

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

**Conduit Multi-Family Bond Financing Program Rules
HFA 116**

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NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
Conduit Multi-Family Bond Financing Program Rules
HFA 116

HFA 116 PART ONE: OVERVIEW, PURPOSE, APPLICABILITY

HFA 116.01 OVERVIEW AND PURPOSE

The Conduit Multi-Family Bond Financing Program provides a source of funds for a variety of affordable multi-family rental developments. The Conduit Multi-Family Bond Financing Program enables the New Hampshire Housing Finance Authority (“Authority”) to lend the proceeds from the sale of tax-exempt bonds for the construction, acquisition, rehabilitation, renovation, furnishing and equipping of multi-family rental housing developments.

HFA 116.02 APPLICABILITY

- (a) These rules only apply to the Conduit Multi-Family Bond Financing Program. See HFA 114 for the rules governing projects that receive the benefit of any other direct or indirect subsidy or financing program administered by the Authority including without limitation subordinate debt, capital subsidy and HFA Risk Sharing (the “Additional Multi-Family Programs”).
- (b) The provisions of HFA 101 are incorporated into these HFA 116 rules.
- (c) Projects intending to use Low Income Housing Tax Credits (LIHTC) must comply with the version of the Qualified Allocation Plan (QAP) (HFA 109) that is in effect when the financing application is submitted to the Authority. Appendix M of the QAP identifies those provisions which are applicable to Rule 116 Conduit Transactions.
- (d) All developments financed with tax-exempt bonds must meet the requirements of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), and any other applicable federal tax requirements (said Internal Revenue Code and other applicable federal tax requirements constituting the “Federal Tax Requirements”), and additional Authority regulatory requirements with respect to project occupancy and income targeting. If any of these HFA 116 rules are inconsistent with the pertinent Federal Tax Requirements, the provisions of the Federal Tax Requirements shall govern.
- (e) All projects must comply with all relevant Authority, state and federal regulations, including but not limited to:
 - (1) NH RSA:204-C
 - (2) NH RSA:48-A:14, minimum housing standards, and local minimum requirements for use and occupancy of housing
 - (3) Federal Fair Housing Act 42 USC §3601 et seq.

- (f) For projects developed and financed in accordance with the provisions of HFA 116 but not receiving the benefit of any Additional Multi-Family Programs, compliance with the following Authority Rules and Policies is not required:
- (1) HFA 110 Construction and Bridge Loan Program Rules
 - (2) HFA 111 Design and Construction Policy Rules
 - (3) HFA 114 Multi-Family Bond Financing Program Rules
 - (4) HFA 115 Initial Equity Determination
 - (5) HFA 204 Replacement Reserves and Residual Receipts
 - (6) Technical Design and Construction Standards
 - (7) Underwriting Standards and Development Policies for Multi-Family Finance

HFA 116.03 RULEMAKING

These Conduit Multi-Family Bond Financing Program Rules are adopted pursuant to RSA 204-C:9, which empowers the Authority to adopt rules relative to programs and operations.

HFA 116 PART TWO: DEFINITIONS

HFA 116.04 DEFINITIONS

In addition to the terms defined in HFA 101, the following words or terms shall have the following meanings in these HFA 116 Rules:

“Applicant” means an entity that is seeking the Authority’s approval to participate in the Conduit Multi-Family Bond Financing Program.

“Application” means the application form and all Authority required supporting documents.

“Complete Application” means an Application with all information and documents required by the Authority to participate in the Conduit Multi-Family Bond Financing Program.

“Conduit Borrower” means the party that receives the proceeds from bond issuance and that is obligated for payment of all amounts associated with the debt obligation (debt service payments on the bonds).

“Findings” means the findings required to be made by the Authority pursuant to RSA 204-C:20, which findings are made after a study undertaken by the Authority with respect to the factors pertinent to the determination as to whether said findings may be made.

“Housing Choice Voucher” means a voucher that entitles the approved holder to tenant based rental assistance provided under Section 8 of the United States Housing Act of 1937.

“QAP” means Qualified Allocation Plan and refers to the document required by the Internal Revenue Code that the state uses to allocate Low Income Housing Tax Credits.

“Qualified Project Period” means a period beginning on the first day on which 10% of the dwelling units in the project are first occupied and ending on the latest of:

- (1) The date which is 15 years after the date on which 50% of the dwelling units in the project are occupied; or
- (2) The first day on which no tax-exempt private activity bond issued with respect to the project is outstanding; or
- (3) The first day on which any project-based Section 8 assistance provided to the project terminates.

“TEFRA” means the Tax Equity and Fiscal Responsibility Act of 1982, as amended.

“Total Development Cost” (TDC) means the total cost of developing a project, including hard (construction) costs as well as soft costs such as fees for legal, accounting, syndication, and development consulting services.

“Trustee” means the trustee selected by the Authority to administer the bond issue, including the receipt of payments on the debt of the Conduit Borrower and the making of debt service payments on the bonds.

HFA 116 PART THREE: GENERAL RULES

HFA 116.05 ELIGIBLE APPLICANTS

Entities eligible to apply include, but are not limited to:

- (1) Limited partnerships;
- (2) General partnerships;
- (3) Corporations;
- (4) Non-profit 501(c)(3) corporations; and
- (5) Limited liability companies.

Individuals and unincorporated associations are not eligible to apply.

HFA 116.06 PROJECT ELIGIBILITY

- (a) For purposes of eligibility for tax-exempt bonds issued under the Conduit Multi-Family Bond Financing Program, eligible projects must meet one of the following standards:
 - (1) At least 20% of units must be occupied by households with incomes at or below 50% AMI as adjusted for household size and published from time to time by HUD; or

- (2) At least 40% of units must be occupied by households with incomes at or below 60% AMI as adjusted for household size and published from time to time by HUD.

Affordability restrictions will apply for a minimum of 30 years except for projects using LIHTCs and intended for eventual homeownership, which may transfer to tenant ownership after 15 years in accordance with the QAP. In no case will affordability restrictions expire prior to the expiration of the Qualified Project Period.

- (b) Mixed income projects are encouraged but the Authority recognizes that many factors, including market conditions and scarce resource allocations will impact the relative mix of targeted and market rate units. The Authority, in its sole discretion, will evaluate projects on a case-by-case basis in accordance with its Findings.
- (c) In order to ensure affordability, the rent and utility cost for rent-restricted apartment units may not exceed 30% of the applicable income limit adjusted for household size, calculated pursuant to, and except as permitted by Section 42(g)(2)(b) of the Internal Revenue Code for projects utilizing LIHTCs (or by the U.S. Department of Housing and Urban Development for projects without LIHTCs).
- (D) The mortgagor shall not discriminate against Housing Choice voucher holders or refuse to lease a rental unit to a family solely because of the family's participation in the Section 8 tenant-based program.

HFA 116.07 FEES AND COSTS

- (a) The Authority shall publish a list of applicable fees on its website. The schedule of fees published when the Applicant submits a Complete Application will be the fees charged for that project.
- (b) The Authority's costs directly related to a project, including costs of bond issuance, legal fees, and third-party reports, will be paid by the Applicant.
- (c) The Executive Director may waive any or all applicable fees.

HFA 116.08 APPLICATION PROCEDURE

- (a) Applications for the Conduit Multi-Family Bond Financing Program will be accepted on a rolling basis. All Application exhibits required by the Authority must be included. The Authority reserves the right to request additional documents; if required, additional documents may be deemed necessary to evaluate an Application or a Complete Application in the Authority's sole discretion.
- (b) Required Application Exhibits are:
 - (1) Cover letter describing project and development team
 - (2) Site Map

- (3) Evidence of Secure Site Control
- (4) Evidence of Permit Status
- (5) Environmental Information
- (6) Flood Map
- (7) Transaction Detail Summary
- (8) Permanent Financing Letter of Interest or Commitment
- (9) Construction Financing Letter of Interest or Commitment
- (10) Equity Investment Letter of Interest or Commitment
- (11) Preliminary or Final Plans and Specifications
- (12) Management Plan (narrative including identification and qualifications of management agent)

The following documentation is not required to accept an Application for initial review but will be required prior to closing and, at the discretion of Authority staff, may be required earlier in the process.

- (13) Construction Contract
- (14) Relocation Plan (if applicable)
- (15) Market Study
- (16) Tenant Selection Plan
- (17) Tenant lease/occupancy agreement
- (18) Management Agreement
- (19) Evidence of Credit Enhancement, if applicable

(c) Complete Applications will be reviewed by Authority staff for appropriateness of proposal and consistency with these rules. Each Complete Application will be reviewed under general criteria. Failure to comply with any of the general criteria may result in the rejection of the Complete Application. The general criteria are:

- (1) Project location considered feasible or appropriate;
- (2) Project or design characteristics appropriate for the neighborhood and satisfy market need;
- (3) Developer and all members of the development team have necessary capacity and experience to successfully complete the project;
- (4) Developer and all members of the development team are and have been compliant with respect to the prior use of any Authority program;
- (5) Development costs including, but not limited to, acquisition, construction, and intermediary expenses are reasonable as determined by Authority staff;
- (6) Review of subordinate debt is complete and acceptable to the Authority; and
- (7) Project determined financially feasible by Authority staff.

(d) Within 45 days of receipt of a Complete Application, the Authority will make a determination to either reject the Complete Application or proceed with processing (“initial determination to proceed”). The initial determination to proceed with processing is not an approval of the allocation of tax-exempt volume cap for the project or a commitment by the Authority to issue tax-exempt bonds. Notwithstanding any resolution adopted by the Authority with respect to the issuance of bonds, the actual issuance of such bonds is

conditioned upon an approving opinion of bond counsel to the Authority with respect to the status of the bonds and certain matters relating to the due issuance and security for the bonds.

- (e) A face to face meeting is a required part of the application/review process.
- (f) If a project receives an initial determination to proceed, then a schedule of events will be developed to include as applicable, but not be limited to:
 - (1) An Official Intent Resolution (if necessary);
 - (2) TEFRA hearing;
 - (3) Final Bond Resolution;
 - (4) Receipt of Governor's Approval
 - (5) Determination Letter (if necessary); and
 - (6) Bond sale.

HFA 116.09 ADDITIONAL REQUIREMENTS

- (a) Upon review of the complete application, site visit, and review of other material available, the Authority may require the preparation of other third-party reports. These reports may include, but are not limited to:
 - (1) Environmental reviews;
 - (2) Appraisals; and
 - (3) Engineering reports.

Such reports will generally be commissioned by the Authority, although the Authority may at its sole discretion accept reports commissioned by other parties. The cost will be borne by the Applicant. Before the Authority authorizes any third-party contracts, the Applicant will have deposited with the Authority adequate funds to cover the costs of said reports.

- (b) Credit enhancement: Bonds can be sold via public offering or private placement. In a public offering, bonds must be structured with a third party credit enhancement acceptable to the Authority. In a private placement, the Authority will require either a third party credit enhancement or a private placement/sophisticated investor letter acknowledging the risks associated with the securities being purchased.

HFA 116.10 APPROVAL PROCESS AND CLOSING

- (a) After the required procedures and final project processing is complete, project approval and the allocation of tax-exempt volume cap will be acted upon by the Authority's Board of Directors. A commitment letter will be issued within 14 days of Board approval.
- (b) Subsequent to Board approval, a mutually agreeable schedule for bond document preparation and bond issuance as well as a budget for bond issuance will be developed by the Authority.

- (c) Applicants will be required to execute a bond Loan and Trust Agreement, an Applicant's Tax Certificate, an Authority Bond Regulatory Agreement, a Land Use Restriction Agreement for Bonds, a Land Use Restriction Agreement for Low Income Housing Tax Credits, if applicable, and any other documents and certificates necessary for the Authority to issue bonds, such as a Continuing Disclosure Agreement and post bond issuance tax and securities laws compliance procedures.

HFA 116.11 ANTI-DISPLACEMENT AND RELOCATION POLICY

Involuntary permanent displacement of existing tenants is strongly discouraged. The Authority may reject an Application that fails to minimize permanent displacement of tenants. A formal relocation plan must be submitted with the Application if any temporary or permanent relocation is anticipated.

HFA 116 PART FOUR: UNDERWRITING STANDARDS

HFA 116.12 FINANCIAL UNDERWRITING

The Conduit Borrower is responsible for compliance with all aspects of project review and underwriting, notwithstanding the party doing the reviewing (for example, local officials, tax credit investor, tax credit counsel, bank purchaser and so on) including:

- (a) Underwriting for financial feasibility, including review of unit mix, projected rents, and trending and vacancy assumptions.
- (b) Reviewing project characteristics for consistency with municipal approvals and other Application materials.
- (c) Review of project costs and projected revenue, as well as verification of other development financing sources.

The Authority staff will review for completeness, reasonableness and consistency with project characteristics described in municipal approvals and other Application materials. The Authority reserves the right to reject any Application for overall or individual line-item costs that are unrealistically low or unreasonably high.

HFA 116.13 MARKET DEMAND

An independent, comprehensive, and professional market study (the "Market Study") will be required for all projects. The Market Study must be performed by one of the approved providers listed on the Authority website unless permission is granted in writing by the Authority's Managing Director of Management and Development to use another provider. The Market Study must meet the Authority's Market Study Requirements.

HFA 116.14 ENVIRONMENTAL COMPLIANCE

- (a) The project shall comply with all federal, state, and local environmental laws and the regulations and rules applicable thereunder. The Conduit Borrower shall be obligated to provide the Authority with evidence of such compliance upon request.

Environmental Reports. The Applicant shall provide satisfactory written reports from acceptable, qualified professionals indicating, on the basis of soils and ground water tests, if deemed necessary by its staff, and other tests and inspections, (a) that the property is in compliance with applicable federal and state environmental statutes and regulations relating to hazardous materials, including contaminated soils, asbestos, urea formaldehyde insulation, underground storage tanks, polychlorinated biphenyls (PCBs) or other environmental hazards; and (b) that the property has not been used as a dump site for oil, hazardous materials, hazardous wastes, asbestos, polychlorinated biphenyls or toxic substances or otherwise used in such a manner which would cause the likelihood of incurring any liability under federal or state legal requirements regarding oil, hazardous materials, hazardous wastes or other toxic substances. In the event said reports do not indicate that the property complies with (a) and (b) above, Conduit Borrower shall submit to the Authority for approval, prior to the closing, a remediation plan to be completed prior to the permanent loan closing or conversion to permanent financing. The Applicant shall also submit to the Authority evidence of environmental insurance, in form and substance acceptable to the Authority.

- (b) Lead and Asbestos. Buildings constructed prior to 1978 must be tested for lead-based paint hazards via a full lead inspection (including the identification of paint and bare soil hazards) by a NH licensed lead paint inspector/risk assessor, otherwise all paint films will be assumed to contain lead. All identified or assumed lead paint/hazards must be mitigated during construction. The level of mitigation required for a project is dependent on the type and amount of funding source used to finance the project. All mitigation work will be performed by a contractor with the appropriate level of certification or license that is required by the applicable regulation for the project.

Housing projects for the elderly, or a residential property designated exclusively for persons with disabilities are exempt from this requirement; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit.

Buildings constructed before 1978 must have an asbestos survey done by an independently licensed firm. All asbestos shall be abated in compliance with local, state, and federal guidelines. Waste manifests and clearance testing results shall be provided prior to completion of the project.

All projects must comply with the following including any updates in effect at the time that the work is being done:

- NH He-P 1600/RSA 130-A NH Lead Poisoning Prevention and Control Act
- U.S. Environmental Protection Agency Lead Regulations 40 CFR 745

Upon completion of construction, clearance testing for a Lead Safe Certificate, performed by a licensed risk assessor, must be conducted in conformance with NH He-P 1600/RSA 130-A NH Lead Poisoning Prevention and Control Act. However, projects deemed exempt under section HFA 116.14.d do not require clearance testing.

HFA 116.15 DEVELOPER FEE

A developer fee is not a guaranteed or automatic budgetary figure and must be approved by the Authority within the context of each project. The fee may not exceed 15% of the Total Development Cost of the project.

HFA 116.16 BONDING

On all construction loans for the construction or rehabilitation of 11 or more dwelling units, the Applicant shall provide 100% Payment and Performance bonds, an equivalent escrow or letter of credit arrangement supervised by the Authority, or a reasonably equivalent surety (the adequacy of which shall be determined by Authority staff in its sole discretion) to assure performance by the contractor to carry on such work, and to assure payment for all labor and materials for which claimants would be able to claim a mechanic's lien pursuant to RSA 447.

HFA 116 PART FIVE: DESIGN AND CONSTRUCTION POLICIES

HFA 116.17 DESIGN AND CONSTRUCTION STANDARDS

All projects must conform to applicable federal, state, and local codes and requirements. Units subject to rent and occupancy restrictions must be constructed in a substantially similar manner to those which are not subject to rent and occupancy restrictions. Income restricted units shall be distributed substantially equally among bedroom sizes and throughout the project for the life of the project, with such distribution to be at the satisfaction of the Authority.

The Architect and Civil Engineer of record are required to execute a design architect's or engineer's certification and an inspecting architect's or engineer's certification for the benefit of the Authority. Plans for all developments will require civil, structural, electrical, and mechanical drawings stamped by a licensed professional engineer registered with the State of New Hampshire. Architectural drawings will also be required and may be stamped by either a licensed architect or engineer registered with the State of New Hampshire.

HFA 116.18 CONTRACTS FOR CONSTRUCTION SERVICES

The Authority reserves the right to review and reject contracts for construction and related services. In total, a builder's overhead, profit, and general conditions may not exceed 14% of the hard construction cost excluding bonds and building permits. When an identity of interest exists between the builder and developer, the sum of the developer's fee plus the builder's overhead, profit, and general conditions may not exceed 18% of the Total Development Cost.

HFA 116.19 PLAN REVIEW

At least three weeks prior to the start of construction, the Applicant must submit complete plans and specifications electronically to the Authority for review. The Authority staff or their designee will review plans within two weeks of their receipt. The Authority reserves the right to require changes to plans that do not conform to industry standards of completeness and quality.

HFA 116.20 SITE VISITS

Authority staff and/or representatives of the Authority will visit the site prior to the start of construction, at least once during construction, and at or around substantial completion. The site visit during construction will be scheduled to generally occur after mechanical and electrical rough-in and prior to installation of drywall. The Authority (whether staff or designee), at its discretion and without obligation, reserves the right to conduct site visits, upon reasonable notice to the Conduit Borrower.

HFA 116 PART SIX: ASSET MANAGEMENT AND COMPLIANCE

HFA 116.21 PROPERTY MANAGEMENT POLICIES

The management agent must have demonstrated experience with the management of affordable housing and be acceptable to the Authority. The Authority must review the Management Agreement, Management Plan, Tenant Selection Plan, and Lease or Occupancy Agreement prior to closing.

The Management Agreement must include this provision:

“the management agreement is subject to termination by the Authority, upon thirty (30) days written notice if (1) the management agent fails to use its reasonable best efforts to rent the units according to the procedures set forth in the Tenant Selection Plan or (2) the project is not kept in decent, safe and sanitary condition.”

HFA 116.22 COMPLIANCE MONITORING REQUIREMENTS

(a) Project Financial Statements

The Authority, at its discretion and without obligation, reserves the right to require the submission of audited financial statements.

(b) Certificate of Completion

All Applicants must complete and submit a Certificate of Completion stating that the Development is completed and identifying any unspent bond proceeds. The Certificate of Completion should be delivered to the Authority within 30 days of completion.

(c) Site Visits

The Authority, at its discretion and without obligation, reserves the right to conduct site visits, upon reasonable notice to the Applicant. These site visits shall include, but not be limited to, physical inspections and tenant file inspection. The Authority may (but is not obligated to) carry out these site visits of the Project at its discretion and shall be permitted to enter the Project for such purpose.

(d) Reporting Requirements

At the closing, the Applicant must provide to the Trustee 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 of each year, the Applicant will provide (or cause to be provided) to the Authority a written certification as to the unpaid principal balances of the loan and the bonds as of the prior June 30.

(e) Tenant Income Certification

It is the policy of the Authority that housing financed by the issuance of Authority bonds or notes meet the income and occupancy requirements as set by the Internal Revenue Code and established by HUD. On forms approved by the Authority, 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.

HFA 116.23 COMPLIANCE MONITORING FOR LIHTC PROJECTS

Projects financed with LIHTCs will be subject to compliance monitoring requirements in accordance with the QAP. The Authority reserves the right to revise compliance monitoring policies and procedures as required by Section 42, including other guidance published by the IRS.

HFA 116.24 INCOME AND RENT REQUIREMENTS

All projects receiving financing must maintain income and rent targeting requirements as outlined in these rules. These restrictions will be enforced by an Authority Bond Regulatory Agreement, a Land Use Restriction Agreement for Bonds and, if LIHTCs are used, a Land Use Restriction Agreement for LIHTCs. These agreements may also contain other conditions that the Authority may impose.

HFA 116.25 POST BOND ISSUANCE TAX REQUIREMENTS

In addition to tax requirements under the LIHTC, the project will be subject to various post bond issuance tax requirements in addition to those described above, including without limitation timely bond proceeds expenditure and proceeding with due diligence to project completion requirements, and the filing of reports to the Internal Revenue Service. The Federal Tax Requirements will be embodied in some or all of the documents listed in HFA 116.10(c).