New Jersey Housing and Mortgage Finance Agency
Multi-Family Conduit Bond Program Guidelines
Adopted: August 18, 2011
Revised: September 27, 2012, June 6, 2013, March 24, 2016 & September 20, 2018

These guidelines, policies, procedures and forms may be amended from time to time due to changes in market conditions and/or changes in the Agency's housing policies or initiatives. Such amendments may occur without notice and are applicable to all pending and future applications. Applicants are, therefore, responsible for contacting the Agency to ascertain whether or not there have been any changes since the date of these guidelines and for complying with such changes.

The New Jersey Housing and Mortgage Finance Agency ("Agency") can assist developers of affordable rental housing by acting as a conduit issuer of tax-exempt multifamily housing revenue bonds in an effort to further its mission to provide safe, decent and affordable housing for all New Jersey residents. A conduit issue is generally defined as "the issuance of municipal securities by a governmental unit (the "conduit issuer") to finance a project to be used by a third party", the security for which is "the credit of the conduit borrower or pledged revenues from the project financed, rather than the credit of the conduit issuer. Such securities do not constitute general obligations of the conduit issuer because the borrower is liable for generating the pledged revenues". The conduit program will be available to projects for which the Agency's traditional loans, funded with tax-exempt bonds of the Agency, are less attractive. The Agency reserves the right to defer a developer's application for inclusion in a conduit issue to a traditional Agency financing program. The bonds shall be limited obligations of the Agency, and will not constitute an indebtedness of the Agency, nor the State of New Jersey. The payment obligation of the bonds issued remains with the ownership entity of the project (the "Applicant"). In addition, the Applicant procures the added security of credit enhancement (except in the case of a direct purchase financing). In this type of transaction, bondholders look to the credit enhancement for security, not the Agency's creditworthiness. In the case of a direct purchase financing, the direct purchaser will look to the creditworthiness of the conduit borrower. These guidelines address the Agency's requirements assuming these structures. These guidelines are intended to be a general guide to the process of conduit bond financing by the Agency.

Bonds can be sold via direct purchase, public offering or private placement. In a public offering, bonds are purchased by an underwriter and sold to private investors in the public marketplace and will be structured with a third party credit enhancement, utilizing a 100% cash collateralized structure, or utilizing a 100% collateralized structure whereby the conduit borrower deposits a security guaranteed by the United States with the bond trustee at or prior to bond closing. In a private placement, the private placement agent will place the bonds with an investor and will be structured with a third party credit enhancement.

Conduit revenue notes may be issued utilizing a back-back loan structure in which the Agency enters into a funding loan agreement with a bank or financial institution ("Funding Lender") evidenced by a note of the Agency. Simultaneously, the Agency enters into a project loan agreement with a conduit borrower to loan the proceeds received by the Agency pursuant to the funding loan agreement to the conduit borrower. The conduit borrower will deliver a note to the Agency in equal principal amount to the project loan and the funding loan. The Agency's obligation to make payments pursuant to a funding loan agreement will be solely secured by and payable from revenues pledged to the Agency with respect to the Project pursuant to a project loan agreement, which pledged revenues will secure payment of the principal and interest on the note issued by the Agency to the Funding Lender. The project loan and note will be secured by a mortgage, assignment of rents and security agreement delivered to the Agency, which will be assigned to the trustee or fiscal agent.

In a direct purchase, a financial intermediary, typically a bank, will purchase bonds directly from the Agency. The circumstances under which a direct purchase or conduit revenue note will be permitted shall include the following:

a. Sale of complex or poor credits
b. Sale of complex financing structure, including those transactions that involve simultaneous sale of more than one series with each series structured differently
c. Volatile market conditions
d. Large issue size
e. Instances where a direct placement offers a compelling economic advantage (i.e. debt service savings and/or substantial reduction in costs of issuance) to the borrower compared to a public offering;
f. Programs or financial techniques that are new to investors
g. Variable rate transactions

In addition, these guidelines may not address the various requirements of bond counsel or underwriter's counsel. While in some cases, the requirements of bond counsel and the Agency may coincide, these guidelines are not intended to act as a guide for <u>all</u> the requirements of a conduit transaction. Rather, these guidelines are intended to address those requirements that the Agency will require, either in conjunction with or in addition to bond counsel.

Finally, these guidelines do not address requirements under other Agency programs. If an Applicant intends to seek other sources of financing from another Agency program, it must consult the appropriate guidelines and requirements for those programs. It is anticipated that most Applicants will otherwise qualify for low income housing tax credits. However, participation in the low income tax credit program is not required for participation in the Agency's conduit financing program. Applicants should consult the Agency's Qualified Allocation Plan ("QAP") and/or the Agency's Tax Credit Division for guidance. These guidelines do not address the requirements of the Agency's tax credit program, however, some information required for conduit bond issuance mirrors the requirements of low income housing tax credits and tax exempt financing.

I. General Overview:

It is expected that a conduit bond or note issue will consist of the following steps:

1. Application for project inclusion in a conduit bond or note issuance is submitted to the Agency, including the items listed in Section III. B. below.
2. Agency staff will review the application materials and may present an inducement resolution (Declaration of Intent) to the members of the Agency Board.
3. A bond or note resolution will be drafted by bond counsel.
4. Publication of the TEFRA hearing notice.
5. Agency's counsel reviews bond and closing documents.
6. Public TEFRA hearing is held.
7. The Agency Board approves the bond or note resolution and an indemnification fee will be collected from the applicant.
8. Agency provides approval letter to the Applicant for its project's inclusion in the conduit bond or note issue, and the Agency's commitment to issue bonds or notes.
9. Agency staff works with the applicant to confirm that all aspects of the financing for the project are in place.
10. A preliminary official statement is issued (if applicable), bonds are priced and final amount is set.
11. Applicant closes with construction lender, credit enhancement provider and investor, or the direct purchaser, as applicable, all approved by the Agency in advance of closing.
12. In a conduit revenue note issuance, the funding loan is closed between the Agency and the Funding Lender and simultaneously, the Agency enters into a project loan agreement with a conduit borrower to loan the proceeds received by the Agency pursuant to the funding loan agreement to the conduit borrower.
13. Agency assigns the mortgage and related security documents, and loans bond proceeds to the program Trustee or fiscal agent.
14. Bond or conduit note closing occurs (simultaneously with # 11 and/or #12 above).
15. Confirmation of bond or conduit note issuance is provided to Applicant.
16. Receipt of bond or conduit note closing binder.
17. Post-closing bond or conduit note and post-issuance tax compliance monitoring.

II. Eligibility:

Eligibility requirements will include, but are not limited to, the following:

1. A term not to exceed 50 years;
2. A cap at 90% of the total project cost;
3. First lien mortgage security to HMFA;
4. Limits on developer's fees;
5. Limits on return on investments;
6. Requirements regarding cost certifications;
7. Requirements regarding payment of prevailing wages (Construction financing only)
8. Municipal Resolution of Need pursuant to NJSA 55:14K-6c.

III. <u>Review of Application and Approval Process</u>:

A. Submission of Application:

The Applicant shall submit a complete application to the Agency's Multifamily/Preservation Programs, including all required documentation and a non-refundable application fee in the amount of $7,500.00. An application is required for each development and/or phase proposed by the Applicant.
Eligible applicants include for-profit, non-profit and governmental entities, preferably with experience in providing housing and a development team with adequate financing creditworthiness to support the proposal. Projects may consist of new construction, acquisition or acquisition/rehabilitation.

Applicants are encouraged to obtain a municipal resolution granting real estate tax abatement for payments in lieu of taxes ("PILOT") pursuant to N.J.S.A. 55:14K-17.

B. Application Requirements:

Application documentation required may include, but is not limited to, the following:

1. UNIAP - Low Income Housing Tax Credit Application for Current Year (if applicable)
2. Market Analysis
3. Evidence of Site Control
4. Preliminary Site Plan Approval
5. Environmental Certification
6. Disclosure of all Financing Information
7. Financing Commitments
8. Financial Feasibility (financial statements prepared by an outside source)
9. Evidence of Credit Enhancement
10. Affirmative Fair Housing Marketing Plan
11. Agency Corporate Certification and Questionnaire for Ownership Entity, General Partner or Managing Member
12. Agency Personal Certification and Questionnaire for Directors and Officers of Sponsoring Entity/Borrower, Individuals Serving as General Partner or Managing Member, and any individual owning 10% or greater interest in sponsoring entity, or in the General Partner or Managing Member
13. Criminal background search for all individuals submitting Personal Certification and Questionnaire forms (Agency form)
14. Formation Certificate for Sponsoring Entity and Managing Member/General Partner
15. Certificate of Good Standing for Sponsoring Entity and Managing Member/General Partner
16. New Jersey Division of Taxation Clearance Certificate

Bond counsel or underwriter's counsel may have additional requirements not noted above.

C. Review of Application:
Applications will be reviewed by Agency staff from a due diligence standpoint, and for completeness of information submitted. Notification of approval, or rejection, shall come only in written form from the Agency Executive Director and verbal approvals or rejections shall not be considered valid responses from Agency to the Applicant. The Agency, however, relies primarily upon the provider of credit enhancement's underwriting criteria.

D. Credit Enhancement:
All multifamily tax-exempt bond conduit issuances by the Agency must be credit enhanced by FHA/Freddie Mac mortgage insurance, FNMA securitization, private bank letters of credit, or enhancement as otherwise approved by the Agency. Direct purchase and conduit note financings are exempted from the requirement for credit enhancement.

E. TEFRA Hearing:
A public hearing, known as a TEFRA hearing, is required to be held by the Agency prior to its conduit issuance of any tax-exempt multifamily bond. The Agency Executive Director, in conjunction with bond counsel, will schedule and advertise the place and time of such TEFRA hearing. The Agency will not schedule a bond closing if the TEFRA hearing is not properly conducted.

F. Financing Team:
An Applicant will chose the underwriter or private placement agent from the Agency-approved lists of underwriters and private placement agents procured in compliance with the Agency's Conduit Bond Program Executive Order No. 26 Policies and Procedures, subject to the requirement that the underwriter chosen is duly qualified and recognized professionals in their field and approved by the Agency. The Agency selected a program trustee based on a competitive RFP process. The Agency will also assign bond counsel, which bond counsel is procured and retained by the Attorney General's Office.

G. Fees: The Applicant should anticipate payment of the following fees in connection with a conduit bond issuance:

Type of Fee:	**Amount:**	**Due:**
Agency's Application	$7,500	At application submission
Agency's Annual Administrative fee	1. 50 bps of Declining Principal Balance up to and including an outstanding principal balance of $15 million; plus 2. 25 bps of Declining	Annually for the term of the mortgage; however, the first year's annual administrative fee will be capitalized as part of the construction budget and is due at bond closing

	Principal Balance of any outstanding principal balance greater than $15 million up to and including an outstanding principal balance of $35 million: plus 3. 10 bps of Declining Principal Balance of any outstanding principal balance in an amount greater than $35 million.	
Agency Issuance fee	50 bps	Bond closing
Agency's Non-Amortizing Debt Fee	200 bps of the Non-Amortizing Debt	Bond closing
Agency's Bond Counsel Fee	To be determined on a per deal basis	Bond closing

The Applicant shall be responsible for all other costs of issuance including fees of the underwriter, trustee, rating agencies, lender, compliance administrator, all bond counsel, auditor and any other parties required to complete the transaction.

H. Financing Documents

(a) Documents to Evidence Bond Issuance:

Documents to be provided to evidence the issuance of bonds will include, but not be limited to the following:

1. Bond Purchase Agreement, Private Placement Agreement or Direct Purchase Agreement
2. Preliminary and/or Official Statement Provisions
3. Qualified Transferee Letter
4. Bond Resolution
5. Trust Indenture
6. Intercreditor Agreement or Assignment Agreement
7. Tax Regulatory Agreement

Collectively these documents shall be known as the "Bond Documents"

(b) Documents to Evidence Note Issuance:

Documents to be provided to evidence the issuance of conduit revenue notes in a back-to-back loan structure will include, but not be limited to the following:

1. Funding Loan Agreement
2. Project Loan Agreement
3. Continuing Disclosure Agreement
4. Note Resolution
5. Tax Regulatory Agreement

Collectively these documents shall be known as the "Note Documents"

I. Documents to Evidence Loan to Applicant:

Documents evidencing the loan of bond proceeds to the Applicant, shall include, but not be limited to:

1. Mortgage
2. Mortgage Note
3. Assignment of Mortgage
4. Financing, Deed Restriction and Regulatory Agreement
5. For projects receiving 4% federal low-income housing tax credits, a Deed of Easement and Restrictive Covenant for Extended Low Income Occupancy

J. Occupancy Requirements – Tax Exempt Bonds:

Projects using tax-exempt financing are subject to restrictions under the Section 142(d) of the Internal Revenue Code. The development must satisfy the minimum occupancy requirements set by federal law: either 20% of the units must be rented to tenants whose income is 50% of median income or lower, or 40% of the units must be rented to tenants whose income is 60% of median income or lower. The Agency uses the income limits established by the U.S. Department of Housing and Urban Development ("HUD") for the area median income adjusted for family size. The occupancy requirements described herein will be memorialized in the Deed of Easement and Restrictive Covenant for Extended Low-Income Occupancy provided by the Agency's Tax Credit Division and executed by the Applicant.

K. Due Diligence Responsibilities:

The Agency requires that all participants comply with any and all applicable federal and state securities laws, including but not limited to, those requiring full and complete disclosure of material facts to potential investors. Responsibility falls on the participants to determine the appropriate investigations, material facts and required disclosure to prospective purchasers of bonds. The Agency will not take any responsibility for such investigations or disclosures and the Agency and bond counsel specifically disclaim any responsibility for such disclosures in its opinion. The Agency expects that the due diligence process undertaken for Agency conduit issuances will meet the following standards:

1.) Underwriter's counsel, who must be knowledgeable and experienced in securities law matters, is expected to take responsibility for due diligence investigations and distribution of the Preliminary Official Statement and the

Official Statement. With respect to direct purchase financings, bank counsel is expected to take responsibility for due diligence investigations.

2.) Underwriter's counsel is expected to issue an opinion in connection with the transaction and the adequacy of disclosure in the Official Statement. The opinion must comply with the market practice for Rule 10b-5 opinions, without any exceptions considered material by bond counsel or general counsel to the Agency. The Agency considers financial and statistical information and financial statements to be permissible exceptions. With respect to direct purchase financings, bank counsel is expected to issue an opinion in connection with the transaction.

3) Where applicable, the Applicant, at its expense, will provide financial statements for inclusion in the Preliminary Official Statement and/or Official Statement, with the request consent and privity letters addressed to the Agency.

All opinions of counsel must be addressed to the Agency and must be given under New Jersey law, except in certain limited instances.

L. Agency Indemnification:
All conduit bond and note issuances must provide for indemnification of the Agency. The Applicant will be required under the Bond Documents to indemnify the Agency and its members, directors, officers, agents, servants, employees, and attorneys such that they shall not be liable for any action performed under the Bond Documents, and that the Applicant shall hold them harmless from any claim or suit of whatever nature.

Any claims asserted against the Agency shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. (except for N.J.S.A. 59:13-9 thereof). While the New Jersey Contractual Liability Act is not applicable by its terms to claims arising under contracts with the Agency, the Owner agrees that it shall be applicable to claims arising under the Bond Documents. It is acknowledged that the Agency is a public entity covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

IV. Post Bond or Note Closing and Post-Issuance Tax Compliance Monitoring:

The Applicant and other participants are required to cooperate with Agency staff conducting post bond closing and post-issuance tax compliance monitoring tasks.

A. Certificate of Completion:
The Agency requires all Applicants to submit a Certificate of Occupancy issued by the municipality in which the project is located. The Certificate of Occupancy should be delivered to the Agency within thirty (30) days of project completion. Additionally, an Architect's Certificate of Substantial Completion evidencing completion of the project financed through the issuance of bonds by the Agency may be required.

B. Determination of Project Cost:
The Agency shall determine all project costs that are reasonable or necessary, pursuant to NJSA 55:14K-3q.

C. Site Visit:
Prior to, during, or after completion of the project, the Agency, at its discretion, and without obligation, reserves the right to conduct site visits, upon reasonable notice to the Applicant.

D. Reporting Requirements:
At the closing, the Applicant must provide to the Trustee or fiscal agent a written certification as to the scheduled monthly amortization of the Loan and the Bonds, and represent to the Trustee in connection therewith that the Loan and the Bonds will remain in compliance therewith unless and until the Applicant provides a new schedule with respect thereto. On or before July 15^{th} of each year, the Applicant will provide (or cause to be provided) to the Agency a written certification as to the unpaid principal balances of the Loan and the Bonds as of the prior June 30^{th}.

E. Annual Financial Statements:
The Agency requires Applicant to submit audited financial statements annually to the Agency.

F. Tenant Income Certification:
It is the Agency's policy that the housing financed by the issuance of Agency bonds or notes meet the general income and occupancy requirements as set by the Internal Revenue Code and established by HUD. On forms approved by the Agency, Applicant shall obtain from each prospective tenant prior to admission to the development a certification of income and thereafter on an annual basis, a recertification of income.

G. Post-Closing Compliance for other Agency Programs:
Projects utilizing other Agency financing or low income housing tax credits will have additional requirements both in the initial underwriting process and post closing, including post-issuance tax compliance monitoring. Applicants and their counsel should consult these programs and/or the appropriate Agency staff to determine all program post-closing requirements.