

Tax Credits and the Federal Economic Stimulus Program – Part II

Governor's Housing Conference

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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



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TCAP Potential Agency Debt

Spending Milestones:

- 75% by 2/16/11
- 100% by 1/1/12



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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?



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Security for TCAP Loan

Mortgage

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



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Security for TCAP Loan

Assignment of syndication proceeds

- Subordinate to construction lender



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Administrative Fee

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



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Relief From the Fee

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



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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



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Other Requirements

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



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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



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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



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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



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Thank you.

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