



# **Housing Infrastructure Bonds Guide**

*April 2020*



## MINNESOTA HOUSING - HOUSING INFRASTRUCTURE BONDS GUIDE



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**Table of Contents**

**Chapter 1 – Purpose and Background .....3**

**Chapter 2 – Eligible Uses and Eligibility Criteria .....4**

    2.01    Owner/Sponsor ..... 4

    2.02    Eligible Use Requirements and Level of Funding ..... 4

    2.03    Design and Construction Review ..... 6

    2.04    Income Requirements ..... 6

    2.05    Rent Limitations ..... 7

    2.06    Prevailing Wage ..... 7

**Chapter 3 – HIB Loan Characteristics .....9**

    3.01    HIB Fees ..... 9

    3.02    Mortgage Interest Rate and Term ..... 9

    3.03    HIB Loan Types ..... 9

    3.04    Bond Tests Analysis ..... 10

    3.05    Underwriting and Post-selection Process ..... 12

    3.06    Post Closing ..... 13

    3.07    Transfers of Ownership and Prepayment ..... 14

    3.08    Return on Equity ..... 15

    3.09    Management and Operation ..... 15

    3.10    Monitoring and Reporting Requirements ..... 15

**Chapter 4 – Fair Housing Policy .....17**

**Chapter 5 – Fraud, Misuse of Funds, Conflict of Interest, Suspension,  
and Disclosure and Reporting.....18**

    5.01    Fraud ..... 18

    5.02    Misuse of Funds ..... 18

    5.03    Conflict of Interest ..... 18

    5.04    Suspension ..... 19

    5.05    Disclosure and Reporting ..... 19

**Chapter 6 – Contact Information .....20**

**Appendix A: Sample Documents.....21**

    1.Sample Organizational Charts ..... 21

**Appendix B: Terms .....23**

## Chapter 1 – Purpose and Background

The authority of Minnesota Housing Finance Agency (Minnesota Housing) to issue housing infrastructure Bonds (HIBs) is provided in Minn. Stat. § 462A.37. The Minnesota Legislature first authorized Minnesota Housing to issue HIBs in 2012 to fund loans for certain housing purposes. HIBs are special, limited obligation Tax-Exempt Bonds, the principal and interest on which are paid solely from appropriations from the General Fund of the state, issued by Minnesota Housing. The proceeds of HIBs may be used by Minnesota Housing to fund loans to finance the acquisition, rehabilitation or construction of housing, including supportive housing, for persons and families of low- and moderate-income. Specifically, loans may be made to finance the following multifamily housing purposes:

- Acquisition, construction, or rehabilitation of permanent supportive housing for individuals and families without a permanent residence; these individuals and household may also have Behavioral Health needs
- Acquisition, rehabilitation, adaptive reuse or new construction of Senior housing
- Acquisition and rehabilitation of federally assisted rental housing and the refinancing of costs of construction, acquisition and rehabilitation, including providing funds to refund, in whole or in part, outstanding Bonds previously issued by Minnesota Housing or another government unit to finance or refinance those costs
- Acquisition and rehabilitation of foreclosed or abandoned housing to be used for affordable rental housing
- New construction of rental housing on abandoned or foreclosed property where the existing structures will be demolished or removed

**NOTE: There are other authorized uses for the proceeds of HIBs, but these uses are not the subject of this guide. This guide only applies to the uses described above.**

## Chapter 2 – Eligible Uses and Eligibility Criteria

### 2.01 Owner/Sponsor

Eligible applicants for loans made from the proceeds of HIBs include:

- A nonprofit, tax-exempt organization as defined under section 501(c)(3) of the Internal Revenue Code
- A governmental entity (excluding the federal government)
- An Indian tribe or tribal housing corporation
- A for-profit entity

### 2.02 Eligible Use Requirements and Level of Funding

**Permanent Supportive Housing – Homeless.** The proceeds of HIBs may be used to finance the costs of acquisition, construction, or rehabilitation of supportive housing for individuals and families who are without a permanent residence, have multiple barriers to obtaining and maintaining housing, and benefit from the availability of supportive housing services. To be eligible for consideration for funding, projects must meet the following criteria:

- Units in a project must provide permanent housing for individuals and families who are homeless. Eligible homeless populations include:
  - High Priority Homeless (HPH)
  - Other Homeless Households
  - Units serving eligible homeless populations may also include individuals who have the following Behavioral Health needs (Behavioral Health Households):
    - People with Mental Illness
    - People with Substance Use Disorders

If intending to finance the development with housing tax credits, the market study submitted with your application must incorporate additional requirements for projects involving special needs population, housing for homeless households and supportive housing as required in Minnesota Housing's [Housing Tax Credit Market Study Guidelines](#).

**Senior Housing.** The proceeds of HIBs may be used to finance the costs of the acquisition, rehabilitation, adaptive reuse, or new construction of Senior housing. To be eligible for consideration for funding, projects must meet the following criteria:

- Units in the project must be leased to households where at least one member is age 55 or older and that member's annual *individual* income does not exceed 50% of the:
  - Metropolitan area median income for persons in the 11-County Metropolitan Area, not adjusted for household size or
  - Statewide median income for persons outside the 11-County Metropolitan Area, not adjusted for household size

## MINNESOTA HOUSING - HOUSING INFRASTRUCTURE BONDS GUIDE

- Statute gives preference to projects that serve households with a gross annual income that does not exceed 30% of the metropolitan area median, not adjusted for household size. Minnesota Housing will prioritize proposals that achieve this preference and demonstrate financial feasibility.
- 100 percent of the units must be intended for occupancy by Seniors and at least 80 percent occupied by Seniors.
- The project must have written policies and procedures specifying intent to provide housing for Seniors.
- A service plan or Senior Housing Narrative must be submitted at the time of application that describes access to services to support residents as they age in place and demonstrates the ability to increase physical supports and supportive housing services as residents age and experience increasing levels of disability. The plan or narrative must have been submitted for review by the local public housing authority (PHA), housing and redevelopment authority (HRA), community development agency (CDA) or economic development authority (EDA) that operates in the city or area where the project is located.
- If intending to finance the development with housing tax credits, the market study submitted with the application must include the materials required in the [Senior Addendum to Market Study Guidelines](#).

**Preservation.** The proceeds of HIBs may be used to finance the costs of the acquisition and rehabilitation of federally assisted rental housing and to refinance costs of construction, acquisition and rehabilitation, including providing funds to refund, in whole or in part, outstanding Bonds previously issued by Minnesota Housing or another government unit to finance or refinance those costs.

- To be eligible for consideration for funding, projects must meet the Preservation Strategic Priority as defined in the Housing Tax Credit Qualified Allocation Plan (QAP) applicable to the year of the funding application, meet a risk of loss and be eligible for the selection criteria by preserving existing federally assisted or other critical affordable units. For more information, refer to the Housing Tax Credit Self-scoring Worksheet.

**Foreclosed Properties.** The proceeds of HIBs may be used to finance the costs of the acquisition and rehabilitation of foreclosed or abandoned housing to be used for affordable rental housing, or to finance the new construction of rental housing on abandoned or foreclosed properties where the existing structures will be demolished or removed.

- To be eligible for consideration for funding, projects must meet at least one of the strategic priorities as defined in the Housing Tax Credit Self-scoring Worksheet.

**Projects.** A project may be either a multifamily housing residence or a portion of a mixed-use multifamily residence that has a property legal description and ownership structure distinct from any other portion of the residence.

The proceeds of HIBs may only be used to finance the costs of projects serving permanent supportive housing for the homeless (this housing may include individuals with Behavioral Health needs) if 100 percent of the units in the project will be permanent supportive housing units.

**Ineligible Projects.** Temporary uses such as shelters, transitional housing or residential hotels **are not** eligible for funding with the proceeds of HIBs. For Senior housing, housing must be of an independent living model. Assisted living facilities **are not** eligible for funding with the proceeds of HIBs.

**Level of Funding.** In determining the amount of the financing from the proceeds of HIBs, Minnesota Housing reviews cost reasonableness on a per-unit and total project cost basis. Minnesota Housing also analyzes the developmental and operational costs to determine that the amount of funds provided to the project is not more than is necessary to make it financially feasible.

**Housing Related Space.** Projects funded with the proceeds of HIBs may include housing-related space such as community, administrative or program space. Minnesota Housing will take into consideration the following factors when determining the amount of housing-related space in a housing project that will be funded with Bond proceeds:

- The extent to which the proposed use of the space fits with the service needs of the tenants and does not expose the tenants to security risks or the project to financial risk
- The ease with which the space is convertible to residential space
- The financial and operational capacity of the applicant or any partner organization to operate and manage the space
- Whether similar services or facilities that are appropriate for the tenants are located nearby
- Whether the space will be used exclusively by tenants
- The availability of other funding for the construction and/or rehabilitation of space, as well as the maintenance and operation of that space

### **2.03 Design and Construction Review**

Projects financed with the proceeds of HIBs must meet Minnesota Housing's [Rental Housing Design and Construction Standards](#) and are subject to plan reviews by staff architects per Minnesota Housing's [Architect's Guide](#).

**HIB Senior Design Requirements.** In addition to meeting Minnesota Housing's Rental Housing Design and Construction Standards, Senior housing projects must also meet universal design standards, which incorporate features that allow a residence to be adapted to an individual's changing needs to encourage aging in place. For more information, refer to the [Universal Design Worksheet Compliance Agreement and Certification](#). Senior housing projects must also be appropriately designed for the targeted population.

### **2.04 Income Requirements**

**Income Limits.** All units in a project financed with the proceeds of HIBs must be occupied by households whose income at the time of initial occupancy does not exceed 80 percent of the greater of [statewide median or area median income](#), not adjusted for household size. Lower income limits may be required for all or some of the units based on Minnesota Housing's funding priorities, state law applicable to a financing with the proceeds of HIBs or federal tax law. Private



For acquisition and rehabilitation projects, the owner must contact each household prior to mortgage commitment and have them certify their gross annual household income on an [Initial Occupancy Statement by Tenant Form](#) (other, more detailed income certification forms may be acceptable as long as information on the more detailed form(s) matches the information requested on the Initial Occupancy Statement by Tenant Form). As assisted units become vacant, they must continue to be leased to income-qualifying households. New households must similarly certify their gross annual household income prior to occupancy.

**NOTE:** If there are other funding sources for the project, there may be additional income requirements.

**Minimum Term.** The income restrictions for the assisted units are in effect for the term of loan. If the loan is prepaid, the income and occupancy restrictions will remain in place for a minimum of 15 years.

**HIB Senior Individual Income Limits.** For projects to qualify units under the Senior housing eligible use of the proceeds of HIBs, at least one household member living in each qualified unit must be age 55 or older, and this individual must have an annual income not greater than 50 percent of metropolitan area median income for projects within the 11-County Metropolitan Area, or 50 percent of statewide area median income for projects outside the 11-County Metropolitan Area.

Applicable household and individual income limits can be found on Minnesota Housing's website at [www.mnhousing.gov](http://www.mnhousing.gov).

## 2.05 Rent Limitations

**Maximum Gross Rents.** Limitations on the amount of rent that may be charged for each unit will remain in place for the term of the loan. Rents for units assisted with the proceeds of HIBs may not exceed the Affordable to Local Workforce rent limits published by Minnesota Housing. Lower rent limits may be required for all or some of the units based on Minnesota Housing's funding priorities. If any of the assisted units are the subject of project-based or tenant-based rental assistance such as Section 8 or a similar state, or local government rental assistance program or private organization or a Housing Support Agreement, such units are deemed to satisfy the rent restrictions. Rents are gross rents that include an allowance for tenant paid utilities. An acceptable utility allowance is determined by the Section 8 public housing authority (PHA) utility allowance for vouchers and must be updated annually.

If there are other funding sources for the project, there may be additional rent limitations.

**Minimum Term.** The rent restrictions for the assisted units are in effect for the term of loan. If the loan is prepaid, the rent and occupancy restrictions will remain in place for a minimum of 15 years.

## 2.06 Prevailing Wage

Under certain circumstances, awards of Minnesota Housing funds may trigger state prevailing wage requirements under Minn. Stat. § 116J.871. In broad terms, the statute applies to awards that meet the following conditions: (1) new housing construction (not rehabilitation); and (2) a single entity receives from Minnesota Housing \$200,000 or more of grant proceeds or \$500,000 of loan proceeds. The statute excludes new housing construction in which total financial assistance at a single project site is less than \$100,000.

Please note the following statutory provisions:

- A state agency may provide financial assistance to a person only if the person receiving or benefiting from the financial assistance certifies to the commissioner of labor and industry that laborers and mechanics at the project site during construction, installation, remodeling, and repairs for which the financial assistance was provided will be paid the prevailing wage rate as defined in section 177.42, subdivision 6. Minn. Stat. § 116J.871, subd. 2.
- It is a misdemeanor for a person who has certified that prevailing wages will be paid to laborers and mechanics under subdivision 2 [see above] to subsequently fail to pay the prevailing wage. Each day a violation of this subdivision continues is a separate offense. Minn. Stat. § 116J.871, subd. 3 .

In addition, a separate prevailing wage statute, Minn. Stat. § 177.41-.43, may apply if funds are used for a building that is publicly owned or leased.

All questions regarding state prevailing wages and compliance requirements should be directed to the Department of Labor and Industry as follows:

Division of Labor Standards and Apprenticeship  
Karen Bugar, State Program Administrator  
443 Lafayette Road N, St. Paul, MN 55155  
651-284-5091 or [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

## Chapter 3 – HIB Loan Characteristics

Minnesota Housing primarily selects projects for a loan to be made with the proceeds of HIBs, when, as and if issued by Minnesota Housing, during Minnesota Housing's annual Consolidated Request for Proposals (RFP) process. Minnesota Housing underwriting parameters for all projects include an analysis of financial feasibility and development costs, and a review of sponsor capacity (financial and organizational), management, marketability and architectural requirements. Refer to Minnesota Housing's [Multifamily Underwriting Standards](#).

### 3.01 HIB Fees

All HIB loans:

- An origination fee of 1 percent of the first \$5 million in financing **and** 0.5 percent on amounts above \$5,000,000. The minimum origination fee is \$10,000.

### 3.02 Mortgage Interest Rate and Term

Loans are made as a zero percent deferred payment loan unless a higher interest rate is necessary to allow the proceeds of HIBs to be used with other funding sources, such as housing tax credits. Principal and interest, if any, may be due and payable at the end of the loan term, which is typically 30 years; however, Minnesota Housing may, at its sole discretion, require 20 percent of cash flow in excess of \$50,000 to be applied annually to the repayment of the loan. The loan term may be adjusted based on requirements and conditions of other funding sources related to the length of the term.

### 3.03 HIB Loan Types

**Tax-Exempt Private Activity Bond Funded.** Loans are structured as deferred payment loans, repayable at maturity. HIBs issued by Minnesota Housing to fund these loans require an allocation of a portion of the state of Minnesota's volume cap on Tax-Exempt Private Activity Bonds. Loans funded with the proceeds of this type of HIBs may help to qualify a project for 4% Housing Tax Credits if the proceeds of HIBs, together with the proceeds of any other Tax-Exempt Volume Limited Bonds issued to finance that project, will fund at least 50 percent of the aggregate basis of the project plus land. The project must meet the Bond Tests Analysis discussed in Section 3.04 and the requirements of the applicable housing tax credit QAP. The borrower may be any type of entity except for a governmental entity.

Minnesota Housing, at its sole discretion, may make a short-term, Tax-Exempt Private Activity Bond-funded bridge loan in the event that the principal amount of the deferred payment long-term HIB loan is not sufficient to meet the 50 percent test.

The bridge loan will have a 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); discuss with Minnesota Housing if this option is desired. The loan term may be longer based on the construction schedule and schedule of equity installments

**Governmental Bond Funded.** Loans are structured as deferred payment loans, and will be either forgivable at maturity, if the borrower is not a governmental entity, or forgivable or repayable at maturity if the borrower is a governmental entity. HIBs issued by Minnesota Housing to fund these loans do not require an allocation of a portion of the state of Minnesota's volume cap on Tax-Exempt Private

Activity Bonds. These loans will not qualify a project for 4% Housing Tax Credits. The borrower may be any type of entity.

**501(c)(3) Bond Funded.** Loans are structured as deferred payment loans and are repayable at maturity. HIBs issued by Minnesota Housing to fund these loans do not require an allocation of a portion of the state of Minnesota's volume cap on Tax-Exempt Private Activity Bonds. These loans do not qualify a development for 4% Housing Tax Credits. The borrower must be a 501(c)(3) nonprofit organization.

### 3.04 Bond Tests Analysis

During Minnesota Housing's annual Consolidated RFP, applicants are required to submit a completed Bond Tests Analysis spreadsheet. This tool assists applicants in determining if the proposed project meets specific Bond tests.

**50% Test.** One of the major requirements for a development to preliminarily 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 total aggregate basis of the project plus land through the placed-in-service date. To initially estimate the Bond amount required, use this equation:

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

This is a rough estimate that may be used during initial selection. The borrower should consult with their accountant to verify that the project will meet the 50 percent test as required by Section 42.

**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, developer fees, general contractor overhead and profits (i.e. amounts not payable by the general contractor to a third party), 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 with the proceeds of Tax-Exempt Bonds.

**NOTE:** For a project to qualify for a HIB loan, there must be sufficient other (non-Bond funded) sources to allocate to bad costs.

**NOTE:** Special attention should be paid to the Good Cost/Bad Cost analysis for projects that are governmental or 501(c)(3) Bond funded as described in Section 3.03. Under these loan structures, the HIB loan may be a substantial portion of the total project sources. Thus it is important to analyze if there are other (non-Bond funded) sources to allocate to bad costs.

The **Bond Tests Analysis, Bond Costs from Workbook** tab calculates the anticipated amount of good costs and, for Tax-Exempt Private Activity Bond funded loans, the amount of Bonds needed to meet the 50 percent test (the total aggregate basis + land amount), plus a three percent buffer, Tax-Exempt

## MINNESOTA HOUSING - HOUSING INFRASTRUCTURE BONDS GUIDE

Volume Limited Bonds. 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 project 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, submit that information to the Minnesota Housing underwriter who is assigned to your project. Minnesota Housing's finance and Bond counsel make the final determination of good costs. Minnesota Housing's counsel must determine there are adequate good costs to support the amount of Bonds; however, Minnesota Housing finance and Bond counsel make no determination about the 50 percent test for purposes of housing tax credits eligibility. The borrower's accountant determines this.

**Ownership Assessment.** Organizational charts for the current and future ownership entities showing the ownership percentage, cash flow, and residuals must be sent to Minnesota Housing post-selection. Refer to Appendix B for sample organizational charts pre- and post-sale.

**NOTE:** If the developer is a related party to the borrower, the developer fee may be ineligible to be financed with Bond proceeds. Special attention should be paid to the Good Cost/Bad Cost Test due to the potential of developer fees, general contractor overhead and profits (i.e. amounts not payable by the general contractor to a third party), or architect's fees not being eligible to be reimbursed with Bond proceeds. Projects financed with governmental or 501(c)3 Bonds should evaluate this carefully as these structures will not include a limited investment partner, thus increasing the likelihood of an identify of interest between the borrower and developer.

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

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

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

**Bond Income Restrictions.** If the project is funded with a 4% Housing Tax Credit financial structure, units must be income-restricted to meet the requirements of the elected minimum set-aside in accordance with Section 42 and Section 142(d). This restriction is in addition to income limits applicable to projects financed with the proceeds of HIBs and associated with any other funding sources financing costs of the project.

### **State Requirements Applicable to Tax-Exempt Volume Limited Bonds.**

- Fair market rents (FMR): At least 20 percent of units must have rents at or below [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 is obligated to extend any existing affordability restrictions and any rental assistance agreements for the maximum term permitted.

**Scattered Site Projects.** For a scattered site development, each separate site must meet the income set-aside, the 50 percent test, the rehabilitation cost test, the Good Cost/Bad Costs test and Minnesota's Fair Market Rent (FMR) test.

### 3.05 Underwriting and Post-selection Process

**Reimbursement Declaration.** After selection, Minnesota Housing will execute a declaration of intent to reimburse costs of the project from the proceeds of HIBs. That declaration of intent allows eligible expenses incurred and paid up to 60 days prior to execution of the declaration to be reimbursed with the proceeds of HIBs. Some 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.

**NOTE:** If land or existing structures are or have been acquired by the borrower, or a related party to the borrower, before 60 days prior to the execution of the reimbursement declaration, those costs are ineligible to be financed with Bond proceeds. Special attention should be paid to the Good Cost/Bad Cost analysis due to the potential of acquisition costs not being eligible to be reimbursed with Bond proceeds. Projects financed with governmental or 501(c)(3) Bonds should evaluate this carefully as there may not be sufficient other (non-Bond funded) sources to pay for acquisition costs if ineligible to be reimbursed with Bond proceeds.

**Tax Equity and Fiscal Responsibility (TEFRA) Hearing.** Minnesota Housing will give notice and hold a TEFRA public hearing for all projects to be financed with the proceeds of HIBs. 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 Bond amount is greater than the amount stated in the TEFRA notice, another TEFRA hearing may be necessary. The Bonds must be issued within one year of the approval of the governor obtained by Minnesota Housing subsequent to the TEFRA hearing, or a subsequent TEFRA hearing must be held.

**Tax-Exempt Bond Issuance.** The proceeds of HIBs usually will finance loans for multiple projects. Neither the principal nor interest, if any, to be repaid with respect to the loans nor the property financed are security for repayment of the HIBs. For approval purposes, a loan made from the proceeds of HIBs is processed in the same manner as a deferred loan. Minnesota Housing's internal Mortgage Credit Committee approval is required for the loan, and after initial selection, additional Minnesota Housing board approval is not typically required.

The funding of the loans, however, will be dependent upon, and will not occur until, the issuance of HIBs. Minnesota Housing's ability to issue HIBs is dependent on Minnesota Management and Budget (MMB) providing updated disclosure with respect to the state of Minnesota and its finances. Currently, that disclosure is only prepared when the state issues its General Obligation Bonds in late summer or early fall.

Minnesota Housing's board resolution approving the issuance of HIBs will identify each loan that is authorized to be financed with the proceeds of those HIBs.

The timing of the issuance of the HIBs affects the following for loans funded with HIBs that are Tax-Exempt Volume Limited Bonds for a project that intends to seek 4% Housing Tax Credits:

- **Applicable Percentage:** The applicable percentage for housing tax credits is based either on the date the project is placed in service or, at the election of the owner, the month the Tax-Exempt Volume Limited Bonds are issued. In the case of projects funded with multiple issues of Tax-Exempt Volume Limited Bonds (whether HIBs or another type of Bond) in different months, the owner may elect which month's applicable percentage to use. In order to lock in the applicable percentage for the month the Tax-Exempt Volume Limited Bonds are issued, the owner 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, and satisfy other applicable requirements for the QAP in the year in which the Tax-Exempt Volume Limited Bonds are issued. If a project is funded with multiple issues of Tax-Exempt Volume Limited Bonds issued in different years, the QAP for the year in which Tax-Exempt Volume Limited Bonds are issued sufficient for the project to meet the 50 percent test will apply. Refer to the QAP or the year in which the Tax-Exempt Volume Limited Bonds are issued for additional information.
- **Declaration of Land Use Restriction Agreement (LURA):** The project must adhere to the tax credit LURA for the year in which the Tax-Exempt Volume Limited Bonds were issued. In the case of projects funded with multiple issues of Tax-Exempt Volume Limited Bonds issued in different years, use the LURA for the year Tax-Exempt Volume Limited Bonds sufficient for the project to meet the 50% test were issued. Refer to the applicable year QAP and HTC Program Procedural Manual for additional information.
- **474A.047 Compliance:** Prior to Bond issuance, projects with an existing project-based federal rental assistance payment contract must enter into a binding agreement with Minnesota Housing to extend affordability restrictions and any contract or agreement for rental assistance for the maximum term permitted. Minnesota Housing must also certify, based on information certified to Minnesota Housing by the borrower, that project reserves will be maintained at the issuance of the Bonds and budgeted in future years at the lesser of:
  - the greater of 40 percent of the outstanding first mortgage or \$5,000 per unit; or
  - The level of project reserves available prior to issuance of the Bonds, provided that additional money is available to accomplish repairs and replacements needed at the time of issuance of the Bonds

### 3.06 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, regardless if the loan is prepaid or assumed, through the later of:

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

The Bond Compliance Agreement is required in connection with any loan, made from the proceeds of Tax-Exempt Private Activity Bonds, including certain loans made from the proceeds of HIBs to an entity that is a 501(c)3 corporation. The Tax Exemption Agreement is required in connection with any other type of loan made with the proceeds of HIBs and terminates when the HIBs have been paid in full.

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.** 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 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 (refer to Bond Compliance Agreement)
  - IRS Form 8703
  - Certification of Compliance with 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 a Minnesota Housing asset manager

### 3.07 Transfers of Ownership and Prepayment

**Transfers of Ownership.** The project may not be sold, and in connection with any sale the loan may not be assumed by the new owner, without the approval of Minnesota Housing. The borrower must request the approval through Minnesota Housing's [Request for Action \(RFA\) process](#). Minnesota Housing, at its sole discretion, will consider giving that approval only if the following minimum requirements are met:

- The borrower is not in default under any of its agreements with Minnesota Housing
- The new entity is eligible to receive a loan from the proceeds of HIBs of the type that financed the original loan as set forth in section 2.02
- The new entity is creditworthy, at Minnesota Housing's sole discretion
- The new entity assumes all contractual obligations with Minnesota Housing
- An assumption fee is paid equal to the approximate administrative costs incurred by Minnesota Housing in processing the sale and assumption

**Prepayment and Assumption.** The loan may not be prepaid for a period of 10 years from the date of the loan. Thereafter, the loan may be repaid in full at any time. The covenants and conditions in the declarations run with the land and will remain in effect for the term of the declarations even if the loan is paid in full or an assumption of the loan is permitted. Minnesota Housing will charge a prepayment



fee in an amount equal to the approximate administrative costs incurred by Minnesota Housing in processing the prepayment.

### **3.08 Return on Equity**

Minnesota Housing statutes currently allow a maximum return of 15 percent based on actual borrower equity, as determined by Minnesota Housing.

### **3.09 Management and Operation**

**Management and Operating Budget.** The budget submitted in the application is reviewed and compared to budgets of comparable projects that have been financed by Minnesota Housing. These comparables are used in the underwriting of the loan and to project long-term operating costs and help ensure the long-term financial viability of the project. For more information, refer to the Minnesota Housing Multifamily [Underwriting Standards](#).

Minnesota Housing reserves the right to reject or adjust the management and operation figures based on the information provided, specific project type and circumstances, and significant changes to the economics of the project's current marketplace.

**Utilization of Units.** All units must be rented to family sizes appropriate to the unit size, with a ratio of at least one person per bedroom. If, during the course of tenancy, a family size changes, a household may submit a written request to the management agent to transfer to another unit or be placed on a waiting list for that transfer. In the event of a decrease in family size, the household may be required to move into the next available, suitably sized smaller unit.

**Marketing.** Minnesota Housing requires that each housing provider carry out an affirmative marketing program to attract prospective buyers or tenants in the housing market area 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. The owner or management agent must submit a tenant selection plan, Affirmative Fair Housing Marketing Plan, and an Affirmative Housing Marketing Plan Addendum.

**Permanent Supportive Housing Documentation.** At application, the borrower must submit a Permanent Supportive Housing Narrative, a Letter of Confirmation from the local (county or tribal) human services department, and a Continuum of Care (CoC) Confirmation (if applicable) form. Prior to loan closing, the borrower must submit, among other items, a management plan, a supportive housing services budget, a supportive housing services plan, a memorandum of understanding (MOU) and any other documentation deemed necessary for Minnesota Housing staff review and approval. For a complete list of requirements, refer to Minnesota Housing's [Supportive Housing Information and Resources](#).

### **3.10 Monitoring and Reporting Requirements**

Minnesota Housing actively monitors each project it finances. This includes monitoring of tenant incomes, rents, affirmative marketing and equal opportunity requirements, and year-end operating reports. All referenced forms can be found on Minnesota Housing's website at [www.mnhousing.gov](http://www.mnhousing.gov).

For loans funded from the proceeds of HIBs, monitoring activities are at Minnesota Housing's discretion and may include verification of tenant incomes, rents, affirmative action and equal opportunity

requirements, financial reports, Homeless Management Information System (HMIS) data, and financial summary, compilation, or audit information. In addition, projects financed by Minnesota Housing are subject to periodic management reviews and physical inspections.

The owner must lease assisted units to qualified households who disclose their annual household income at initial occupancy on an [Initial Occupancy Statement by Tenant Form](#) (other, more detailed income certification forms may be acceptable). This form is used to help verify that households are qualified to occupy an assisted unit. Owners must also request (but cannot require) that qualified households complete a [Tenant Demographic Profile Form](#), which provides additional information for program evaluation. Occupancy information on all units must be reported annually in the form and manner requested by Minnesota Housing.

Additionally, each adult member of a household occupying an assisted unit must sign and date a [Minnesota Government Data Practices Act Disclosure Statement](#). This statement informs the tenant that their annual household income and other information will be reported to Minnesota Housing and may be reviewed by other governmental agencies. This is required for the administration and management of state or federal programs that provide housing for low- and moderate-income families.

**Senior.** As referenced in section 2.02, for projects to qualify units for a loan funded with the proceeds of HIBs under the Senior housing-eligible use, at least one household member in each qualified unit must be age 55 or older and this individual must have a gross annual income that does not exceed 50 percent of metropolitan area median or statewide area median income. The owner must lease assisted units to qualified individuals who disclose their annual individual income at initial occupancy on a [Certification of Senior Eligibility for HIB form](#). Minnesota Housing uses this form to help verify that households are qualified to occupy an assisted unit. Owners must also certify on the form that documentation to confirm the individual's income has been received and their gross annual income does not exceed the applicable income limit.

**Permanent Supportive Housing.** Minnesota Housing requires owners and service providers of permanent supportive housing units to provide specific information beyond general funding reporting requirements. These include, but are not limited to, entering and reporting participant information in Minnesota's HMIS; reporting annually to Minnesota Housing on the operations of the property through an annual budget and financial review and a supportive housing annual online property survey; and periodic inspections by an asset manager or compliance officer that follows the schedule approved by the Minnesota Housing board for deferred loans or the HTC schedule, if the loan is eligible for housing tax credits. For a complete list of requirements, refer to Minnesota Housing's [Supportive Housing Information and Resources](#).

## Chapter 4 – 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.

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 5 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **5.01 Fraud**

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 5.05.

### **5.02 Misuse of Funds**

A loan or grant agreement is a legal contract. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 5.05.

### **5.03 Conflict of Interest**

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper or illegal act results from it.

An individual conflict of interest is any situation in which one's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party's objectivity in carrying out their responsibilities might be otherwise impaired due to competing duties or loyalties

- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party's responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party's participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived, or potential conflicts of interest through one of the ways described in section 5.05.

A contracting party should review its contract agreement and Request for Proposals (RFP) material, if applicable, for further requirements.

#### **5.04 Suspension**

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Please refer to Minnesota Housing's website for a list of [suspended individuals and organizations](#).

#### **5.05 Disclosure and Reporting**

Minnesota Housing promotes a "speak-up, see something, say something" culture whereby internal staff, external business partners (e.g., grantees, borrowers) and the general public are encouraged to report instances of fraud, misuse of funds, conflicts of interest, or other concerns without fear of retaliation. You may report wrongdoing or other concerns by contacting:

- Minnesota Housing's Chief Risk Officer
- Any member of Minnesota Housing's [Servant Leadership Team](#)
- [EthicsPoint](#), the Minnesota Housing hotline reporting service vendor

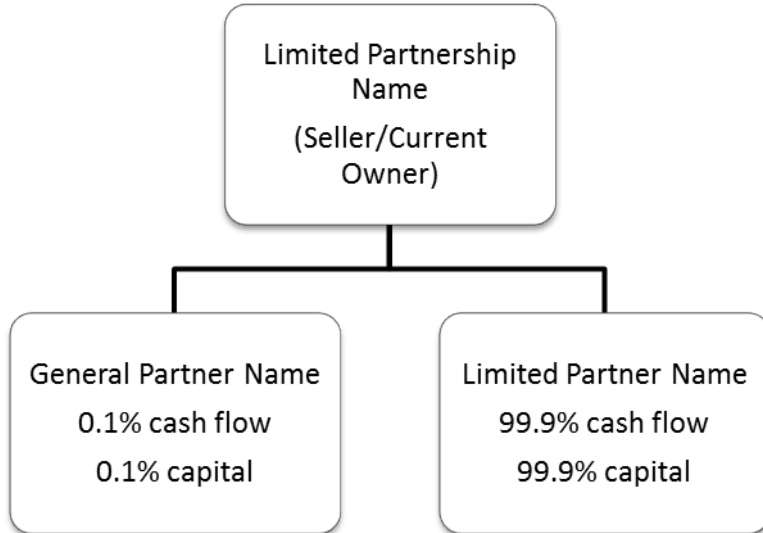
## **Chapter 6 – Contact Information**

Contact William Price, at 651.296.9440, [william.price@state.mn.us](mailto:william.price@state.mn.us), or the underwriter assigned to your project, for questions concerning this source of funding.

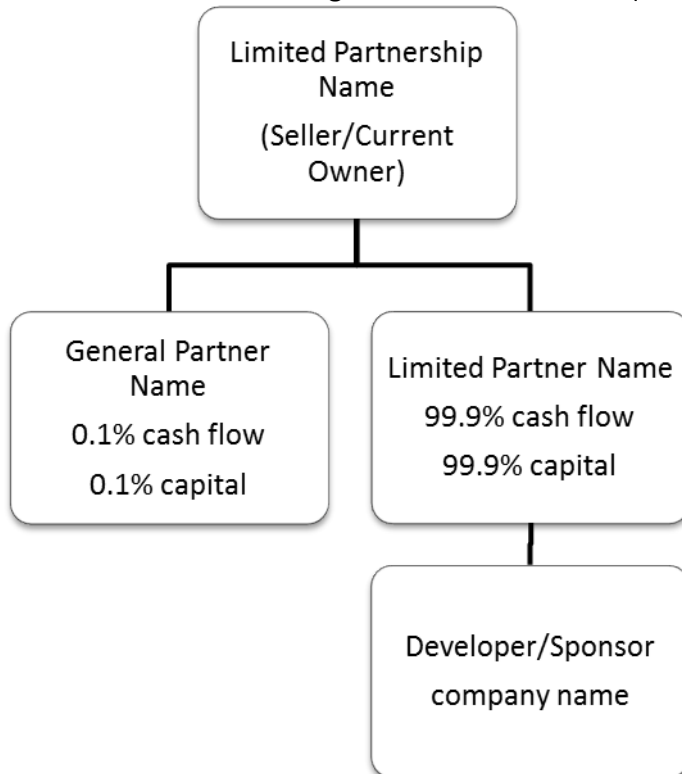
## Appendix A: Sample Documents

### 1. Sample Organizational Charts

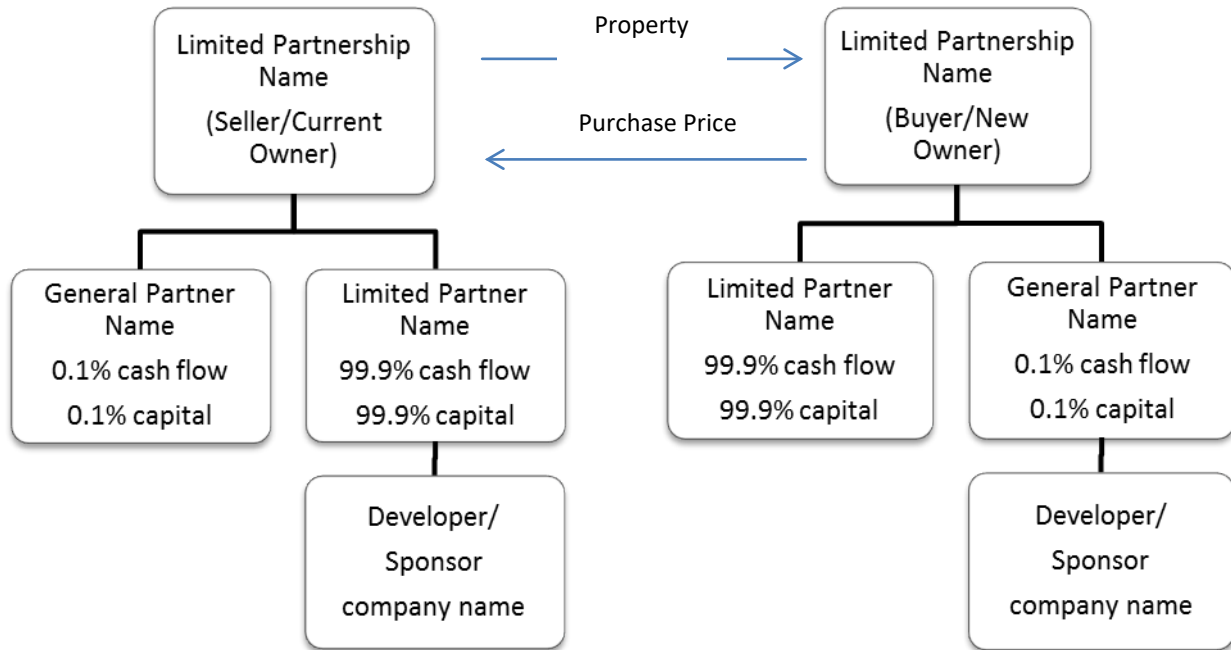
#### Original Structure of Seller (From Initial Closing – Date)



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



**Structures as of Closing Date for Sale of Project**





## Appendix B: Terms

| Term   | Definition   |
|--|--|
| <b>4% Housing Tax Credits</b>                                | Non-competitive HTC 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>11-County Metropolitan Area</b>                           | Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright counties   |
| <b>Behavioral Health Households</b>                          | A household with at least one individual who meets the definition of People with Mental Illness or People with Substance Use Disorders   |
| <b>Bond</b>  | A <a href="#">debt investment</a> 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 <a href="#">fixed interest rate</a> . 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 <a href="#">creditors</a> , of the issuer. |
| <b>Bond Test Analysis</b>                                    | The Microsoft Excel spreadsheet required for all applications eligible for HIB that provides a preliminary analysis of several of the required tests that must be met for Tax-Exempt Bonds including the good cost/bad cost and 50 percent tests.  |
| <b>Consolidated RFP</b>                                      | Consolidated Request for Proposal offered once a year which consolidates and coordinates multiple housing resources into one application process, including deferred loans, Housing Tax Credits and amortizing first mortgages.  |
| <b>Coordinated Entry System</b>                              | Coordinated Entry System defined by the Statewide Coordinated Entry standards and protocol as adopted by the local Continuum of Care or such successor system as determined by Minnesota Housing   |
| <b>Declaration of Land Use Restrictive Agreement (LURA):</b> | The Declaration, Land Use Restriction Agreement, Declaration of Land Use Restrictive Covenant for HTC.   |
| <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.  |

MINNESOTA HOUSING - HOUSING INFRASTRUCTURE BONDS GUIDE

| Term                                       | Definition  |
|--|---|
| <b>High Priority Homeless</b>              | Households prioritized for permanent supportive housing by the Coordinated Entry System   |
| <b>Housing infrastructure Bonds (HIB)</b>  | HIBs are special, limited obligation Tax-Exempt Bonds, the principal and interest on which are paid solely from appropriations from the General Fund of the state, issued by Minnesota Housing.   |
| <b>HTC</b>                                 | Housing Tax Credits - A financing program for qualified residential rental properties. The HTC program offers investors a 10-year reduction in tax liability in exchange for capital to build eligible affordable rental housing units in new construction, rehabilitation, or acquisition with rehabilitation.   |
| <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>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>Other Homeless Households</b>           | Households, other than High Priority Homeless Households, that include (i) individuals leaving institutions that do not have a permanent residence or (ii) Other Homeless populations not referred by the Coordinated Entry System  |
| <b>People with Mental Illness</b>          | People with an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is detailed in a diagnostic codes list published by the Commissioner of the Minnesota Department of Human Services, and that seriously limits a person’s capacity to function in primary aspects of daily living such as personal relations, living arrangements, work, and recreation. |
| <b>People with Substance Use Disorders</b> | The meaning given in the current Diagnostic and Statistical Manual of Mental Disorders  |
| <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,   |

| Term                                   | Definition   |
|--|--|
| <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>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 HTC.  |
| <b>Senior</b>                          | A person 55 years of age or older with an annual income not greater than 50 percent of: (i) the metropolitan area median income for persons in the 11-County Metropolitan Area, not adjusted for household size; or (ii) the statewide median income for persons outside the 11-County Metropolitan Area, not adjusted for household size.   |
| <b>Tax-Exempt Volume Limited Bonds</b> | A Municipal <a href="#">Bond that must</a> 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 <a href="#">referendum</a> of the governmental entity. |
| <b>Workbook</b>                        | The Microsoft Excel spreadsheet used to apply for Minnesota Housing multifamily funding.   |