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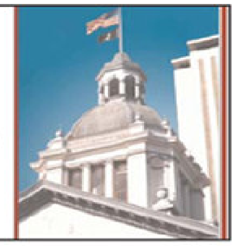

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Affordable Housing Construction May Get a Boost from Federal Stimulus Funding

Finding Funding Sources for Affordable Housing Construction has become a Difficult, if not Impossible Exercise; But Help May now be on the way through the Federal Stimulus Package.

By Michael Donaldson
Carlton Fields Shareholder

With the passage of the William E. Sadowski Affordable Housing Act in 1992, Florida created one of the largest affordable housing trust funds in the country. The Sadowski Trust is funded by dedicated revenue generated from documentary stamp tax proceeds.

During Florida's housing boom almost a half billion dollars per year were deposited into the Trust. The Trust funds were to be used by state and local agencies to assist with the development of much-needed affordable housing. In essence, these funds were used in conjunction with other funding sources such as Low Income Housing Tax Credits (LIHTC) and Multifamily Revenue Bonds to subsidize the costs associated with the development of affordable housing. With this dedicated funding source in place, the affordable housing market flourished with thousands of new affordable units coming on line each year.

Decrease in Funding

Over the past few years – caused in no small part by the economic slowdown, and a reduction in documentary tax proceeds – the amount of money in the Sadowski Trust has decreased. Indeed, documentary tax collections this year will be less than $240 million.

Moreover, in the 2008-09 fiscal year as part of its budget balancing exercise, the Legislature further reduced affordable housing funds by "sweeping" approximately $250 million from the Sadowski Trust and moving those funds to general revenue.

In conjunction with the reduction of Sadowski Trust monies, and because of reduced tax revenue, many local governments have reduced their affordable housing funds and directed those funds to other programs. Accordingly, finding funding sources for affordable housing construction has become a difficult, if not impossible, exercise.

American Recovery and Reinvestment Act of 2009

In response to these realities, President Obama and the Federal Government recently passed legislation, which includes specific provisions and allocations designed to boost the affordable housing development industry. Indeed, the industry received several key enhancements from the $787 billion total legislative package.

Gap Financing

Perhaps the most important component of the ARRA is an attempt to reenergize the LIHTC's market. Through the sale of LIHTCs, developers obtain equity which is used to supplement the construction of an affordable housing project. Because no one is currently buying LIHTCs for a price that makes a deal work, many deals have stalled and are in jeopardy of not being constructed at all. With the passage of ARRA, however, state housing credit agencies (HCAs) will receive approximately $2.25 billion to assist these stalled projects. These funds will be allocated to HCAs based on a federal formula and are designed to be used to fill the gap created by the reduction in the value of LIHTCs. The HCAs must distribute these funds competitively and according to their qualified allocation plans. Projects awarded low-income housing tax credits in fiscal years 2007, 2008, or 2009 are eligible for funding.

Low Income Housing Tax Credits Exchange

In a further attempt to bolster the anemic LIHTC market, the ARRA granted HCAs the authority to convert their unused and undersubscribed housing credit allocations into direct federal grants to otherwise worthy projects. Each state may apply for an LIHTC grant election amount equal to 85 percent of the product of: 100 percent of (a) the state's unused allocation form 2008 and (b) any allocation returned in 2009 *plus* 40 percent of (i) the state's 2009 allocation, as elected by the state, and (ii) the state's share of the 2009 national pool multiplied by 10.

The Affordable Housing Industry Received Several Key Enhancements in the $787 billion Federal Stimulus Package.

Effectively, the Treasury may buy all of a state's unused 2008 housing credits, all 2009 credits returned by awardees, and up to 40 percent of the state's 2009 credit allocation. The Treasury will pay 85 cents per credit, which is not a bad price in today's market where credits routinely go for 68 cents. By contrast, when the market was booming, credits were sold at $1.05 per credit.

The Treasury's funds will be delivered to states in exchange for a portion of their LIHTC authority, and then will be loaned or granted to LIHTC-qualified projects. According to Florida Housing Finance Corporation, the HCA for Florida, this could amount to an additional $550 million for affordable housing development in Florida. Recipients of these credit exchange funds will be regulated as if their property had received an allocation of LIHTC, for the purposes of use and other restrictions. However, state agencies, in some circumstances, may use a portion of their exchange proceeds to make sub-awards for financing qualified low-income buildings that did not receive competitive LIHTC allocations. The Florida Housing Finance Corporation is currently evaluating this new mechanism for project funding and soliciting comments from program participants.

Community Development Block Grant Program

The ARRA also includes $1 billion for the Community Development Block Grant Program (CDBG). The CDBG program allows local governments to undertake activities intended to create suitable living environments which provide affordable housing and create economic incentives. The funds will be allocated by HUD using the FY 2008 funding formula. Localities must give priority to projects that can result in contracts, based upon bids made within 120 days from the date funds are made available to recipients.

The HUD Secretary may waive or specify alternative requirements by statute or regulation, except requirements related to fair housing, nondiscrimination, labor standards, and the environment. Eligible applicants include states and local governments that received CDBG funding in Fiscal Year 2008.

Neighborhood Stabilizations

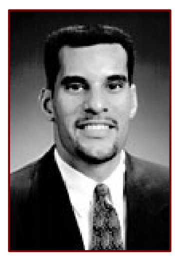
In conjunction with the Housing and Economic Recovery Act of 2008, the ARRA created a new Neighborhood Stabilization Program (NSP). The NSP will provide emergency assistance to state and local governments to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and light within their communities.

The NSP provides grants to every state and certain local communities to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline in house values of neighboring homes.

Current Status

Currently, both state and local governments are analyzing how these new funding sources, as well as others created by ARRA, can benefit from their ability to provide affordable housing. Likewise, HUD is preparing and issuing guidance, which provides more details as to eligibility and other criteria for the implementation of these new funding sources. These new funds should have a positive impact on the affordable housing market.■

Michael Donaldson is a Shareholder in the Tallahassee office of Carlton Fields, P.A. His primary practice area is administrative and civil litigation with a focus on assisting developers of affordable housing in obtaining funding through the Florida Housing Finance Corporation and local financing agencies. He also assists developers in navigating land use and environmental issues at the state and local levels.



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