

**Montana Board of Housing
Private Placement Policy for
Unrated/Unenhanced Multifamily Housing Revenue Bonds**

The following policy (“Policy”) shall apply to the issuance of unrated or unenhanced revenue bonds of the Montana Board of Housing (“MBOH”) to be sold to individuals or multiple institutions for the financing of multifamily rental housing projects in certain areas of the State. For purposes of this Policy, “unrated or unenhanced bonds” shall mean (i) those bonds that are not rated Aa/AA (or equivalent) or better by a national rating agency or (ii) those bonds 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.

A. Terms of the Transaction.

1. Bond issues must be (a) 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 sophisticated investors or to an Institutional Purchaser.)

2. Bonds must be in denominations of at least \$100,000 (or the entire principal amount of the bond issue in the event it is less than \$100,000).

3. There must be a trustee for the bondholders, identified by the borrower, which must be the trust department of a federally regulated financial institution.

4. Only Bonds issued for multifamily housing projects which incorporate the use of low income housing tax credits shall be considered under this Policy.

5. The Purchaser of the Bonds shall determine whether or not the Bonds or the underlying loan shall be credit enhanced by a third party .

6. The Purchaser of the bonds shall be represented by nationally recognized securities law counsel and such counsel shall deliver written assurances with respect to review by the Purchaser of the terms of the transaction

B. Cost of Issuance.

"The MBOH imposes a fee for the issuance of loans made with tax exempt private placement bonds of 25 basis points. This spread is used to enhance costs related to the issue, administration, and compliance, in part, for the multifamily portfolio. This fee may be negotiated lower with staff if special circumstances warrant a reduced fee. This fee is payable to the MBOH at origination and August 1, annually, thereafter based upon the principle balance on August 1."

C. Initial Private Placement.

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

a. Certain boldface representations to the effect that (i) the Purchaser is an “accredited investor” under the federal securities laws and, if an individual, an “individual accredited investor” under the Montana Securities Act, (ii) the Purchaser understands that the Bond is not rated and should be considered a speculative investment and (iii) the Purchaser has determined to either (A) require, and has approved, credit enhancement for the 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 Bonds, the security for the Bonds, the terms of the 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 Bonds.

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

d. The Purchaser will not undertake any “Transfer of Bond Interest” without having the Transferee sign a similar Investor Letter (see further Policy points below). (The term “Transfer of Bond Interest” is defined in the “Securities Laws Matters” portion of the Investor Letter to include any sale, pledge or other transfer of all or a portion of an ownership or security interest in the Bonds.)

e. The Purchaser represents it has requested, received and reviewed pro forma financials concerning the project and projections of cashflows for the term of the 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 Bonds.

f. The Purchaser will indemnify and 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 Bonds. Such indemnification shall survive payment of the Bonds.

2. In connection with purchasing the Bonds, counsel to the Purchaser (which must be nationally recognized securities law counsel) will be required to deliver to MBOH and the Trustee (i) written assurance that the Purchaser has reviewed the terms of the transaction under the supervision of that counsel and to the best of that counsel’s knowledge after due

inquiry, the representations of the Purchaser stated in the Investor Letter are accurate and (ii) an opinion to the effect that the Purchaser has the authority to invest in the Bonds for its own account and that the provisions of the Investor Letter, including the indemnification provisions, are legal, valid and binding and enforceable against the Purchaser. Counsel to the purchaser shall also deliver an opinion that the Purchaser of the Bonds is not acting as an “underwriter” of the Bonds for federal or Montana state securities laws purposes.

D. Transfers of Bond Interests.

1. No Transfer of Bond Interest will be permitted within 90 days of the issuance date without an opinion of nationally recognized securities law counsel to the effect that such Transfer of Bond Interest does not constitute an underwriting or securities transaction requiring registration or disclosure under, and is in compliance with, the federal or state securities and banking laws.

2. Each Transferee must execute an Investor Letter substantially similar to the one executed by the original Purchaser.

3. Each Transferee must deliver a written assurance and opinion of counsel (see paragraph B-2 above).

4. Each owner of a Bond making a Transfer of Bond Interest must execute a certificate satisfactory to MBOH to the effect that, after due inquiry, such transferor/owner has reason to believe that the representations of the Transferee set forth in its Investor Letter are accurate and that such transferor/owner has disclosed to the Transferee such information and risks concerning the Bonds and related security as a reasonable investor would consider to be material.

E. Final Board Approval

1. The Board reserves the right to refuse to participate in a conduit deal if other extenuating circumstances arise.