Association of Public Finance Professionals

APFP

District of Columbia
Maryland
Virginia

Innovative Approaches to Affordable and Workforce Housing

APFPs Fall 2023 Educational Seminar – Speakers

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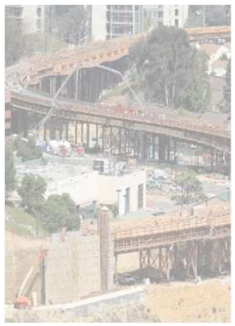


BUILD AMERICA BUREAU

U.S. DEPARTMENT OF TRANSPORTATION

Financial and Technical Assistance Opportunities
October 2023

Bureau Financing Programs

		TIFIA	RRIF	PAB
General Features	Program Type	• Federal credit assistance	• Federal credit assistance	• Conduit-issued debt financing (*not* federal credit assistance)
	Credit Products	• Direct loans; loan guarantees; lines of credit	• Direct loans; loan guarantees	• Allocation of tax-exempt municipal bonding authority
	Eligible Projects	• Surface transportation and public infrastructure projects	• Railroad, seaport (with rail service), and economic development projects	• Highway or freight transfer projects that meet the IRS' private use test
	Interest Rate	• U.S. Treasury rates	• U.S. Treasury rates	• Market rates
Program Requirements	Cost Parameters	• Min. project cost: > $50 M; > $15 M for ITS; > $10 M for TOD and local • Max. project cost: none • Max. loan to value: 33-49% • Max federal assistance (grants + loans): 80%	• Min. project cost: none • Max. project cost: none • Max. loan to value: 75-100%	• Min. project cost: none • Max. project cost: none • Max. loan to value: n/a
	Credit Rating	• Senior debt and TIFIA must be rated investment grade (BBB- or higher)	• No credit rating requirement	• n/a
	Credit Subsidy	• Appropriated by Congress	• Limited appropriations; credit risk premium paid by borrower, refunded after loan is repaid	• n/a

Major Federal Requirements

National Environmental Policy Act (NEPA)

- Federal environmental review and final determination (i.e., CE, FONSI, or ROD)

Buy America

- Domestic sourcing of steel, iron, manufactured goods, and construction materials

Uniform Relocation Assistance and Real Property Acquisition Act (URA)

- Just relocation assistance and compensation to persons displaced by Federally assisted projects

Davis-Bacon

- Prevailing wages and labor standards for contractors and subs performing on federally assisted contracts

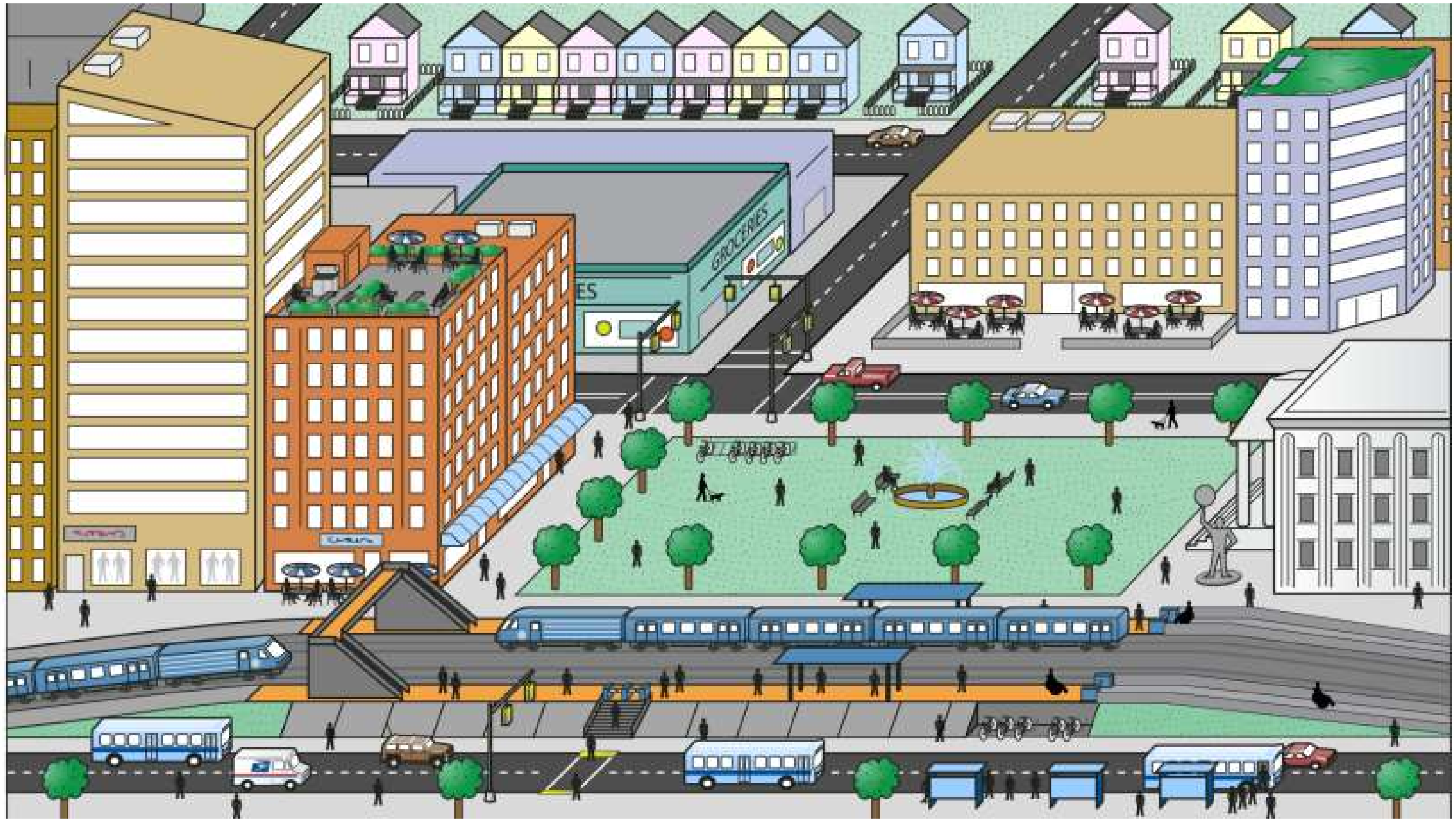
Planning & Programming

- All TIFIA projects consistent with RTP and/or STP, and included in TIP and/or STIP
- RRIF rail projects consistent with state rail plans

Other Modal Requirements

- Project oversight regime of modal grant programs
- e.g., a transit project receiving a RRIF loans must comply with all FTA (Ch. 53) grant requirements

Transit-Oriented Development (TOD) Eligibilities



Surface Transportation

Joint Development (TIFIA)

Public Infrastructure (TIFIA)

Economic Development (RRIF)

3 Basic Types of Tax-exempt Bonds that Finance Multifamily Rental Housing

1. **"GOVERNMENTAL BONDS" FOR MULTIFAMILY RENTAL HOUSING PROJECTS OWNED BY GOVERNMENTAL ENTITIES;**

2. **INTERNAL REVENUE CODE SECTION 142(D) EXEMPT FACILITY BONDS FOR "QUALIFIED RESIDENTIAL RENTAL PROJECTS" THAT ARE SUBJECT TO A VOLUME CAP ALLOCATION BY THE INTERNAL REVENUE SERVICE (AND TYPICALLY COUPLED WITH FEDERAL LOW-INCOME TAX CREDITS) ("LIHTCS");**

   - If 50% percent or more of the cost of any building and the land on which the building is located is financed (the "50% Test") by a tax-exempt obligation that is subject to the private activity bond "volume cap" requirements under Section 146 of the Code (the "Volume Cap Bonds"), the project is automatically entitled to what is commonly known as the "4%" LIHTC (the "4% Credit"). The 4% Credit is structured to yield over a 10-year period amounts of federal tax credits (which result in a dollar-for-dollar reduction to the taxpayer's federal income tax liability) which have a present value equal to 30% of the low-income unit costs of a project (the "4% Credit"). Project developers/sponsors traditionally "sell" the 10-year stream of LIHTCs to third-party investors (mostly financial institutions) in exchange for equity proceeds (which reduces the amount of debt and other funding that would otherwise be required to construct the development and enables the project to offer affordable rents).

   - For the first time, DHCD is **<u>not</u>** accepting submissions for projects financed with volume cap bonds and LIHTCs in its 2023 Consolidated RFP for Affordable Housing Projects.

3. **"QUALIFIED 501(C)(3) BONDS" FOR MULTIFAMILY RENTAL HOUSING PROJECTS TO BE OWNED BY 501(C)(3) ORGANIZATIONS.**

Comparison of Tax-exempt Financing Options for Multifamily Rental Housing

<table>
<tr><th></th><th colspan="2">501(c)(3)</th><th>Governmental</th><th colspan="2">Exempt-Facility</th></tr>
<tr><td>Volume Cap Required</td><td colspan="2">No</td><td>No</td><td colspan="2">Yes</td></tr>
<tr><td>LIHTC Eligible</td><td colspan="2">No</td><td>No</td><td><u>New Volume Cap</u>

Yes</td><td><u>Recycled Volume Cap</u>

No*</td></tr>
<tr><td>For-Profit Ownership</td><td colspan="2">No</td><td>No</td><td colspan="2">Yes</td></tr>
<tr><td>Qualified Management Contracts Required</td><td colspan="2">Yes</td><td>Yes</td><td colspan="2">No</td></tr>
<tr><td>TEFRA Required</td><td colspan="2">Yes</td><td>No</td><td colspan="2">Yes</td></tr>
<tr><td>95% Good Costs</td><td colspan="2">Yes</td><td>No</td><td colspan="2">Yes</td></tr>
<tr><td>2% Costs of Issuance Limit</td><td colspan="2">Yes</td><td>No</td><td colspan="2">Yes</td></tr>
<tr><td>"Private Use" Limitation</td><td colspan="2">5%</td><td>5%/10%</td><td colspan="2">None</td></tr>
<tr><td>Income Set-Asides (Federal)</td><td><u>Acquisition</u>

20@50 or 40@60 & (ii) New Const. requirements below

<u>New Const.</u>

Depends on Charitable Purpose**</td><td><u>New Const.</u>

depends on charitable purpose</td><td>None/Contractual</td><td colspan="2">20%@50% AMI

Or

40%@60% AMI</td></tr>
<tr><td>Issuer Jurisdiction Requirement</td><td colspan="2">No</td><td>Yes</td><td colspan="2">No</td></tr>
<tr><td>State and Local Requirements</td><td colspan="2">Varied</td><td>Varied</td><td colspan="2">Varied</td></tr>
</table>

Tax-Exempt 501(c)(3) Bonds for Multifamily Rental Housing in the District of Columbia

501(c)(3) organizations may finance affordable rental housing projects ("**Projects**") in the District of Columbia (the "**District**") using **<u>tax-exempt "qualified 501(c)(3) bonds" without volume cap</u>** ("**PABs**") issued through the District's Revenue Bond Program administered by the Office of the Deputy Mayor for Planning and Economic Development ("**DMPED**"). The PABs may be combined with subordinate Housing Production Trust Fund ("**HPTF**") gap loan funding from the District's Department of Housing and Community Development ("**DHCD**") and housing assistance payments from the District of Columbia Housing Authority ("**DCHA**") under the Local Rent Supplement Program ("**LRSP**"). Projects financed with PABS may also qualify for real property tax exemption in the District. Contact an Orrick team member for additional information.[1]

Tax-exempt PABs for Multifamily Rental Housing in the District (General Requirements)

Issuer	District of Columbia (acting through DMPED's Revenue Bond Program)
Form of Legal Entity	A 501(c)(3) organization (or disregarded entity) with a charitable purpose to provide affordable housing (an "**Organization**").
~~**Ownership Requirements**~~	~~The Organization (or a governmental unit) must own <u>all</u> property financed with the PABs. For-profit ownership (directly or indirectly) is <u>not</u> permitted.~~
State Ceiling/Volume Cap	A volume cap allocation is <u>not</u> required.
TEFRA and District Approval	Subject to a public hearing and approval by the Council and Mayor of the District.
Private Use and Security Limitations	5% limit on private business use and private payments or security of the PABs.
Costs of Issuance Limitations	Issuance costs financed by the PABs cannot exceed 2% of the proceeds of the PABs.
Project Set-Aside and Rental Restrictions (Generally)	**<u>Federal</u>:** • *<u>Acquisitions</u>*: Based on the Organization's charitable purpose - but regardless of requirements imposed by the Organization's charitable purposes - 20% of the units at 50% or less of area median gross income for the Washington Metropolitan Statistical Area provided by the United States Department of Housing and Urban Development ("**AMI**") or 40% of the units at 60% or less of AMI; <u>or</u> the property is "substantially rehabilitated" beginning within the two-year period ending one year after the date of the acquisition of the property. • *<u>New Construction</u>*: Based on the Organization's charitable purpose but must ensure that the housing is "affordable" to residents occupying the set-aside units in the Project.[2] **<u>DHCD</u>:** A minimum of 20% of the total housing units in the Project must have rents affordable to "low," "very low" and "extremely low" income households for at least 40 years under a recordable rent regulatory agreement.[3] The percentage of all units receiving HPTF funds cannot be less than the percentage of the Project's total development costs financed with HPTF Funds. HPTF funds cannot exceed 49% of the total development costs of the Project. **<u>DCHA</u>:** Projects may qualify for a 15-year long-term subsidy contract providing housing assistance payments from DCHA for units for households at or below 30% of AMI, adjusted for family size. Rent for LRSP units cannot exceed 30% of household income.
PABs Maturity Limitation	120% of the average reasonably expected economic life of the Project financed with the PABs.
Management Contract	Any "management contract" must meet the criteria of Rev. Proc. 2017-13.
Alternative Minimum Tax	Interest on the PABS is <u>not</u> an item of tax preference for purposes of the alternative minimum tax.
LIHTC Ineligibility	PABs do not qualify the Project for federal or District low-income housing tax credits.
Real Property Tax Exemption	Available if at least 50% of the units are at or below 80% of AMI (the remainder units may be up to 120% of AMI). Rents cannot exceed 30% of 80% or 120% of AMI (as applicable). The Organization must maintain an indigency reserve for tenants who become unable to pay rent because of financial hardship.

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Q&A

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