

**AN EMERGING NEW SOURCE OF
TAX-EXEMPT WORKFORCE HOUSING BOND FINANCING –
SECTION 501(c)(3) BORROWERS WORKING WITH LOCAL COUNTIES, CITIES
AND TOWNS TO “LESSEN THE BURDENS OF GOVERNMENT”***

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* Copyright © November 17, 2025 by R. Wade Norris, Esq. All rights reserved. This document may not be reproduced without the prior written permission of the author. **This is a very general “high point” summary of these financings under Section 145 of the Code, which are subject to substantial rules and regulations. Also see the author’s presentation entitled “Federal Tax Law Requirements Applicable to Tax-Exempt Bond Financings for Section 501(c)(3) Borrowers in Low and Middle Income Housing Bond Financings – General Summary,” dated September 30, 2025 and available on request at the email above, for a more detailed general description of tax-exempt Section 501(c)(3) financings.**

A QUICK OVERVIEW: THERE ARE THREE TYPES OF TAX-EXEMPT MULTIFAMILY RENTAL HOUSING BONDS

Each has its own set of rules **depending on** the nature of **the owner** of the residential rental housing property.

1. **Tax-Exempt Volume Limited Private Activity Bonds under Section 142(d)** of the Code for profit motivated owners, the vast majority of which are paired with 4% LIHTC (most complex rules, by far the biggest category).
2. **Tax-Exempt “Section 501(c)(3)” Private Activity Bonds under Section 145** of the Code for certain nonprofit owners. No private activity bond volume required but cannot be paired with 4% LIHTC (somewhat less complex but substantial body of rules).
3. **Essential Function Bonds under Section 103 of the Code** for facilities owned by a state or political subdivision – *e.g.*, a city, county, housing authority or housing forward corporation or a controlled affiliate (simplest rules).

This PowerPoint focuses on a new, emerging subset of Category 2: How Section 501(c)(3) Bonds under Section 145 of the Code can now be used to provide affordable workforce or middle-income housing.

BACKGROUND: THE UNMET NEED FOR AFFORDABLE WORKFORCE HOUSING

- **One-third of our country's population rents** their homes.
- It has become widely accepted that each year an **increasing percentage of our low- and moderate-income families are severely rent burdened**, spending more than 50% of their income for shelter.
- **This is true for middle-income or "workforce" families (e.g., 60% to 120% or 140% of AMI)** as well as lower income families (below 60% of AMI).
- **Current laws and regulations provide almost no support for middle-income or "workforce" families.**
- This is true even though **last year**, an estimated 75,000 or **15% of the roughly 500,000 multifamily rental units** produced in the United States involved 9% LIHTCC or (Category 1 above) tax-exempt bonds under Section 142(d) and 4% LIHTC supporting rentals for families averaging **60% of AMI or lower.**

- **Recent expansion of “Essential Function Bonds” (Category 3) for workforce housing:**
 - **In 2019 to early 2022**, record high demand for tax-exempt multifamily housing bonds and once-in-a-lifetime low rates allowed governmental entities to issue over \$9-10 billion of unrated **“essential function bonds” (or Category 3) to provide well over 15,000 affordable workforce housing units.**
 - **Unfortunately**, with the increase in interest rates from early 2022 through today, **those financings have fallen dramatically.**
 - In addition, over the **last two years**, an increasing number of investment grade rated housing authorities have put their credit behind rated, publicly offered essential function bonds to provide affordable workforce housing.
 - **But this growing trend still leaves a huge, unfilled gap** in the need for affordable workforce housing.
- Now, a **new category** of affordable workforce housing bonds is just beginning to emerge:

Tax-exempt bonds under Section 145 of the Code (Category 2 above) for Section 501(c)(3) sponsor/borrowers working with local counties, cities and towns to “lessen the burdens” of governments trying to meet unmet needs for affordable workforce housing in their communities.

MOST CHARITABLE MISSIONS FOR RENTAL HOUSING UNDER SECTION 501(C)(3) DO NOT WORK FOR AFFORDABLE WORKFORCE HOUSING

- Most participants in tax-exempt multifamily housing bond financings for Section 501(c)(3) borrowers are accustomed to dealing with borrowers whose charitable mission is **“relief of the poor and distressed.”** Rev. Proc. 96-32 provides **very clear guidelines** for these financings and a **safe harbor** for bond counsel opinions.
- **Requires either 20% of the units be targeted at 50% of AMI or 40% of the units be targeted at 60% of AMI, and that at least 75% of the total units be held for tenants at 80% of AMI or below. Of the total units, 25% can be market rate.**
- **This charitable mission and other Section 501(c)(3) missions such as housing for seniors does not work for affordable workforce housing.***

* Donnelly Amendment – Potentially Applicable to Any Multifamily Rental Housing Financing Under Section 145. **Under Section 145(d) of the Code** (the so-called “Donnelly Amendment”), **unless the financing involves new construction or acquisition/substantial rehab financing** where the cost of the rehab exceeds the adjusted basis of the building being acquired (**very substantial rehab** indeed), **the project must elect either 20 at 50 (at least 20% of units reserved for tenants < 50% of AMI) or 40 at 60 (at least 40% of the units for tenants at 60% < AMI)**, as would apply to a private activity multifamily housing project under Section 142(d). The rentals on the 20 at 50 or 40 at 60 units are likely to be much lower than what can be charged to tenants above 60% of AMI, but ***under a 20 at 50 set-aside the remaining 50% of the units can be targeted to middle-income tenants.***

LESSENING THE BURDENS OF GOVERNMENT

- **Establishing** that a financing falls within the Section 501(c)(3) borrower’s “**lessening the burdens of government**” **charitable purpose** is a more complex undertaking, based in large part on facts and circumstances (as discussed below), and does not benefit from safe harbor guidelines.
- **Careful coordination** is required in advance with bond counsel and Section 501(c)(3) borrower’s counsel **on the front end of any proposed financing** to assure that the unqualified opinions these firms are required to deliver for closing of this type of tax-exempt bond financing can be obtained.

TWO MAIN REQUIREMENTS FOR “LESSENING THE BURDENS” – 501(c)(3) FINANCINGS*

1. The governmental unit must clearly establish that additional affordable middle-income or “workforce” housing is an important governmental burden which is not being met.
 - Rev. Ruling 85-1 states:

“An activity is a burden of the government if there is an **objective manifestation by the governmental unit** that it considers the activities of the organization to be its burden.”
 - A **formal resolution** passed by a governmental body **can be an important element** in satisfying this criterion. A mere statement by the mayor that “we really need more workforce housing” won’t be enough.
 - The existence of a program or programs under which that **governmental unit provides subordinate loan financing or other financial support for such housing is highly helpful**, as might be the **leasing of city or county owned land for the project for a low or nominal sum** and similar types of support.

* Set forth in IRS Revenue Rulings 85-1 and 85-2.

2. The **second requirement** is:

“Whether the Section 501(c)(3) organization’s role will actually lessen the burdens of government considering all of the relevant facts and circumstances.”

- This will generally consist of the **Section 501(c)(3) organization** (or a controlled affiliate) **serving as the borrower/owner** of the Project.
- In addition, it **may also serve as sponsor, developer or guarantor and otherwise provide financial and/or other support.**
- A **history of long and frequent discussions** between the Section 501(c)(3) borrower and the governmental unit to meet the need can be quite helpful.
- In short, the Section 501(c)(3) organization’s role **should demonstrate that it will materially assist the governmental unit** in achieving its clearly established unmet goals for more affordable workforce housing.

A LANDMARK TAX-EXEMPT BOND FINANCED AFFORDABLE WORKFORCE HOUSING PROJECT

MIDDLE-INCOME HOUSING AUTHORITY NHP FOUNDATION SECURED BONDS (602 GALENA STREET – FRISCO, CO) SERIES 2025A

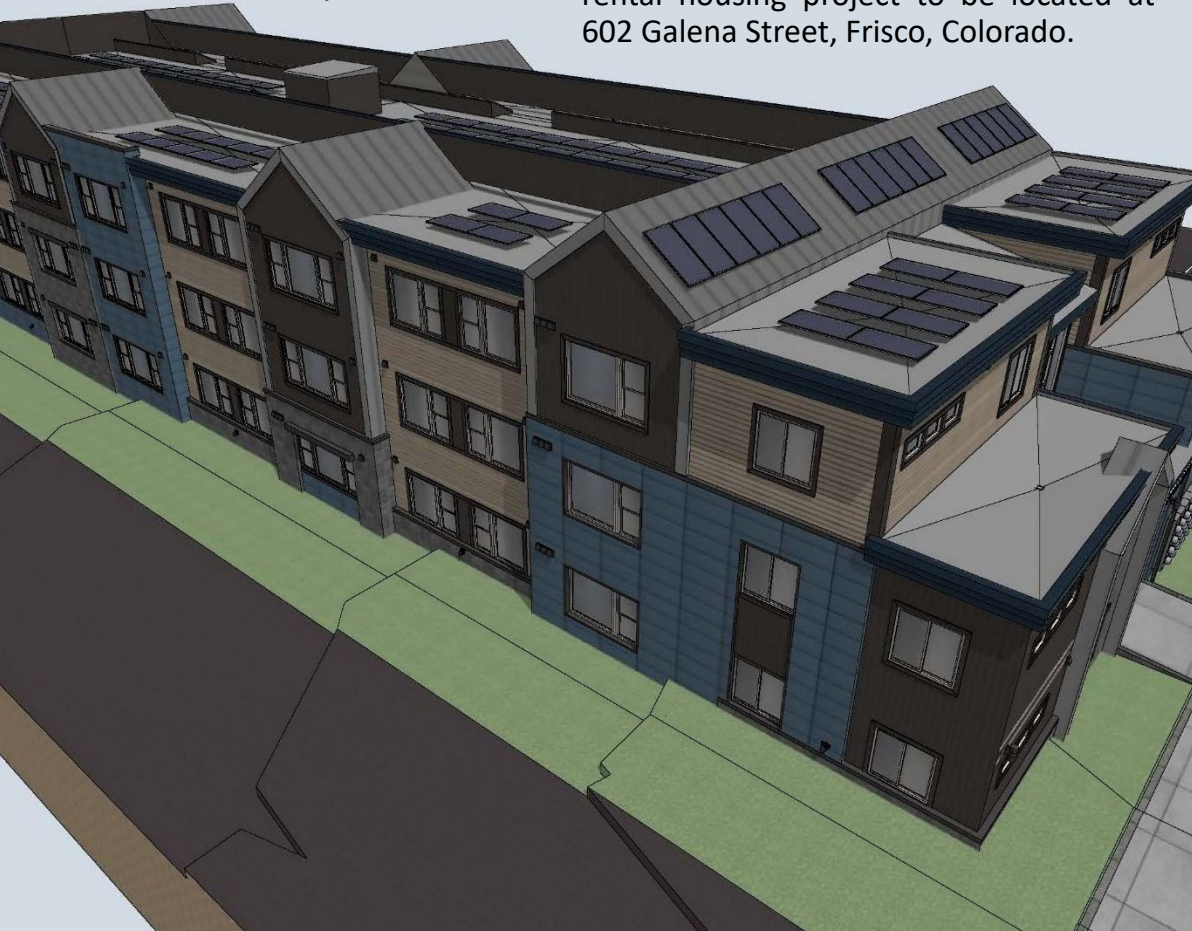
- **One of the nation’s first Section 501(c)(3) financings using a nonprofit entity’s “lessening the burdens of government” charitable mission** to enable a tax-exempt workforce housing bond financing under Section 145. **A textbook case.**

Why a Landmark Financing?

- **Major national 501(c)(3) organization – The NHP Foundation – served as developer, and** through a special purpose section 501c3 subsidiary, served as **the borrower** and owner of the Project. Provided major financing support by **putting its AA- investment grade credit rating behind the Bonds – a game changer!**
- **First issue closed by the Middle-Income Housing Authority.** Established the ability of MIHA to serve as a conduit issuer for workforce housing projects. Also served as special limited partner of the Borrower, creating a valuable real estate tax exemption and certain sales tax relief.
- Took advantage of a **major new financing structure pioneered by KeyBanc Capital Markets** where A-rated housing authorities and now a major investment grade rated Section 501(c)(3) organization have **tapped into the resurging publicly offered tax-exempt bond markets** to achieve lowest financing costs and maximum loan proceeds.

602 Galena Apartments

602 Galena Apartments is a 54-unit middle-income multifamily affordable rental housing project to be located at 602 Galena Street, Frisco, Colorado.



Parties

The NHP Foundation – Sponsor, Developer, Borrower Parent and Guarantor

Town of Frisco, Colorado – Major Subordinate Lender and Ground Lessor

Middle-Income Housing Authority –
Issuer and Special Limited Partner of Borrower

Sierra Management Group, LLC – Issuer’s Financial Advisor

Taft Stettinius & Hollister LLP – Issuer’s Counsel

Orrick, Herrington & Sutcliffe LLP – Bond Counsel

KeyBanc Capital Markets, Inc. – Underwriter

Norris George & Ostrow PLLC – Underwriter’s Counsel*

* Wade Norris and Reggie Norris, who represented Norris George & Ostrow in the financing, are now with the firm **Dinsmore & Shohl LLP**.

Sources and Uses of Funds

Sources of Funds

501c3 Bonds	\$18,305,748
Reinvestment Income†	380,434
Town of Frisco Gap Loan	<u>8,100,000</u>

Total Sources of Funds **\$26,786,182**

Uses of Funds

Acquisition (Town Provided Free Land!)	\$75
Construction	17,227,799
Soft Costs	2,073,200
Total Financing Costs	2,929,413
Total Reserves	1,740,755
Developer Fee	<u>2,814,940</u>

Total Uses of Funds **\$26,786,182**

Role of Summit County and Town of Frisco

- Provided a **firm demonstration by the local government** of a **major governmental need** for more affordable workforce rental housing which was **not being met** and a **solicitation of the public's assistance** in meeting that burden. Satisfied the first of two major requirements under Section 145 of the Code using the “lessening the burdens of government” charitable mission of a Section 501(c)(3) corporation.
- Summit County and the Town of Frisco provided **one of the most compelling cases that we have seen** nationally for satisfying this requirement.
- In May of 2020, **Summit County commissioned a study that indicated a need of at least 80-100 affordable workforce rental units**, very few of which had been supplied since that date. The **Town of Frisco undertook a similar study**, which indicated that of 3,600 housing units, only 153 were targeted to tenants at 100% of AMI or below.
- Ultimately, the **Town provided the site** on which the Project will be built under a 75-year ground lease for \$1.00 per year – *i.e.*, **free land** – **AND** made a **\$8.1 million subordinated loan** to the Borrower which **funded 30% of total development cost**.

Role of The NHP Foundation

- Served as **sponsor, developer and borrower** of the Project and **entered into a funding agreement** enabling the tax-exempt bond financing to achieve its **AA- credit rating**.
- **This pledge of a major investment grade credit increased the proceeds** from the bond financing by **roughly 50%** over the proceeds which would have been available under an unrated public offering!!!
- **This satisfied the other major “lessening the burdens” requirement** under Section 145 of the Code – **material assistance by the Section 501(c)(3) corporation** in meeting the unmet governmental need.
- Over a four-year period, used its **decades of nationwide experience in the development, construction, operation** and all other aspects of **affordable multifamily rental housing** across the United States to **guide the development of the Project** and its financing plan and bring the various participants together to enable the Project to move forward.

- **Main Drivers of a Textbook Section 501(c)(3) Lessening the Burdens Financing with no tax credits:**
 - NHP Foundation pledge of AA- rating – over 50% increase in proceeds – roughly \$6,000,000 over an unrated private placement.
 - Town of Frisco Subordinate Loan – \$8,000,000 or 30% of capital stack.
 - Town of Frisco Free Land – Value = roughly \$3,500,000 or 13% of capital stack.
 - Real and sales tax relief – Value = roughly \$1,500,000 or 6% of capital stack.
- **The MIHA-602 Galena Street financing represents a new creative national standard of how Section 501(c)(3) corporations whose mission includes lessening the burdens of government can work with local governments to finally provide a substantial source of financing to meet this largely unmet growing affordable workforce housing need.**

* It should be noted that a profit-motivated developer may perform many of the functions performed by the NHP Foundation in the MIHA-602 Galena Street financing for both lower income and workforce Section 501(c)(3) as well as essential purpose financings where the nonprofit Section 501(c)(3) corporation or governmental borrower lacks the experience and resources of the NHP Foundation. Such private participants can have no ownership interest but can be paid competitive levels of compensation for services rendered and risks assumed. This payment may be provided in part by delivery to each participant of one or more series of subordinate tax-exempt debt. **These issues are explored in much greater detail in our more general presentation on Section 501(c)(3) financings described in the footnote on the cover page of this presentation.**

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