Multifamily Tax-Exempt Financing

George T. Magnatta, Esq.
Saul Ewing LLP
How are multi-family housing deals being financed today?

- Conduit stand alone transactions have replaced Issuer as lender “pooled” financings over the last few years.

- In a conduit structure, the bonds are limited obligations of the Issuer (PHFA) secured by a loan which the Issuer assigns to the bondholder or Trustee.
How are multi-family housing deals being financed today?

- Conduit deals are typically done on a project by project basis.

- Public offering v. private placement of conduit transaction.

- Public deal--documentation will include an Indenture, Loan Agreement, Offering Memorandum, Mortgage and Tax Regulatory Agreement.
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- Private placement--documentation will include a Bond Purchase and Loan Agreement instead of an Indenture, Loan Agreement and Offering Memorandum.
How are multi-family housing deals being financed today?

- Security for the Bonds
  - Federal Housing Administration (FHA) Insurance.
  - Guaranty from a third party.
  - Fannie Mae/Freddie Mac LOC.
How are multi-family housing deals being financed today?

- FHA Programs

  - Issuer issues short-term tax exempt bonds to meet the 50% test under LIHTC rules.
  
  - Bonds are collateralized with proceeds from a FHA loan.
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- FHA Programs
  - Separate “cash collateral account” is held by a trustee or escrow agent to secure the bonds.
  - Bond proceeds can not be draw unless equal amount is available in cash collateral account.
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- FHA Programs
  - In most cases, after project is placed in service, tax-exempt bonds are retired with proceeds from FHA loan.
  - Bonds can be issued as a draw-down loan to avoid negative arbitrage.
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- **FHA Programs**
  - If Bonds are rated, usually get a very high rating due to cash collateral.
  - HUD approval required for FHA Loans.
  - Can be structured as public deal or private placement.
Federal Tax Law

• At least 95% of all bond proceeds, including investment earnings to be allocated to capital costs associated with the Project.

• Tax Due Diligence necessary early in the transaction.

• Substantial User Rules to be considered regarding timing of entry of equity investor.
Federal Tax Law

• 25% limitation on land.

• Importance of Reimbursement Resolution.

• 2% cost of issuance limitation.

• Capitalized Interest Rules.
Federal Tax Law

- Volume Cap/TEFRA approvals.

- Bonds must be used to finance a “qualified residential project”—20/50 or 40/60 standard.

- Low/Mod requirements apply to project through life of “qualified project period”. Regulatory Agreement will run with the Project.
Federal Tax Law

• Special Rule for Acquisition/Rehabilitation

- Project may involve acquisition and rehabilitation rather than new construction.
- Borrower must spend an amount equal to at least 15% of the total amount of bond proceeds used to acquire the buildings on the rehabilitation. This is a “project by project” test.
Federal Tax Law

• Section 142(d) does not offer an incentive to go beyond the 20/50 or 40/60 set aside. Tax credits, however, are granted in proportion to the number of units set aside for tenants whose income are at or below 60% of area median.

• Many tax credit projects are 100% low-income projects.
Federal Tax Law

• States receive annual dollar amounts for low income housing tax credits. An exception is made however for the “50% Test”.
• 50% test provides that if 50% or more of the cost of land and the building constituting a project is financed with tax-exempt bonds for which volume cap allocation is received, no portion of any of the 4% credits count against the state’s annual allocation.
George T. Magnatta, Partner  
Centre Square West, 1500 Market Street, 38th Floor  
Philadelphia, PA  
Phone: 215.972.7126  Fax: 215.972.1867

George Magnatta is chair of the firm's Public Finance Practice. His practice focuses on serving as bond counsel, underwriter's counsel, borrower's counsel, and tax counsel for states, cities, economic development authorities, housing authorities, and non-profit entities in the implementation and financing of major capital initiatives that benefit public, private, and non-profit entities. He is also an experienced practitioner in the tax aspects of public finance, with a thorough understanding of the complex Internal Revenue Code requirements in this area. George also represents issuers of bonds whose bond transactions are being audited by the Internal Revenue Service.

Prior to joining Saul Ewing, George served as Assistant Branch Chief of the Office of Chief Counsel, Legislation and Regulations Division of the Internal Revenue Service in Washington, D.C. George is a frequent panelist at meetings of the National Association of Bond Lawyers.

George has extensive experience with structuring tax-exempt financings for states, cities, industrial development authorities, housing authorities, colleges, universities, and real estate developers. He has been involved in multimillion dollar sophisticated financings for major capital projects (including, for example, sports stadiums, airport terminals, hospitals, universities, nursing homes, residential rental projects, gas utility projects, and electrical utility projects). His years of experience and knowledge of the complex rules on tax aspects of municipal financings has assisted in bringing these transactions to fruition. He is the co-author of ABCs of Industrial Development Bonds, 5th Edition, Packard Press. He authored a chapter in the book, Public Finance Settlements and Negotiations: Leading Lawyers on Establishing Financial Covenants, Negotiating Mortgages, and Obtaining Bottom-Line Goals (First Edition, Aspatore Books, 2006).

George also has extensive experience with bond pools, interest rate swaps and housing bond financings (both single-family and multi-family transactions).

He has also represented parties before the IRS in connection with tax-exempt bond audits involving multimillion dollar bond issues. The IRS has also sought George's feedback through his past work on its Advisory Committee on Tax-Exempt and Government Entities (ACT). His contributions to the ACT included reports about revisions to Voluntary Closing Agreement Procedures (VCAP), the role of the issuer in conduit financings and information reporting relating to tax-exempt bonds.