

# MIDDLE-INCOME HOUSING

## BACKGROUND AND LEGAL BASICS

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# Middle-Income Households

- "Middle-income housing" (sometimes called "workforce housing") typically refers to multifamily rental housing targeted at households earning between 60% and roughly 120% of area median income
- By contrast, "low-income" housing generally refers to units restricted to occupancy by households earning less than 60% of AMI
- The middle-income housing population includes nurses, firefighters, teachers, police officers and others who struggle to find reasonably priced housing in high-cost areas



# Background

- For most of the past 20+ years, there has been little governmental support for middle-income housing
  - The federal low-income housing tax credit (LIHTC) program is targeted at 60% of AMI and below (with some exceptions)
  - HUD/Section 8 programs similarly target low and very-low income households
  - States have not provided significant support for middle-income rental housing, focusing resources instead on promoting homeownership



# The First Wave

- **California:** The frontrunner with nearly 14,000 units acquired and converted to rents affordable for middle-income families since 2020
- **Texas:** Middle-Income housing properties financed in Austin, Dallas, El Paso and Houston
- **Idaho:** Middle-Income housing properties financed in Sun Valley
  - Project featured in the [New York Times](#)
  - Workforce Housing Fund established during the 2022 Legislative Session [HB 701](#)
- **Colorado:** Middle-Income housing properties financed in Colorado Springs, Pagosa Springs and Wheat Ridge
  - Colorado Workforce Housing Trust Authority established during the 2022 Legislative Session [SB22-232](#)



# Key Financial Drivers

Transaction structures for middle-income housing typically leverage of one or more of the following advantages arising from municipal financing:

1. Federal and/or state tax-exemption on bonds
2. Real property tax exemption/abatement
3. Favorable debt terms in the bond market compared to the multifamily mortgage market



# Types of Bonds

- Depending on the market, jurisdiction and other circumstances, middle-income housing can be financed with
  - governmental bonds (aka "governmental purpose" or "essential function" bonds)
  - 501c3 bonds
  - exempt-facility bonds (aka "private activity bonds" although that term is imprecise in this case)
- Taxable municipal bonds may also be used in some circumstances.

***A chart showing different types of bonds used for middle-income housing is attached to this presentation as an Appendix***



# The Second Wave – What Comes Next?

- For much of 2022 and the beginning of 2023, the relationship between bond yields (i.e. borrowing costs) and apartment cap rates (i.e. investment returns) has made it challenging to finance middle-income housing with tax-exempt bonds
- There has also been policy blowback in California in particular against "JPA deals"
- However, the Overton Window has shifted and it seems unlikely that middle-income housing will go off the affordable housing finance menu entirely
- Rather, we can expect a second wave that may include
  - Greater regulation
  - More emphasis on new construction
  - More contributed land or other "equity" to lower leverage
  - Increased employer participation (resort towns, health systems, universities, etc.)

# Appendix – BOND CHART

	501c3	Governmental	Exempt-Facility*	
Volume Cap Required	No	No	Yes	
LIHTC Eligible	No	No	<u>New Volume Cap</u> Yes	<u>Recycled Volume Cap</u> No**
For-Profit Ownership	No	No	Yes	
Qualified Management Contracts Required	Yes	Yes	No	
TEFRA Required	Yes	No	Yes	
95% Good Costs	Yes***	No	Yes	
2% Costs of Issuance Limit	Yes	No	Yes	
"Private Use" Limitation	5%	10%	None	
Income Set-Asides (Federal)	<u>Acquisition</u> 20%@50% AMI or 40%@60% AMI	<u>New Const.</u> depends on charitable purpose****	None/Contractual	20%@50% AMI or 40%@60% AMI
Rent Restrictions (Federal)	None/Contractual	None/Contractual	None (except LIHTC)	
State and Local Requirements	Varied	Varied	Varied	

\*These are often referred to (imprecisely) as “private activity bonds” or “PABs”

\*\*Exempt facility bonds issued with recycled volume cap do not count toward the “50% Test” contained in IRC Section 42(h)

\*\*\*The “95/5 Test” is applied somewhat differently for 501(c)(3) bonds than for exempt-facility bonds

\*\*\*\*For example, a 75%@80% AMI requirement may need to be added





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