

From: Mark Shelburne
Sent: Thursday, May 07, 2009 4:54 PM
To: Lucas, Eric
Subject: FW: Re: HUD/Treasury Webcast Notables

I understand you may be involved in the implementation of the Exchange program. If you have an opportunity please review the emails below as they relate to the apparent prohibition on lending 1602 Exchange proceeds.

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From: ABA Forum on Affordable Housing and CD Law Members
[mailto:HOMEFORUM@MAIL.ABANET.ORG] On Behalf Of Mark Shelburne Sent: Thursday, May 07, 2009 7:39 AM
To: HOMEFORUM@MAIL.ABANET.ORG
Subject: Re: HUD/Treasury Webcast Notables

My colleague in Michigan makes very good points about the problems with prohibiting loans. Below are a few more questions and thoughts.

1. Is any federal guidance necessary on this subject? Agencies, in consultation with stakeholders, can determine the form of subawards.
2. Do ARRA or the joint statement contain restrictions on making loans? The notion of “grants” applies only to transfers from Treasury to agencies, not the subaward themselves. The relevant language is agencies “may make subawards to finance” buildings and “[recapture] may be enforced by means of liens”. Do either of those phrases prohibit lending?
3. Will granted subawards have state-level income tax consequences? Even if a state's revenue laws are conformed to the IRS Code, the federal tax exemption is not statutory.
4. At least one state has constitutional language limiting the ability to grant federal dollars, which could preclude participation in the exchange.
5. Grants have a negative connotation outside our industry. While we may understand what they mean, some politicians will see them as simplistic handouts as opposed to the sophisticated, well-regulated commercial real estate that has evolved over the last 20+ years.
6. That said, will owners/developers effectively realize a windfall of stimulus money in 15 to 30 years? In the current political environment it is difficult to see how Congress intended such an outcome.

For further comments see NCSHA's letter to Treasury:
www.ncsha.org/uploads/Treasury_Exchange_Letter.pdf

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