BANK TAX-EXEMPT LOAN PROGRAMS
AND
FREDDIE MAC TAX-EXEMPT LOAN (“TEL”) STRUCTURE
FOR AFFORDABLE MULTIFAMILY RENTAL HOUSING PROJECTS

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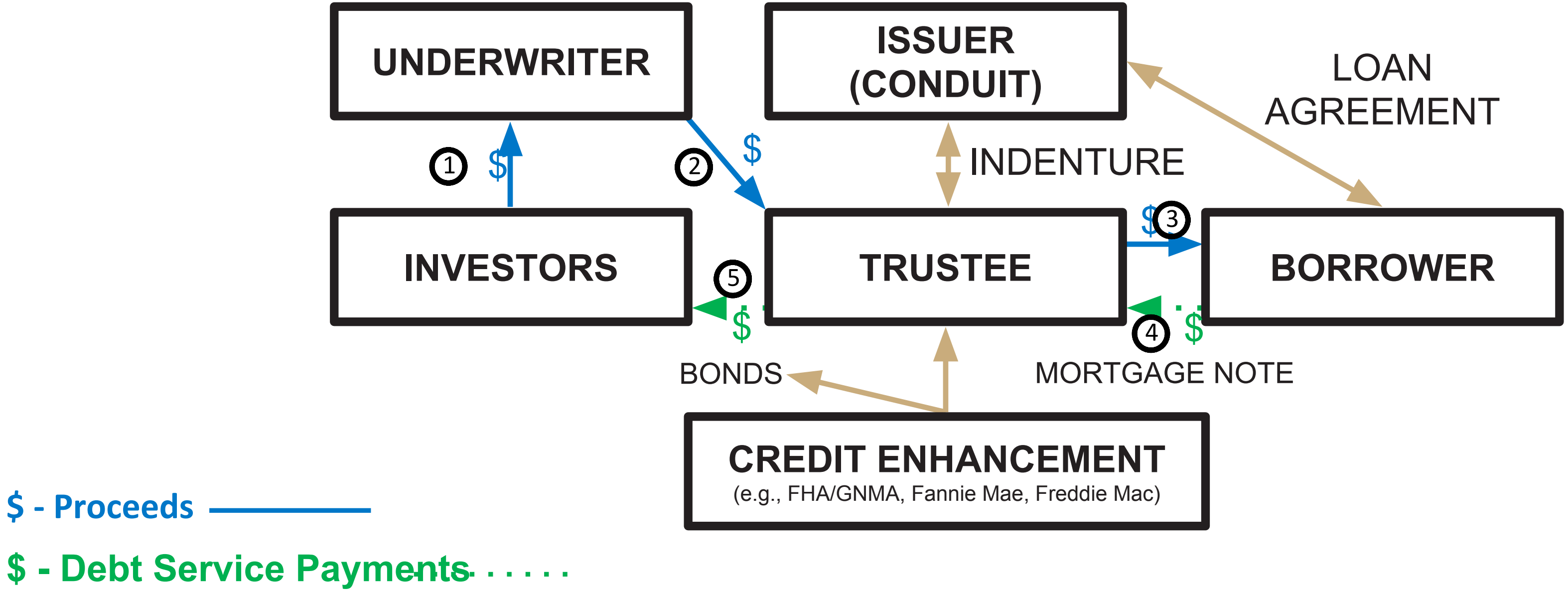
BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

- In the **1970s through the mid 1990s**, tax-exempt bonds issued for affordable multifamily rental projects were almost always **credit enhanced** by FHA/GNMA, Fannie Mae, Freddie Mac, a bank letter of credit or similar credit enhancements; were **rated** A to AAA by S&P or Moody's, and were sold in **underwritten public offerings.**

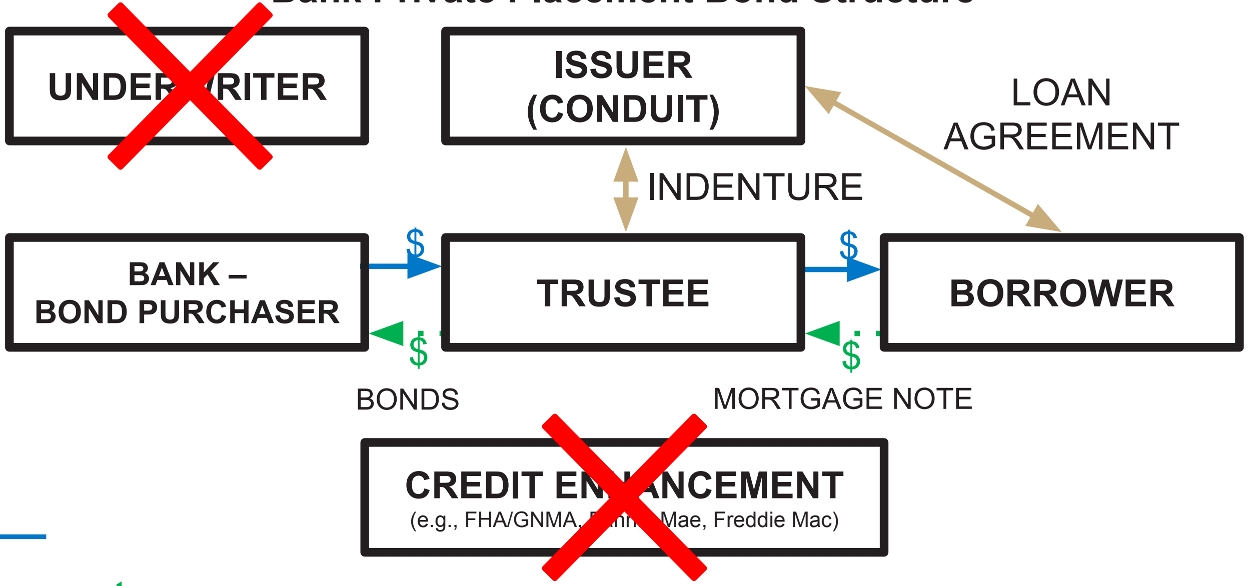
Traditional Credit Enhanced Bond Structure



BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

- **Commencing in the late 1990s**, programs emerged where banks and other **financial institutions bought non-credit enhanced, unrated tax-exempt bonds** backed by real estate collateral and either held them on their balance sheet or warehoused and ultimately securitized them, generally in $100 million plus pools of stabilized unrated tax-exempt bonds.

Bank Private Placement Bond Structure

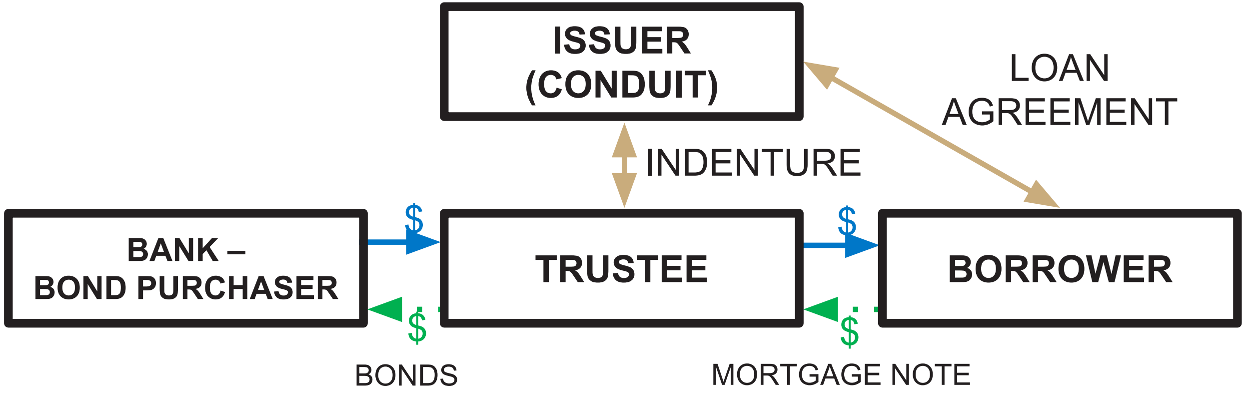


$ - Proceeds

$ - Debt Service Payments

BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

Bank Private Placement Bond Structure



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BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

- These bond private placement programs had the **advantages** of:
  - **Lower financing costs** – No rating fees and other costs associated with a public offering.
  - **Flexibility** – Terms could be modified as agreed by the Issuer, the Borrower and the Bank or other program sponsor.
  - **Speed** – faster loan underwriting and no delays associated with rating and public offering.

BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

- More recently, **additional major advantages** have been added, including:
  - **Draw-down Funding**: when tax-exempt debt is funded as loan advances are made – **eliminates construction period negative arbitrage** on new construction sub-rehab deals – can be **up to 2-4 points or more of savings** on new construction/sub rehab versus “fully-funded” publicly offered bonds.
  - Provides an **extremely low variable rate during construction**/rehab – e.g., SIFMA (0.03%) or LIBOR (0.33%) plus spread of 1.80% to 2.50% = **1.85% to 2.50% rate.**
  - **Locks in very low permanent rate** (e.g., 16 or 17-year LIBOR swap plus 2.50% or around **4.50% perm rate**) at initial loan closing.

BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

- **In the early 2000s, banks became even bigger players** in this space, largely **due to the Community Reinvestment Act ("CRA")**. Under the CRA, banks are required to do a certain minimum dollar amount of CRA eligible **"lending activity"** and a certain minimum amount of CRA eligible **"investing activity"** during 3-year rolling compliance periods in each market where they make loans, take deposits or otherwise have a presence. If a bank receives a **low CRA score**, the **regulators will** deny approval of new banking activities and will otherwise impede and **constrain the bank's ability to grow**.

- **Purchasing tax-exempt debt and/or low-income housing tax credits is** a **CRA-eligible activity**, and banks have become very active buyers of this tax-exempt debt, especially in major urban markets (e.g., New York, California, D.C., Miami, Chicago, San Francisco, Los Angeles and Denver). **Tax credit equity pricing is more favorable in** these markets ($1.00 to $1.15/$1.00 of credits versus .90¢ - .95¢ in other markets) **and tax-exempt borrowing rates are lower** (by perhaps 0.50% to 1.00% or more) and other terms more favorable **in these "CRA driven markets"**.

- The **"lending credit" bucket is**, for most banks in most markets, **more difficult to fill than** the **"investment credit" bucket**.

BACKGROUND ON PRIVATE PLACEMENTS FOR AFFORDABLE MULTIFAMILY HOUSING PROJECTS

- **Prior to 2008**, bank **regulators** generally **allowed banks to claim "lending credit" for purchasing tax-exempt affordable housing bonds** in draw-down private placements, since, in the absence of a rating or credit enhancement on such bonds, the transaction is the economic equivalent of a bank loan.

- **In 2008**, the regulatory supervisors for many banks changed, and the **new bank regulators took the position**, based on the terminology **that "bonds"** issued under "indentures" with "trustees" **are securities**, and thus began to require **that tax-exempt "bond" purchases** had to **go into the "investment bucket"**.

- This was a **devastating CRA interpretation** for many banks.

This gave rise to…

BANK "TAX-EXEMPT LOAN" PROGRAMS

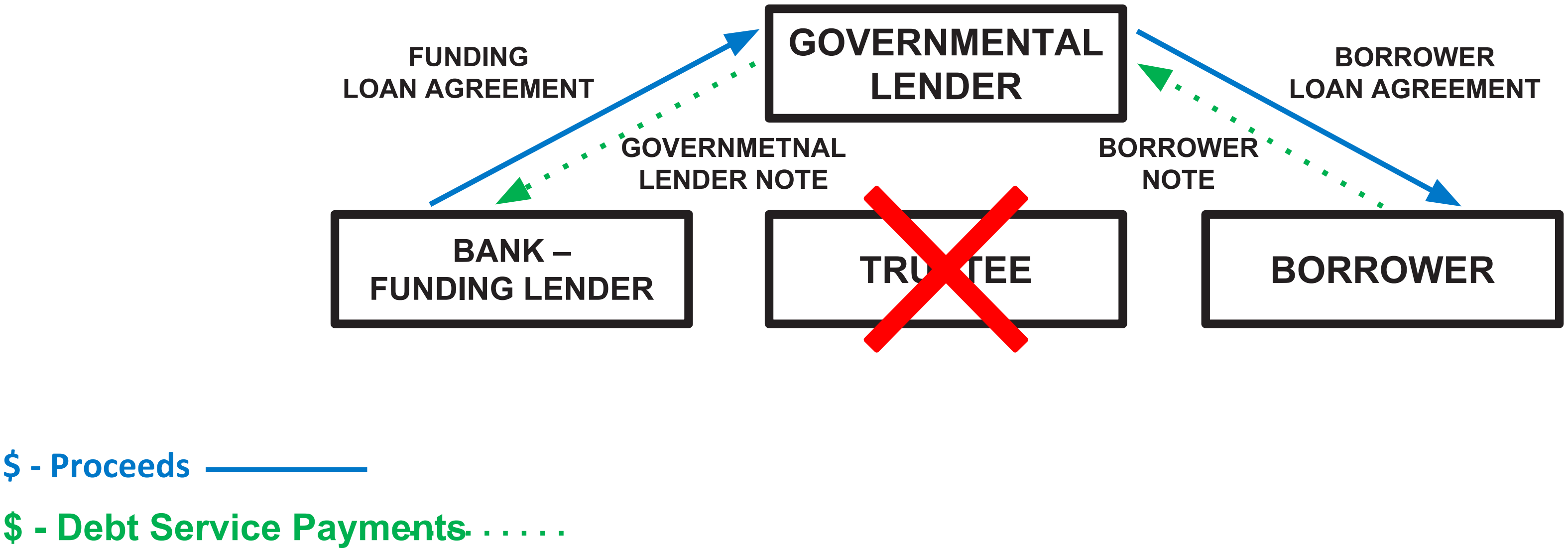
- In response to this development, banks, lead by **Citigroup Inc. and its Citibank, N.A. affiliate**, **created an alternative tax-exempt loan versus tax-exempt bond structure** in order to effectively provide the debt side funding for these transactions on **fundamentally the same terms and conditions**, but **using loan terminology throughout versus bond/securities terminology**.

- **Wade Norris and Ryan George at Eichner Norris & Neumann PLLC**, as outside counsel to Citi, played a leading role in **creating an alternative set of documents** incorporating this new terminology, in a process **much like translating the same book to a different language**.

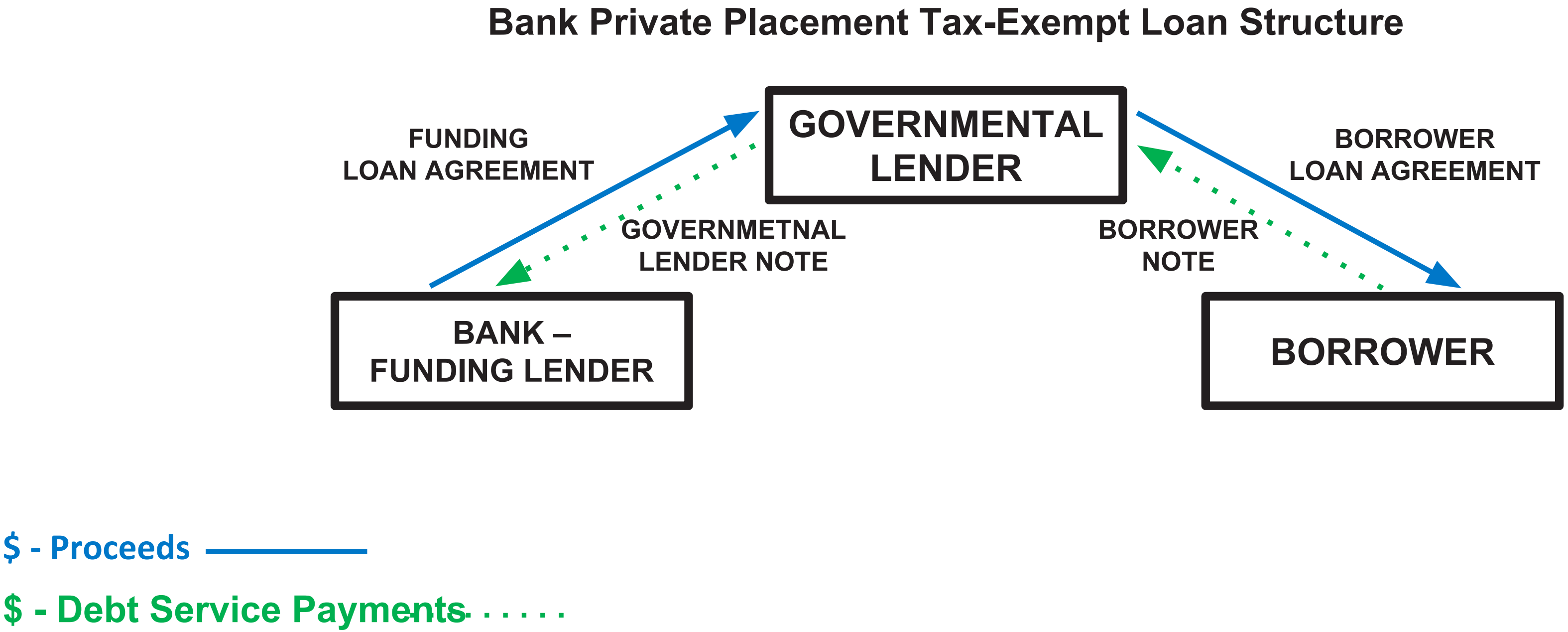
ALTERNATIVE "TAX-EXEMPT" LOAN STRUCTURE

- Rather than purchasing bonds, the **Bank** (or "**Funding Lender**") makes a loan (the "**Funding Loan**") directly to the Municipal Entity (the "**Governmental Lender**"). The Governmental Lender then loans the proceeds of the Funding Loan directly to the **Borrower** (the "**Borrower Loan**"). This is basically a tax-exempt loan to a governmental lender, which loans the proceeds to a project borrower. This conduit loan structure has been used in a wide array of tax-exempt financings for industrial development and other areas of municipal finance.

Bank Private Placement Tax-Exempt Loan Structure



ALTERNATIVE “TAX-EXEMPT” LOAN STRUCTURE



BANK "TAX-EXEMPT LOAN" STRUCTURES

- **Since 2008**, a large number of banks now have closed financings utilizing this structure with **over 40 state and local housing finance agencies** on **literally hundreds of tax-exempt affordable housing financings**. In fact, this tax-exempt loan structure may now account for a substantial majority of private placement tax-exempt debt financings for affordable housing as compared to tax-exempt private placements structured as tax-exempt "bonds".

- While this structure differs in form and appearance from a traditional bond direct placement structure, in substance it represents economically the **same transaction for the borrower**. Moreover, in the case of most of these financings, the proposed alternative structure **does not significantly change the role, responsibilities or liabilities of the governmental entity as the conduit issuer of the tax-exempt debt.**

- In addition to allowing banks to claim CRA "lending credit", under recent SEC interpretations, the alternate **tax-exempt loan structure** also **enables banks to receive loan accounting treatment** versus securities accounting treatment. This can enable banks which hold these obligations for investment to **avoid marking these holdings to market, with unpredictable income statement and balance sheet effects**.

KEY ISSUER CONSIDERATIONS

1. **Limited Liability/Nonrecourse. The obligations of the Municipal Entity as the "Governmental Lender"** under this structure, are **strictly limited, non-recourse obligations of the Municipal Entity, secured only by and payable only from, payments received from the Borrower under the Borrower Loan Agreement, just as would be the case under a private placement tax exempt bond structure**. **Under most programs, the limited liability/non-recourse language with respect to the governmental entity is virtually identical under the two structures**.

2. **Documents**. On documents, **the tax-exempt loan structure substitutes a "Funding Loan Agreement" evidencing that Funding Loan for the Indenture** under which the Municipal Entity would issue its bond under the bond placement structure. Under both structures, the proceeds received from the Bank are loaned by the Municipal Entity to the Borrower under a loan agreement between the Municipal Entity and the Borrower. **The payments by the Borrower under the Borrower Loan are pledged and, together with the deed of trust on the Project, provide the sole source of security for repayment of the Municipal Entity's obligations under the Governmental Lender Note**, just as this same loan payments are pledged and provide the sole security for repayment of bonds issued by the Municipal Entity under the bond private placement structure.

3. **No Change in Municipal Entity's Role as Conduit**. **This structure also does not change the fundamental role of the Municipal Entity as a conduit provider of tax exempt financing. The Bank**, as the Funding Lender and/or a servicer, **is responsible for disbursing and administering the Borrower Loan** on behalf of the Municipal Entity, just as it would be under a typical bond financed private placement structure. **Funds and accounts are maintained by the Funding Lender** rather than by a bond trustee, but **the governmental entity's "non-involvement" in these matters is unchanged**.

KEY ISSUER CONSIDERATIONS

4. **Private Activity Bond Volume and 4% LIHTC Allocations. As noted above, literally hundreds of tax exempt multi-family housing financings have closed over the past seven years. There has been no impairment in the private activity bond volume allocation received by the borrowers from bond volume allocating authorities or of the 4% LIHTC allocation from tax credit allocators as a result of shifting the transactions to the tax exempt loan structure from a bond private placement transaction**. The Governmental Lender Note under the tax-exempt loan structure, like the bond under a bond structure, is a debt of a state or political subdivision and a tax-exempt “private activity bond” under Section 142(d) of the Internal Revenue Code. In effect, the volume allocators appear to be treating the two alternative financing structures with banks as fungible for private activity bond volume and 4% LIHTC allocation purposes.

5. **Significant Importance of CRA “Lending Credit” and Other Advantages to Banks. As noted above, this structure enables banks to receive CRA “lending credit” and provides other important advantages in how banks can account for and carry this kind of paper. These advantages are very important to banks and enable banks to continue to provide this type of construction and/or long-term debt financing to affordable housing projects across the United States on the most competitive terms**.

NEW FREDDIE MAC TAX-EXEMPT LOAN ("TEL") STRUCTURE

- **For many years**, the principal mechanism Freddie Mac had for participating in affordable housing tax-exempt debt financings was to **provide its credit enhancement agreement for rated, publicly offered long-term (e.g., 18 year) tax-exempt bonds**.

- In 2014, **Freddie Mac** introduced its **Tax Exempt Loan or "TEL"** structure with **many of the same features and terms as bank private placements:** Low perm rates comparable to those under bank private placement programs and potentially available in all markets, not just CRA.

- Ballard Spahr served as outside counsel to Freddie Mac in developing model program documents; **Wade Norris with Ryan George of NGO were hired as special outside counsel to Freddie Mac** to make certain tax exempt loan revisions, draft model documents for certain states and develop certain program memos and powerpoints.

- **Loan terms are 16 years (mod rehab) up to 18 years (new cons/sub rehab), a 35-year loan amortization, 1.15 debt service coverage and a 90% maximum LTV. Permanent loan rates are in the low 4.0% range.**

NEW FREDDIE MAC TAX-EXEMPT LOAN (“TEL”) STRUCTURE

- Freddie Mac has stated that for many transactions, a **rate lock** can be achieved **within three months** of commencement of loan processing, and the **closing** can be achieved within **30 to 45 days thereafter**.

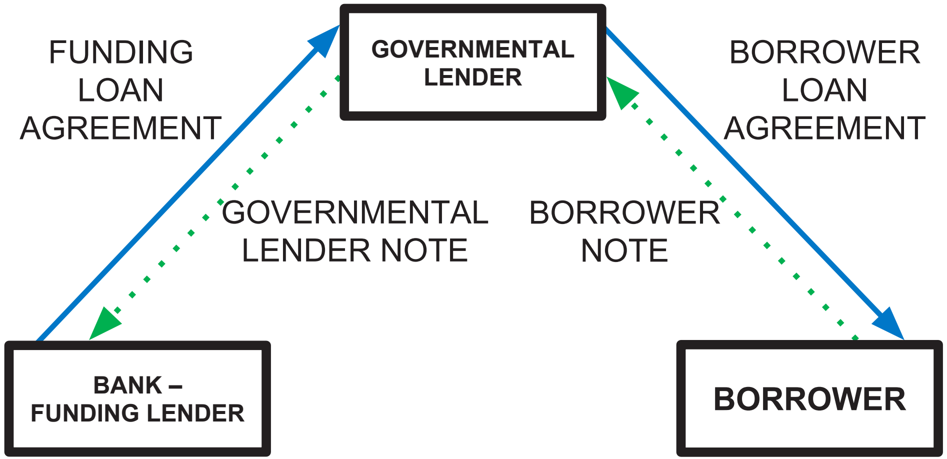
- The program was **expanded in 2015 to include sub rehab/new construction with a bank taking the risk during the pre-Conversion phase**, and a forward commitment from a Freddie Mac Targeted Affordable Lender (the “Seller/Servicer”) and Freddie Mac to acquire the permanent phase component of the tax-exempt loan at an agreed upon fixed rate at achievement of stabilized occupancy (“Conversion”).

- Provides **very low variable rate borrowing** (e.g., **SIFMA (3 bps) or 1-month LIBOR (33 bps) + 2.20 – 2.50) pre-Conversion** on **draw-down** (no negative arbitrage) basis; and **perm rate** locked at closing in **low 4.0% range (excluding third party fees)**.

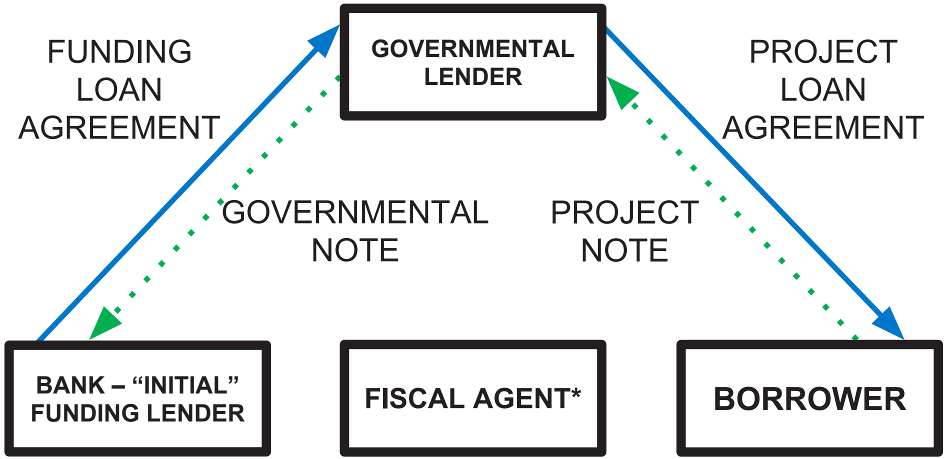
- Is substantially the same in many respects as the bank tax-exempt loan structure, **but does require separate bank (probably with separate counsel)** to take pre-Conversion real estate risk for new construction/sub rehab deals (which involves two origination fees and two sets of legal fees) versus most other private placements where the bank is the Funding Lender on both sides.

A side-by-side comparison of the bank tax-exempt loan and Freddie Mac TEL structures illustrates their similarities.

Bank Tax-Exempt Loan Structure



Freddie Mac TEL Structure



$ - Proceeds ————

$ - Debt Service Payments . . . . . .

*Note: The Freddie Mac TEL structure adds back a "fiscal agent" (similar to a trustee, but using a different name) to administer funds and accounts.

NEW FREDDIE MAC TAX-EXEMPT LOAN (“TEL”) STRUCTURE

- Multiple-Phase Transaction:

  - The Bank, which is called the **“Initial” Funding Lender, funds the loan** on a drawn down basis and takes the real estate risk **Pre-Conversion**.

  - **At Conversion**, pursuant to a Construction Phase Financing Agreement, the permanent component of the **Funding Loan is sold by the Initial Funding Lender to the Freddie Mac Seller/Servicer**, who becomes the successor Funding Lender.

  - After submission to Freddie Mac of a permanent loan closing package and a several-week review by and approval by Freddie Mac, the **Freddie Mac Seller/Servicer transfers the permanent component of the Funding Loan to Freddie Mac** pursuant to a Commitment from Freddie Mac which is executed and delivered at original closing.

  - After it acquires the permanent component of the Funding Loan, **Freddie Mac, at its option**, then **securitizes pools of such loans** in an “M Class” securitization, which it believes produces very favorable pricing.

NEW FREDDIE MAC TAX-EXEMPT LOAN ("TEL") STRUCTURE

- The TEL structure **allows the Borrower to work with its Bank**, with whom it may have an existing construction lending relationship, during the Pre-Conversion phase. **Many Banks prefer not to hold permanent loan components on their balance sheets**, so this program appeals to such banks versus a bank private placement.

- **Costs may be somewhat higher** than bank private placements because there are typically **two origination fees** and **two sets of legal fees**; one for the Bank acting as the "Initial Funding Lender" in the pre-Conversion phase and one for the Freddie Mac/Perm loan side. Note also (see slide 17) that the **Freddie TEL Structure does require a third party administrator** (the "fiscal agent"), which many bank private placement programs do not require. This adds a small (typically $3,000 to $4,000) up front expense and small (usually 2-4 basis points) ongoing fee.

- **Important to have a** party involved, perhaps even a broker-dealer firm serving as "**quarterback**" of the overall financing, if the bank serving as Initial Funding Lender and/or the Freddie Mac Seller/Servicer is not widely experienced in running complex tax-exempt affordable housing debt transactions.