

**Schedule D2- DRAFT****501(c)(3) Tax-Exempt Bond Financing (“Bonds”)**

Qualified 501(c)(3) organizations may use 501(c)(3) tax-exempt bonds as a means of financing the acquisition, rehabilitation, and/or new construction of multifamily housing. Developers may apply to IHCD to serve as a conduit issuer of the bonds. Note: 501(c)(3) bonds do not come with Low Income Housing Tax Credits.

**Applicants must meet all requirements of this Schedule to be considered for an issuance of bonds. IHCD reserves the right to not award bonds to a proposed development for any reason.**

**A. Application Process**

1. Applications are accepted and reviewed on an ongoing basis and may be submitted at any time.
2. Preliminary Conference – Applicants are encouraged to meet with IHCD staff prior to application submission to discuss the Development proposal, objectives, and Development Team and to review IHCD’s 501(c)(3) bond financing policies and requirements.
3. Applicants must follow the application instructions of the Qualified Allocation Plan (“QAP”), including the instructions in Schedule G “Application Package Submission Guidelines.” IHCD will issue an application form specific to 501(c)(3) bond applications.
4. Applicants must submit Form J along with the application.
5. Applicants may request additional IHCD gap sources in the form of a Development Fund loan per Schedule J of the 2023-2024 QAP.
6. Applicant must submit a determination letter from the IRS stating it is an exempt organization described in IRC Section 501(c)(3).

**B. Applicant/Owner Requirements**

The Applicant and Owner must be a qualified 501(c)(3) organization (or, with respect to the Owner, a disregarded entity of its parent 501(c)(3) organization for federal tax purposes) that meets all requirements of the Nonprofit set-aside of Part 4.1 of the QAP. At time of closing, the 501(c)(3) organization will be required to provide opinion of outside counsel acceptable to IHCD regarding the organization’s 501(c)(3) status and the impact of the bond financing thereon.

Ownership Test: All properties to be financed must be 100% owned by a 501(c)(3) organization (or a disregarded entity thereof) or governmental unit. To qualify as a 501(c)(3) organization, the organization must have received a determination letter from the IRS stating that it is an exempt



organization described in IRC Section 501(c)(3). The organization must maintain its 501(c)(3) status throughout the entire term that the bonds are outstanding

### **C. Threshold Requirements**

Applicants are required to meet all existing threshold requirements of the QAP, with the addition of the following requirements:

1. Applications will not be scored. Minimum score requirements do not apply.
2. Bond counsel on the transaction must be an Indiana firm.
3. All bond-financed Developments must comply with the applicable provisions of the Internal Revenue Code, regulations, Revenue Procedures, and other Internal Revenue Service guidance.
4. The weighted average maturity of the bonds may not exceed 120% of the weighted average life of the capital assets being financed, excluding land;
5. No more than 2% of the bond proceeds may be used to pay costs of issuance;
6. Except with IHEDA approval, 95% or more of the net proceeds must be used to finance capital expenditures
7. Bonds are subject to general arbitrage investment and rebate rules.
8. Private Use Test: Any management or service contracts must meet the safe harbor requirements of Revenue Procedure 2017-13 in order to avoid causing the use of the tax-exempt bond financed project to be considered Private Use. This includes the following:
  - i. Compensation may not be based, in whole or in part, on a share of net profits from operation of the project. See Rev. Proc. 2017-13.
  - ii. The qualified user (i.e., the 501(c)(3) owner or its wholly owned subsidiary) must exercise a significant degree of control over the property. The control requirement is met if the contract requires the qualified user to approve the annual budget of the property, capital expenditures, disposition, rents charged, and the general nature and use of the property.
  - iii. The manager or service provider must not have a relationship with the qualified user that would, in effect, substantially limit the ability of the qualified user to exercise its rights under the management or service contract.
  - iv. The term of the contract, including all renewal options, must be no greater than the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the property.



## **D. Eligible Uses and Affordability Requirements**

1. For a bond financed Development providing residential rental property, the Development must provide one of the following:
  - i. Residential rental property for family housing where the first use of the property is pursuant to the bond issue. Assisted living does not qualify.
  - ii. “Qualified residential rental projects” (as defined in IRS Code Section 142d)
  - iii. Property that is to be substantially rehabilitated (rehabilitation expenditures must equal at least the adjusted basis of the property acquired and be made within the two-year period ending one year after the date of acquisition of such property)
2. A Development must set-aside at least 75% of its total residential units for low-income households with gross annual household incomes at or below 80% of area median income (adjusted for family size). At least 20% of the total residential units must be made available to households with annual incomes below 50% of the area median income, or at least 40% of the total residential units must be made available to households with annual incomes below 60% of the area median income.
3. The rent limit applicable to a given unit must match the income limit designated for that unit. For example, a unit restricted for occupancy by households with gross household incomes at or below 50% AMI must have a gross rent that does not exceed the 50% rent limit. IHCD will apply the Multifamily Tax Subsidy Program income and rent limits as released by United States Department of Housing and Urban Development.
4. If a project to be rehabilitated is subject to an existing Low Income Housing Tax Credit extended use agreement, the existing income and rent restrictions will remain in effect.
5. The borrower is required to enter into a regulatory agreement with IHCD at the time of loan closing. This is a recorded document. The regulatory agreement will set forth the sponsor’s responsibilities and obligations relating to such issues as affordability requirements and use restrictions, management of Development reserves, and financial reporting.
6. The project will be subject to a fifteen-year affordability period, enforceable through a recorded regulatory agreement. Exception: If a project is eligible for bonds because it is a qualified residential rental project as defined in Section 142d, then the length of the affordability period is the “qualifying project period” defined in Section 142d(2)(A).

## **E. Closing Requirements, Deadlines, and Fees**

1. Escrow closings will not be permitted under any circumstance.



2. Applicants must close on bonds within six months of the date of IHCD A approval of an award of bonds. Applicants who fail to meet this closing deadline may request a three-month extension. IHCD A will allow no more than two extensions, for a maximum extension of six months beyond the original deadline. Each extension request is subject to a \$1000 extension fee as outlined in Section 7.2(C) of the QAP. If the Applicant has not closed by the end of the second extension deadline, they must reapply.
3. At time of closing, the 501(c)(3) organization will be required to provide opinion of outside counsel acceptable to IHCD A regarding the organization’s 501(c)(3) status and the impact of the bond financing thereon.
4. An issuance fee equal to 0.5% of the total bond issuance, but not to exceed \$40,000, will be charged to cover IHCD A costs. Such fee is payable at the closing of the bonds. The Applicant is also responsible for paying for issuer’s counsel. IHCD A reserves the right to charge a lower fee depending on the structure of the bonds.
5. IHCD A will not pay upfront or ongoing fees.

