Jonsson, Margaret

From: Michelle Morlan [MMorlan@nationaldevelopmentcouncil.org]
Sent: Friday, May 08, 2009 12:02 PM
To: Jonsson, Margaret; Fulton, Stephen; Ledezma, Daniel
Subject: RE: Section 108 Loans

Group,,

We did discuss this on our last call with Mark Kantor et al where we indicated to them that it was always the plan that the 108's were proposed to be fully amortizing from the beginning; and that in the case of the Roselyn and Walnut Park transactions, the City would be debt servicing the entire obligation for principal and interest on behalf of the borrower due to the projects not having the capacity to service the debt. Thus, each loan will have a declining principal balance from the start due to the City making the scheduled payments on their behalf out of CDBG funds. They raised the issue that their investor and in fact NHA themselves had never realized this and consequently the investors had underwritten the transaction as if the city's money was a grant. This creates a significant issue for investors because if a loan is paid down during the tax credit period and the city makes these payments, the investor must treat it as either debt forgiveness or income. Both are bad, and apparently the investors had not been made aware of this and underwrote the transactions differently. The downside for them is clearly significant but it would be helpful to have it quantified. With the current collateral structure we cannot simply replace the HUD loan terms with a set of documents that calls this a deferred loan because HUD is looking to the property for its secondary source of repayment. Alternative structuring at the City-to-HUD level might be possible in order to lessen the impact of "loan forgiveness" to the investor but whatever the terms of the HUD-City loan are they would need to be matched at the borrower level. Recall that the 108 loan can provide for deferral of principal payments but it cannot permit deferral of interest. We could potentially look at deferring the principal portion for the tax credit period. The problem with this is that there would need to be a source identified for the lump sum payment at the end of the deferral period. That seems like a very remote possibility as it would be a large one-time hit for the City. The only other way that this could be modified is if the City did not have the properties as collateral but instead provided a full faith and credit guarantee or some other guarantee source. Then, the loan to the project would not need to track so directly with the loan from HUD and you could in fact use the standard PDC docs if you wanted. I know that this was explored and rejected many times in the past. It may be time to explore it again and for a different reason – the other funding partners in these projects cannot accept the loan terms as they are. Before either option is explored though, I think it would be beneficial for us to quantify the impact of the fully amortizing loan on the investor. We should ask Jonathan to have Wells Fargo model this?

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From: Mark Kantor [mailto:mkantor@housinglaw.com]
Sent: Friday, May 08, 2009 10:54 AM
To: Jonsson, Margaret; Fulton, Stephen; Ledezma, Daniel; Allen, Kate; Michelle Morlan;, John Finke @AOL
Cc: Michelle Haynes; Watt Taylor; Jonathan Trutt; Martha McLennan; DBlomgren@batemanseidel.com
Subject: RE: Section 108 Loans

I am not sure I understand. My understanding was the partnership loan was to be deferred. Are you indicating that the partnership loan from the City was to actually have annual payments of principal and interest of approximately $66,300? My understanding is that project does not have cash flow to make such payments and consistent with City underwriting practices for such housing, was not underwritten to make such payments and

YEAR 1

ROSELYN – receives $400 k from Oak (GF) and $430 k from BHCD (HIF from PDC)

OAK – gives $400k GF to Roselyn

PDC – gives $430 k HIF to BHCD

BHCD –
* gives $430 k CDBG (program delivery IGA) to PDC
* puts $430 CDBG 108 into RFP

YEAR 2

ROSELYN - whole

OAK - receives $400 k HIF from BHCD (thru PDC)

PDC - gives $400 k HIF to BHCD

BHCD -
* gives $400 k CDBG (program delivery IGA) to PDC or Asset Mgt/loan servicing entity
* puts $400 CDBG 108 into RFP