Tax Credits and the Federal Economic Stimulus Program – Part II

Governor’s Housing Conference

September 23, 2009
TCAP Potential Agency Debt

Agency liable for repayment if:

• Funds used for ineligible costs
• Noncompliance with LIHTC
• Project not completed by 1/1/12
• Spending milestones not met
TCAP Potential Agency Debt

Spending Milestones:

- 75% by 2/16/11
- 100% by 1/1/12
Security for TCAP Loan

Guaranty by borrower and principals
• Construction period
• Permanent through 8/1/12
• Tax implications
  - If full recourse, can investor take credits?
Security for TCAP Loan

Mortgage

- Construction period: Second position
- Permanent: Shared first position
- Agency is permanent lender on all TCAP deals
Security for TCAP Loan

Assignment of syndication proceeds

• Subordinate to construction lender
Administrative Fee

- 5% of tax credit amount
- Paid at permanent closing
- Cannot be paid with TCAP Funds
- Fee not in anybody’s projections
Relief From the Fee

- Hardship credits
- No deferral of developer fee
- May need QAP amendment
Interest

- 1% interest rate
- Accrues from Amortization Date – 8/1/12
- No interest from closing until Amortization Date
- Not payable for 10 years or until deferred fee paid
- 10 years starts at construction completion
Other Requirements

- HUD Environmental Review
- Davis Bacon
- HUD-approved sign
- Contractor reporting requirements
  - Job creation
  - Job retention
Other Requirements

- Management reports same as LIHTC
- TCAP provisions benefit tenants
  - Tenants are 3rd party beneficiaries
  - Can sue owners and Agency
- Loan agreement meets HUD separate agreement requirement
Three Day Expenditure Rule

• Agency must disburse TCAP funds within 3 days of receipt
• Does not require Agency to pay requisitions within 3 days of receipt
Some Issues

- Does sales tax exemption apply?
- No prepayment until 8/1/12
- Agency will not close on permanent loan until six months sustaining occupancy on some projects
Thank you.

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