MULTIFAMILY FINANCE PRODUCTION DIVISION
BOARD ACTION REQUEST
December 18, 2008

Action Item

Presentation, Discussion and Possible Approval of a Change in the Fee Schedule for Multifamily Tax-Exempt Bond Issuances through the Department.

Requested Action

Approve changes and authorize credit of a portion of previously collected fees for Private Activity Bond Program where TDHCA was the issuer.

Background and Recommendations

The recent economic stresses have been particularly difficult on rental developments funded with mortgage revenue bond funds and the Department has received legislative requests to re-evaluate the Department's fee structure to ensure that the Department's program operate within the current resources and, if possible, to provide some ongoing financial relief for properties under financial pressure. The Department has also often heard public comment that a redundancy in the compliance monitoring and asset oversight activities exists and that asset oversight activities, as a best practice activity rather than regulatory activity, should be available at the choice of the owner. The Department has conducted an assessment of the current fee structure for TDHCA issued Bond developments which have associated tax credits to determine if any fee relief could be given.

The results of the study indicated that the Department should not cut the tax credit per unit fee as it very closely covered the cost of monitoring and related operations and is consistent with the tax credit fees for non-Bond funded developments. The Department did see an opportunity to provide relief to the developments that have been financed through Bonds issued by the Department by reducing the duplication of compliance monitoring and asset oversight activities and fees.

The Department's Bond rules have included a $40 per unit annual compliance fee in addition to the $40 per unit tax credit compliance fees in the tax credit rule and a $25 per unit fee for asset oversight fee also in the Bond rule. The Bond and asset oversight fees were included in the Bond rules for the first time in 2008 however they have been collected as a separate fee at various rates in prior years. The Department has reviewed the duplication in the monitoring for Bonds, tax credits and asset oversight and determined that a simplification of the monitoring activity could be achieved without reducing the Department's ability to assure compliance with required regulations. After reviewing the costs associated with required monitoring and the reserve funds established by the Department, we are recommending that the fees be reestablished at $25 per unit for the Bond compliance and $40 per unit for tax credit compliance associated with a TDHCA issued bond transactions. The asset oversight fee and separate monitoring activity is proposed to be eliminated except where the developer requests or bond documents require that this separate activity continue. As a result, the TDHCA monitoring of these properties will remain the same, but the overall fee to TDHCA will be reduced to a total of $65 per unit.

This decrease in fees will reduce the Department revenue by an estimated $96,000 per year and result in a direct savings of the same amount for the development community. In addition, the Department believes that we can return previously collected fees (in excess of $65 per unit) as credits back to the properties that paid them in the amount of $139,830. The Department has sufficient compliance fee reserves and will utilize these previously collected and reserved funds to fund the ongoing monitoring activity.

The additional $25 per unit fee for asset oversight is collected by and the activity is currently performed by the Texas State Affordable Housing Corporation (TSAHC) through a contract with TDHCA which provides $3 per unit returned to TDHCA. The provision for this activity and its related fees are included in the bond transaction documents and in some earlier developments specifically identify TSAHC as the asset oversight entity but in most cases identify TDHCA as the oversight entity. After analysis, we believe that we can and in most cases already do collect the most pertinent asset oversight data in our Annual Owners Reports and through our current compliance activities without any additional costs to the Department. If the developer who receives this report desires and the bond documents allow, the Department will sign an agreement suspending this procedure and its related fee. This would result in a $25 per unit reduction in fees. Again this will be a voluntary agreement to stop performing the third party asset oversight activity based on the property's interest in discontinuing the program.

The Department believes that the combination of monitoring of the bond and tax credit monitoring, plus the additional reporting will ensure the properties are maintained at a high quality for those who elect not to continue asset management with no negative impact to the residents.

Staff Recommendation

Staff recommends approval of the reduction of fees, the credit back to tax-exempt bond/tax credit properties that previously prepaid compliance fees in excess of $65 per unit per year in total compliance monitoring fee, and providing an option for bond properties to elect not to participate in the asset oversight program going forward where bond documents allow.