



# **Tax-Exempt Bonds Informational Guide**

*April 2019*



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## Introduction <sup>1</sup>

### Statutory Requirements

Tax-exempt Bonds must comply with the applicable requirements of Internal Revenue Code Sections 103 and 141 through 150. Tax-exempt Volume Limited Bonds for residential rental housing projects must also comply with the requirements of [Minnesota Statutes Section 474A.047](#).

### What are Tax-exempt Bonds?

Tax-exempt Bonds are Municipal Bonds the interest on which is not included in gross income for purposes of federal income taxation. If, as in Minnesota, the interest of Municipal Bonds issued by the state of Minnesota or an entity or political subdivision created by the state is exempt from state income taxation, those Municipal Bonds 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 Bonds:** Minnesota Housing’s General Obligation 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 housing developments.
    - Rental Housing Bonds must be Tax-exempt Volume Limited Bonds in order to qualify a multifamily housing 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 may issue Conduit Bonds when the multifamily housing development will 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.
- **State Appropriation Bonds**
  - **Housing Infrastructure Bonds (HIB)** are neither Revenue Bonds nor General Obligation Bonds. HIBs are payable from funds the state has promised to appropriate each year to pay debt service.

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<sup>1</sup> This guide 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.

- There are several types of HIBs. Some are Tax-exempt Volume Limited Bonds that qualify a multifamily housing development for 4% Housing Tax Credits when used to finance 50 percent or more of the aggregate basis of building and land.

For more information on HIB, refer to the [Housing Infrastructure Bonds Guide](#).

## **What is Minnesota Housing’s Annual Volume Cap for Tax-exempt Volume Limited Bonds, and How is it Determined?**

Federal tax law governs how much each state is allocated each year in volume cap for Tax-exempt Volume Limited Bonds and when any allocated volume cap expires. It is determined for each state by a multiplier of that state’s population. For example, in 2019 it is \$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 the issuers of Bonds in that state. [Minnesota Statutes Chapter 474A](#) describes the allocation process.

Minnesota Housing is an “entitlement issuer” under state law, and is allocated a designated percentage of the state’s volume cap each year. It also is the transferee of all unused state volume cap at the end of each year.

Minnesota Housing’s portion of the state’s volume cap for Tax-exempt Volume Limited Bonds varies from year to year. For 2019, Minnesota Housing was allocated \$135,636,444 as its entitlement issuer portion. 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 administers 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.** When Minnesota Housing issues Tax-exempt Bonds to finance a LMIR mortgage, either one or two series of Bonds may be 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 series of Bonds must be in an amount sufficient to fund at least 50 percent of the aggregate basis of the building and land in order for the multifamily housing development to be eligible to receive 4% Housing Tax Credits. (For additional information on how to qualify for housing tax credits, refer to [Article 8 of the Qualified Allocation Plan \(QAP\)](#) and [Chapter 7 of the Housing Tax Credit \(HTC\) Program Procedural Manual](#)) of the applicable year for which the housing tax credits are allocated.

Recently, 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.

**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 benefit a multifamily housing 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 multifamily housing developments that do not also qualify for Minnesota Housing deferred funding. For more information on Conduit Bonds and the threshold conditions that should be present in order for Minnesota Housing staff to recommend a Conduit Bond issue, refer to Minnesota Housing's Debt and Balance Sheet Management Policy.

### **What is the Process for Securing 4% Housing Tax Credits?**

Minnesota Housing is the primary housing credit agency for housing tax credits in Minnesota. There are also certain cities and counties that act as designated housing credit agencies or suballocators for their jurisdictions. These suballocators are the cities of Minneapolis and St. Paul along with Dakota County and Washington County. When an issuer in the state receives an allocation of the state's volume cap for a multifamily housing project, pursuant to Section 42 of the Internal Revenue Code, the sponsor of that project must separately request an award of 4% Housing Tax Credits from Minnesota Housing (or the applicable housing tax credit suballocator based on the issuer and the location of the housing project) in order to obtain a preliminary determination of eligibility for those credits, known as a 42M letter. Refer to the [Housing Tax Credits Procedures for Projects Financed with Tax-exempt Volume Limited Bonds](#) for more information on the determination of applicable QAP and tax credit review requirements.

Sponsors of multifamily housing projects located in the jurisdiction of an entitlement issuer (i.e. City of Minneapolis, City of Saint Paul, and Dakota County) may request that entitlement issuer to issue Tax-exempt Volume Limited Bonds for the project. Additionally, cities and counties that are not entitlement issuers (except for cities in Dakota County) can apply for volume cap to issue 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 multifamily housing project beginning in January of each year from the "housing pool" with the possibility of additional volume cap being available from the "unified pool" beginning each August. These non-entitlement issuers must issue the Tax-exempt Volume Limited Bonds using the allocation within 120 days of receipt of the allocation or the end of the calendar year, whichever occurs first.

Minnesota Housing's process for the award 4% Housing Tax Credits requires sponsors to submit a complete application for issuance of a preliminary determination letter (42M letter) by Minnesota Housing prior to the issuance of Tax-exempt Volume Limited Bonds. If the issuer of the Bonds is not Minnesota Housing, the initial application submission must include evidence that the project received an allocation of volume cap from MMB. The initial application submission must also include a preliminary determination letter (42(m)(2)(d)) from the issuer of the Bonds that addresses the tax credit dollar amount and the reasonableness of project costs.

Minnesota Housing offers an optional pre-application process to aid sponsors in mitigating risks that may prevent a multifamily housing project's eligibility for an award of 4% Housing Tax Credits before an application is submitted to MMB for an allocation of volume cap for the project. The process allows sponsors to obtain from Minnesota Housing a preliminary determination of the project's costs compared to Minnesota Housing's predictive cost model and minimum scoring eligibility for 4% Housing Tax Credits. Refer to the pre-application process question for additional details. Sponsors are strongly encouraged to submit a pre-application to Minnesota Housing and learn more about [Minnesota Housing's 2019 4% Only Pre-application Process](#).

If the multifamily housing development is eligible for 4% Housing Tax Credits by reason of the Tax-exempt Volume Limited Bonds funding at least 50 percent of the aggregate basis of the building and land, a full and complete application for a preliminary determination of eligibility for 4% Housing Tax

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credits (42M) must be submitted prior to the issuance of the Tax-exempt Volume Limited Bonds. Minnesota Housing’s review may take up to six weeks or more from the time the full application package is submitted.

Applicants seeking financing from Minnesota Housing through the issuance of Tax-exempt Volume Limited Bonds can apply via the annual Multifamily Consolidated 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 multifamily housing project has also been awarded a deferred loan from Minnesota Housing.



## Chapter 1 – Selection Underwriting

### 1.01 Deal Structure

**Loan Amount.** For bridge loans financed by 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, subject to the limitation on the amount of Bonds described in the next paragraph. 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 percent test for 4% Housing 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 Tax-exempt Volume Limited Bonds needed to satisfy the 50 percent test. The borrower should size the Bonds including a buffer of up to, but not in excess of, 3 percent to ensure that the multifamily housing project satisfies the 50 percent 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 (not less than 12 months after 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 multifamily housing development.

**Interest Rate.** The interest rate on the Bonds will be determined at the time of the sale of the Bonds. 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 multifamily housing development has been selected and the loan is near closing, the investment banker underwriting Minnesota Housing’s Rental Housing 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, the 50 percent test, the rehabilitation test, the Good Cost/Bad Costs 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 Percent Test.** The threshold requirement for a development to qualify for 4% Housing Tax Credits is the use of the proceeds of Tax-exempt Volume-limited Bonds to pay for at least 50 percent of the total aggregate basis of the building and land through the placed-in service date. To initially estimate the bond amount required, use this equation:

$$\text{Bonds required for 50 percent test} = 0.50 * ([\text{total aggregate basis} - \text{rebates}] + \text{land acquisition cost})$$

This is a rough estimate that may be used during initial selection. The borrower should consult with their accountant to ensure that the project meets the 50 percent test as required by Section 42 of the Internal Revenue Code.

**Good Costs/Bad Costs.** Certain eligible development costs, also known as good costs, may be allocated to the proceeds of Tax-exempt Bonds, while other ineligible (bad) costs may not. There must be sufficient 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 one of these parties, since payments to related parties (as defined by federal tax law) may not be Tax-exempt Bond financed. Complete the Ownership Assessment described above to help determine good/bad costs.

The Bond Tests Analysis, Bond Costs tab from the Workbook tab calculates the anticipated amount of good costs and the amount of Bonds needed to meet the 50 percent test ( $0.50 * ([\text{the total aggregate basis} - \text{rebates}] + \text{land acquisition amount})$ ) plus a three percent buffer. 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 percent test.

If a multifamily housing 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 counsel and bond counsel make the final determination of whether there are sufficient good costs to support the amount of Bonds; however, Minnesota Housing finance counsel and bond counsel make no determination as to satisfaction of the 50 percent test for purposes of 4% Housing Tax Credits. The borrower’s accountant must determine this.

**Rehab/Acquisition Ratio.** Rehabilitation expenditures must be equal to or exceed 15 percent of the portion of the costs of acquiring the building financed by Bonds.

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

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

**Income Restrictions.** For the multifamily housing project to qualify for 4% Housing Tax Credits, units must be income-restricted to meet the requirements of IRC Section 42 and Section 142(d) , with a minimum set-aside of either 40 percent of units at 60 percent of area median income or 20 percent of units at 50 percent of area median income.

**State Requirements Applicable to Tax-exempt Volume Limited Bonds.**

- 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 borrower must agree to extend any existing affordability restrictions and any rental assistance agreements for the maximum term permitted.
- Developments with existing 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 percent of the outstanding first mortgage or \$5,000 per unit or (2) the amount of reserves at the time of Bond issuance, provided sufficient funds are be available at Bond issuance to complete immediate repairs.

## Chapter 2 – Post-Selection Process

### 2.01 Reimbursement Declaration

After selection, Minnesota Housing will execute the declaration of intent to reimburse costs of the project from the proceeds of Tax-exempt Bonds. That declaration of intent allows eligible costs incurred and paid up to 60 days prior to execution of the declaration to be reimbursed with proceeds of Tax-exempt Bonds. Certain preliminary expenditures are reimbursable even if incurred and paid earlier (e.g. architect, engineering, surveying, soil testing), but not land acquisition or site preparation. The reimbursement declaration does not expire.

### 2.02 Tax Equity and Fiscal Responsibility (TEFRA) Hearing

Minnesota Housing will notice and hold a TEFRA public hearing for all multifamily housing projects to be financed with the proceeds of Tax-exempt Bonds. The principal amount of Bonds stated in the notice of the TEFRA hearing will include a buffer over the anticipated amount of the Bonds. If the final principal amount of the Tax-exempt Bonds will be greater than 110 percent of the amount stated in the TEFRA notice, another TEFRA hearing will be necessary. The Bonds must be issued within one year of the TEFRA approval, which must be obtained by Minnesota Housing subsequent to the TEFRA hearing.

### 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 until the Bonds are issued.

#### **Bond fees in conjunction with Minnesota Housing short-term Rental Housing Bonds:**

- Issuance Fee (covers, among other things, fees of bond counsel, fees of investment banker, rating agencies, bond trustee):
  - \$100,000 plus
  - 0.75 percent of principal amount of Bonds
- 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

### 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 in relation to good costs.** Additionally, if the amount of Bonds change, fees must be adjusted accordingly.

Prior to Mortgage Credit Committee approval, the borrower must provide a letter from their accountant verifying that the amount of the Tax-exempt Volume Limited Bonds is sufficient to meet the 50 percent test. A sample letter is available in [Minnesota Housing's online Portal](#) due diligence checklist.

**NOTE:** Minnesota Housing will not issue Tax-exempt Volume Limited 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 applicable percentage for 4% Housing Tax Credits is based either on the date the project is placed in service or, at the election of the owner, the month in which the Tax-exempt Volume Limited Bonds are issued. 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 fifth day of the month following the month the Tax-exempt Volume Limited Bonds are issued.
- **QAP Scoring:** The project must meet the minimum score for the QAP in the year in which Tax-exempt Volume Limited Bonds are issued. Refer to the Housing Tax Credit Self-scoring Worksheet for additional information.
- **Declaration of Land Use Restrictive Agreement (LURA):** The project must adhere to the tax credit LURA for the year in which the Tax-exempt Volume Limited Bonds were issued. Refer to the QAP and Housing Tax Credit Program Procedural Manual of the applicable year for which the housing tax credits are allocated for additional information.

## 2.05 Bond Team Communications and Process

**Bonds 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 multifamily housing development that may affect the principal 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 the investment banker selected by the borrower, in consultation with Minnesota

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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 percent test
- Review good costs/bad costs
- Review buyer and seller ownership structures
- Mortgage Credit Committee approval of the project

Prior to Minnesota Housing’s 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, must be provided to Minnesota Housing.
- Both the board resolution (prepared by Minnesota Housing’s Bond counsel) and the POS (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.

**Bond Team for Each Type of Transaction**

	<b>LMIR Bridge Loan</b>	<b>Conduit Bonds</b>	
<b>Borrower’s Primary Point of Contact</b>	Minnesota Housing underwriter	Minnesota Housing underwriter	
<b>Markets and Sells Bonds</b>	Minnesota Housing’s investment banker	Borrower’s/ first mortgage lender’s investment banker, in consultation with Minnesota Housing	
<b>Reviews Good/Bad Costs</b>	Minnesota Housing’s in-house finance counsel and outside Bond counsel	Minnesota Housing’s in-house finance counsel and outside Bond counsel	
<b>Determines Final Amount of Bonds for 50 Percent Test</b>	Borrower’s accountant	Borrower’s accountant	
<b>Drafts Preliminary Official Statement</b>	Minnesota Housing’s in-house finance counsel	Borrower’s/ first mortgage lender’s investment banker’s counsel	
<b>Drafts Series Resolution for Board Meeting</b>	Minnesota Housing’s outside bond counsel	Minnesota Housing’s outside bond counsel	
<b>Presents Board Report for Bridge Loan</b>	Minnesota Housing underwriter	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 Committee report and present it to the Mortgage Credit Committee for approval. The interest rate for the bridge loan will be determined closer to closing.

### 3.02 Minnesota Housing Board

Board approval is required for the LMIR end loan as well as the bridge loan and the Bonds issued to finance 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) of the applicable year for which the 4% Housing Tax Credits are allocated.

The application for a 4% Housing 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 that 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 Program Procedural 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 IRC Section 42(m)(1)(D) and, if issuing the Tax-exempt Volume Limited Bonds, Section 42(m)(2)(D) of the IRC. The letter will address whether the project satisfies the requirements for allocation of a housing tax credit dollar amount under the QAP, the housing 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 their counsel requests information, Minnesota Housing’s underwriter refers the borrower to Minnesota Housing’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 risk share 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 offered for 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.

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:

- The date the Bonds are paid in full, or
- 15 years from the date 50 percent of units are first occupied, or
- Termination of the Section 8 contract, if applicable

Minnesota Housing’s asset manager monitors the property for compliance under the Bond Compliance Agreement. The Bond Compliance Agreement must be an attachment to the Management Agreement, and the Management Agreement must contain a provision requiring the manager of the project to comply with the provisions of 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 completed when 50 percent of the units in the project are occupied. Exhibit B is used to document the bond compliance agreements:
  - 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 (refer to 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 – Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful to, because of protected class status:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions. For additional information on Affirmative Fair Housing Marketing Plan and other fair housing resources, see the [Fair Housing](#) page on Minnesota Housing's website.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

## **Chapter 6 – Fraud Disclosure and Suspension**

### **6.01 Fraud Disclosure**

The recipient must report all known or suspected instances of fraud in connection with the awarding or receipt of Minnesota Housing funds to Minnesota Housing’s Chief Risk Officer as soon as evidence of fraud is discovered by the recipient. “Fraud” means an intentional deception made for personal gain or to damage another.

### **6.02 Suspension**

By entering into any agreement with Minnesota Housing, accepting any award of funds from Minnesota Housing, or otherwise conducting any business with Minnesota Housing, a party represents that the party, or any principal of the party, has not been suspended from doing business with Minnesota Housing pursuant to the Minnesota Housing Finance Agency Board of Directors Participant Suspension Policy. A principal is defined as: (a) an officer, director, owner, partner, principal investigator, or other person within an organization or entity doing business with Minnesota Housing with management or supervisory responsibilities; or (b) a consultant or other person, who: (1) is in a position to handle Minnesota Housing funds; (2) is in a position to influence or control the use of those funds; or (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to be performed under contract with Minnesota Housing. A party must contact Minnesota Housing for a list of all suspended individuals and organizations.

## Appendix A: Terms

Term	Definition
<b>4% Housing Tax Credits</b>	Non-competitive low-income housing tax credits (LIHTC) that multifamily housing projects 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 housing project’s placed-in-service date. Multifamily housing projects also must meet the requirements of the applicable year Qualified Allocation Plan (QAP).
<b>42(m)(1)(D)</b>	Internal Revenue Code (IRC) Section 42(m)(1)(D) requires the tax credit allocator to determine that the multifamily housing project 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 Housing Tax Credit Program Procedural Manual, which in most cases requires the multifamily housing project comply with underwriting benchmarks contained in the manual.
<b>42(m)(2)(D)</b>	Internal Revenue Code (IRC) Section 42(m)(2)(D) requires that the tax-exempt bond issuer make a determination that the multifamily housing project is financially feasible and that no excess credits are awarded. The applicable underwriting criteria and benchmarks are those of the housing tax credit allocating agency responsible for the 42(m)(1)(D) determination.
<b>Bond</b>	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.
<b>Cash Collateralized</b>	Conduit Bond transactions in which the Bonds are Cash collateralized by funds from other lenders, including from a Multifamily Accelerated Processing (MAP) first mortgage lender external to Minnesota Housing.
<b>Conduit Bonds</b>	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.
<b>Declaration of Land Use Restrictive Agreement (LURA):</b>	The Declaration, Land Use Restriction Agreement, Declaration of Land Use Restrictive Covenant for housing tax credits.

<b>FMR</b>	<a href="#">Fair Market Rent</a> .
<b>General Obligation Bonds</b>	A security backed by the full faith and credit of the issuer of those bonds, and payable from any of its generally available money, assets or revenues.
<b>HIB</b>	Housing Infrastructure Bonds that are a funding source for loans awarded through Minnesota Housing’s annual consolidated RFP. 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 payment, 30 year loan.
<b>Internal Revenue Code (IRC)</b>	The Internal Revenue Code (IRC) refers to Title 26 of the United States Code. The Internal Revenue Code is enforced by the <a href="#">Internal Revenue Service (IRS)</a> .
<b>LMIR</b>	<a href="#">Low and Moderate Income Rental Program</a> . LMIR first mortgage loans are typically insured by HUD through its risk-sharing program.
<b>Mortgage Credit Committee</b>	A cross-divisional management group that approves credit analysis, ownership structures and financing of projects for multifamily loans and related matters.
<b>Municipal Bond</b>	A debt security issued by or on behalf of a state or its political subdivision, or an agency or instrumentality of a state, its political subdivision, or a municipal corporation. Municipal bonds, for example, may be issued by states, cities, counties, special tax districts or special agencies or authorities of state or local governments
<b>POS</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• The Terms of the Offering</li> <li>• Purpose of the Issue</li> <li>• Summary</li> <li>• Description of Bonds</li> <li>• Description of The Issuer</li> <li>• Financial Data for The Issuer or the Conduit Borrower</li> <li>• Regulatory Matters</li> <li>• Feasibility Statement</li> <li>• Legal Proceedings</li> </ul>

MINNESOTA HOUSING – TAX-EXEMPT BONDS INFORMATIONAL GUIDE

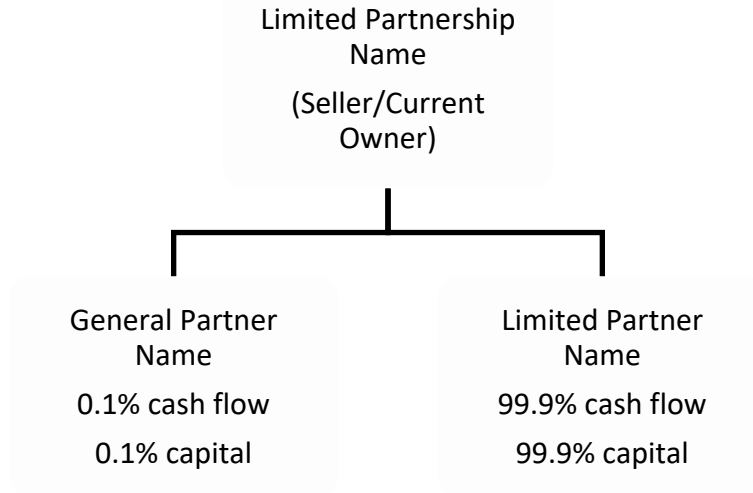
	<ul style="list-style-type: none"> <li>• Type of Indenture (Open/Closed)</li> <li>• Authorization of Bonds</li> <li>• Security Pledged, if any</li> <li>• Construction Plans</li> <li>• Tax Status</li> </ul>
<b>Private Activity Bonds</b>	A Municipal Bond issued to fund projects used by a non-governmental entity in its trade or business and secured by property used in a trade or business. Since certain types of these obligations may be Tax-exempt Bonds and therefore bear interest excludable from federal gross income,
<b>QAP</b>	Qualified Allocation Plan. Section 42 of the Internal Revenue Code requires that state allocating agencies develop a QAP for the distribution of housing tax credits within their jurisdiction. The current and proposed QAPs for each calendar year are available at <a href="http://www.mnhousing.gov">www.mnhousing.gov</a> .
<b>Residential Rental Bonds</b>	Tax-exempt Volume Limited Bonds issued to finance qualified residential rental projects that meet the requirements of Section 142(d) of the Internal Revenue Code.
<b>Section 142(d)</b>	Section of the Internal Revenue Code that describes what constitutes a qualified residential rental project.
<b>Section 42</b>	Section of the Internal Revenue Code applicable to the low-income housing tax credit (LIHTC).
<b>Sub-allocator</b>	Eligible cities and counties in Minnesota that have the authority to administer housing tax credits locally. These include Minneapolis, Saint Paul, Dakota County and Washington County.
<b>Tax-exempt Bonds</b>	A Municipal Bond that bears interest excludable from federal gross income, and sometimes also not subject to state or local income taxation.
<b>Tax-exempt Volume Limited Bonds</b>	A Municipal Bond that must 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.
<b>TEFRA</b>	Tax Equity and Fiscal Responsibility Act of 1982. Certain types of Private Activity Bonds, to qualify as Tax-exempt Bonds must be approved (TEFRA approval) either by an elected official or a 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 the governmental entity.
<b>Workbook</b>	The Microsoft Excel spreadsheet used to apply for Minnesota Housing multifamily funding.

*Certain definitions courtesy of Investopedia, Municipal Securities Rulemaking Board, and Investor words.*

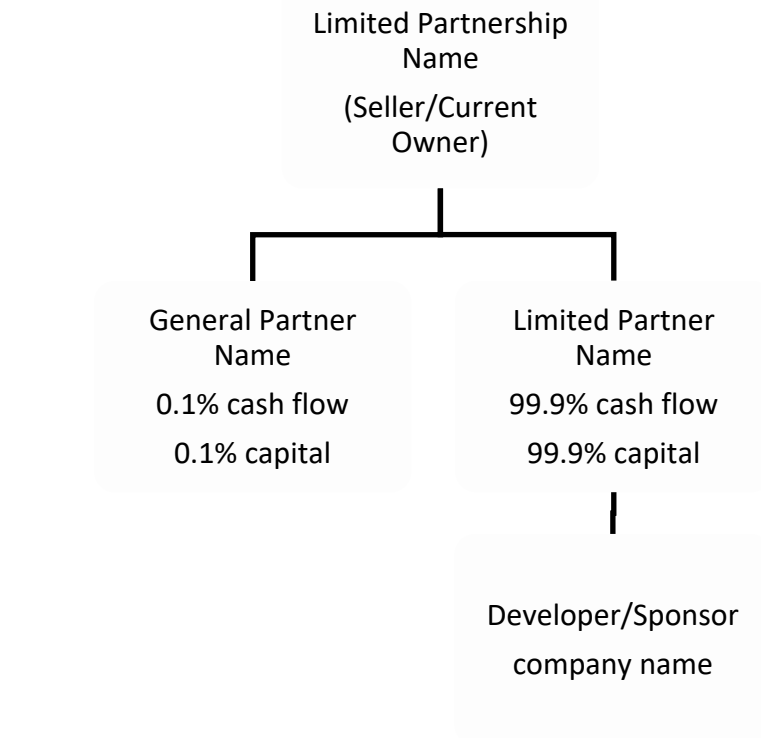
## Appendix B: Sample Documents

### 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



MINNESOTA HOUSING – TAX-EXEMPT BONDS INFORMATIONAL GUIDE

