Multi-Family Policy &Implementation

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Bryant
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OUR NAME IS EASY TO REMEMBER OUR WORK IS HARD TO FORGET.

Tallahassee Orlando Miami Jacksonville Tampa Atlanta Washington D.C.

Legal Authority of the Issuer

- Chapter 159
- Resolutions/Ordinances
- Policies and Procedures of HFA

Acronyms

AMI	Area Median Income
BPA	Bond Purchase Agreement
CDBG	Community Development Block Grants
CUR	Credit Underwriting Report
DBF	Division of Bond Finance
ELI	Extremely Low Income
LURA	Land Use Restriction Agreement
PAB	Private Activity Bond
POS	Preliminary Official Statement
OS	Official Statement
SAIL	State Apartment Incentive Program
SHIP	State Housing Initiatives Partnership Program
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982

Role of the HFA Board Member

- What does an HFA Board Member need to know?
  - What is the project?
  - What is the security for the project?
  - What is the cost to the Issuer?
  - What if any, are the risks to the Issuer?
  - What is the public benefit?
  - Issuer Fees (Are there any Related Party Issues?)

Critical tool is the Credit Underwriting Report.

Financing Team (Multifamily Transactions)

- Bond Counsel
- Issuer's Counsel
- Borrower
- Borrower's Counsel
- Tax Credit Investor
- Disclosure Counsel (when there is an offering document)
- Underwriter
- Lender/Purchaser
- Credit Underwriter
- Issuer/Servicer
- Trustee/Fiscal Agent

Process

- Application from the Borrower to the HFA
- Review of Application by Financial Advisors
- Inducement Resolution adopted by the Issuer
  - "official intent" for purposes of tax code (reimbursement period starts)
- Credit Underwriting
- Publish TEFRA Notice (7 days prior to the hearing)
- Hold TEFRA Hearing (Telephonic; Who is the hearing officer?)
- TEFRA approved by highest elected official

- When does a TEFRA expire?

  (a) one year;

  (b) three years; or

  (c) never expires.

<u>Answer</u>:

One (1) year if no bonds issued.

Three (3) years if bonds issued within the first year and "plan of finance" language included in the TEFRA Notice.

- Private Activity Bond Allocation Needed to Issue Bonds
- Request Private Activity Bond Allocation from the Division of Bond Finance after approval of issuance of Bonds by the highest elected official
- New legislation governing Private Activity Bond Allocation effective January 1, 2025

Servicing

- Negotiate Documents: Trust Indenture/Funding Loan Agreement; Loan Agreement/Financing Agreement; Mortgage; LURA; Guaranties; Servicing Agreements
  - Security
    - Mortgage
    - HUD
    - Cash Collateral
    - Freddie Mac
    - Fannie Mae
    - Other Lending Programs

- Construction Loan and Mortgage Servicing
- Compliance Monitoring
- Financial Monitoring

- Examples of Subordinate Financing Sources:
    - HOME
    - ELI
    - SAIL
    - CDBG
    - SELLER NOTES
- Final Bond Resolution by Issuer approving substantially final documents
- Post POS (assumes public offering)
- Sell Bonds/sign BPA

- Post OS
- Distribute Closing Documents and Opinions
- Obtain Ratings (public offerings)
- Closing

Closing Time Frame

- What is the average amount of time to close a multifamily bond issue from inducement by the Issuer to closing?
  - (a) 60 days;
  - (b) 90 days;
  - (c) 120 days;
  - (d) 1 year; or
  - (e) Longer than 1 year.

Delays

- Examples of Causes for Delays?
  - Due diligence items
  - Third party reports/consents

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Florida Housing Finance Corporation

FHFC Multifamily Mortgage Revenue Bond (MMRB) Program

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Multifamily Mortgage Revenue Bond Program (MMRB)

MMRB can use both taxable and tax-exempt bonds to provide below market rate construction and permanent loans to non-profit and for-profit developers of affordable multifamily housing.

Bonds are commonly sold through either a negotiated public offering or a private placement.

MMRB can be used in conjunction with other Florida Housing programs, such as the State Apartment Incentive Loan Program (SAIL) and the HOME Investment Partnerships Program (HOME).

MMRB Program

The non-competitive application process is generally open year-around. Though, with the shortage of available MMRB allocation, it is currently closed for Corporation-Issued MMRB. However, Developers can utilize a Request for Applications (RFA) for competitive funding that is in conjunction with MMRB.

Developments that fund at least 50% of aggregate basis and land with MMRBs will qualify to receive an allocation of non-competitive (4%) housing credits.

Minimum Set-Aside and Affordability Requirements

- **Set-Aside:** 20% of units at 50% AMI or less
  OR
  40% of units at 60% AMI or less

- **Affordability Period:** Minimum is 30 years. If used in conjunction with competitive funding, the minimum is 50 years.

FHFC is a Conduit Issuer

- The Bonds are not an obligation of FHFC or the State of Florida and neither are liable.

- The Bonds are payable, as to principal, premium (if any), and interest, solely out of the trust estate created under the bond documents.

Private Activity Bond (PAB) Allocation

- Private Activity Bond Allocation is administered by the Division of Bond Finance of the State Board of Administration (SBA).
- On January 1 of each year, SBA disperse Florida's PAB Allocation through multiple pools throughout the State of Florida, one being the Florida Housing Finance Corporation pool.
- At the end of each year, any remaining unused PAB Allocation throughout the State is allocated to FHFC as Carryforward Allocation, which must be used within three years.

FHFC Multifamily Allocation

2024 PAB Allocation for both Multifamily and Single Family use as of Jan 1, 2024: $682,210,187.50

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	Allocation Received	Allocation Used in 3 year period	Allocation Remaining
2021 Carryforward Allocation	$373,291,080	$223,422,061	$149,869,019*
2022 Carryforward Allocation	$324,500,000	$0	$324,500,000
2023 Carryforward Allocation	$417,969,690	$0	$417,969,690

* Remaining allocation to be used in 2024

Multifamily Developments that are currently in the pipeline for closing total $1,084,500,000 in MMRB allocation.

MMRB and Fiscal Determination

- FHFC must acquire Fiscal Determination Approval for each Bond Issue per Florida Statutes.
- A Fiscal Determination Report (Report), prepared by an Investment Banker, is provided to the FHFC Fiscal Determination Committee (Committee), which consists of staff members outside of the Multifamily Bond Program. This Report gives each Committee member the opportunity to review the economic viability of the development.
- The Committee members vote on a recommendation that is subsequently provided to the FHFC Executive Director (ED) for approval.
- Following the ED's approval of the Report, FHFC issues an approval letter for the Bond Issue.

MMRB and The Tax Equity and Fiscal Responsibility Act

- **In connection with each issuance of federally tax-exempt bonds, FHFC must comply with requirements of Section 147(f) of the Internal Revenue Code and The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, which requires public approval for all tax-exempt bond issues.**
- **A TEFRA hearing is mandated by the IRS to allow opportunity for individuals to express their views on the issuance of bonds and the nature of the developments for which bond funds will be allocated.**
- **Regulations require that FHFC must receive TEFRA approval from the Governor following a public hearing for which appropriate public notice was given.**

MMRB and TEFRA Process

- **To begin the TEFRA process, FHFC must publish a TEFRA hearing notice. The notice is published on FHFC's website and the Florida Administrative Register (FAR). This notice states the date, time, and location the hearing will be held, along with an overview of the proposed development.**
- **After the hearing is held, a TEFRA hearing report (TEFRA Report) is generated, which consist of a transcript of the hearing, a notarized affidavit of website publication, and a copy of the FAR publication.**
- **The TEFRA Report is then sent to the Governor for approval and signature.**
- **Once the Fiscal Determination Report and TEFRA Report have been approved, FHFC can proceed with closing.**

Waiver Requests/Issues

- Personal Guarantees
- Interest Only Payments – Post Conversion
- New Bond Structures
- Applicant/Developer Changes

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Broward County HFA

1. Broward Context

2. HFA/Division Organization

3. Programs
    a) Bonds
    b) MCC
    c) Special Projects
    d) Revolving Loan Fund
    e) Investment Portfolio

4. Gap Financing
    a) Amounts
    b) Terms
    c) Link to HFA Bonds
    d) Affordability Periods
    e) Evaluation Criteria

BONDS 101

Topics to be covered:

- Tax Exempt Bond Financing for Rental Developments
- 4% Low Income Housing Tax Credits
- HFA Credit Underwriting/Best Practices

BONDS

- **Private Activity Bond issues under Section 142(d)** where bond proceeds are loaned to a **profit motivated owner** to build or acquire and rehabilitate qualified residential housing facilities.

- **“Section 501(c)(3)” Bond issues under Section 145 of the Code** where bond proceeds are loaned to a **charitable organization** having a designation under Section 501(c)(3) of the Code to build or acquire facilities for its mission of (i) providing **affordable housing** for persons of lower income, or (ii) providing appropriate housing for the **elderly or handicapped.**

Tax Exempt Bonds for Rental Housing

- Bonds may be used to finance the acquisition and rehabilitation or new construction of affordable housing by a for-profit or non-profit owner
- County Housing Finance Authorities and the Florida Housing Finance Corporation have the right to issue Bonds
- Tax exempt bonds are not “money”; they are a way to borrow money. Investor must agree to purchase the Bonds and the Bonds must be repaid
- Bond Issuance/Borrowing requires sufficient ongoing income (rents) to make the debt payments
- Minimum Set Asides as follows – 20% of units must be reserved @ 50% of median income or 40% of units must be reserved @ 60% of median income. Most deals are 100% at 60% AMI to maximize tax credits

Rental Housing Programs that May Accompany Tax Exempt Bonds

Low Income Housing Tax Credits (4%)

Subsidy Programs:

- SAIL
- SHIP
- HOME
- Local HFA or County/City Gap Funding
- Tax Exemptions

Project Based Section 8 and Public Housing

What is a Housing Credit?

- Tax Credits are provided to a for-profit entity in exchange for a commitment to rehabilitate or build affordable rental housing units
- Tax credits are received annually for ten years
- Developer (for profit or non-profit) is general partner, with 0.1% ownership
- Investor(s) with tax liability become limited partners with 99.9% ownership
- 99.9% of tax credit flows to limited partners, who pay funds upfront in exchange for 10 years of tax credits

Tax Credit Calculation

Net Equity =

- **Eligible Basis** (project cost less land and other ineligible items)
- **X Credit Rate** (4% fixed- previously was adjusted monthly based on AFR; Rate for 2020 was as low as 3.18%)
- **X 130% if in QCT or DDA**
- **X % Low Income Units**
- **X Number of years credit granted (10)**
- **X Current syndication rate** - Estimated at .94% (function of investor's required internal rate of return and several other factors)

Factors in Determining Loan Amount

The amount of Bonds that can be borrowed (issued) is limited to around 25 - 50% of Total Development Costs based on the following:

- Interest Rate
- Term (length) of loan
- Debt Service Coverage Requirement of Lender (“DSC”)
- Loan to Value Requirement of Lender (“LTV”)
- Occupancy (and Vacancy) in the market
- Restricted Rents, which impact Net Operating Income
- Income Set Aside (a 60% AMI development will support a higher loan than a 50% AMI development)
- Cost of the development

Sample New Construction Project

- **Cost of Project:** $14,770,000

- **Sources:**
- Tax Exempt Bonds $3,060,000
- 4% Low Income Housing Tax Credit Equity $5,048,000
- Deferred Developer Fee <u>$1,200,000</u>
- **Total Sources: $9,308,000**

- **Shortfall! $5,462,000**

- **If in QCT or DDA $3,947,600 (26.9% of Cost)**

Costs Have Increased Dramatically in Past 25 Years: Need for Long Term Affordability

- Costs have increased massively in the last 25 years
- If units are lost because affordability requirements “burn off”, they cannot be replaced with the same subsidy
- Even if the subsidy is repaid, the money returned would support only about 30% of the cost of replacing the lost unit with a new unit
- Affordability in perpetuity preserves the land and the development as affordable
- The units will need to be rehabilitated at some point– but at a significantly lower cost than building new units
- Also, once the land is lost, particularly on a desirable site, it cannot be replaced

Cost Comparison:
New Construction 2002 v. 2020 v. 2024

Cost Comparison
2002 versus 2020 versus 2024
Garden Apartments

Number of Units	200	132	156
Year	2002	2020	2024
Total Actual Construciton Cost	$54,009	$144,409	$184,062
Total General Development Costs	$7,992	$32,653	$22,399
Total Financial Costs	$2,530	$17,453	$19,877
Total Developer Fee	$11,354	$35,013	$39,726
Total Acquisiton Costs	$3,985	$16,667	$19,985
Total Development Cost	**$79,870**	**$246,195**	**$286,049**

Credit Underwriting/Best Practices

- You want a team of experts that work for you.   Financial Advisor, Bond Counsel, Bond Underwriter, Trustee and Credit Underwriter that is your team
- Other participants equity provider, lender developer part of the team but do not always of the same goals/interests
- HFA's and Lenders have similar but different goals:
  - Rules and Guidelines to be implemented by the HFA and FHFC
  - Policy Implementation
  - Guarantees
  - Consistency in analysis for Bonds and Gap financing
  - All sources of Funds available at closing

Best Practices - Continued

- Minimum Rehab of $40,000 required by FHFC
- Length of Set Asides
- Feature and Amenities
- All sources of Funds available at closing
- 1.10X minimum debt service coverage
- Purchase price limitations
- Payment and Performance bond
- Earnouts

Construction Servicing/Compliance/Financial Monitoring

Construction Servicing

- Make sure the property is built in accordance with your requirements
- Major Deal Terms do not change
- Do you want to read about in the newspaper / Last to hear about it

Compliance

- Following the IRS guidelines
- Do not want to be out of compliance
- Condition of property

Financial Monitoring

- Property Performance
- Occupancy

Bad Issuers

- There are issuers other than FHFC and County HFA’s that do not have a public purpose orientation and do not provide the necessary reviews for successful rental developments.
- These issuers exist largely to generate fees to professionals
- If the deal succeeds or fails, they are paid
- These issuers do not properly underwrite the transaction
- This results in financings that have inadequate rehabilitation and often bond defaults

Bad Issuers Cont.

- They often use non-profits with questionable reputations
- When will you see these issuers? A developer, banker, or attorney will approach your local government asking that you hold a TEFRA hearing– claiming that they have some multi-jurisdictional financing that has a short time frame– and you must act immediately
- They will claim how wonderful the deal will be and that you have no risk
- If you get any TEFRA request, you should immediately contact your County HFA for guidance

Conclusion for Rental Bonds

- Tax Exempt Bond Transactions with 4% LIHTC still need additional subsidy beyond the bonds and equity to be financially feasible.
- New Construction Projects need multi-million $ in Subsidy
- Preservation/Acquisition/Rehab Projects need far less Subsidy
- Dedicating County funds to subsidize Affordable Housing Developments will greatly increase the likelihood that affordable units will be preserved or created
- Long term affordability is critical, as costs have and will continue to escalate and available land will be reduced so that replacing lost units will cost much more in subsidies than the subsidy needed to rehabilitate units with affordability of 50 years or perpetuity
- If anyone other than your local HFA contacts a local government about a TEFRA hearing and approval, contact your local HFA immediately before taking any action. This is almost certainly an irresponsible issuer financing an acquisition of a development that is in poor condition and will not receive adequate rehabilitation