INTRODUCTION TO TAX EXEMPT MULTI-FAMILY HOUSING BONDS AND 4% LOW-INCOME HOUSING TAX CREDITS*

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* **Interest rates, fees and other variables can vary dramatically** depending on state, timing, market conditions and other factors, and the other variables may vary significantly depending on project, developer and other factors. Borrowers should check with their investment banker or financial advisor before conducting a detailed assessment of any of these structures or programs.

** Contact information on other NGO lawyers and other professionals is set forth on the last page.

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I. NORRIS GEORGE & OSTROW PLLC

1. Norris George & Ostrow PLLC (NGO) is an **eleven-lawyer boutique law firm based in Washington, DC** specializing tax-exempt municipal bond finance with a special emphasis on tax-exempt multifamily rental housing bond finance.

2. Our **principal roles** are serving as **underwriter's counsel** in public offerings, **bank or other purchaser's counsel** in **private placements**, and **special bond matters counsel to borrowers** in these financings.

3. NGO's attorneys have been **architects of** the structures and model documentation for the industry's major tax-exempt debt programs, including **the country's leading tax-exempt bond and loan private placement program**, the **short term cash backed tax-exempt bonds** used with low-rate FHA insured and rural development loans since 2008, **the Freddie Mac TEL** private placement **structure** and the **Fannie Mae M.TEBs** rated publicly offered bond structure.

4. More recently, **NGO has played a major role** in almost 20% of the $8.0 Billion of **tax-exempt workforce housing bonds** that have been issued over the past two years in California and Texas to move over 14,000 conventional apartment units into public ownership.

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5. In the **last six years** alone, attorneys on the NGO team have **closed more than 700 private and public transactions in 46 states**. States with the largest number of deals closed by the team since 2016 are California (over 200 financings), Washington State (over 70), Colorado (over 40), Texas (over 70), Florida (over 40), Illinois (over 40), Minnesota (over 25), and Hawaii (over 20).

6. NGO's lawyers are **frequent authors and participants at affordable housing industry conferences**, and Wade Norris and Ethan Ostrow are frequent authors, speakers and panel leaders/conveners for affordable housing topics.

7. NGO has a keen familiarity with market terms, structures, and techniques, and we strive to **conduct negotiations in a collegial manner** while **securing the best possible outcomes** for our underwriter, private placement, and borrower clients.

8. NGO has what we believe is an unparalleled, **long-standing nationwide network of relationships** with most of the major participants in tax-exempt and taxable multifamily housing bond financings **throughout the United States**, including issuers, bond counsel, lenders, developers, municipal underwriters and rating agencies. We believe the trust we have built over the years with colleagues in the industry **enables us to provide a uniquely proactive, insightful and effective representation for our clients.**

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II. BONDS 101 – TAX-EXEMPT MUNICIPAL BONDS AND LOANS

THE BASICS

- What is a **Bond**?
  - A loan made by a Bondholder to a borrower, paid back with interest, e.g., a U.S. Savings Bond.
- Person receiving interest income ALWAYS pays taxes on the interest earnings unless they buy a MUNICIPAL BOND.

WHAT IS A **MUNICIPAL BOND**?

- **Municipal Bond** – A **debt obligation** of a **STATE**, city, county, redevelopment agency, housing authority **OR OTHER POLITICAL SUB-DIVISION** or public body or instrumentality **OF A STATE**.
- A municipal debt obligation may be called a "**Bond,**" a **"Note" or a "Governmental Lender Note." The name does not matter.** If it is a debt of a state or political subdivision and conforms to certain requirements, it will be **treated as a tax-exempt bond under Section 103 of the Internal Revenue Code**.

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BONDS 101

- Bonds **issued by** the **federal government** bonds are **<u>not</u>** municipal bonds.
- Bonds **issued by Section 501(c)(3) corporations** are **<u>not</u>** municipal bonds.
  - Section 501(c)(3)s can issue bonds to finance their activities, but those bonds are taxable.
  - Section 501(c)(3)s can have a **state or political subdivision** – *i.e.*, **a municipal issuer** – issue **its** bonds on a **tax-exempt** basis and lend proceeds to the (c)(3) borrower for certain charitable purposes, including affordable and senior's housing.

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SECTION 103 OF INTERNAL REVENUE CODE

- Provides that **interest on municipal bonds is excluded from gross income for federal income tax purposes**.
- Most states also **exempt** interest on bonds or loans issued by issuers in that state for projects in that state **from state income taxation**.

"GOVERNMENTAL PURPOSE" OR "ESSENTIAL FUNCTION" BONDS

- **Often, the municipal issuer uses the proceeds itself** (i.e., **it is both the issuer and the borrower**) for general public purposes, such as roads, water and sewer systems, police and fire departments, schools and other publicly owned facilities.
  - These bonds are often **backed by the general credit** of the municipal issuer and are called **general obligation bonds.**
  - Sometimes bonds are **backed only by revenues from a certain public enterprise** (e.g., water and sewer systems) and are called **revenue bonds.**

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- Generally speaking, municipal bonds, where the **owner of the facilities financed** is a state or political subdivision, are called **“governmental purpose” or “essential function” bonds.**

- Of the roughly $450 billion annual volume of municipal bonds*, the vast majority, or about $300 billion, are essential function bonds.

- These bonds **derive their tax-exemption under Section 103** of the Internal Revenue Code and **are subject to much less complex rules than “private activity” bonds**, which are described below.

“PRIVATE ACTIVITY” BONDS – TWO TYPES

- **In other cases**, a municipal bond **issuer may loan the proceeds to a private party** – **either** (i) a **profit-motivated entity** such as a developer **or** (ii) a **Section 501(c)(3) nonprofit corporation** – which agrees to use the proceeds to finance an activity which has a specified beneficial public purpose. These bonds are sometimes abbreviated as "PABs."

  - Such **approved purposes** include airports, certain educational facilities, docks and wharves, pollution control, certain privately owned water systems, industrial development, certain single-family housing and certain **multifamily rental housing facilities.** There are **30 such activities,** which are listed in the table attached as Exhibit A.

  - The volume of these bonds **experienced dramatic growth** in the 1960s **through the early 1980s**, and **Congress became concerned that the drain on federal revenues** was becoming too great.

* According to SIFMA, total muni volume in 2021 was $482 billion; with higher interest rates, through September of 2022, annualized muni volume for 2022 would be about $412 billion. Muni bonds issued for new facilities are called "new money" bonds; muni bonds issued to pay off prior bonds are called "refunding bonds."

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- As a result, in 1986, these "quasi-public purpose" bonds for non-governmental borrowers were labeled "**private activity bonds**," and **Congress limited the volume of 16 of these 30 types of private activity bonds** which could be issued by each state, as shown in Exhibit A.

- Today, these private activity bonds comprise about $150 billion of the U.S. $450 billion annual municipal bond market.*

- The House passed a version of the Tax Cuts and Jobs Act of 2017 **("HR1") which would have eliminated the tax-exemption on all private activity bonds**. Critics of these bonds argued, "They are for golf courses, football stadiums and office buildings." Clueless! In fact, these uses were less than 1% of the issuance; **83%** of private activity bonds were issued **for** nonprofit hospitals, colleges and universities, and other **non-profit institutions** and for affordable **multifamily rental and single family housing**. Fortunately, **saner minds in the U.S. Senate prevailed**, and **tax-exempt private activity bonds were saved**. But we live in a scary world!

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* The volume of private activity bonds issued in 2017 in all 30 categories was $142 billion, roughly $70 billion were "new money" issues and roughly $72 billion were refundings.

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- **Annual PAB Volume Limitations.** The **current annual** private activity bond volume **limit** for the entire United States is **$39.754 Billion**. For 2023, **each state gets the greater of (i) $120 per capita or (ii) $358,845,000.** Eighteen (18) lower population states and the District of Columbia get the minimum. In 2022, California, the highest population state, got $4.316 Billion. See Exhibit B.

- **Carryforward Bond Volume.** If private activity bond volume allocated to an issuer is not used in the year of allocation, **an issuer can** make a simple filing with the IRS by mid-February of the following year, and that issuer can **use the volume for the same purpose** (*e.g.*, multifamily rental housing) **in any of the 3 years following** the year in which the volume was allocated.

- Prior to 2016, only a few states had more demand for private activity bond volume than their annual allocation plus available carryforward volume. **Due primarily to the dramatic increase in demand for multifamily rental bond volume from 2016 through 2021, over 20 states became oversubscribed. More recently**, as a result of the dramatic rise in interest rates since the spring of 2022 and continuing cost increases, **the oversubscription ratio has declined substantially**, but 12-15 states remain oversubscribed. **See the discussion in Section IV below.**

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- **Section 142(d) Private Activity Bonds.** If the **loan** of tax-exempt bond or loan proceeds is **to** a **for-profit partnership or LLC** for affordable multifamily rental housing, then the bonds or loan will be exempt under **Section 142(d)** of the Code. These tax-exempt bonds or loans **will require a PAB volume allocation, but can trigger 4% LIHTC**.
- **Section 501(c)(3) Private Activity Bonds.** If the **loan** of tax-exempt bond or loan proceeds is to certain types of **Section 501(c)(3) corporations,** as the borrower, then the Bonds will be exempt under **Section 145 of the Code**. **No volume allocation is required, but these financings are not eligible for 4% LIHTC**. **If** facility is **also a multifamily residential facility** as defined in Section 142(d) and **does <u>not</u> involve new construction or substantial rehab**, **Section 142(d) targeting requirements** (described below) will apply.
- Both types of private activity bonds for multifamily rental housing are **generally not backed by the general credit** or revenues of the municipal issuer, which almost always serves as a mere "**conduit**" to lend the tax-exempt bond proceeds to the owner of the "quasi-public purpose" facility.

- **Again, any debt of** a **state or political subdivision** of a state **can be tax-exempt, whether styled as a "bond" or a "loan,"** as long as the applicable statutory and regulatory provisions are satisfied.

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THREE MAJOR TYPES OF TAX-EXEMPT MULTIFAMILY RENTAL HOUSING BONDS

- So, to summarize, there are **three different categories of tax-exempt multifamily residential rental housing bonds**, each with its own set of rules, **depending on the nature of the owner** of the residential rental housing facility:

  1. **Essential Function Bonds under Section 103 of the Code** for facilities **owned by a state or political subdivision** – *e.g.*, a city, county, housing authority or housing forward corporation or a controlled affiliate. Simplest rules; very small percentage of annual volume.

  2. **Tax-Exempt Volume Limited Section 142(d) Private Activity Bonds** for **profit motivated owners**, the vast majority of which are paired with 4% LIHTC. By far the most complex rules, but also by far the biggest category – probably 90-95% of annual volume or more.

  3. **Tax-Exempt "Section 501(c)(3)" Bonds** under Section 145 of the Code for **certain nonprofit owners**. (No private activity bond volume required but cannot be paired with 4% LIHTC.)

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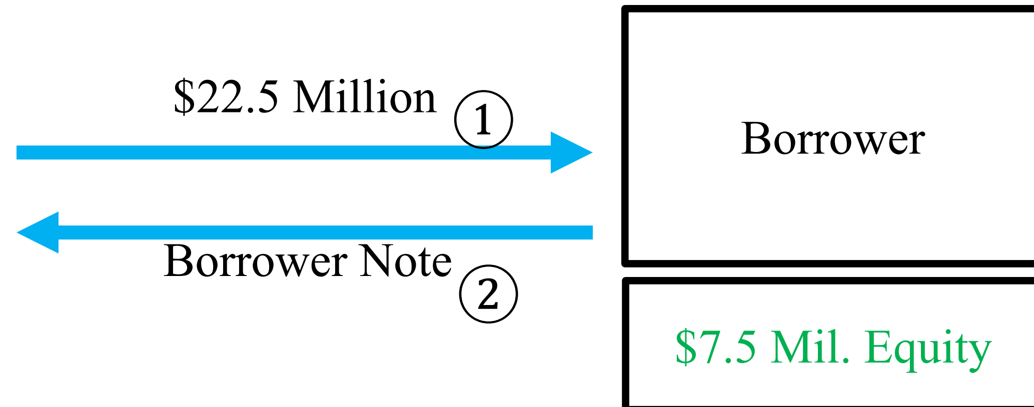
III. BASICS OF MARKET RATE AND AFFORDABLE APARTMENT FINANCE

MARKET RATE APARTMENTS

- Hi!
- I am a real estate developer.
- I want to develop, finance and build a $30 Million **market rate** apartment building.
- I have equity of about $7.5 Million (≈ 25% of Total Development Cost ("TDC")) and I need a loan of about $22.5 Million (≈ 75%).
- I borrow $22.5 Million from my bank.



- Simple; quick!

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WHAT ARE MY MARKET RATE DEVELOPER ECONOMICS?

- I build the project using my equity and my bank loan proceeds, rent it up, achieve stabilized occupancy.
- Show 2-3 years of stabilized NOI.
- In year 5-6, I sell it at a nice (3.5-4%?) cap rate, get my equity out, plus a nice profit.
- What's my profit if it's a 20% per year return and 5 years? That's a profit of about $7.5 Million.
- I add that $7.5 Million profit to my $7.5 Million original equity. Repeat the above; on an even larger project! Or two projects! Keep growing my net worth.
- **Is this a great country, or what!?**

You!

Too can succeed in America!

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AFFORDABLE APARTMENTS
9% LIHTC AND TAX EXEMPT BONDS + 4% LIHTC

- Hi!
- I am also a real estate developer.
- I want to develop, finance and build a $30 Million **affordable** apartment building.
- I will rent to tenants whose income does not exceed 60% of AMI for a family of 4, adjusted for family size*, and I will restrict the rents I charge to 30% of that amount*.
- How can I do that?

---

* I could choose to set aside **20%** of the units for tenants whose income does not exceed **50%** of AMI for a family of four, adjusted for family size, restrict rents on those affordable units to 30% of those income levels, and rent the other 80% of the units to any tenants at unrestricted rents, but I can only sell tax credits on the affordable units. This "mixed income" financing model is most often used on large urban apartment projects with tax-exempt private activity bonds and 4% LIHTC on the 20% of the units which are affordable.

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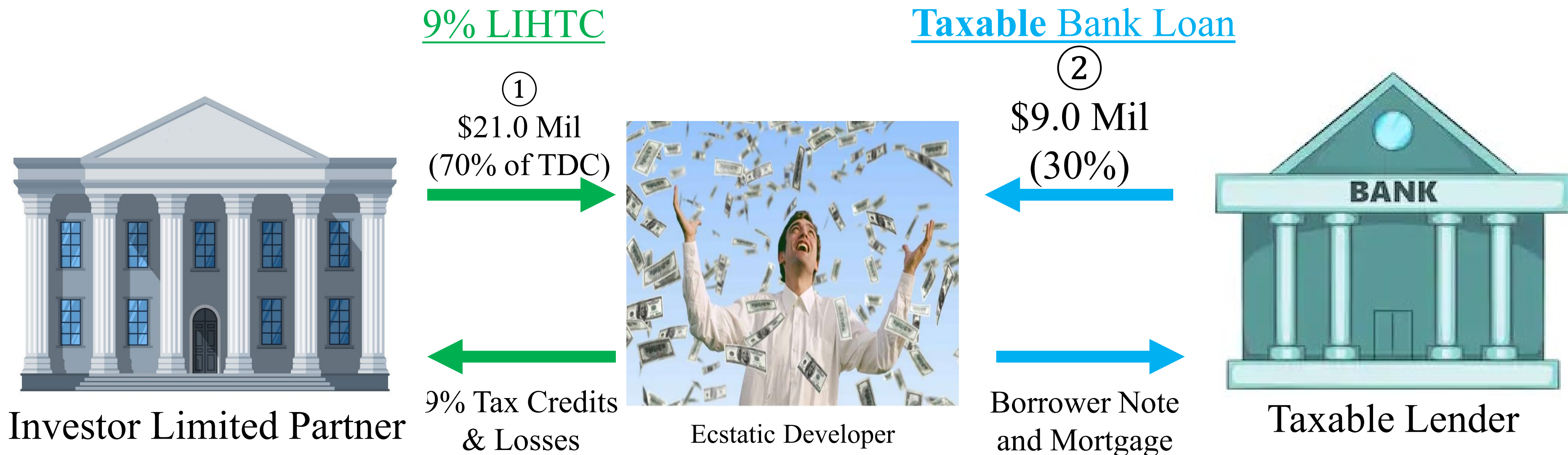
TWO WAYS:

A. Apply for and sell **9% Low Income Housing Tax Credits** ("9% LIHTC") under Section 42 of the Code.



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9% LIHTC (Cont'd.)

- **Note ecstatic demeanor of above developer** – low leveraged loan (30% LTV) and huge LIHTC proceeds (70%).
- Available for **new construction** and **acq./rehab** (rehab at least $6,000 per unit).
- **Cannot use tax-exempt bonds or loans** on a "project" receiving 9% LIHTC, but bank loan is very small. Home run!
- 9**% LIHTC volume allocation** required; **often oversubscribed 4 or 5:1**.
- Can't get a 9% allocation? Next best thing is…

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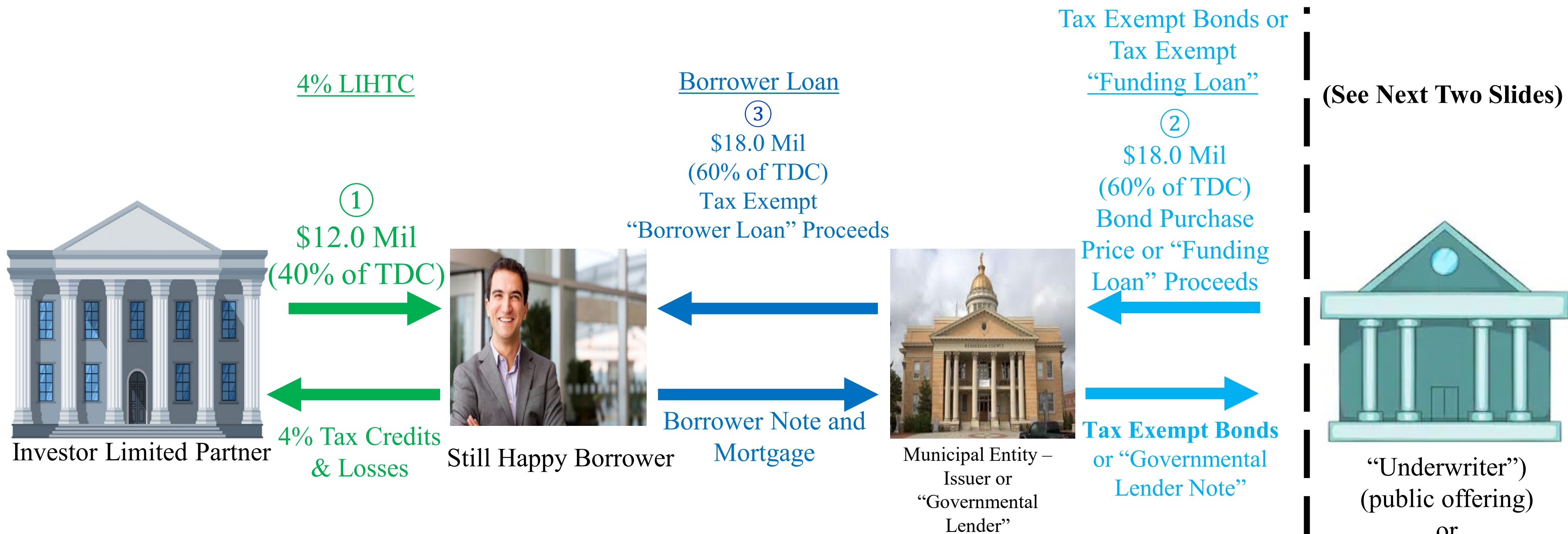
4% LIHTC Combined with Tax Exempt Bonds or Loans Under Section 142(d)

B. Apply for tax-exempt private activity bond volume and issue **Tax Exempt Private Activity Bonds under Section 142(d)** of the Code; sell **4% Low Income Housing Tax Credits** under Section 42 ("4% LIHTC")



- Not as powerful as 9% LIHTC, BUT:
  - Does finance ≈ 35-40%+ of TDC (4.0% now = 4.0%, not 3.2%!!! ☺).
  - Requires more debt, but tax-exemption often provides a lower borrowing rate on the debt side of the deal.
  - Remember: **Debt must flow through a municipal issuer** to be tax-exempt.

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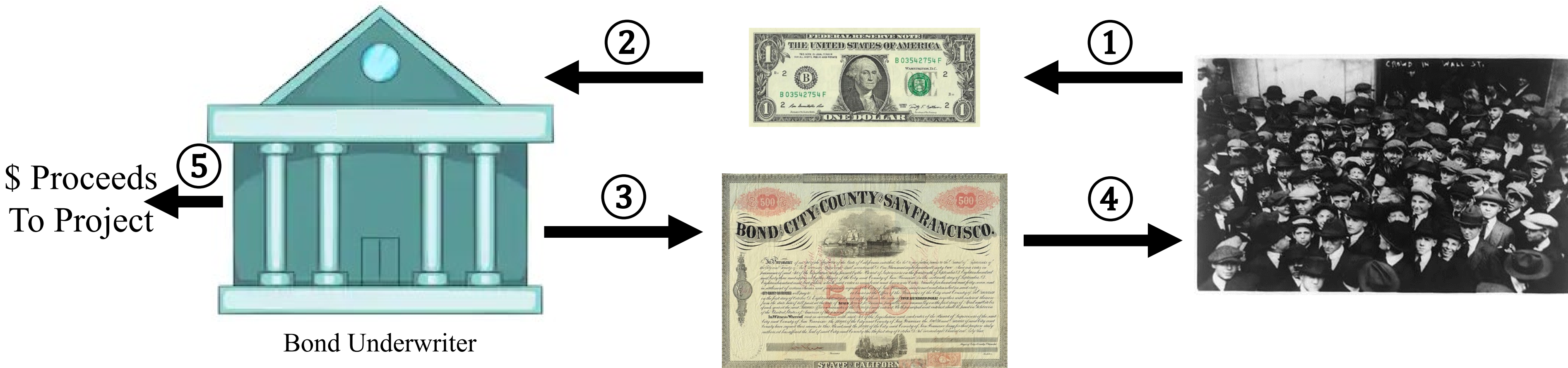
Tax Exempt Bonds May be Sold in Either of Two Ways:

- **Public Offering – The Basics**
  - A registered broker-dealer firm or "underwriter" sells Bonds to public retail investors.



- **Bonds are often "credit enhanced"** (i.e., guaranteed by Fannie Mae, a bank or a major financial institution.*)
- Most often are **rated A or higher** ("investment grade") by Standard & Poor's or Moody's.
- Bonds **sold in $5,000 (or lower) minimum denominations**.

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* Some state housing finance agencies and other larger local issuers put their own rated credit behind the bonds they issue.

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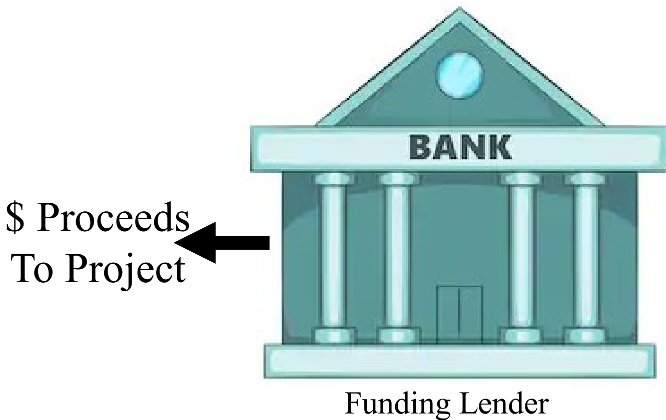
Tax-Exempt Bonds May be Sold in Either of Two Ways:

- **Private Placements – The Basics**
  - A bank or other private placement sponsor funds the bonds or loans out of its own funds – no offering to the public.



- Bonds or "loan" backed by 1st deed of trust and construction period guarantees but **no credit enhancement**.
- **Unrated**.
- **Large minimum denominations** (e.g., $100,000+) and **restrictions on transfer** (only to **Qualified Institutional Buyers ("QIBs")** or **Accredited Investors under Reg D ("AIs")** – no moms, pops, widows or orphans!
- Purpose of restrictions – **reduce litigation risk** to issuer and other participants.

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- **Different terminology** may be used for the municipal debt being sold.

Public Offering	Private Placement
The tax-exempt debt is almost always called a "**Bond**" or "**Note**." The names of financing participants and documents use **"bonds/securities" terminology**.	The tax-exempt debt is called a "**Governmental Note**" or "**Governmental Lender Note**" for Community Reinvestment Act ("CRA"), accounting and reserve requirement purposes. Styled as a tax-exempt "loan," names of the participants and documents use **tax-exempt "loan" terminology**.
The Key Point: Either (regardless of name) will be treated as a "tax-exempt private activity bond" under Section 142(d) and will trigger 4% LIHTC.	

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WHAT'S IN IT FOR ME,
THE **AFFORDABLE** RENTAL HOUSING DEVELOPER?

?

?

?

- **The Big Minus**:
  - Comparison to Market Rate Apartment Financing:
    - With limits on tenant income and rent, and a 15+ and almost always 30+ or 55+ year regulatory period, **I won't be able to flip the project in 5-6 years**, get my equity out and roll my profit into my next deal. ☹

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WHAT'S IN IT FOR ME, THE **AFFORDABLE** RENTAL HOUSING DEVELOPER?

TWO BIG PLUSES:

1. "Automatic" **4% tax credit equity – The BIG Reason**. ☺

   - **Available** under Section 42 of the Code **only** to **borrowers using new money private activity bonds** under **Section 142(d)** for profit motivated borrowers.

   - Can be **syndicated for 35-45% or more of total development cost** on a 100% affordable project.*

2. **Lower** debt side **borrowing rates.** ☺

   - May be as much as **50-100 basis points lower** than taxable lending rates, which can add proceeds equal to **another 8-10% of total development cost.**

---

* And project may qualify for state low income housing tax credits.

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WHAT'S IN IT FOR ME, THE **AFFORDABLE** RENTAL HOUSING DEVELOPER?

- **OTHER PLUSES:**
  - I'll **qualify for a larger loan** (lower DSCR and larger LTV) because:
    - **Tax exempt rates are generally lower** than taxable rates (by up to 50-100 basis points); however, rates on **taxable FHA insured** and **Rural Development loans** may be lower.
    - **Tax credit rents are typically lower than market rents.**
    - **The lender has sophisticated investor limited partner in a first loss position ahead of it.**
    - According to a March 2018 CohnReznick report, the **cumulative foreclosure rate for these properties is only 0.71%!!** CohnReznick states that **this is lower than that on all other classes of commercial real estate and AAA corporate debt since 2000!**

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WHAT'S IN IT FOR ME, THE **AFFORDABLE** RENTAL HOUSING DEVELOPER?

- I can collect a **developer fee** of 10-12% (or more?) of TDC at closing or in 1st year or two.
- In some cases **my management company can manage for a fee**.
- In some cases my **affiliated construction company can build** or rehab the project.
- These projects may not rocket in value, but **can increase substantially in value over time**.

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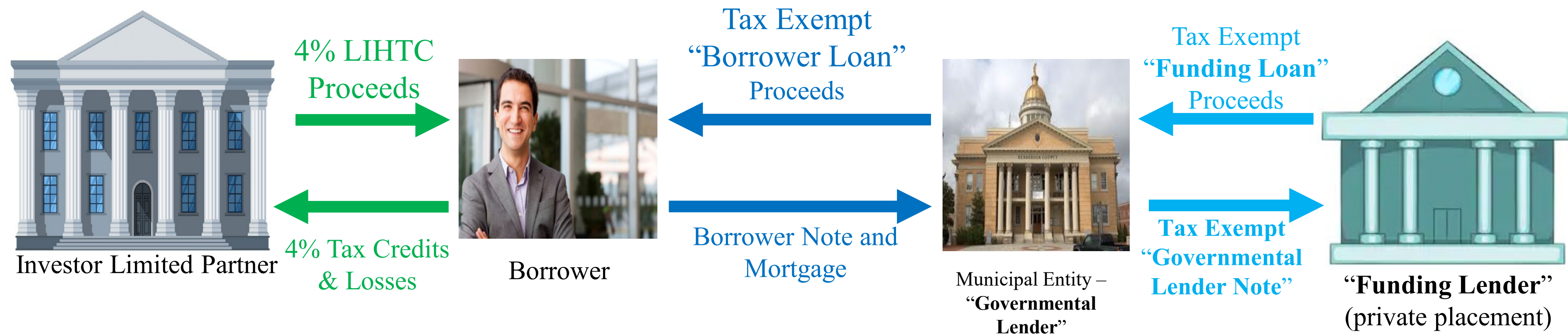
Private Placements – The Details

- **Private placements** comprise probably **70% or more** of the roughly $20 Billion of **tax-exempt multifamily housing private activity bonds** (or "loans") issued in the United States each year.
- The simplest private placement structure is that shown on slide 15 and again below – a bank or other program sponsor (the "**Funding Lender**") **makes a "Funding Loan" to the** municipal entity, which we call a **Governmental Lender**, who in turn loans the money to the Borrower. The Governmental Lender issues its "**Governmental Lender Note**" to the Funding Lender, which is payable from the **Borrower Note**.

Private Placements – **Very Streamlined Structure**



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Private Placements – The Details (cont'd)

- Private placement programs have the **advantages** of:
  - **Lower financing costs** – No rating fees and other costs associated with a public offering.
  - **Flexibility** – Terms can be modified as agreed by the Issuer, the Borrower and the Bank or other program sponsor.
  - **Speed** – Faster loan underwriting in some cases and no delays associated with rating and public offering.
  - **Draw-down Funding**: 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.
  - **Prior to the yield curve inversion** beginning in 2022, **low variable rate during construction**/rehab/rent-up – e.g., 1-Month SOFR* plus spread of ~2.00% to 2.50% = **2.50% to 3.00% "pre-Conversion" rate.** With the dramatic rise and major inversion of the yield curve which we have seen since early 2022, **today the pre-Conversion rate is higher than the perm rate. 1-Month SOFR (5.30%) plus 2.00 - 2.30% = 7.30% to 7.50%**.
  - **Locks in low permanent rate** (e.g., 16 to 18-year LIBOR swap – **today, about 3.75% (plus ~2.00%-2.50%)** or around **5.75% to 6.25% perm rate**) at initial loan closing.

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* During this period most private placement sponsors imposed a 50-75 basis points floor, but most sponsors apply a 0.50% floor.

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Private Placements – The Details (cont'd)

- **"Built-in" Tax Exempt Bridge Loan between Closing and Conversion.** Since the bank funding the loan has a first deed of trust on the project and other guarantees, these programs also allow the pre-Conversion phase of the tax-exempt loan to be "upsized" to fund project costs incurred prior to the receipt of tax credit equity, subordinate loans, and other permanent funding sources, which may not be available until after the related costs have been incurred.
- **Underwriting Terms Very Attractive**
  - **35 or, now most often, 40-year loan amortization** to a 16 – 18 year balloon
  - **Very large (85 – 90%) loan-to-value,** and
  - **Very low debt service coverage (1.15).**

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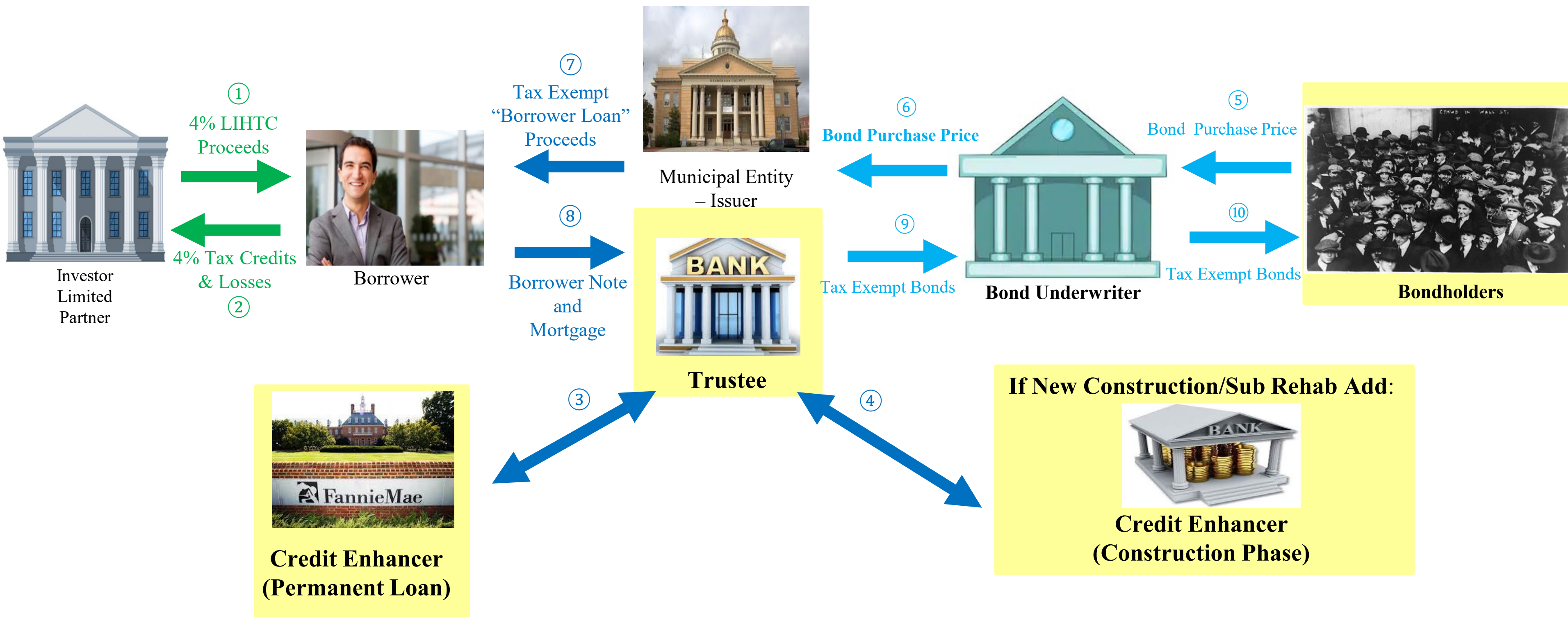
Public Offerings – The Details

- **Tax exempt "Bonds" may also be sold in a publicly offering.** Such bonds **will have a trustee** to act for the bondholders, and, as noted above, **are often "credit enhanced"** by a major **highly rated institution,** such as Fannie Mae or a bank, who agrees to pay timely debt service on the Bonds if the project's net operating income is insufficient.
- Most public offered bond structures are **more complex, involving more players**.



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Other Minuses of Publicly Offered Bonds

- **Additional Costs:**
  - The credit enhancer(s) and Trustee shown above are generally represented by counsel. **Credit enhancement and Trustee fees**, together with Underwriting fees, and those of their counsel **can be substantial and greater than the origination and legal fees in a private placement**.
  - A **rating will generally be required**, adding another player and **additional costs**.
  - **The additional complexity can result in a greater time to close (by one or two months).**
  - **A private placement sponsor may lock in a perm rate spread** (to an index, but not the perm rate) **at time of loan application**. **Not available in a public offering** (though public offering spreads for a given structure tend to be fairly stable).

So…..

- **Why would any sane, profit motivated developer choose a public offering over a private placement?**

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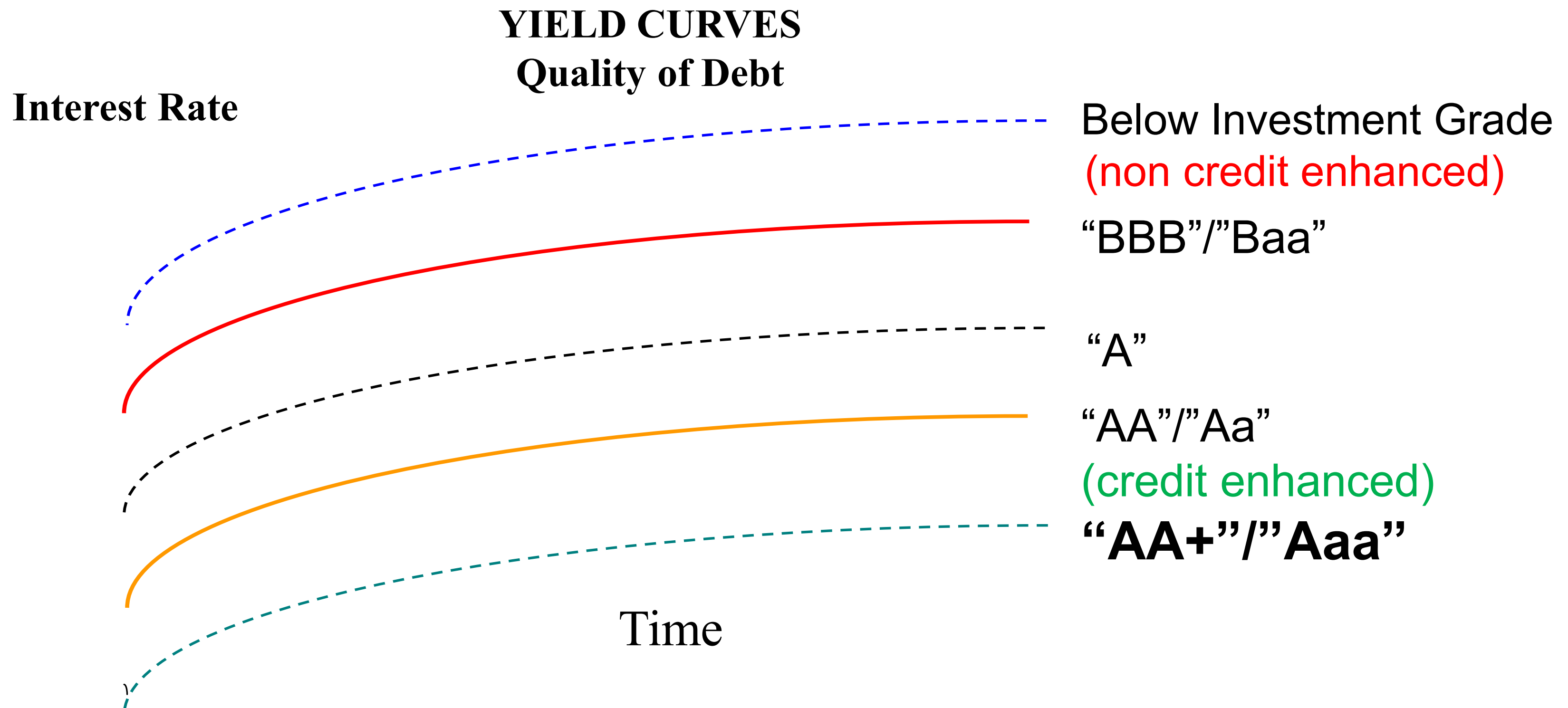
MAIN ADVANTAGE: LOWER RATES!!!

- In most cases, publicly offered Bonds are **rated AA+ or Aaa** and are generally **sold in low minimum denominations (e.g. $5,000)** by the **underwriter to** a wide range of **retail investors**.
- As a result, **such bonds carry very low interest rates**!



- These **lower rates generally offset the cost of the credit enhancement** to produce an **all-in borrowing cost for the Borrower comparable to private placements**.

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- In addition, over the past three years, **individual investors and tax-exempt municipal bond funds have comprised about 75% of the buy side of the municipal bond market.**

- Over this period (until early 2022), **inflows into municipal bond funds greatly exceeded outflows, driving down all municipal interest rates**, but **especially those for publicly offered municipal bonds**.

- These trends **made the all-in borrowing costs on publicly offered bond structures, such as the Fannie Mae M.TEBs structure, even more competitive** with private placements at certain times and in some cases a better choice.

- **Since early 2022, bond fund inflows have reversed into outflows, making publicly offered long-term bonds less attractive in today's interest rate environment.**

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IV. 4% LOW INCOME HOUSING TAX CREDITS

- Section 42 permits investors in qualified projects to claim an **annual credit against federal income tax for a 10-year period** after the project is placed in service.
- **Amount of credit which can be taken each year** over a **10-year period** after placed in service is a specified percentage (now a real **4%!!!**) **of the "eligible basis"** of the **affordable units.**
- **"Eligible Basis"** is roughly speaking, **total development cost less land and commercial (for a 100% affordable project).***
- This is a **tax credit** – better than an income tax deduction: **Each dollar of credit offsets one dollar of tax liability**, not just 20 to 40+¢ as is the case with an income tax deduction.
- As is discussed below in Section IV, the **lack of private activity bond volume** versus demand in perhaps 12-15 high growth states **has become a substantial limitation** on the availability of 4% LIHTC in those states.

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* Multiply by the percentage of units limited to 60% of AMI tenants for "mixed income" projects with some "market rate" units.

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- On 100% affordable multifamily rental projects the **4% LIHTC often funds 40 or 45% of total development cost ("TDC") or more**. If state tax credits are available as they are now in 20 states, the percentage of TDC may be 50% or higher.

- In 2016, it is estimated that **tax-exempt bonds combined with 4% LIHTC** provided funding for roughly **75,000 units** of 135,000 estimated affordable rental apartment units in the United States*

- **The market for 4% LIHTC** on 100% affordable projects **is well established**.

  - **Prices** ranged from the $0.70 to $0.80/dollar of LIHTC through most of the 1990's.

  - **Prices climbed to a level exceeding $0.90 to $1.00** in some markets in the early 2000's and **are now in the $0.85 to $0.95/dollar range** on many executions.

---

* It is estimated that the 60,000 balance of these 135,000 affordable rental units were financed with 9% LIHTC. These 135,000 affordable rental units were about 1/3 of the estimated 400,000 rental apartment units produced in the U.S. in 2016. The CohnReznick 2018 study referenced in slide 21 estimated current production for 9% LIHTC and tax-exempt debt + 4% LIHTC at about 100,000 units per year.

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Basic Requirements for 4% LIHTC

- **10-Year Holding Period:** Generally speaking, project must have been owned by prior owner for at least 10 years to be eligible for 4% credits, **unless "federal or state assisted"** (e.g. section 8, FHA insured).*
- **50% Test:** At least **50% of aggregate basis** of the building and cost of land must be **financed from tax-exempt private activity bonds** under Section 142(d), which Bonds must **remain outstanding until** the Project's **placed-in-service-date** (generally, COO on new construction; completion of rehab on acq/rehab deals) to get full value for 4% LIHTC.

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* This exemption may be available if the project was "federal or state" assisted before or after closing of the financing and transfer of the project to the new tax credit limited partnership or LLC.

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- **Generally the same 40/60 income targeting** as Bond test under Section 142(d) of the Code (but applies building by building), but most tax credit projects are 100% affordable to maximize tax credits – **tax credits are only paid on the targeted units**.
- Unlike bond rules, **tax credit rules limit rents charged** on targeted units **to 30% of the applicable income limit** for the targeted unit.

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- Tax credit units **must continue to comply** with above limitations for a Qualified Project Period ("QPP," discussed below) of at least **15+ years after placed in service, or** tax credit investors will be **subject to "recapture"** of tax credits claimed.
- **If the project loan defaults and the lender forecloses, remaining years' credits convey with the property**, even though original tax credit investor paid for the entire stream of credits in first one or two years.
- Thus the **tax credit investor**, like the credit enhancer(s) in public offerings, or the bond purchaser or "funding lender" in non-credit enhanced private placements, will take various steps to **carefully monitor** both **regulatory compliance and** the **project's financial performance** throughout the project's QPP and beyond.

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Sample Transaction - Value of 4% LIHTC

	100% Affordable, DDA*
Assume: Total Development Cost	$30.0 Million
Less: Land	($4.0 Million)
Less: Commercial	$0
Qualified Basis	$26.0 Million
Assume: Difficult to Develop Area ("DDA") or Qualified Census Tract ("QCT")* (e.g., entire City of LA)	x 1.3
	$33.8 Million
Assume:100% at 60% of AMI means "Applicable Fraction" of 1.0	x 1.0
	$33.8 Million
Tax Credit Rate	x 0.04
Annual Credit Amount	$1,352,000
Number of Years Credits Received – 10 years	x 10
Future Value of 10 Years of Credits	$13,520,000
Assume: **90¢**/$1.00 Pricing	x 0.90
Net Syndication Proceeds to Borrower	$12,168,000
	(40.1% of Total Development Cost)

* DDA or QCT = 30% basis boost. On acquisition/rehab financings, the basis boost only applies to the rehab expenditures, not the cost of acquiring the building and fixtures.

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Tax Exempt Bond or Loan Financing
100% Affordable Project
Sample Sources and Uses of Funds

- Assume: Total Development Cost = $30,000,000

Sources		
Tax Exempt Bond or Loan Proceeds	$16,500,000	(55%)
Federal 4% Tax Credit Equity	12,000,000	(40%)
State Tax Credits and/or Subordinated Loan from City, County or State	900,000	(3%)
Deferred Developer Fee	600,000	(2%)
Total:	**$30,000,000**	**(100%)**

Uses		
Land	$4,500,000	(15%)
Construction Costs	21,000,000	(70%)
Financing Fees (Bond Costs of Issuance; Other)	1,500,000	(5%)
Other "Soft" Costs	2,100,000	(7%)
Deferred Developer Equity	900,000	(3%)
Total:	**$30,000,000**	**(100%)**

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Bond Costs of Issuance
($20,000,000 Tax Exempt Bond or Loan Issue)*

	Public Offering	Private Placement
Issuer Fees	$85,000	$85,000
Bond Counsel Fees	70,000	70,000
Financial Advisor to Issuer or Issuer's Counsel	35,000	35,000
Underwriting Fees	200,000	-
Underwriter's Counsel Fees	50,000	-
Rating Agency	15,000	-
Construction/Permanent Origination Fee (2%)	400,000	400,000
Fees of Construction/Perm Lender's Counsel	85,000	85,000
Trustee and Counsel	7,500	-
Total Cost of Issuance	***$947,500 (4.7% of Bonds)***	***$675,000 (3.4% of Bonds)***

**** Two thirds of the funds at closing on a $30,000,000 project; the original tax-exempt debt amount is often paid down from tax credit equity and other permanent funding sources at "conversion" to stabilized occupancy.***

***** Certain of these items, including issuer fees, may vary greatly from deal to deal. This table does not include fees associated with 4% LIHTC, any subordinate loans and other possible loan side financing fees.***

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V. FEDERAL TAX LAW – THE BASICS

- Nature and scope of federal tax requirements depend on **type of financing**
- For tax law purposes:
  - **"New Money"** Issues (proceeds to construct or acquire and rehab the project).
    - Proceeds are used to **finance** the **construction, acquisition** and, in some cases, **rehabilitation** of a multifamily rental housing project.
    - This is where **substantially all of current multifamily bond activity** is (except for new tax-exempt public purpose or Section 501(c)(3) workforce housing bonds).
    - Of "**New Money**" deals, **90-95%** are **Private Activity Bond** issues under **Section 142(d)** – for a **profit motivated owner,** almost always combined with 4% LIHTC.
  - "**Tax-Exempt Refundings**" of prior tax-exempt bonds – **very unusual today** due to low taxable rates – very different (simpler) rules.

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Rules under Section 142(d) for "New Money" deals are very similar to those for 4% LIHTC under Section 42

- The **tax-exempt bond financing rules** will be incorporated in a "**Bond Regulatory Agreement**" **or** a "Land Use Restriction Agreement" (**"LURA"**) which bond counsel prepares and which will be recorded against the land.*
- **Residential Rental Housing Facility.**
  - **"Rental":** Tenant must rent unit**; no condos.**
  - **Complete living units** (each unit has at least a minimal kitchen and bath); "Single Room Occupancy (or "SRO's") are exempt from this requirement.
  - **No Transient use** (no hotels, rooming houses, leases of at least six months).
  - **Leased to the general public** (although restrictions to the elderly, veterans, and certain other broad groups are permitted).

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* There will be a separate Regulatory Agreement on the 4% LIHTC §42 side.

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Major Tax Exempt Bond Rules Under Section 142(d)

- **20/50 or 40/60 Income Targeting**
  - Rent **20% of units** to families with **incomes ≤50% area median**, or rent **40% of units** to families with **income ≤60% area median income**
  - Above limits for family of 4; **adjust up or down for family size** (like HUD under Section 8).
  - **Annual recertification:** If income rises above **140%** of applicable income limit, next unit of equal or smaller size must be rented to qualifying tenant.
  - Lasts for the **longest of (i) at least 15 years after 50% occupancy**; **(ii)** until any **Project based Section 8 subsidy expires**; or **(iii)** as long as **Bonds outstanding** (the "**Qualified Project Period**" or "**QPP**").
  - Substantial majority of deals are 100% at 60% of AMI, with 4% LIHTC on 100% of the units and effectively, a 30+-year QPP under Section 42.

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Major Tax-Exempt Bond Rules Under Section 142(d)

- **Private Activity Bond Volume Allocation Requirement**
  - Must **apply through issuer** for allocation.
  - **Demand** for multifamily housing volume had grown to be **greater than the supply** in 18 or so states as shown in the map on the next slide.
  - In **many of these states, applications had exceeded awards by 3:1** (e.g., California) **to 5:1** (e.g., Washington state) in 2021, as shown in the map on the following slide.
  - **More recently**, as a result of the dramatic rise in interest rates since the spring of 2022 and continuing cost increases, **the oversubscription ratio has declined substantially**, but 12-15 states remain oversubscribed. Today, this has also substantially lowered the over-subscription ratio in a number of the over-subscribed states, as also shown in the map.

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Volume Limited States and "Guestimated" Oversubscription Ratios*

Washington 5:1 → 3:1
Oregon 1.3:1 → 1.5:1
Colorado 1.5:1 → 3.0:1
California 3:1 → 1.5:1
Hawaii 1.4:1 → 1.6:1
Texas 3:1 → 2:1
Minnesota 2.5:1 → 1.4:1
New York 3.5:1 → 3.0:1
Mass 2.5:1 → 2.0:1
Tennessee 2.1 → <1.0:1
Virginia 1.2:1 → 1.0:1
North Carolina 1.1:1 → <1.0:1
South Carolina 1.2:1+ → <1.0:1
Georgia 2:1 → 3:1

ALASKA, WASHINGTON, OREGON, COLORADO, CALIFORNIA, HAWAII, IDAHO, MONTANA, NEVADA, UTAH, WYOMING, ARIZONA, NEW MEXICO, NORTH DAKOTA, SOUTH DAKOTA, NEBRASKA, KANSAS, OKLAHOMA, TEXAS, MINNESOTA, IOWA, MISSOURI, ARKANSAS, LOUISIANA, WISCONSIN, ILLINOIS, MICHIGAN, INDIANA, KENTUCKY, MISSISSIPPI, ALABAMA, FLORIDA, OHIO, WEST VIRGINIA, PENNSYLVANIA, NEW YORK, NEW JERSEY, DELAWARE, MARYLAND, MASS, CONN, RI, VT, NH, MAINE, TENNESSEE, DC, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA

* Our NGO estimates are based on published data, supplemented by conversations with industry colleagues active in tax-exempt multifamily bond and loan financings in our nationwide practice. We believe the true level of oversubscription cannot be assessed by simply comparing multifamily PAB volume applications filed to multifamily PAB allocations, since this does not reflect developers who would have filed in severely oversubscribed states, but did not make the effort to do so due to the perceived low likelihood of obtaining an award. For example, in 2021 California had about $7.0 billion of multifamily PAB applications and allocated about $3.5 billion to multifamily, suggesting a 2:1 oversubscription ratio. But it was common knowledge that the State's top priority was new construction. Knowledgeable California industry colleagues told us they were confident there would have been another $1.0 billion applied for on acquisition-rehab/preservation financings, but developers simply did not apply due to the very low likelihood of receiving an award. This was our 2021 estimate of oversubscription in California, close to 3:1 rather than 2:1 in that robust year. The more recent estimates reflect our estimates for 2023.

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Major Tax-Exempt Bond Rules Under Section 142(d)

- Moreover the **actual demand versus supply ratios** are **probably higher by 50%** or more (**e.g., 3:1 in California**) since many otherwise valid projects which cannot score high enough do not even bother to apply (e.g., acquisition/rehab projects in California, which at present strongly favors new construction in scoring).
- The Affordable Housing Credit Improvement Act ("**AHCIA**") provision in the Build Back Better legislation to **lower the 50% Test to 25%** is one of the industry's two top lobbying priorities (the 50% increase in 9% LIHTC being the other), but that legislation is stalled.
- If passed, any reduction would more likely be to 35% or some level higher than 25% for budgetary reasons.
- Passage this year probably unlikely. The Chairman of the House Ways & Means Committee is a friend of tax credits, but from a rural state more likely to favor expansion of 9% LIHTC.
- This type of reduction, **if achieved, would help materially**, but it would solve the problem in most of the volume starved states.

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Major Tax-Exempt Bond Rules Under Section 142(d)

- Bond volume **recycling provides limited relief**, since it **does not qualify under the 50% Test** and only provides volume for projects which do not require 4% LIHTC or need permanent tax-exempt volume above the 50% Test. **AHCIA provisions in the stalled Build Back Better legislation allowing single family and multifamily recycled bond volume to be exchanged** could also help some projects, but does not constitute major relief.
- In **other states, volume is not yet a problem, but once the annual demand** for private activity bond volume in a state **exceeds the annual supply, the state may** very quickly eat through its carryforward volume and **become volume limited in only a year or two**. California went from a carryforward situation to 2:1 oversubscribed in only two years.
- In every state, you have to **understand timing, procedures and criteria** of the allocation process and fit your transaction into this.
- In volume limited states, it is **critical** for the developer to **ascertain the availability of private activity bond volume** for its proposed project **and** the **available issuers** through which the developer may apply for that volume **at the very outset of the financing**. **Remember: No volume = no 4% LIHTC = no affordable apartment financing**.

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Each State Has Own Allocation System

- Lottery, or
- Merit-scoring criteria, or
- Geographic allocation, perhaps collapsing mid-year into statewide pool?
- Preferred categories:
  - Preservation; other acq/rehab; new construction.
  - Rural; mixed income; general?
- Once per year or multiple application rounds?
- Different periods to use after award (e.g., 180 days) or volume may be lost.
- Once again:
  - One must **asses bond volume availability** and process **at the very outset of financing**.
  - Every state is different.

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OTHER TAX EXEMPT BOND REQUIREMENTS UNDER SECTION 142(d)

50% Change of Ownership Requirement on Acquisition Financings; No tax-exempt refinancing for existing owner

- Ownership interests representing at least 50% of profits and capital must be held by persons unrelated to prior owner of project. No tax-exempt refinancing for existing owner under Section 142(d).

95/5 Good Cost/Bad Cost Test

- At least 95% of tax-exempt bond proceeds must be spent on so-called "good costs" – i.e. costs paid or incurred by the borrower.
  - No earlier than the date 60 days prior to the "Inducement" or "Official Action" resolution date, except for certain permitted "preliminary expenditures."
  - Are by their nature "capital costs" versus working capital or operating expenses.

2% Costs of Issuance Limitation

- No more than 2% of tax-exempt bond or loan proceeds may be used to pay any costs of issuance. (No problem; pay any excess from 4% LIHTC proceeds or taxable debt).

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OTHER TAX EXEMPT BOND REQUIREMENTS UNDER SECTION 142(d)

15% Rehab Requirement on Acquisition Financings	• Spend 15% of portion of depreciable cost of buildings and fixtures financed with tax-exempt bonds or loan for rehab within 24 months of the issuance of the Bonds*.
Other Requirements	• Since summer of 2008, all multifamily housing bonds have not been subject to AMT. • Public Hearing and Elected Governmental Approval or "TEFRA" requirement ("NIMBY" problems). • No more than 25% of tax-exempt bond proceeds can be used for land.

* Or the date on which the Project is acquired, if later.

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VI. PRINCIPAL DOCUMENTS USED IN TAX-EXEMPT MULTIFAMILY HOUSING BOND AND LOAN FINANCINGS

The following is a summary of the principal documents which are utilized in most tax-exempt multifamily housing bond and loan financings.*

A. **Trust Indenture or Funding Loan Agreement.** The basic terms of the Bonds or Governmental Lender Note are typically set forth in a Trust Indenture (Bond or Funding Loan Agreement) between the Issuer/Governmental Lender and a commercial bank serving as Bond Trustee or Fiscal Agent.

1. Sets forth the basic financial terms of the Bonds or Governmental Lender Note, including their maturities, interest rates (or methodology for determining interest rates, in the case of a variable rate issue), redemption provisions, mandatory tender provisions, if any (on certain variable rate transactions), and other such basic financial terms.

2. Also sets forth the basic security for the Bonds or Governmental Lender Note and pledges to the holders.

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* These documents will, of course, vary greatly depending upon a number of factors. These include whether the bond issue is credit-enhanced or noncredit-enhanced, whether it is fixed or variable rate, whether the financing structure involves a loan of bond or loan proceeds to the borrower (most typical structure), or a lease, installment sale, or other arrangement, and other factors.

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3. Sets forth various funds and accounts, specifies how Bond proceeds and other monies will initially be deposited into those funds and accounts and provides a “waterfall of funds” directing how revenues coming into the Indenture or Funding Loan Agreement will be disbursed to pay debt service on the Bonds or Governmental Lender Note, to cover other administrative expenses of the issue, and for other purposes.
4. Sets forth certain events of default and remedies and provisions governing the role of the Trustee or Fiscal Agent, supplemental indentures and certain other matters.
5. Typically prepared by Bond Counsel.

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B. Borrower Loan or Project Loan or Financing Agreement. Agreement between Issuer/Governmental Lender and Borrower and possibly the Trustee/Fiscal Agent or another Lender, typically prepared by Bond Counsel, pursuant to which Bond proceeds are loaned to the Borrower to provide for the construction or acquisition and rehabilitation of the Project.

1. Sets forth obligations of the Borrower to repay the loan of Bond proceeds to the Lender or to the Trustee/Fiscal Agent on behalf of the Issuer and other basic terms of the loan.

2. Will often contain various other representations, warranties and covenants by the Borrower which are generally designed to ensure the property is operated and maintained in such a manner as to enable the Borrower to make the payments due on the loan and to preserve the tax-exempt status of the Bonds or Governmental Lender Note.

3. Contains specified events of defaults and remedies and embodies various other provisions relating to the Project.

4. Typically prepared by Bond Counsel.

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C. **Mortgage or Deed of Trust.** Document under which Borrower grants a real estate security interest in the Project and related fixtures to the Trustee/Fiscal Agent and typically to any Credit-Enhancer of publicly offered, credit-enhanced Bonds to secure obligation of the Borrower to repay the loan of Bond or Governmental Lender Note proceeds under the Loan Agreement.

1. A Security Agreement may be embodied in the Deed of Trust or separately prepared to create a security interest in equipment relating to the Project in personal property in favor of the Trustee/Fiscal Agent and/or Credit-Enhancer.

2. Will contain typical real estate security provisions, and will vary from state-to-state.

3. May be prepared by Bond Counsel, Lender's Counsel or Borrower's Counsel or by Counsel to the Credit-Enhancer or Bond Purchaser's Counsel in a private placement.

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D. **Bond Regulatory Agreement, Declaration of Restrictive Covenants or Land Use Restriction Agreement.** Agreement between Borrower and Issuer/Governmental Lender and/or Trustee/Fiscal Agent in which the Borrower agrees to comply with the provisions of Section 142(d) of the Internal Revenue Code (in the case of private activity bonds for profit-motivated sponsors), Section 145 of the Code (in the case of certain financings for charitable organizations under Section 501(c)(3) of the Code) and/or other provisions of the Code and regulations applicable to tax-exempt multifamily housing bonds or loans.

1. Typically executed and delivered at closing and recorded at closing or at least before Bond proceeds are disbursed, and will "run with the land" on the property.

2. Typically prepared by Bond Counsel.

E. **Tax Certificate or No Arbitrage Certificate.** Contains representations and warranties of Issuer, Borrower, Underwriter or Private Placement Purchaser, on which Bond Counsel will rely in rendering its Approving Opinion.

1. Delivered at closing.

2. Prepared by Bond Counsel.

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F. **Credit Enhancement Facility.** On publicly offered, credit-enhanced bond issues, provides assurance of timely payment of debt service on Bonds, or senior most Series of the Bonds, in the event net cash flow from the Project is insufficient.

1. May consist of a Credit Enhancement Agreement, a letter of credit (in the case of bank credit enhanced financing), a Bond Insurance Policy or similar device.

2. Prepared by Credit Enhancer or its Counsel.

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G. **Reimbursement Agreement.** On publicly offered, credit-enhanced bond issues, agreement between the Borrower and Credit Enhancement Provider under which Borrower agrees to reimburse credit enhancement provider for any draws on the Credit Facility.

1. Contains numerous and elaborate default and remedial provisions, and typically gives the Credit Enhancer tremendous control, particularly following any default in the Borrower's obligations on the transaction.
2. Secured by shared interest in Mortgage or Deed of Trust, and/or by separate Mortgage or Deed of Trust on Project.
3. Typically prepared by Counsel to the Credit Enhancer.

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H. Construction Funding Agreement. Governs details of construction draws and may set forth terms of "Conversion" of the loan to a "permanent" loan following construction or arbitration and achievement of stabilized occupancy (*e.g.,* 1:15 debt service coverage for 90 consecutive days).

1. Used in many draw-down, tax-exempt bond or loan private placements.
2. Generally prepared by Bond Purchaser or Funding Lender's counsel for the private placement.

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I. Intercreditor Agreement. On publicly offered, credit-enhanced bond issues, governs the respective rights of the Trustee (on behalf of the Issuer), on the one hand, and the Credit Enhancer on the other, to real estate security for the Bonds and to direct control of proceedings in the event the Borrower defaults on any of its obligations on the transaction.

1. Typically gives principal control and enforcement rights to the Credit Enhancer following a loan default, so long as the Credit Enhancer is performing its obligations under the credit enhancement facility, and otherwise to the Trustee on behalf of the Issuer and the Bondholders.

2. Typically prepared by Bond Counsel (since the Issuer is typically a party).

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J. Official Statement/Limited Offering Memorandum. On publicly offered, credit-enhanced bond issues, disclosure document similar to a stock prospectus used by the Underwriter to sell the Bonds, signed by Issuer and/or Borrower. In limited public offerings with a Limited Offering Memorandum ("LOM"). Rarely used on privately placed bond issues.

1. Generally contains a description of the terms of the Bond issue, the Credit Enhancement (if any) and the Credit Enhancer, the Issuer of the Bonds, the Borrower and other private participants and the Project, and the expected sources and uses of Bonds for the financing.

2. Typically contains summaries of the principal legal documents (Indenture, Loan or Financing Agreement, Regulatory Agreement and possibly other principal financing documents) description of tax-exemption on the Bonds.

3. For limited offerings, LOM will contain complete copies of major Bond documents, market studies, appraisals and certain other third party reports and detailed financial projections.

4. Form of the Bond Counsel Opinion relating to the validity and tax-exempt status of the Bonds as well as the form of the Continuing Disclosure Agreement of the Borrower (on fixed-rate financings) may be attached as Exhibits.

5. Generally prepared by Underwriter's Counsel on publicly offered multifamily housing bond transactions.

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K. **Bond Purchase Agreement.** Agreement executed and delivered by the Issuer, the Underwriter or Bond Purchaser and the Borrower, at the time the Bonds are sold to the public or committed to be purchased by the Bond Purchaser, under which the Issuer will agree to issue the Bonds on a day specified for closing, typically several weeks (on a fixed-rate deal) to several days (on a variable rate deal) following the pricing of the Bonds and the execution and delivery of the Bond Purchase Agreement.

1. Underwriter or Bond Purchaser agrees to purchase the Bonds upon satisfaction of conditions set forth therein and the Borrower agrees to borrow the Bond proceeds pursuant to the Bond documents.

2. Specifies the terms of the purchase of Bonds, including the agreed underwriting fee or discount or private placement origination fee, sets forth specific documents, certificates and opinions which must be delivered (often attaching forms of the certificates and opinions as exhibits or specifying their content in the body of the document) in order for the Underwriter or Bond Purchaser to be obligated to close and accept delivery of the Bonds.

3. May contain indemnification provisions in favor of the Issuer and/or the Underwriter or Bond Purchaser, and may set forth the other fees and expenses of the financing and the party or parties responsible for paying them.

4. Generally not used in private placements structured as tax-exempt loans; provisions incorporated in other documents. Typically prepared by Underwriter’s Counsel or Bond Purchaser’s Counsel.

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L. **Continuing Disclosure Agreement.** Agreement in which Borrower agrees to provide to the Trustee, acting in the capacity of a "Dissemination Agent" or to the Bond Purchaser in a private placement, information regarding certain material events which may occur during the life of the financing, copies of its annual financial statements, and certain other continuing disclosure information required by Rule 16c2-12.

1. Required in most fixed-rate financings under SEC Rule 15c2-12, but also, as a matter of contractual agreement, by some Bond Purchasers or Funding Lenders in private placements.
2. Typically prepared by Underwriter's Counsel or Bond Purchaser's Counsel and sometimes by Bond Counsel.

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M. Remarketing Agreement. Agreement between the Borrower and the Underwriter, serving in the capacity of Remarketing Agent, under which the Remarketing Agent agrees to remarket any Bonds tendered when the interest rate on the Bonds is reset to a new rate.

1. Used in variable rate bond issues or in fixed rate issues, where the interest rate on the Bonds is not fixed to the final maturity at Bond closing.
2. Specifies the procedure for the remarketing of Bonds, the method of payment and the ongoing fees of the Remarketing Agent.
3. Typically prepared by Underwriter's Counsel.

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N. Other Agreements, Certificates and Opinions. There are numerous other agreements which may be involved in many bond financings. In the event more than one series of Bonds are involved, there may be separate versions of each of some of the above agreements (e.g., Indenture, Loan Agreement) with respect to each series of Bonds and there may be various subordination agreements specifying the respective rights between or among the various series of Bonds or vis-à-vis other non-bond debt. Assuming the structure involves a separate construction credit facility, there may be an entire separate set of documents relating to the construction loan aspect of the financing. The foregoing is by no means an exhaustive list of the documents, opinions and certificates delivered in a typical tax-exempt multifamily housing bond transaction. A typical closing transcript on such a financing will include at least 40 or 50 and sometimes over 100 items and may consume two or three volumes of materials in especially complex financings.

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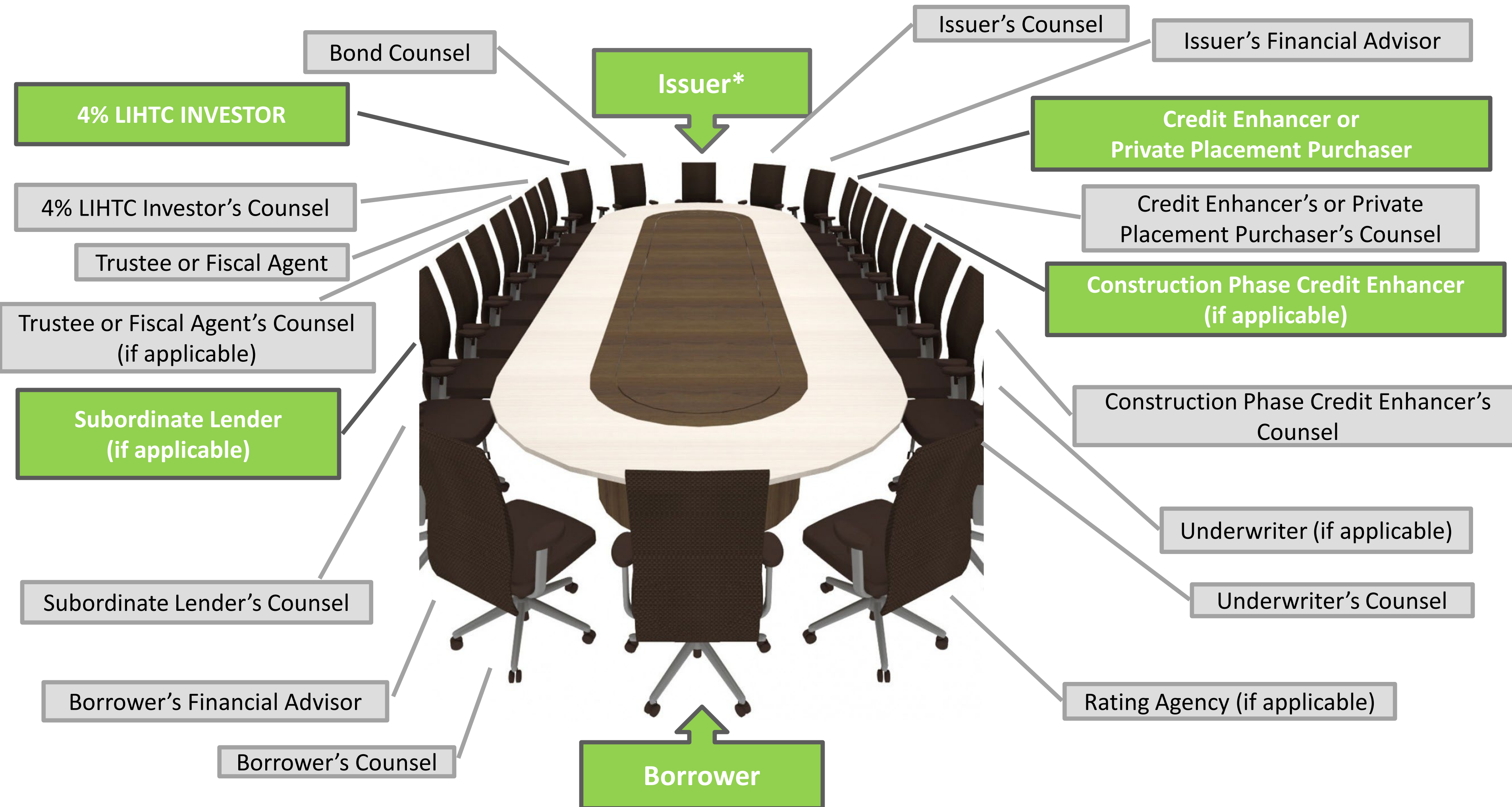
VII. ASSEMBLING THE FINANCING TEAM
Parties Around the Table



* Green boxes represent the major players whose needs and requirements will have the greatest impact on the structure, terms and documentation of the financing.

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The Issuer

- Remember: Tax Exempt Bond or Note must be issued by **state or** some **political subdivision** of a state.
  - Issuer must be authorized under state constitution and some statute to issue bonds to fund the project in question.
  - There may be **different alternative issuers** available, each with its own different program, fee structure and other requirements.
  - Some of these program **requirements** (on affordability, etc.) **may exceed those of federal tax law** (discussed below) – choose carefully!

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Three major types of issuers:

1. State Housing Finance Agency (e.g. California State Housing Finance Agency)

- Can finance projects **anywhere in the state.**
- May **sometimes** control a **high percentage of state's multi-family volume**.
- May **put its credit behind bond issue or provide savings from multiple-project "combined" issues.**
- May provide **subordinate loan financing.**
- Generally **much more issuer involvement and control** and **somewhat higher fees (e.g. 25 to 50 basis points/ year vs. 10 or 12.5 or less for local or multi-jurisdictional issuers (below).**
- Often have **fixed team of participants**, including designated underwriter. Great if you're the designee; kiss of death of you're not.
- Often use **pooled financing structures** – terms may (or may not be) competitive, but low flexibility.
- May **bar borrower from optional prepayment** for life of loan even though the HFA can refund its bonds to the Issuer's benefit.

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2. Local County, City, Redevelopment Agency, Housing or Economic Development Authority (e.g., City of Chicago)

- Generally **allow borrower more control** over financing team, including underwriter and sometimes bond counsel (among qualified or several qualified firms).
- **More flexibility on financing structure** – perhaps limited to "A" rated or higher, unless privately placed.
- **Must have access to private activity bond volume** to be a viable choice.
- Almost **never pledge their credit**, but may make subordinated loans from their funds.
- **More flexibility** on prepayment and lower fees.

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3. Multi-Jurisdictional Authority (e.g., joint powers authority such as the CMFA and CSCDA in California)

- Probably **control Bond Counsel** (or you choose among several) and Issuer's Counsel/Financial Advisor– **do not mandate other players.**
- Generally **greatest flexibility** on structure.
- **Always serve as conduit**, have no subordinated loan funds (but may still be available from other sources).
- **Generally "hands off"** with few, if any, extra requirements; **competitive fees** and **greatest developer flexibility.**

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Bond Counsel

- Passes on:
  - The **validity** of the Bonds under state law (Railroads example).
  - The **tax-exempt status** of the Bonds under federal and state law.
- Drafts the main financing documents such as the Indenture or Funding Loan Agreement, Borrower or Project Loan Agreement and Regulatory Agreement, and the closing papers.

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Owner and Owner's Counsel

- Develops, builds or renovates, owns and often manages the project.
- Responsible for complying with rules to maintain tax-exempt status of bonds (use of proceeds, set-asides, rebate, etc.) and to preserve 4% tax credits, if applicable.
- **Counsel should be experienced in real estate matters, in tax-exempt bond or loan financings and, if applicable, in tax credit equity.**
- Developer may also have separate financial advisor.

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4% Low Income Housing Tax Credit Equity Provider and Counsel

- **Key player** on Section 142(d) private activity issues.
- Will have a separate timetable and due diligence process that must be coordinated with Tax-Exempt Bonds or Loan; important for Owner to **select early in the process**.
- May have separate state tax credit equity syndicator and counsel on some deals.

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Lender and Lender's Counsel

- Structures involving **Fannie Mae** and **Freddie Mac** or **FHA** insured or **USDA guaranteed rural development ("RD")** financings use lenders approved under those platforms and lender's counsel experienced in those program requirements.

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Credit Enhancer and Its Counsel (Many Publicly Offered Bonds)

- Like Issuer **- Key participant** – If present, its requirements **will largely determine the basic terms of the financing.**
- **Many publically offered multifamily bond issues use some form of credit enhancement, but public offerings now comprise a minority of deals** (versus private placements) **in most jurisdictions.**
- Typical Credit Enhancers include **Fannie Mae**; domestic and foreign **banks** (through letters of credit), and others. **Short-term** (often publicly offered) **tax-exempt bond issues used with FHA and RD financings to satisfy the 50% Test** are now **"cash collateralized" by U.S. Treasury obligations; rated Aa+ by S&P or Aaa by Moody's and no credit enhancer** is required**.**
- **Today, most bond issues** are **structured as tax-exempt loans** and use no credit enhancement and are **privately placed** with **banks** (to satisfy CRA goals as well as financial returns) **or other institutional investors,** like **Freddie Mac** under its "TEL" program.
- These tax-exempt loans have **higher bond or loan interest rates** but **no credit enhancement** fees, and thus often produce **competitive all in borrowing costs** and permit a **"draw down" funding which eliminates project fund negative arbitrage** on new construction and sub rehab deals.

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Separate Construction Phase Credit Enhancer or Tax Exempt Loan "**Initial Funding Lender**" (e.g., a Bank) and Counsel

- Used primarily on Fannie Mae and Freddie Mac tax-exempt bond and loan issues – **Fannie Mae and Freddie Mac do not take project related risk until stabilized occupancy** (e.g. ≥ 1.15 DSCR for 90 consecutive days).
- Not necessary in most publicly offered Bank Letter of Credit backed tax-exempt bonds or tax-exempt loans privately placed with a bank or other non-GSE* sponsor.

---

* GSE – Government Sponsored Enterprise; i.e. Fannie Mae and Freddie Mac.

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Underwriter (Publicly Offered) or Funding Lender (Private Placement) and its Counsel

- **Underwriter or Funding Lender serves as the Quarterback for the financing.**
- **Assembles** the **financing team.**
- On public offerings, the Underwriter assists project owner (the "Owner") **in choosing optimal financing program**, including credit enhancement, if any.
- **Develops financial structure** of bond issue (credit enhancement, if any, bonds maturities, put features, etc.) and **prepares** bond **cash flows**, if any.
- Assists Owner in assessing availability of private activity **bond volume.**

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Underwriter or Funding Lender and its Counsel
(Continued)

- **Obtains rating on publically offered issues.**
- Together with Bond Counsel, **coordinates closing.**
- **Underwriter's or Funding Lender's Counsel** assists in above and prepares Official Statement (on public offering), Bond Purchase Agreement, Continuing Disclosure Agreement and other Underwriting or Private Placement Documents.

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- **Trustee/Fiscal Agent and Trustee's/Fiscal Agent's Counsel.**
  - **Administers Trust Indenture or Funding Loan Agreement**; makes payments to Bondholders and often disburses bond proceeds.
  - May also serves as **dissemination agent** under the Continuing Disclosure Agreement on publically offered and some privately placed tax-exempt loan transactions.
- **Title Insurance Company.**
  - Insures title for benefit of lender and 4% LIHTC Provider and Borrower.
  - Coordinates recording and develops settlement statement for closing.
- **Rating Agency (public offerings).**
  - **Rates the Bonds (N/A in private placements).**
  - "Major" Rating Agencies: Generally **Standard & Poor's or Moody's.**
  - Most credit enhanced bonds are rated "AA+" or "AA" (Standard & Poor's) or "Aaa" or "Aa" (Moody's) (top 2 categories - produce lowest interest rates for an issue of a given maturity).

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VIII. FINANCING TIMETABLE

Summary Timetable Overview

- **General Rule –** May require **4-6 months or more** from outset; some require less time.
- A key role of Underwriter or Funding Lender is to coordinate the following **critical processes** to achieve a timely **pricing** of the Bonds and **closing.**
  - **Volume allocation process**, if applicable.
  - **Issuer approval process.**
  - **Rating Agency process, if applicable.**
  - **Bond or Loan Underwriting Approval** by each **Major Financing Component.**
    - **Tax Credit Equity Provider.**
    - Senior Bond **Permanent Credit Enhancement (if applicable) or Senior Loan Permanent Funding Lender.**
    - Senior Bond **Construction Phase Credit Enhancement (if applicable) or Senior Loan "Initial" Funding Lender.**
    - **Subordinate Loan Provider.**
- Document production and approval.
- Pricing.
- Closing.

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The Goal is to avoid:

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Sample Timetable

Month-By-Month

Month(s)	
1	➢ **Owner selects Underwriter or Funding Lender.** • Select Issuer, Financing Structure and Credit Enhancer if applicable.
	➢ **Owner works with Issuer to apply for private activity Bond volume** allocation.
	➢ **Application filed with credit enhancer or Funding Lender**, which begins loan underwriting process.
	➢ **"Official action" or "reimbursement" resolution** passed by Issuer (for "new money" issue).
2	➢ Credit enhancer or Purchaser **begins real estate loan underwriting** • 60-90 days for many Private Placements and structures involving Fannie Mae or Freddie Mac; 90-120 days for FHA/ §223(f); 5-8 months for FHA §221(d)(4); RD slightly longer than FHA.
3-4	➢ **Credit Enhancer** or **Funding Lender(s)** and counsel **on board**, **volume assured.**
	➢ Underwriter or Funding Lender prepares and circulates initial financing **participants list**, rough financing **timetable** and basic **term sheet.**
	➢ **"All hands" organization meeting or conference** call to review financing.

Month(s)

4

- **Draft Documents Circulated** (starts 45-60 day drafting, revision and approval process).
  - **Bond Counsel**: Indenture or Funding Loan Agreement, Borrower Loan Agreement, Regulatory Agreement.
  - **Credit Enhancer's** or Funding Lender's **Counsel** and Construction Phase Credit Enhancer's or Initial Funding Lender's Counsel: Credit Enhancement, if applicable or Loan Commitment(s) and Documents.
  - **Underwriter's Counsel** or Purchaser's Preliminary Official Statement (public offerings), Bond Purchase Agreement, Rule 15c2-12 Continuing Disclosure Agreement, if any and Remarketing Agreement, if any (mandatory tender or variable rate transactions).
- Underwriter **submits documentation and cash flows to Rating Agency (public offering).**
- **Conference calls to obtain comments** on documents.
- Draftpersons **prepare and circulate revised drafts.**
- **Obtain private activity Bond volume allocation** (Generally must close in set number (e.g., 90-180) days.
- **Notice** published (minimum 7 days) for **TEFRA hearing** by the Issuer.
- Initial **comments** received from **Rating Agency (public offering).**
- **Documents** in "substantially final form" **submitted to Issuer.**

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Month(s)

5

- **TEFRA hearing held.**
- **Issuer passes Bond Resolution** and approves TEFRA hearing.
- **Credit enhancement commitment** (both **permanent** and, if applicable, **construction**) or Funding Lender's commitment **received.**
- **Subordinate Loan**, if any, **approved** or finalized.
- **4% LIHTC equity commitment** delivered by Tax Credit Syndicator and Partnership or Operating Agreement final.
- **Rating received** from Rating Agency (public offering).
- **Objective/Result: Preliminary Official Statement** finalized, "deemed final" for SEC Rule 15c2-12 purposes and **mailed (public offering).**

6

- **Underwriter prices and sells Bonds;** or **Funding Lender locks Bond or Tax Exempt Loan interest rate** and commits to purchase/fund.
  - **Bond Purchase Agreement executed (public offering)**
  - Parties commence **preparation of final documents**, including pricing information
  - Bond Counsel circulates **Closing Papers**
  - **Conference call** to discuss comments on final Closing Papers and Documents prior to Closing
  - Final Official Statement printed and mailed (public offering).
- **Transaction preclosed** one day and **closed** and funded on the following day or the second following day.
- Recording: often one day later (Gap Title Insurance).

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IX. REAL ESTATE FINANCE 101

- **General partners** generally **guarantee** repayment of **debt** and project completion **during construction** or rehab **and rent-up**.
- "Non-recourse" means **guaranty falls away** after project reaches **stabilized occupancy** (sometimes called "Conversion" = 1.15 debt service coverage (more later) and 90% occupancy for 90 consecutive days), **except**
  - **Fraud** (GP is still liable).
  - **Environmental** (GP is still liable).
- **Otherwise**, if project loan defaults, borrower can simply **give lender the keys.**

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REAL ESTATE FINANCE 101

- **Very different from most corporate financings** or **municipal general obligation financings** where debt often backed by diversified income stream and large, diversified balance sheet.

- Because the real estate project is almost the only security for the loan (after pre-Conversion guarantees are released), lenders use at least **two fundamental tests** in determining how large a loan they will make on a particular project:

  1. **Minimum Debt Service Coverage ("DSCR")** test: The projected net operating income **("NOI")** from the project (rental revenues less operating expenses) **must "cover"** the **debt service** on the proposed loan (scheduled payments of principal, interest and ongoing fees) by a ratio of at least, say, **1.15 to 1.00** (e.g., DSCR $\geq$ 1.15).

     - The **purpose** of the minimum DSCR test is to **minimize** the **likelihood of default** on the loan by providing some "cushion" in projected NOI over required debt service.

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2. **Loan-to-Value ("LTV") Test**: The **largest loan** the lender will make is **no greater than** a certain **percentage** (e.g., 90%) **of** the **"value"** of the project, usually as determined by an appraisal (using cost, market comparables, projected cash flow) (e.g., LTV≤90%).

   - **Purpose** of the maximum LTV test is to **provide some cushion** to the lender **if the project is sold** after being taken back by the lender through foreclosure or deed-in-lieu of foreclosure following a default on the loan.

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REAL ESTATE FINANCE 101

3. It's like taxpayers dealing with the IRS – the **borrower gets** the **lower** of the **loan size** indicated by the minimum DSCR test or the maximum LTV test.
4. The exact real estate underwriting tests used will depend on debt financing program chosen, project financed, borrower strength and experience and other factors.
5. On structures other than FHA loans, loan will be **re-underwritten following construction or rehabilitation and rent-up,** and must be paid down if required at this **"Conversion"** to the permanent stabilized loan phase to satisfy the DSCR test; however, typically no LTV test is imposed as a condition to Conversion.

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X. BONDS 102 – ALTERNATIVE FINANCING STRUCTURES

- **Publicly Offered Bonds**
  - **As noted above, publicly offered bonds are generally credit enhanced and AA+ or Aaa rated.**
  - Examples include short-term cash-backed tax-exempt bonds used to satisfy the 50% Test for projects using now lower rate **taxable FHA** and **RD financing**.
  - Long-term tax-exempt Fannie Mae credit enhanced long-term "M.TEBs" monthly pay bonds used with Fannie Mae "DUS" loans.
  - **Some** publicly offered issues – primarily Section 145 issues for Section 501(c)(3) borrowers acquiring stabilized projects with very light rehab – may have **lower rating**, usually "BBB" or "A" (lowest two tiers of "investment grade").
  - Some unrated bond issues backed by other stabilized projects may be **sold in limited public offerings** with some of the restrictions found in private placements.

Alternative Financing Structures

- **Privately Placed Tax Exempt Bonds and Loans**
  - **As described above, unrated, non-credit enhanced private placement** issues are **now predominant** especially in large urban CRA-driven markets. These issues are most often structured as **tax-exempt** loans which are placed in **large minimum denominations** (e.g., $100,000 or $250,000 or higher) to sophisticated individual or institutional investors. Other restrictions:
    - Transfer limited to "Qualified Institutional Buyers" as defined in Rule 144A, or "Accredited Investors" under Reg D.
    - May have initial Investor Letter or "Transference Representation Letter" and sometimes "Traveling" Investor or Transference Representation Letter.
    - Restrictions on Transfer.
    - Examples include the **bank draw down** tax-exempt bond or loan **private placement** structures and the closely related **Freddie Mac** tax-exempt loan or **"TEL" structure**.
  - **"Senior/sub"** structure may also be used where payment of debt service on one series is made in full before any debt service is paid on the subordinated series (usually "Series B" and/or "Series C").

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Which is the Right Structure?

Depends Upon…

- Project Type and Location.
- Borrower Financial Strength.
- Maximum Proceeds.
- Maximize Cash Flow.
- Reduce Guaranties/Recourse.
- Reduce Conversion/Balancing Risk.
- Timeframe.
- Rates.

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MAJOR TAX-EXEMPT BOND OR TAX-EXEMPT LOAN EXECUTIONS FOR AFFORDABLE HOUSING

A. BANK OR OTHER SPONSOR PRIVATE PLACEMENT PROGRAMS*

- Starting in **the late 1990's**, in part to satisfy CRA goals, banks began to buy **non credit enhanced bonds, backed only by a first deed of trust and certain pre-"Conversion" general partner guaranties** (e.g., completion, payment). This has become **by far the dominant tax-exempt debt financing structure** for affordable rental housing projects in **major urban markets** (e.g., Boston, New York, Washington D.C., Miami, Chicago, San Francisco, Los Angeles, Seattle).

- **These programs, together with the Freddie Mac "TEL" structure described below,** comprise the **substantial majority (over 70%) of tax-exempt debt side executions** (by number of financings and dollar volume) **for 100% affordable projects.**

---

*In 1998, **Wade Norris** helped pioneer what has become the Citi Community Capital leading private placement platform, and in the early 2000's, pioneered the leading securitization structure for these issues through Freddie Mac, in which NGO counsel **Kim Griffith** also played a major role. **Wade Norris** and **Ryan George** led the development of documentation for the tax-exempt loan (versus) bond format for these executions for Citi Community Capital and a number of other bank and private placement program sponsors when the regulatory environment dramatically changed in 2008.

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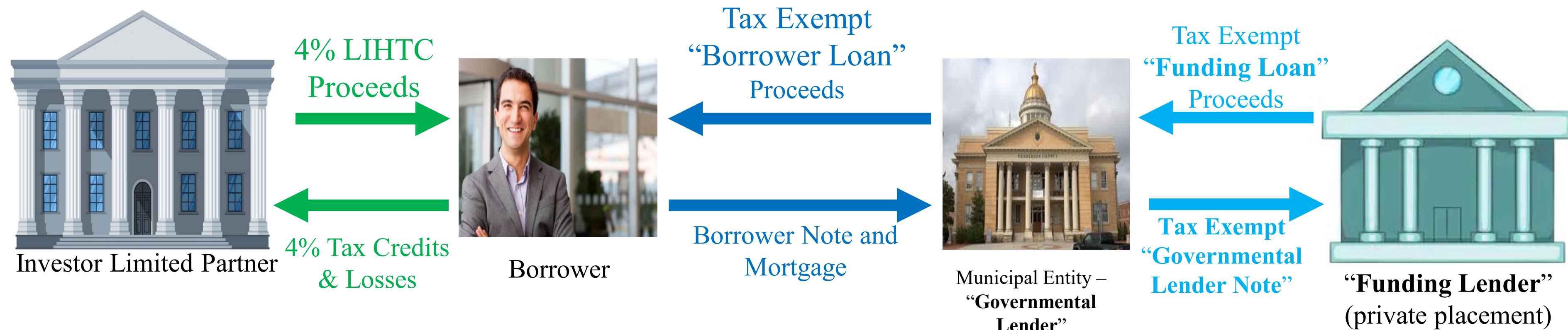
MAJOR TAX-EXEMPT BOND OR TAX-EXEMPT LOAN EXECUTIONS FOR AFFORDABLE HOUSING

A. BANK OR OTHER SPONSOR PRIVATE PLACEMENT PROGRAMS

- The substantial major advantages and disadvantages of private placements are described above on slides 19 through 23.

Private Placements – Very Streamlined Structure



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B. FREDDIE MAC TAX-EXEMPT LOAN OR "TEL" STRUCTURE

- In 2014, **Freddie Mac** introduced its **Tax Exempt Loan or "TEL"** structure.* Since then, several Billion dollars in loans have closed. Structure basically the same as Bank and Other Sponsor Private Placements, with a few differences.
- **Requires a separate bank (probably with separate counsel) to take pre-Conversion risk** on the tax-exempt loan versus most other private placements, thus perhaps entails slightly higher costs.
- Freddie Mac also **always requires a "Fiscal Agent,"** some bank and other sponsor private placements do not, lowering expenses.
- Freddie Mac tends to agree to permanent interest rate locks further in advance than many competitors.

---

* **Kim Griffith led the development of the Freddie Mac TEL structure** in his role as **Vice President of Affordable Sales and Investments in Freddie Mac's Multifamily Division**, a position he held from 2003 through 2015. **Wade Norris** and **Ryan George**, as **special outside counsel to Freddie Mac**, assisted in the drafting of program memoranda, model documents and other materials relating to the development and implementation of the Freddie Mac TEL structure.

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C. FANNIE MAE "M.TEBs" STRUCTURE

- In 2015, Fannie Mae pioneered a new **fixed rate publicly offered tax-exempt Fannie Mae monthly pay MBS pass-through** structure.*
- **Under this structure, the Trustee simply passes through the monthly Fannie Mae MBS payment** securing the Bonds to the Bondholder on **next business day** on a **tax-exempt basis**.
- **Bond coupon rates are around the 10-year U.S. Treasury rate plus 1.00%: 4.15% + 0.10% = 5.25% bond coupon in today's market.**
- **Fannie Mae also offers competitive guaranty and servicing fees of roughly 100-140 basis points to promote this program.**
- **Result: All-in borrowing rates as low as 6.15% to 6.55%.**
- **35 to 40-year loan amortization to 16 to 18-year balloon, 1.15 DSCR; 85-90% LTV.**

***Wade Norris** and **Ethan Ostrow**, together with their prior colleague, the late **Ad Eichner**, worked with Fannie Mae and other participants to develop the structure and documentation for the Fannie Mae M.TEBs product. This led to the closing of the first M.TEBs financing in February, 2015. Messrs. Norris and Ostrow then served as underwriter's counsel on the first seven M.TEBs financings which closed over the next two years and have served as underwriter's counsel on a substantial portion of these financings closed since that time.

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Fannie Mae M.TEBs

- On **new construction and sub rehab** financings, Bonds are **"cash backed" for 1st 2-3 years**.
  - Imposes gross **negative arbitrage** cost of **only a point** or so in today's highly inverted yield curve environment.
  - Requires a **taxable draw down construction loan**, which may carry a slightly higher rate than in a tax-exempt draw down private placement.
  - However, having **two sets of construction period interest** raises 4% LIHTC proceeds by 2-3 percent of total development cost, which substantially more than offsets these two small negative factors, and in fact is a net advantage today.
- The program **may allow more lenient waivers** for certain loan underwriting criteria such as larger rehab per door for mod rehab loans with low tenant relocation risk, and the potential for **earn-out provisions for certain loans** and other features typically associated with Fannie Mae DUS loans.
- **Fannie Mae allows M.TEBs to be sold at a premium of up to 6 points**. Very attractive raise of additional proceeds for only a slight rise in rates (about 6-8 basis points per point). Premium requires additional bond volume allocation.

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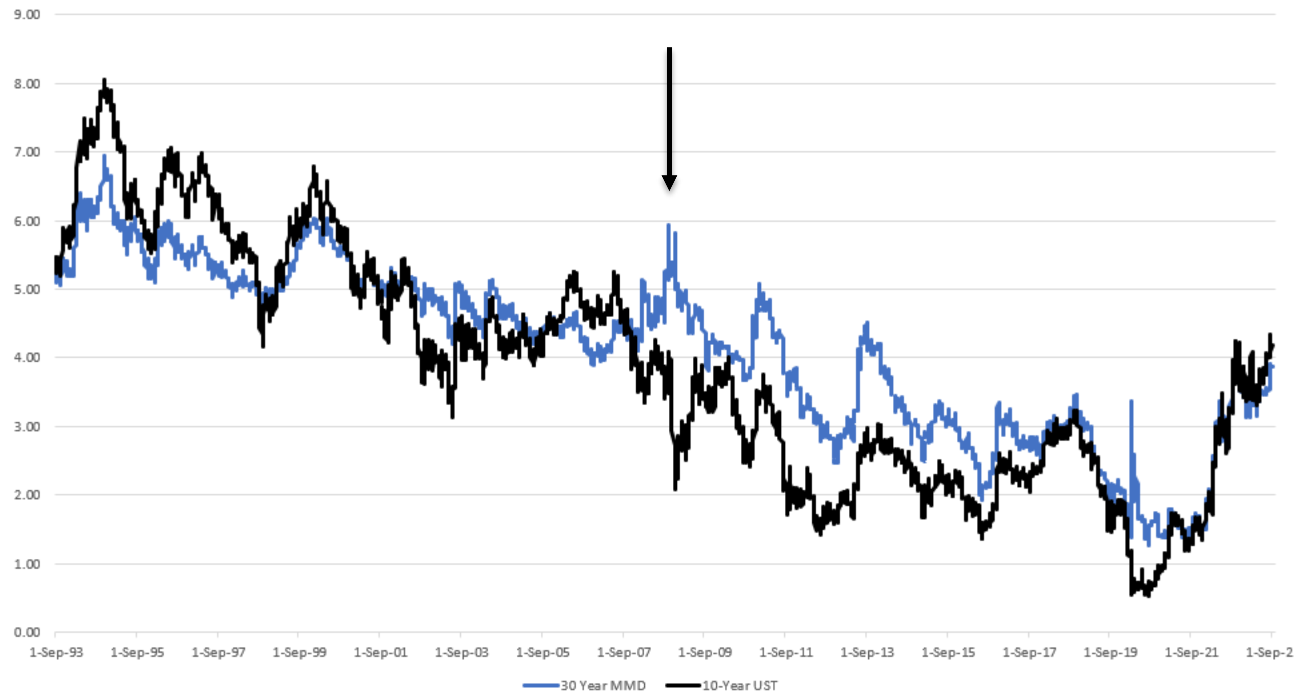
D. SHORT-TERM CASH BACKED TAX-EXEMPT BONDS*

- For many years on **FHA Insured or RD financings,** we would **pledge the GNMAs to secure long-term tax-exempt muni bonds** to get the lowest borrowing rate – left side of chart.

- This all changed in the **2008 financial crisis**, when **taxable rates like those on GNMAs fell *below*** the rates on **long term tax-exempt muni bonds** by 50-100 basis points or more until the recent rate run-up – right side of arrow.

LONG-TERM RATE COMPARISON: 30-YEAR MMD (TAX-EXEMPT) VERSUS 10-YEAR CONSTANT MATURITY TREASURY (TAXABLE)



***Wade Norris**, working with other industry colleagues, played a major role in introducing the use of short-term cash backed financing with FHA insured loans in 2009, and recent years he and **Ethan Ostrow** have helped pioneer a number of the innovations, including those described below, which have dramatically improved the efficiency of these executions.

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THE ALL-IMPORTANT 50% RULE

- “So if I can do a simple taxable conventional GNMA sale on my FHA insured loan at a lower rate, **why would I use muni bonds?**”
- **The 50% Rule**: Again, to be eligible for 4% LIHTC, **you have to finance at least 50% of “aggregate basis” of the building(s) plus land with volume limited tax-exempt private activity bonds** under Section 142(d) of the Code **and keep them outstanding until the project’s placed-in-service date**.

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SHORT-TERM CASH-BACKED TAX-EXEMPT BONDS
HOW IT WORKS

- Issue **short-term tax-exempt bonds equal to 50% of the project's aggregate basis of the building(s) plus land* priced to a mandatory tender date 6-12 months following the targeted placed-in-service date** (to provide for construction delays). **Stated maturity will be 6-12 months** later, **allowing a remarketing** of bonds if more time is needed to place project in service.

- **Two funds** established under Bond Trust Indenture and **invested in U.S. Treasury securities**:

  - A "**Project Fund**" in which all the tax-exempt bond proceeds are deposited, and

  - A "**Collateral Fund**" in which FHA or RD lender taxable loan advances are deposited.

- Financings are structured so that as each dollar of tax-exempt bond proceeds is disbursed from the Project Fund to pay project costs, an equal amount of taxable loan lender advances must be simultaneously deposited into the Collateral Fund. **The principal of the Bond issue thus remains 100% "cash collateralized"** with U.S. Treasuries. Receive a AA+ or Aaa rating and **no other credit enhancement is required**.

Note: This may be greater than or lower than the taxable loan amount. Most developers aim for 52-55% of such aggregate basis to provide a cushion. The **short-term cash backed bond structure often produces a lower bond amount than other executions**, which lowers bond financing costs.

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SHORT-TERM CASH-BACKED TAX-EXEMPT BONDS

- **In today's market**, **U.S. Treasury securities** at 24 months yield about 2.15 basis points, roughly equal to the bond coupons at 24 months of about 2.35 basis points. As long as this holds, it eliminates any **negative arbitrage** under the structure.
- **When** the project loan has been fully funded, rehabilitation or construction has been completed and **the project has been placed in service, the tax-exempt bonds are redeemed**.
- The **Project's only remaining debt** is **the taxable FHA insured or RD loan.**

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Sample Short-Term Cash-Backed Tax-Exempt Transaction

New Construction/Sub Rehab – 4-Year Bonds, with 3-Year Mandatory Tender

Expected Placed-In Service Date	30 Months
Initial Mandatory Tender Date	36 Months*
Stated Bond Maturity	48 Months
Bond Sale	Public offering (only) of S&P AA+ rated or Moody's Aaa—rated Bonds
Interest Earnings from Eligible Investments	4.90%
Initial Bond Coupon Rate	4.50%
Net Negative Arbitrage	$0

* Bonds are sold to the 36-month mandatory tender date. If delays are encountered on placing project in service then bonds can be remarketed to new buyers providing up to 12 additional months before tax-exempt debt goes away.

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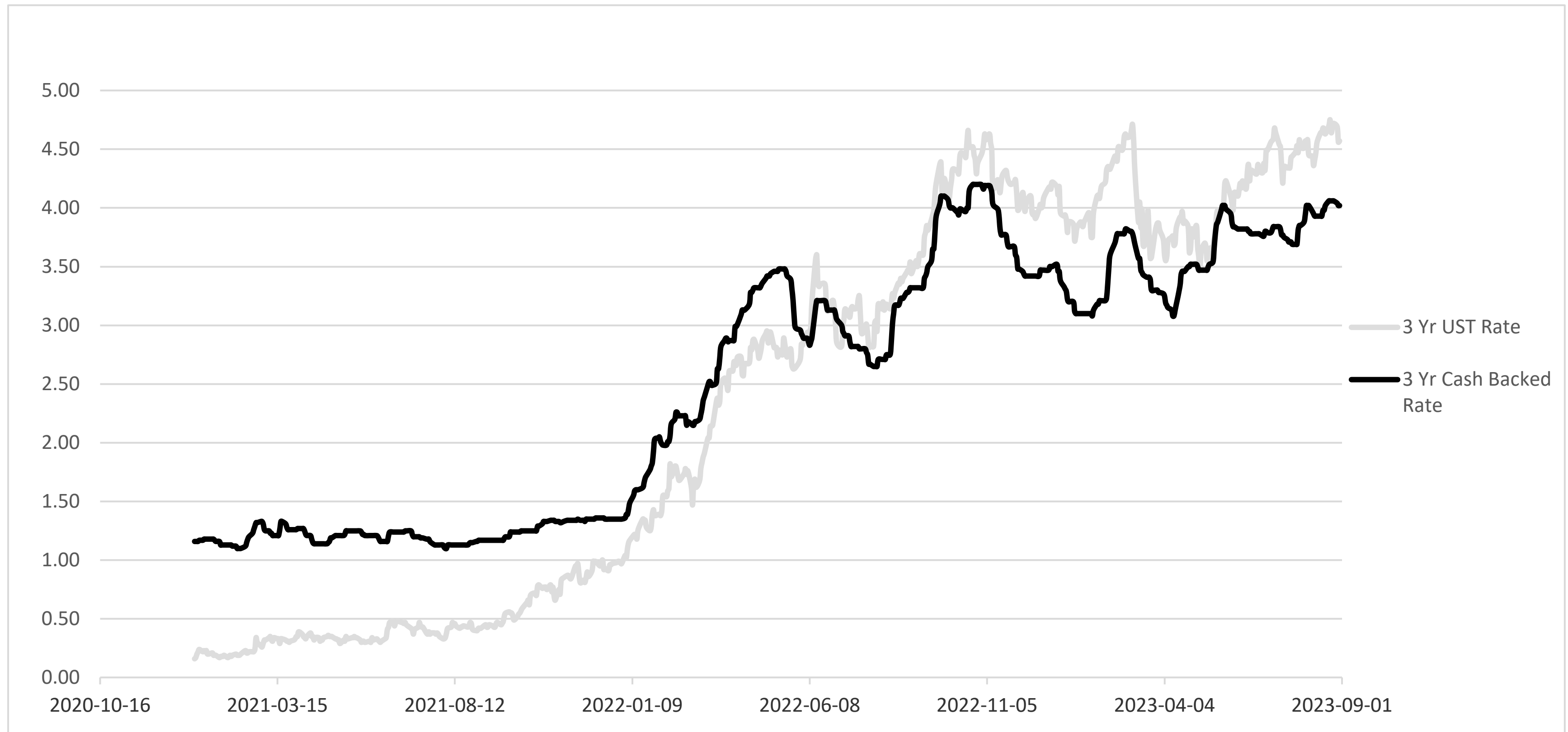
- Today, the yield on 3-year **U.S. Treasury securities** is **about 4.50% – about 50 basis points higher than a current bond yield of about 4.0%.**
- **This results in no negative arbitrage**, which otherwise would be required to be funded upfront.



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APPROXIMATE ALL-IN BORROWING RATES ON THE FHA INSURED LOAN
(The "Real" Construction/Permanent Loan)

	Moderate Rehab	Sub Rehab-Acq. Large 1st Draw	Sub Rehab-New Cons
Mortgage Loan Interest Rate			
GNMA Pass Through Rate	**5.65%**	**5.80%**	**6.05%**
3rd Party Fees	N/A	N/A	N/A
Servicing + GNMA Fee	0.25%	0.25%	0.25%
Total **ML Rate**	**5.90%**	**6.05%**	**6.35%**
Add: MIP	0.25%	0.25%	0.25%
Total **All-in Borrowing Cost**	**6.15%***	**6.30%**	**6.60%***

- Spreads on taxable multifamily GNMA sales to 60-year US Treasury have been significantly higher since rates began to rise in early 2021 and thus do not enjoy the same advantage over other affordable multifamily lending rates as is the case in a normal interest rate environment where they can have a 50-100 basis point or greater advantage.

- However, there is **no re-underwriting of the loan at the permanent loan stage** and **no balloon on a 35 or 40-year loan amortization**. FHA loans do require greater processing times, and Davis Bacon wage rates apply on new construction and substantial rehabilitation loans.

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* Note: bonds are sized to 52 – 54% of Tax Credit basis; under long-term muni bond structures used before 2009, bond issue would be larger (equal to taxable loan amount) with higher costs.

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SUMMARY OF BORROWING/ UNDERWRITING RATES
PRINCIPAL TAX EXEMPT DEBT PRODUCTS FOR 100% AFFORDABLE PROJECTS

	Estd. Actual All-In Borrowing and Perm Period Underwriting Rate
1. Bank Private Placement	
-Mod Rehab	**5.75% to 6.25%**
-Sub Rehab/New Cons	
Cons Period	**6.50% to 7.50% Floating***
Perm Period	**5.75% to 6.25%***
2. Freddie Mac "TEL" Program (Mod Rehab, Sub Rehab, New Cons)	**Similar to Bank Private Placements above**
3. Fannie Mae "M.TEBS" Structure	**6.15% to 6.55%**
4. Short-Term Cash Backed Tax Exempt Bonds with Taxable Loan Sale	
FHA §223f or RD Mod Rehab	**6.15%**
FHA §221(d)(4) or RD Sub Rehab / New Cons	**6.60%**

- **These long-term all-in borrowing rates are about 200 basis points or more higher than 2 years ago.**
- **One of the most attractive tax-exempt debt markets we have seen in many years, but it has been supported by additional federal, state and local subordinate loan funding which has resulted in volume being lower but greater than the increase in rates would otherwise suggest.**

* The ratio may now be lowered on some financings through the use of caps and/or swaps by 50 to 100 basis points or more.

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Table 2. Qualified Private Activities*

Internal Revenue Code Section	Type of Private Activity Internal Revenue Code Section (Italicized activities must be owned by the issuing government to qualify)	Subject to Volume Cap	Year Established
§142	**Exempt facility bonds**		
§142(c)	*Airports*	No	1968
§142(c)	*Docks and wharves*	No	1968
§142(c)	*Mass commuting facilities*	Yes	1981
§142(e)	Water furnishing facilities	Yes	1968
§142(a)(5)	Sewage facilities	Yes	1968
§142(a)(6)	Solid waste disposal facilities (government owned)	No	1968
§142(a)(6)	Solid waste disposal facilities (private owned)	Yes	1968
§142(d)	Qualified residential rental projects	Yes	1968
§142(f)	Local electric energy or gas furnishing facility	Yes	1968
§142(g)	Local district heating and cooling facilities	Yes	1982
§142(h)	Qualified hazardous waste facilities	Yes	1986
§142(i)	High-speed intercity rail facilities (government)	No	1988
§142(i)	High-speed intercity rail facilities (private)	Yes[a]	1988
§142(j)	*Environmental enhancements of hydroelectric generating facilities*	No	1992
§142(k)	Qualified public educational facilities	No	2001
§142(l)	Qualified green building and sustainable design projects	No	2005
§142(m)	Qualified highway and surface freight transfer facilities	No	2005
§142(n)	Qualified broadband projects (government)	No	2021
§142(n)	Qualified broadband projects (private)	Yes[a]	2021
§142(o)	Qualified carbon capture facilities	Yes[a]	2021
§1400U-3	Recovery zone facility bonds	No	2009
§1394	New empowerment zone facilities	No	1994
§143	**Mortgage revenue bonds**		
§143(a)	Qualified mortgage bond	Yes	1968
§143(b)	Qualified veterans' mortgage bond	No	1968
§144(a)	**Qualified small issue bond**	Yes	1968
§144(b)	**Qualified student loan bond**	Yes	1976
§144(c)	**Qualified redevelopment bond**	Yes	1968
§145	**Qualified 501(c)(3) bond**	No	1968
§150	**Current refunding bonds not exceeding outstanding amount of refunding bonds**	No[b]	1968
§150	**Current refunding bonds exceeding outstanding amount of refunding bonds**	Yes	1968

Source: IRS Publication 4078 and Infrastructure Investment and Jobs Act of 2021 (P.L. 117-58).

***Source of table**: Congressional Research Service: Private Activity Bonds: An Introduction January 31, 2022

a. 25% of the bond issue is included in the cap.

b. Maturity limitations apply for refundings of qualified mortgage revenue bonds and qualified student loan bonds.

Appendix. Annual State Private Activity Bond Volume Cap and Personal Income Data

Table A-1. Annual State Private Activity Bond Volume Cap and Personal Income Data*

State	2022 Volume Cap ($ Millions)	2020 Personal Income ($ Billions)	2022 Cap per $100 of 2020 Personal Income
U.S. Total	39,754	19,607	$0.20
Alabama	554	228	$0.24
Alaska	335	46	$0.72
Arizona	800	368	$0.22
Arkansas	335	143	$0.23
California	4,316	2,763	$0.16
Colorado	639	370	$0.17
Connecticut	397	280	$0.14
Delaware	335	55	$0.61
District of Columbia	335	62	$0.54
Florida	2,396	1,210	$0.20
Georgia	1,188	555	$0.21
Hawaii	335	83	$0.41
Idaho	335	89	$0.38
Illinois	1,394	792	$0.18
Indiana	749	351	$0.21
Iowa	351	169	$0.21
Kansas	335	163	$0.21
Kentucky	496	212	$0.23
Louisiana	509	236	$0.22
Maine	335	73	$0.46
Maryland	678	405	$0.17
Massachusetts	768	541	$0.14
Michigan	1,106	531	$0.21
Minnesota	628	351	$0.18
Mississippi	335	125	$0.27
Missouri	679	318	$0.21
Montana	335	58	$0.58
Nebraska	335	112	$0.30
Nevada	346	169	$0.21
New Hampshire	335	92	$0.37
New Jersey	1,019	652	$0.16
New Mexico	335	98	$0.34
New York	2,182	1,440	$0.15
North Carolina	1,161	533	$0.22
North Dakota	335	47	$0.71
Ohio	1,296	627	$0.21
Oklahoma	439	199	$0.22
Oregon	467	239	$0.20
Pennsylvania	1,426	789	$0.18
Rhode Island	335	64	$0.52
South Carolina	571	251	$0.23
South Dakota	335	53	$0.63
Tennessee	767	352	$0.22
Texas	3,248	1,619	$0.20
Utah	367	170	$0.22
Vermont	335	37	$0.91
Virginia	951	532	$0.18
Washington	851	516	$0.16
West Virginia	335	80	$0.42
Wisconsin	649	324	$0.20
Wyoming	335	36	$0.93

Source: Personal income data are from the Bureau of Economic Analysis, State Annual Personal Income, available at http://www.bea.gov/. Bond volume cap information are CRS calculations using 2021 Census population data.

***Source of table:** Congressional Research Service: Private Activity Bonds: An Introduction January 31, 2022