



## Development Finance Programs August 12, 2010

**Agenda Item:**

Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of a calendar year 2010 Application for Allocation of Private Activity Bonds, Notice of Intention to Issue Bonds and State Bond Application to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the AOF – Texas Affordable Housing Pool Project

**Summary:**

The Corporation received an application in July for new Private Activity Bonds for the acquisition and rehabilitation of seven affordable apartment communities. The applicant, American Opportunity Foundation, Inc. (“AOF”) is a nonprofit developer based out of Atlanta, Georgia. AOF was formed in 1983 as a 501(c)(3) corporation in order to sponsor low-income housing, housing for the elderly and housing for persons with disabilities. AOF received its initial determination letter from the Department of the Treasury on January 30, 1985 and received a group determination letter on April 7, 1993. The group letter permits AOF to extend its exempt status to organizations under AOF'S direct supervision and control.

Prior to 1995, AOF was primarily engaged in accepting donations of low-income multifamily properties through the Resolution Trust Corporation under the Bargain Sale Provisions of IRC Code Section 1011(6). Additionally, AOF served as a charitable general or special limited partner in three (3) partnerships that own conventionally financed apartment properties receiving low income housing tax credits.

AOF'S primary business plan now involved the acquisition of multifamily properties utilizing tax exempt bond financing. The currently application involves the acquisition of 7 properties currently owned by the American Opportunity for Housing Corporation (“AOH”). There are no affiliations between AOH and the applicant. A list of the seven properties is included below.

Property Name	City	Units
Briarcrest	Spring	376
Clover Hill	Arlington	216
Hillcrest	Grand Prairie	310
Mill Creek	Spring	174
One Westfield Lake	Spring	246
Regal Park	San Antonio	114
Vista Landing	San Antonio	296
<b>Totals</b>		<b>1732</b>

All seven of the properties are currently affordable properties previously financed using 501(c)(3) bonds and other tax exempt or taxable loan structures. Five of the properties (Briarcrest, Clover Hill, Hillcrest, Mill Creek, and One Westfield) are currently financed with 501(c)(3) bonds issued by the Corporation in 2002. These properties are in default on their bond payments and are at risk of



## Development Finance Programs August 12, 2010

foreclosure, which make them eligible under the Corporation's targeted housing needs for At-Risk properties under our private activity bond program.

The acquisition and rehabilitation would be financed by new private activity bonds issued through a public offering that will either be rated by Standard & Poor's, enhanced by Fannie Mae or HUD, or possibly issued as unrated bonds. The ownership entity will be a subordinate entity under AOF'S group exemption letter. From March, 1996 through August, 1999 AOF acquired twenty-eight (28) properties in twenty (20) subordinate entities totaling 6,808 affordable housing units.

### **Feasibility Analysis**

Staff has conducted only a cursory analysis of the feasibility of this project. A full underwriting would be completed if the inducement is approved by the board, and prior to the final approval of the board to issue bonds. The summary budget and proforma submitted by the applicant did meet the Corporation's threshold criteria, but will need to be expanded upon to include details for each of the seven properties, along with assurances that the Corporation's fees and other necessary operating costs are budgeted for prior to the payment of primary or subordinate bonds.

A significant consideration for feasibility for these properties is the elimination of significant bonds debt that is currently in default. The applicant's plan includes an agreement with the primary bond holder to foreclose on the current debts against the properties and sell the properties out of foreclosure to the applicant. This would permit for the total debt against the properties to be written down and align with the properties current market value.

This strategy also may permit the developments to retain their current property tax exemptions. Under current state law, a development receiving tax exemption under Texas Tax Code §11.182(k) may continue to receive its full exemption if the property is foreclosed upon if the development is then sold to a qualified community based housing organization. The Corporation will require the applicant to produce an attorney's opinion letter before accounting for tax exemption in our underwriting process.

### **Public Benefit**

If the proposed development were to advance to closing, the Corporation would be able to preserve more than 900 units of affordable housing targeted to households earning 80% or less of area median income and more than 400 units for households earning 50% or less of area median income. If the projects are allowed to continue without a new financial plan, it is more than likely that all 1,732 units would be foreclosed upon and sold as market rate apartments to private owners.

### **Staff's Recommendation:**

It should be noted that the board is only taking action on an inducement of bonds that gives staff the authority to request a reservation of bond funds from the Texas Bond Review Board for private activity bond volume cap. If the inducement is approved, the applicant is required to submit a full underwriting package for the proposed development, hold public hearings, and draft significantly



## Development Finance Programs August 12, 2010

complete bond documents before the Corporation's Board would review a resolution to issue bonds and before the submission of a full bond application to the Texas Bond Review Board.

After reviewing the inducement application package, staff recommends that the Board approve the inducement resolution regarding the submission of a calendar year 2010 application for allocation of private activity bonds, notice of intention to issue bonds and state bond application to the Texas Bond Review Board and declaration of expectation to reimburse expenditures with proceeds of future debt for the AOF – Texas Affordable Housing project.

The following conditions will be considered and placed into the regulatory agreement or other appropriate documents to ensure compliance with the Corporation's conditions to this award.

1. The Corporation shall negotiate the payment of outstanding liens for PILOT payments, unpaid issuer fees and unpaid compliance fees, in whole or in part as a condition of closing;
2. The Corporation shall place transfer restriction on the primary and subordinate bonds, to be approved by the Board at a later date;
3. The Developer shall be required to notify the Chief Appraiser of each appraisal district included in the transaction at least 15 days prior to the first public hearing, to give notice of their intent to extend the tax exemption currently in place; and
4. The Developer shall submit to the Corporation the Reservation Detail Package and Bond Application materials at least 10 days prior to the submission of the reservation application to the Texas Bond Review Board.