make it available to all purchasers, as well as to any investor or broker dealer who requests one. An official statement includes: The Terms of the Offering Purpose of the Issue Summary Description of Bonds Description of The Issuer Financial Data for The Issuer or the Conduit Borrower Regulatory Matters Feasibility Statement Legal Proceedings Type of Indenture (Open/Closed) Authorization of Bonds Security Pledged, if any Construction Plans Tax Status
Private activity bonds	A municipal debt obligation that is issued by a governmental entity to fund projects used by a non-governmental entity in its trade or business or secured by property used in a trade or business. Since the interest on certain types of these obligations may be exempt from gross income and therefore beneficial in terms of tax liability,

	private activity bonds are often used by cities, townships and other governmental entities to attract private funding for projects that may feature some advantage to the general public.
Qualified Allocation Plan (QAP)	Section 42, requires that state allocating agencies develop a Qualified Allocation Plan (QAP) for the distribution of the tax credits within their jurisdiction. The current and proposed QAPs for each calendar year are available at mnhousing.gov
Residential rental bonds	In Minnesota, governed by Minnesota Statutes § 474A.047, tax-exempt bonds issued to finance residential rental projects that meet the requirements of Section 142(d) of the Internal Revenue Code.
Section 142(d)	Internal Revenue Code § 142 Exempt facility bond. *(excerpt below):* (a) General rule. For purposes of this part, the term “exempt facility bond” means any bond issued as part of an issue, 95 percent or more of the net proceeds of which are to be used to provide…qualified residential rental projects (1) In general. The term “qualified residential rental project” means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project: (A) 20-50 test. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income. (B) 40-60 test. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.
Section 42	Internal Revenue Code § 42 and regulations issued pursuant thereto (Low-income housing tax credit (LIHTC)).
Sub-allocator	Eligible cities and counties in Minnesota that have the authority to administer tax credits locally. These include Minneapolis, Saint Paul, Dakota County and Washington County.
Tax-exempt bonds	A bond, issued by a municipal, county or state government, whose interest payments are not subject to federal income tax, and sometimes also state or local income tax.
Tax-exempt volume limited bonds	A bond, issued by a municipal, county or state government, that is required to receive an allocation of a portion of the state’s volume cap for the issuance of private activity bonds under Section 146 of the Internal Revenue Code in order to qualify as a tax-exempt bond.
TEFRA	Acronym for “Tax Equity and Fiscal Responsibility Act” of 1982. As a pre-condition for the exclusion from gross income for federal income tax purposes of interest on

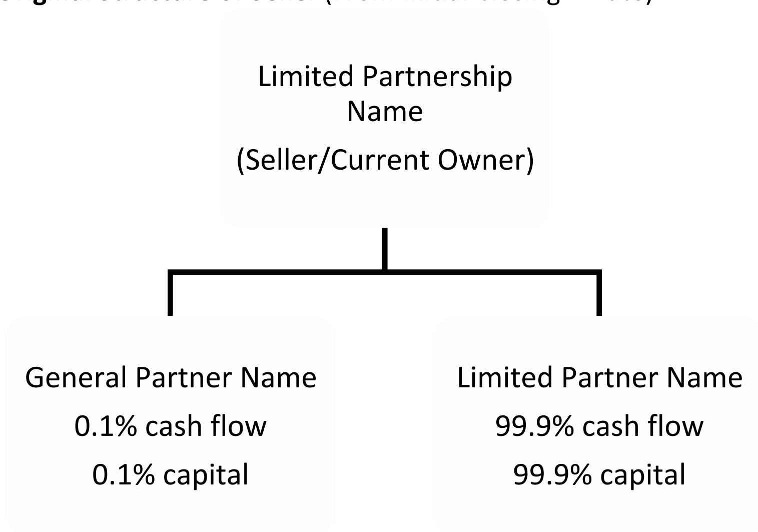
	all qualified private activity bonds, TEFRA requires, among other things, that the issue be approved (TEFRA approval) either by an elected official or body of elected officials of the applicable governmental entity after a public hearing (TEFRA hearing) following reasonable public notice (TEFRA notice) or by voter referendum of such governmental entity.
Workbook	The Microsoft Excel spreadsheet used to apply for Minnesota Housing multifamily funding.
Yield	The income return on an investment. This refers to the interest or dividends received from a security.

Certain definitions courtesy of Investopedia, Municipal Securities Rulemaking Board, and Investorwords.

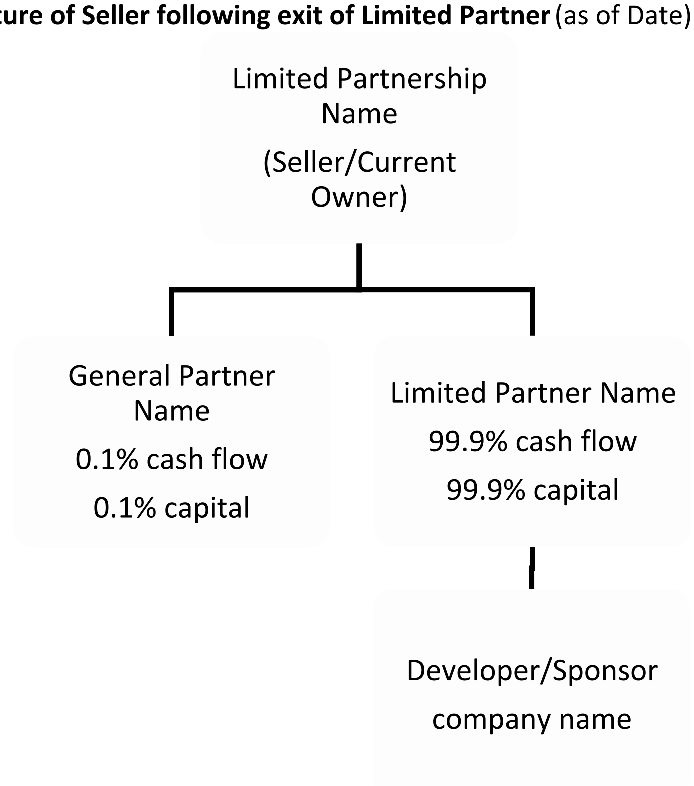
Appendix B: Sample Documents

1. Sample Organizational Charts

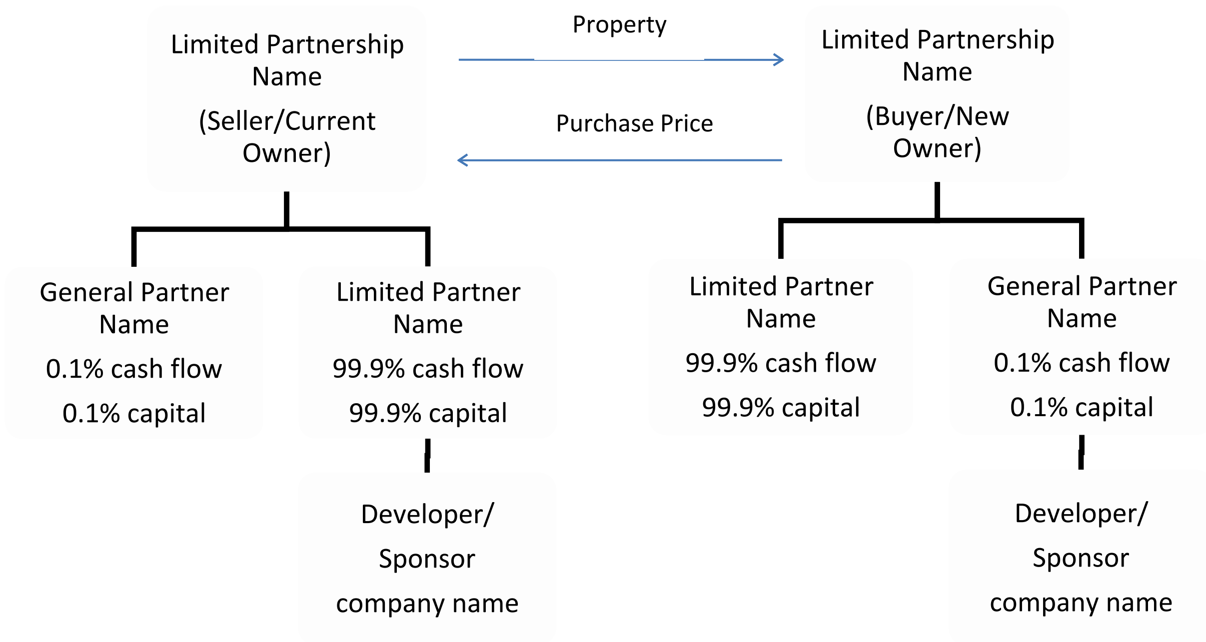
Original Structure of Seller (From Initial Closing – Date)



Structure of Seller following exit of Limited Partner (as of Date)



Structures as of Closing Date for Sale of Project


Limited Partnership Name
(Seller/Current Owner)
Property
Purchase Price
Limited Partnership Name
(Buyer/New Owner)
General Partner Name
0.1% cash flow
0.1% capital
Limited Partner Name
99.9% cash flow
99.9% capital
Developer/
Sponsor
company name
Limited Partner Name
99.9% cash flow
99.9% capital
General Partner Name
0.1% cash flow
0.1% capital
Developer/
Sponsor
company name