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Re: Comments on THDA's Draft Multifamily Tax-Exempt Bond Authority Program Description for 2023

Thank you for the opportunity to provide feedback on the Tennessee Housing Development Agency's (THDA) Multifamily Tax-Exempt Bond Authority (MTBA) Draft Program Description for 2023. The Tennessee Developers Council's mission is to provide a unified voice for the development community on the most important state housing issues and to effectively and efficiently communicate concerns or feedback about state policy and legislation that directly impacts affordable housing development businesses. In that spirit, our comments are based on the premise of creating and preserving more affordable housing options for low-income Tennesseans.

Maximum MTBA Per Development Limits

In the most recent QAP update, THDA adopted timely increases to the TDC limits but did not make corollary changes to the maximum MTBA per development limits in the draft MTBA Program Description. While we appreciate the executive director's waiver authority, we remain concerned that these artificially low limits may prevent deals from being able to pencil – therefore limiting which deals apply before even being considered for a waiver.

Inflation is at an all-time high, yet the maximum MTBA Per Development Limits remain stagnant, the limits in Section 5.B.2 for rehabilitation have not increased since 2017, while the New Construction and Adaptive Reuse/Conversion limit in Section 5.B.1 has not increased since 2018. If the amounts had been increased alongside the compounding effect of inflation each year the current amounts would be:

- New Construction: $43 million → $48,634,000;
- Substantial Rehab: $25 million → $28,869,370;
- Moderate Rehab: $16 million → $18,476,640; and
- Limited Rehab: $13.7 million → $15,820,410.[1]

[1] 2.1 percent in 2017, 1.9 percent in 2018, 2.3 percent in 2019, 1.4 percent in 2020, and 7.0 percent in 2021. Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, Consumer Price Index: 2020, 2019, 2018 and 2017 in Review. Retrieved From: www.bls.gov/opub/ted/2018/consumer-price-index-2017-in-review.htm www.bls.gov/opub/ted/2019/consumer-price-index-2018-in-review.htm, www.bls.gov/opub/ted/2020/consumer-price-index-2019-in-review.htm, www.bls.gov/opub/ted/2021/consumer-price-index-2020-in-review.htm and https://www.bls.gov/opub/ted/2022/consumer-price-index-2021-in-review.htm.

At a minimum, the Tennessee Developers Council recommends increasing the MTBA limits in the 2022 MTBA Program Description to account for recent inflation. We also suggest that THDA consider increases beyond adjustments for inflation to account for the expectation that costs will continue to rise.

Furthermore, we do not believe that the program is well served by its current tiered approach for rehabilitation. As we have commented in previous years, the size of the request does not always align with the specific needs of a property. The best indicator of rehabilitation needs in any given project is an independent third-party Physical Needs Assessment (PNA). The current tiered scale can require developers of larger scale projects and/or projects with relatively high acquisition costs (e.g., projects located in hot real estate markets) to incur significant expenses replacing systems and building components that may otherwise have a useful life in excess of the 15-year compliance period. We suggest as an alternative, modifying the current tier system in the BPD so that each tier is scaled against bond authority requested per unit as opposed to total bonds requested. This will make the rehab requirements neutral to the total number of units in a proposed project or the relative value of the land.

Basis Boost for Difficult Development Areas

We are deeply concerned about the definition of basis boost, which as currently written, limits the boost to Qualified Census Tracts (QCT) only. Without the statutorily required boost for Difficult Development Areas (DDA), many developments across Tennessee would be rendered financially infeasible.

26 U.S.C § 42(d)(5) states:

"(B) Increase in credit for buildings in high-cost areas

> (i) In general
>
> In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—
>
> > (I) in the case of a new building, the eligible basis of such building **shall** be 130 percent of such basis determined without regard to this subparagraph, and
> >
> > (II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) **shall** be 130 percent of such expenditures determined without regard to this subparagraph." (emphasis added).

This section of the code indicates Congress's acknowledgement that developments in both QCTs and DDAs would be more costly, as well as its commitment to providing additional funding for these high-priority projects. The intentional use of the word **shall** in subsections I and II implies that housing credit allocating agencies lack the authority to deny the basis boost to these properties. We urge THDA to amend the definition of basis boost as follows in order to bring the QAP into alignment with federal law.

Basis Boost - An increase of up to 30% in eligible basis for a building in order to improve the financial feasibility of the building in a Difficult Development Area or Qualified Census Tract. ~~In this MTBA Program Description, only areas defined by HUD as Difficult Development Areas are eligible for the Basis Boost.~~

Other Sources of Funds

We urge THDA to be impartial on soft funds and strike the following language on page 7: “or other permanent contributions that do not require repayment.” When the tiebreaker was initially conceptualized, its aim was to bring in other sources of funding such that deals would not be wholly dependent on THDA funding. Sources of outside funding, regardless of how they are structured, should not be penalized. Amazon’s Housing Equity Fund, while technically “soft,” requires repayment out of cashflow, as well as a 99-year Land Use Restrictive Agreement.

Relatedly, we ask THDA to remove the addition to Section 8.C.3.a, and for THDA to converse with Amazon to make sure their commitment to providing affordable housing in the Nashville region aligns with requirements laid out in the bond program description in the definitions and Sections 8.C.3.a and 10.B.2.a.

30-Year Pro Forma

We observe that a current 30-year pro forma was added to the list of supporting documents for initial application and urge THDA to change the requirement to align with the industry standard of a 15-year pro forma. Thirty years is too long of a period to be able to predict the performance of a property and developments often require recapitalization well before reaching 30 years.

Program Limits and Calendar of Events

THDA has typically published an initial MTBA amount in the fall preceding the implementation of a new MTBA Program Description. As much notice as possible regarding funding amounts and timing is necessary to both the health of the program and the developers that have invested millions of dollars in pre-development work over several years. We ask that THDA continue the tradition of providing a MTBA estimate of the first round in the fall, followed by a supplemental allocation in the spring. Similarly, we request THDA provide rough estimates for the Calendar of Events so that the development community can properly prepare.

Thank you again for the opportunity to provide comments. Please feel free to contact me directly at 202-939-1753 or ksnyder@housingonline.com.

Sincerely,

Kaitlyn Snyder

Kaitlyn Snyder
Managing Director