

# Montana Board of Housing Policy for Conduit Multifamily Housing Revenue Bonds

Adopted July 18, 2005

Amended October 15, 2007

Amended August 10, 2015

Adopted May 19, 2020

The following policy (“Policy”) shall apply to the issuance of bonds, notes, obligations or other evidence of indebtedness (each a “Conduit Bond”) of the Montana Board of Housing (“MBOH”) issued as limited revenue, non-recourse obligations of MBOH secured solely by the trust estate pledged to such Conduit Bonds under the trust indenture, resolution, loan agreement or similar document (each an “Indenture”) pursuant to which such Conduit Bonds are issued, for the purpose of financing a mortgage loan made to a sponsor (the “Borrower”) of a multifamily housing project located in the State of Montana (the “Project”) for the construction, acquisition or rehabilitation of a Project which incorporates the use of low income housing tax credits.

Sections C and D of this Policy apply only to privately placed Conduit Bonds that (i) are not rated Aa/AA (or equivalent) or better by a national rating agency or (ii) that are not insured, guaranteed or otherwise enhanced by an entity, the unsecured debt of which is rated Aa/AA (or equivalent) or better by a national rating agency. With the advice of counsel, MBOH staff may waive any particular requirement of this Policy if such waiver is consistent with the Montana Housing Act of 1975, as amended, and the purposes of this Policy.



**NOTWITHSTANDING A BORROWER'S COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS POLICY, MBOH RESERVES THE RIGHT TO REFUSE TO PARTICIPATE IN A CONDUIT FINANCING IF OTHER EXTENUATING CIRCUMSTANCES ARISE.**

**A. Terms of Conduit Bond Transactions**

1. Conduit Bonds must (a) be rated Aa/AA (or equivalent) or better by a national rating agency; (b) be enhanced by an entity, the unsecured debt of which is rated Aa/AA (or equivalent) or better by a national rating agency; or (c) privately placed with either (i) an "accredited investor" as defined in Section 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act") or (ii) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act (each an "Approved Buyer").

2. Unless otherwise approved by MBOH staff, there must be a trustee for the bondholders or a fiscal agent (the "Trustee"), identified by the Borrower and acceptable to MBOH, which must be the trust department of a federally regulated financial institution.

3. The initial purchaser of the Conduit Bonds (the "Purchaser") shall determine whether or not the Conduit Bonds or the underlying mortgage loan shall be credit enhanced by a third party.

4. In connection with the issuance of Conduit Bonds, the Borrower will execute a tax compliance certificate that describes the requirements and provisions of the Internal Revenue Code of 1986, as amended (the "Code") that must be followed in order to maintain the tax-exempt status of interest on such Conduit Bonds as well as the reasonable expectations of the Borrower at the time of issuance of the Conduit



Bonds with respect to the use of the proceeds of the Conduit Bonds and the Project. The Borrower must adopt policies and procedures, acceptable to MBOH, that ensure Borrower's compliance with the covenants and representations set forth in the tax compliance certificate.

5. The public sale of Conduit Bonds is subject to certain federal and state securities laws, including Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule") which requires the Borrower to enter into a written agreement (the "Undertaking") to provide certain financial information and operating data on an annual basis and notices of the occurrence of certain enumerated events with the Municipal Securities Rulemaking Board under its Electronic Municipal Market Access system. The Borrower must adopt policies and procedures, acceptable to MBOH, to ensure the Borrower's compliance with its Undertaking and the Rule.

## **B. Issuer Fee and Costs of Issuance**

1. With respect to the issuance of long-term Conduit Bonds, MBOH imposes an annual fee of 25 basis points for Conduit Bonds of less than \$10 million or 20 basis points for Conduit Bonds of \$10 million or more, or, in either case, such lesser amount as may be permitted by the Code. This fee is payable to MBOH on the date of issuance of the Conduit Bonds and August 1, annually, thereafter based upon the principal balance on each August 1. If any portion of such Conduit Bonds are prepaid prior to the tenth (10<sup>th</sup>) anniversary of the date of issuance of such Conduit Bonds, a pro rata portion of the unpaid fee shall be paid by the Borrower, at the time of such prepayment, as a lump sum amount equal to the present value (based on a discount rate equal to the then-current 10 year treasury rate) of the pro rata portion of the unpaid fee for the number of years remaining until the tenth (10<sup>th</sup>) anniversary of the date of issuance of such Conduit Bonds.



2. With respect to the issuance of short-term Conduit Bonds, MBOH imposes a one-time annualized fee of 150 basis points, or such lesser amount as may be permitted by the Code.

3. A portion of MBOH's fees are used to offset out-of-pocket expenses incurred by MBOH related to its administration and compliance monitoring obligations with respect to the Conduit Bonds; MBOH staff may waive any portion of its fee in excess of such amount if special circumstances warrant a reduced fee.

4. In addition to the foregoing fees, the Borrower shall also be responsible for the payment of MBOH's out of pocket expenses related to the Conduit Bonds including the fees of the Trustee, any MBOH municipal advisor and MBOH's general counsel and Bond Counsel.

### **C. Initial Private Placement of Conduit Bonds**

1. Each Purchaser of a privately placed Conduit Bond must execute an Investor Letter acceptable to MBOH and its counsel. The Investor Letter (a current form of which is available from MBOH or its Bond Counsel) will be addressed to the Trustee and MBOH and will contain certain representations and agreements from the Purchaser, including, but not limited to, representations and agreements to the effect that:

a. The Purchaser: (i) is an Approved Buyer, (ii) understands that the Conduit Bonds are not rated, and (iii) has determined to either (A) require, and has approved, credit enhancement for the Conduit Bonds or (B) waive any requirement that credit enhancement be provided.

b. The Purchaser represents that it has undertaken its own



diligence with respect to the Conduit Bonds, the security for the Conduit Bonds, the terms of the Conduit Bonds, the Project, the developer, whether or not to require credit enhancement and any and all other factors relevant to its decision to invest in the Conduit Bonds.

**c.** The Purchaser acknowledges that MBOH has not undertaken any credit underwriting of, and is not responsible for any disclosure concerning, the Conduit Bonds or the security or source of payment for the Conduit Bonds.

**d.** The Purchaser will not undertake any sale, pledge or other transfer of all or a portion of its ownership interest in the Conduit Bonds (each a “Transfer of Conduit Bond Interest”) to a Transferee other than an Approved Buyer, without having such Transferee sign or acknowledge a similar Investor Letter (see Section D below).

**e.** The Purchaser has requested, received and reviewed pro forma financials concerning the project and projections of cash-flows for the term of the Conduit Bonds, reflecting costs, revenues and reasonable inflation factors, all of which have been certified by the party preparing them and has determined the same to be an adequate basis for investing in the Conduit Bonds.

**f.** The Purchaser will indemnify or otherwise hold harmless MBOH and its related parties from all damages, losses or claims, including but not limited to, Purchaser’s misrepresentations or failure to comply with the terms of the Investor Letter and any and all damages, losses or claims by any subsequent owner of the Conduit Bonds. Such indemnification shall survive payment of the Conduit Bonds.



**D. Transfers of Privately Placed Conduit Bond Interests**

Any Transfer of Conduit Bond Interest within 90 days of the date of issuance of the Conduit Bonds must comply with federal and state securities and banking laws and federal tax laws applicable to transfers occurring during such 90 day period.

In connection with any proposed Transfer of Bond Interest, other than a transfer to (a) an Approved Buyer or (b) a trust or custodial arrangement meeting, the above described bond rating each of the beneficial owners of which are required to be Approved Buyers, each Transferee must execute or acknowledge an Investor Letter substantially similar to the one executed by the original Purchaser.

