

CDFA // BNY MELLON DEVELOPMENT FINANCE WEBCAST SERIES

Affordable Housing Finance - Market Rate/Affordable/Low-Income

The Broadcast Will Begin at 2:00 PM Eastern

- ▶ Submit your questions in advance using the Zoom control panel
- ▶ View previous webcast recordings online at www.cdfa.net

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DEVELOPMENT FINANCE
WEBCAST SERIES



Hello! Welcome to the webcast.



Allison Rowland

Manager, Research and Technical Assistance
Council of Development Finance Agencies
Columbus, OH

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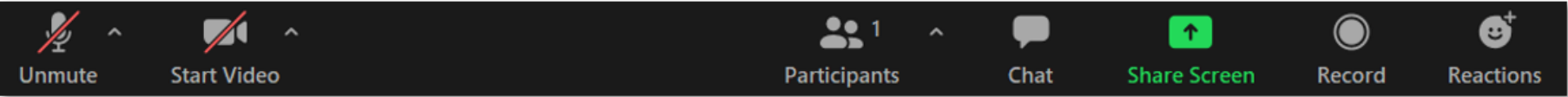
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Submit your questions in the chat feature pictured above.



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Affordable Housing Finance – Market Rate/Affordable/Low-Income

Panelists

James Young, Moderator

Vice President
The Bank of New York Mellon

Sisera Daniel

Partner
Kutak Rock LLP

Terry Barnard

Multifamily Production and Outreach Manager
Colorado Housing and Finance Authority

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Affordable Housing Finance – Market Rate/Affordable/Low-Income



James Young

Vice President
The Bank of New York Mellon

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Sisera Daniel

Partner
Kutak Rock LLP

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CDFA DEVELOPMENT FINANCE
WEBCAST SERIES:
AFFORDABLE HOUSING FINANCE-
MARKET RATE/AFFORDABLE/LOW
INCOME

Sisera M. Daniel, Partner, Kutak Rock LLP

December 21, 2021

Private Activity Bonds for Multifamily Housing: Overview

Basic Structure

- Bond Issuer: State-law borrowing and lending powers, treated as state or political subdivision under Internal Revenue Code (“Code”) and federal and state securities laws
- Negotiable bonds issued under bond resolution/indenture, usually with bond trustee
- Proceeds loaned to borrower, mortgage/repayments pledged as security

Advantages

- Tax-exempt interest rate (+ issuer spread, credit enhancement fees)
- 4% LIHTC (with volume cap allocation)

Private Activity Bonds for Multifamily Housing: Overview

Variations and Features

- Standalone/conduit; parity resolution/indenture
- Public offering via underwriter(s); private placement/direct purchase
- Fixed rate; variable/multi-modal; derivatives (swaps/caps)
- Fully funded; draw-down bond
- Credit and/or liquidity enhanced

Laws

- Issuer's governing statute/other state law
- Securities Act of 1933 § 3(a)(2) and related exemptions
- Rules 10b-5 and 15c2-12 under Sec. Exchange Act of 1934
- State "blue sky" laws
- Code §§ 103, 141-142, 146-150 and related Treasury Regulations

PABs: Qualified Residential Rental Projects

- Each rental property must be operated as a “qualified residential rental project,” containing separate and complete living facilities
 - Facilities for living, sleeping, eating, cooking and sanitation
 - Open to general public for use on other than a transient basis

“General public use” expanded per IRS Revenue Procedure 2019-17

- Improvements should consist of buildings or structures each containing one or more similarly constructed units or one or more proximate buildings or structures with similarly constructed units

PABs: Low Income Restrictions

- 20% of rental units occupied by families whose incomes do not exceed 50% of area median income, or
- 40% of rental units occupied by families whose incomes do not exceed 60% of area median income
 - Tenants deemed to continue to be low-income tenants until income exceeds 140% of area median income
 - When a tenant's income exceeds the 140% limit, then the project owner must rent the next vacant unit of comparable or smaller size to a low-income tenant
 - Minimum restrictions required notwithstanding authority under LIHTC Section 42 for income-averaging

Permissible Uses of Housing Bond Proceeds

- Capital Costs
 - 95% of the bond proceeds must be used to pay qualified project costs (i.e., “good costs”); 5% of the bond proceeds may be applied to pay “bad costs;” the 5% includes up to 2% for costs of issuance

- Reimbursements
 - In order apply bond proceeds to reimburse costs incurred prior to bond issuance, issuer must declare, in any reasonable form, its intent to issue bonds or notes and the maximum principal amount
 - Project description required

Permissible Uses of Housing Bond Proceeds

- Acquisition of Existing Project
 - Rehabilitation expenditures must be equal to or greater than 15% of the acquisition costs made within 2 years of the issuance of the bonds

- Limitation on Land Acquisition
 - No more than 25%

TEFRA Approval – IRC Section 147(f)

- Bonds are subject to approval by legislature or highest elected official of jurisdiction where the bonds are issued
- Prior to approval, public hearing required after reasonable public notice (Treas. Reg. Section 1.147(f)-1)
 - Hearing must provide a reasonable opportunity for interested individuals to express their views orally and in writing
 - 7 calendar days' prior notice
 - Publication of notice on issuer website permissible

Public Hearing Format; Other Approvals

- Public hearing format
 - Pre-COVID-19: In-person
 - Revenue Procedure 2021-39: Telephonic hearings permissible until 3/31/2022
 - Telephone number and access codes must be listed in the public notice
 - Telephone number must be toll free
- Other Approvals
 - Issuer approvals under state and local legislation, and rules and policies of the issuer, such as an authorizing resolution or bond validation
 - Allocation of volume cap or evidence of carry forward

Qualified Project Period

- Period during which income restrictions are required
- Begins when 10% of rental units are occupied by low-income tenants
- Ends on the later of (a) 15 years after 50% occupancy of the project, (b) all the bonds that financed the project are redeemed or retired, or (c) termination of any Section 8 subsidy benefitting the project

Permissible Uses of Housing Bond Proceeds

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Additional Rules

- Average bond maturity must not exceed 120% of the average reasonably expected useful life of project
- Substantial user or related person to the owner of the project financed by the bonds may not purchase the bonds in an amount that relates to the amount borrowed by the substantial user; otherwise, issuer spread is limited to 0.125%

COVID-19
AND
RECOVERY:
HOUSING-
RELATED
ISSUES



COVID AND RECOVERY: ISSUES

- **IRC Section 42(h)(4) – 50% Test**
 - *Finance 50% or more of aggregate basis and project qualifies for 4% tax credits.*
- **COVID-19 Pandemic and Significant Cost Overruns**
 - Solutions:
 - Allocate to Interest Reserves, Relocation Costs
 - Reduce developer fee
 - **Issue Supplemental 4% Bonds**

COVID AND RECOVERY: COST OVERRUNS AND SUPPLEMENTAL 4% BONDS

Supplemental 4% Bond Issues

- Additional Bonds for Satisfaction of 50% Test
- Allocation of Additional Volume Cap
- Timing Considerations
 - Placement in Service
 - Maturity Date of Original Bonds

COVID AND RECOVERY: PUBLIC OFFERING AND PLACEMENT IN SERVICE DELAYS

Remarketings; New Securities Disclosure

- Securities Act of 1933 § 3(a)(2) and related exemptions

Avoiding Reissuance

- Section 1.1001-3 of the Regulations and Notice 88-130 and Notice 2008-41
 - New Volume Cap
 - New 8038
 - Arbitrage Rebate Date Triggered

COVID AND RECOVERY: CONVERSION DELAYS

In the housing context, the ability to “convert” has been impacted in several ways:

- Construction delays
- Challenges in marketing and leasing-up completed projects
- Increased underwriting scrutiny by permanent phase lenders
- Impacts of the pandemic on area median incomes and allowable rents

In the housing world, we frequently deal with both the “bond rules” and the “tax credit rules”, implicating:

- Placed in service questions
- Forbearance and reissuance rules (in particular, I.1001-3(e)(3) comes up frequently)
- Cumulative effects of modifications (see I.1001-3(f)(3))

Affordable Housing Finance – Market Rate/Affordable/Low-Income



Terry Barnard

Multifamily Production and Outreach Manager
Colorado Housing and Finance Authority

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Affordable/Low-Income

chfa's new and innovative programs for affordable rental (and other) housing

Terry Barnard, Manager of Multifamily Production and Outreach

December 21, 2021

colorado housing and finance authority



about chfa

CHFA was established in 1973 by the Colorado General Assembly.



CHFA is not a state agency and does not receive and direct appropriations.

Board of Directors: **11 Members**



CHFA received authority to use bond proceeds for economic development activities in 1982.



Approximately **\$25B** has been raised and invested in Colorado to date.

financing the places where people live and work[®]

chfa's impact in communities



Homeownership

Single family (SF)
mortgage loans

Down payment assistance

Homebuyer education



Rental Housing

Multifamily (MF) finance

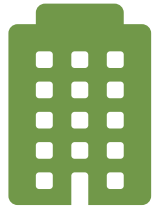
Housing Tax Credits



Business Lending

Small business lending;
capital access programs

chfa's impact in communities



Rental Housing

Multifamily (MF) finance

Housing Tax Credits

chfa's impact in communities



Rental Housing

Multifamily (MF) finance

Housing Tax Credits

Manufactured Housing Communities

chfa's impact in communities



Rental Housing

Multifamily (MF) finance

Housing Tax Credits

Manufactured Housing Communities

Small-scale Rental Housing – Finance & TA

chfa's impact in communities



Rental Housing

Multifamily (MF) finance

Housing Tax Credits

Manufactured Housing Communities

Small-scale Rental Housing – Finance & TA

Middle Income/Workforce Mezz Debt

chfa's impact in communities



Rental Housing

Multifamily (MF) finance

Housing Tax Credits

Manufactured Housing Communities

Small-scale Rental Housing – Finance & TA

Middle Income/Workforce Mezz Debt

Single-family Construction Loans

manufactured housing communities

Resident Owned Communities
(ROC) Participation



financing tools:

- **participation loan**
 - purchase a participation in a first mortgage originated by ROC USA
 - Co-op ownership comprised of residents
- **direct perm loans**
 - direct loan to sponsor entity acquiring a mobile home park
 - preserve affordability
 - perform needed infrastructure rehab



small-scale
housing:

financing and
technical
assistance

financing tools:

- **direct permanent loans**
 - takeout of construction loans, with terms and conditions based on appropriate risk factors
- **multifamily collateral support (MFCS)**
 - deposit provided to a local lender to enable the lender to make a larger loan to the project

technical assistance continuum



Developer's
Guide



Trainings
Webinars



Technical
Assistance
Provider



Technical
Assistance
Grants

Middle Income Access Program

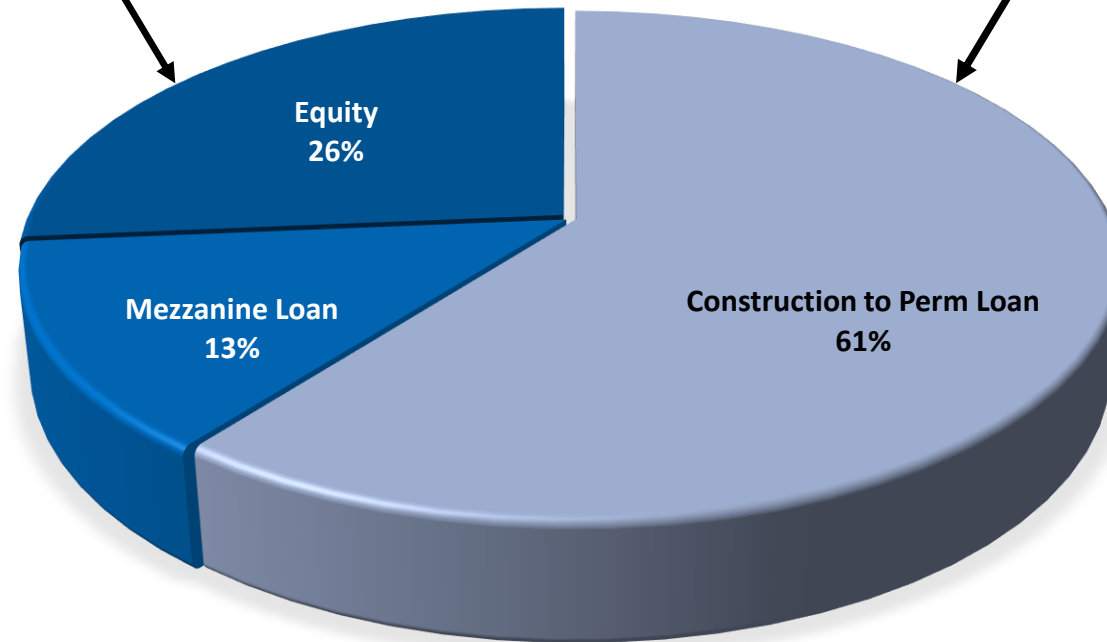


The program addresses the middle income workforce, sometimes referred to as the “missing middle,” with incomes too high for Housing Credit units but often overburdened by market rents. Typically, the missing middle is comprised of renters whose income is between 80% and 120% Area Median Income (AMI).

Deal Structure

Institutional and other PE sources

HUD, Fannie Mae or Freddie Mac
Non-LIHTC Forward, or other
senior debt provider



MIAP - Basic Terms

Loan Size	\$2 million to \$6 million (before participation)
Security	2 nd Deed of Trust
Interest Rate	5% to 6%; interest only for early years; step up for later years
Exit Fee	5% to 6% of net sale or refinance proceeds
Affordability Requirements	At least 20% of units affordable to renters at 80% or less of Area Median Income; up to 75% of total units at or below 120% AMI; 25% can be unrestricted
CHFA Participation Size	Target of \$1 million CHFA capital per project
Benefits	Gap financing up to 24 months, non-recourse debt up to 15 years

single-family construction

revolving line of credit or
construction loan



financing tools:

- **revolving line of credit**
 - chfa funds are drawn as needed to complete a portion of the project, recycled after units are sold
- **direct construction loan**
 - full construction loan provided to project and drawn as needed, paid back after units sell



thank you!

Submit your questions to the panel now by using the Zoom control panel.

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**Fundamentals of Economic Development Finance
WebCourse**

January 26-27, 2022
12:00 – 5:00 PM Eastern

Intro Bond Finance WebCourse

February 14-15, 2022
12:00 – 5:00 PM Eastern

Advanced Bond Finance WebCourse

February 16-17, 2022
12:00 – 5:00 PM Eastern

Intro Revolving Loan Fund WebCourse

March 28-29, 2022
12:00 – 5:00 PM Eastern

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