pab 2017
frequently asked questions

november 14, 2017

q1 Is there a formal application form to complete? Or, is the application to be in the form of a letter to CHFA?

a1 There is no formal application form. If you are interested in pursuing:

Option 1: new tax-exempt bonds that close into escrow before 12.31.17 (notice: deals not closed), please submit all information requested as part of the year-end PAB bond application checklist, items 1a – 1g in a narrative and email to Tasha Weaver at tweaver@chfainfo.com on or before November 15, 2017. In addition, a fee of $25,000 as advance payment for CHFA bond counsel retainer must be received by check payable to Colorado Housing and Finance Authority no later than November 16, 2017 as per 1h in the notice.

Option 2: new tax-exempt bonds that cannot close into escrow before 12.31.17 (notice: Deals not closed + Risk Share), please submit all information requested in program conditions items 3a – 3f in a narrative and email to Terry Barnard at tbarnard@chfainfo.com on or before November 17, 2017. In addition, a reservation deposit equal to 0.25% of the amount of bond funds requested but no less than $25,000 must be received by check payable to Colorado Housing and Finance Authority no later than November 22, 2017 as per program condition 4 in the notice.

q2 If the legislation is not yet passed by year-end and we are planning a conduit issuance, would you recommend a 'dry' closing that does NOT fully fund the bonds in 2017? But rather, wait until our 'regularly scheduled' closing date in order to save interest on the otherwise fully drawn bonds.

a2 Bonds must close and be fully funded into escrow, with all amounts being drawn down by year end.

q3 In general, can I complete a 'dry closing' in 2017 and avoid any issues?

a3 No, Bonds must close into escrow and be fully funded and drawn by the end of the year. In general, borrowers must reasonably expect to spend, or enter into a binding obligation to spend, 5% of the proceeds within six months of the closing and must reasonably expect to spend 85% of the proceeds within three years. Bond counsel will apply a heightened scrutiny in analyzing the information contained in the application and reserves the right to request certifications from the borrowers as to project readiness and matters pertaining to site control, zoning, building permits, etc. The escrow account must be held by a third-party trustee or fiscal agent, or with the approval of bond counsel and subject to certifications by the lender, in an account at the lender's institution owned by the borrower.

q4 I have already submitted an LOI and plan to submit my tax credit application on November 30th. What options are available for me?

a4 Unfortunately, it is now too late to submit a tax credit application for this year-end program. Applications will still be accepted through November 30 in accordance with the QAP and will be reviewed in due course (assuming 4% credits are available on 2018).

q5 I already received a competitive award, what do I need to do to protect my deal – what are my options?

a5 To preserve options for a 4% LIHTC paired with either 9% Federal or State LIHTCs, you need to close on a conduit deal and fully draw-down your funds into escrow (Option 1) or participate in a CHFA year-end bond issue utilizing credit enhancement (letter of credit/risk-share) (Option 2).

q6 If we are to utilize bond cap from another entity (e.g. City of Denver), by what date does the cap need to be transferred to CHFA?

a6 Unless otherwise agreed in writing, all transfers of cap to CHFA must be completed no later than December 8, 2017.

q7 Is there any strategy available to create a situation that resembles a "draw-down" schedule, to minimize construction loan interest carry cost?

a7 No, we are not aware of any such strategy that would comply with the Tax Code. Unfortunately, the requirement to fully draw bond proceeds by the end of the year (assuming passage of the current draft of the House Bill) results in increased interest carry costs that are unavoidable. Please consult with your financial advisor, who may recommend short-term variable rate obligations to be issued initially.

q8 If the tax-exempt bond issue happens in 2017, can any taxable bond issue happen in 2018 or will it need to happen at the same time?

a8 No, there is no prohibition on incurring taxable debt in 2018. However, if an overall financing plan for a project requires a combination of tax-exempt and taxable debt, the lack of taxable financing by the bond closing may indicate a lack of reasonable expectations as to project readiness.

q9 If you have already closed a 4% deal, have not hit the 50% test, but are comfortable paying a taxable rate on draws in 2018, can you just draw to the 50% point in 2017 and still maintain your credits, etc.?

a9 The answer to this question is likely yes, but please consult your tax credit investor and tax credit advisor to verify that this outcome is acceptable.

q10 How much volume cap is available for allocation by year end?

a10 As you can imagine, the amount of volume cap is a moving target as deals continue to close and CHFA continues to accept delegations and assignments from other jurisdictions. We believe we have ample volume cap; however, we will reassess availability after we know the application volume. We continue to encourage assignments and delegations of cap from other jurisdictions as well as recycling cap where appropriate.

q11 Do the CHFA documents provide for drawdowns prior to work completed? Any approvals from CHFA needed?

a11 Generally, CHFA bond documents reflect the terms of the financing agreements with the conduit lender. Every financing structure is different, but the drawdown provisions for such obligations are typically contained in the main financing document and/or in a separate construction funding agreement with the lender. Please check with your lender and counsel on this point.

q12 For PAB volume cap, is the 55% rule still in place? Would CHFA consider allowing for more than a 55% bond amount? What if a municipality transfers more than 55% of the bond amount needed?

a12 Yes, the 55% rule is still in place. CHFA may consider allowing more than 55% depending on individual circumstances.

q13 Is a PAB application required for all projects looking to close this year, even if we have already submitted a complete tax credit application?

a13 Yes, while there is no formal application, all steps outlined in the respective notices must be completed in connection with any applications for PAB.

q14 Is conversion-to-perm considered a reissuance?

a14 No, as long as the financing documents entered into at the time of closing are structured in a way that clearly establishes the terms of the conversion, such conversion will generally not result in a reissuance (or deemed refunding) for federal tax purposes. An alteration that occurs by operation of the original terms of the debt instrument, either automatically or by the unilateral exercise of an option by the issuer or holder, is not ordinarily a significant modification that results in a reissuance.

q15 Is it required to use Sherman & Howard for bond counsel?

a15 Yes, unless otherwise agreed, bond counsel will be Sherman & Howard L.L.C.

q16 We'd like CHFA to issue our bonds and have 1st Bank purchase them and fund the loan into escrow until we close in April. If that's the case, do you still need the info requested in the notice?

a16 Assuming this is a traditional conduit bond structure, you need to submit the application information for (Option 1.)

q17 When you say 50% of bond closing fees at closing and then 50% at construction closing - is that breaking of escrow?

a17 Notwithstanding the language contained in the notices, bond counsel will require all issuance costs and closing fees to be paid at the initial closing of the bond issue.

q18 Can CHFA TEFRA my project prior to tax credit approval so I can be included in the Risk Share pool/bucket?

a18 Yes, provided your application for tax credits has already been submitted to CHFA. However, including a project in a TEFRA notice does not obligate CHFA to issue tax credits.

q19 What if I don't have the final address for TEFRA yet? I.e. I have a good address that may change?

a19 The exact address is not required for the TEFRA notice. The tax regulations require that the notice contain the prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location (i.e., at the northeast corner of Manning Street and 50th Avenue). However, please note that an incorrect address that results in a substantial deviation from the actual location can invalidate the bond issuance for that location.

q20 Will I be subject to negative arbitrage and how can I avoid it?

a20 We are not aware of any way to avoid negative arbitrage. Unfortunately, the requirement to fully draw bond proceeds by the end of the year (assuming passage of the House Bill as drafted upon introduction on 11.2.17) results in increased interest carry costs that are unavoidable. Please consult your financial advisor for specific information regarding the impact of negative arbitrage on your project and cash flows.

q21 I understand that PAB may not be available next year, but I have already closed. What happens if I have not drawn down all the bonds?

a21 If the H.R. 1 becomes law as drafted upon introduced on 11.2.17, then all tax-exempt bond proceeds must be 100% drawn down by December 31, 2017 (e.g., all bond funds would need to be drawn and placed in an escrow account or other account owned by the borrower, subject to approval by bond counsel, or spent on the project before that date) or risk being treated as taxable. Interest must accrue on the full amount of the drawn proceeds, and to the extent that funds are held in an account of the lender, such amounts should earn interest at market rates. In the absence of full draws prior to the end of the year, interest on subsequent draws will be taxable. Speak with your lender, tax credit investor, and counsel immediately.

q22 Why am I required to have a CHFA risk share loan?

a22 To support its bond issuance and loan under (Option 2), CHFA requires credit enhancement during both construction and throughout the permanent loan term. Acceptable forms of credit enhancement could include a bank letter of credit for construction coupled with an FHA/FANNIE/FREDDIE execution on the long-term loan. For more information click here and contact Terry Barnard.

q23 Do I really need a "commitment" as opposed to an LOI? Why?

a23 For conduit bond issues that are closing into escrow before year-end (Option 1), we require a signed loan commitment from your lender to demonstrate readiness of the project. Given the expedited timing for these transactions, we (and our bond counsel) want to make sure that the transaction is likely to close.

For participation in the risk-share CHFA bond offering (Option 2), we require a negotiated term sheet from your proposed credit enhancement provider. Bond counsel may require additional information or documentation, but a negotiated term sheet from your proposed credit enhancement provider is sufficient for purposes of the application.

q24 What are the deadlines for board meetings and final resolution approval?

a24 The last CHFA Board Meeting where CHFA Bonds with Risk-Share may be approved is December 7, 2017. The last CHFA Board meeting where CHFA conduit bond transactions may be approved is December 14, 2017.

q25 What documents does the board need to have available at the final approval meeting in substantially complete form?

a25 With respect to conduit bond issues closing into escrow before year-end (Option 1), we require substantially final deal documents to the board at the time of the resolution.

q26 I already received a competitive tax credit award, what do I need to do to protect my deal – what are my options?

a26 If your project received a 9% tax credit award and does not depend on 4% tax credits (which require PABs), you need do nothing. If your project received 4% tax credit and 9% or 4% State tax credits, you need to close on the PABs before year-end either in connection with your existing lender and tax credit investor (Option 1) or talk to CHFA if your transaction is suitable for risk-share (Option 2.)

q27 Will I be subject to Davis-Bacon wages?

a27 If risk-share applies during the construction period, yes. If you have an alternative credit enhancement during construction (e.g. bank letter of credit) then it depends on whether any other financing source requires it.

q28 What negative arbitrage will be allocated to my project if I participate in a CHFA year-end bond issue with CHFA as lender?

a28 Bonds will accrue interest from the date of closing in December 2017. CHFA will acquire short-term investment securities to cover as much of the interest expense as possible. Any residual negative arbitrage will be allocated on a pro-rata basis to projects based on the amount of bonds allocated to them.