

*Bond Counsel*

**New Mexico Mortgage Finance Authority  
Legislative Oversight Committee**

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- It has been our pleasure to serve as MFA's Bond Counsel since September 1, 1994.
- During that time MFA has issued over \$3 Billion of Bonds and more importantly has assisted in financing housing for thousands of New Mexico residents.
- Ballard Spahr LLP is a national law firm, with 14 offices across the country, from California to New York.
- Our purpose today is to give you a brief overview on MFA's Bonds, from a legal standpoint, and to also discuss the uses of such Bonds and the safeguards MFA has in place.

## **Bond Overview from a legal standpoint:**

- Under the New Mexico Mortgage Finance Authority Act - MFA issues several types of Bonds to finance housing in New Mexico:
  - Multifamily Housing Bonds for residential rental projects for persons or families of “low or moderate income”
  - Single Family Housing Bonds to finance the purchase from mortgage lenders within the State of loans made to persons of low or moderate income for an owner occupied residence.
- By state law, MFA’s bonds are only obligations of MFA and may not constitute an obligation of the State of New Mexico or any of its political subdivisions. MFA’s bonds are generally special, limited obligations, payable solely from specified pledged assets and are not secured by other moneys or assets of MFA.

- **HOW MFA'S BONDS ASSIST IN MEETING THE OBJECTIVES OF THE MORTGAGE FINANCE AUTHORITY ACT**
- Recognizing that one of the powers of this Committee is to monitor how MFA's bonds and activities further the objectives of the Act, below are some details:
  - In accordance with State and Federal Law, MFA seeks to make funds available to finance housing throughout the State of New Mexico
  - MFA works to make certain that underserved communities and individuals are identified and served by its programs
  - Over the years, income and purchase price limits have been set so as to target resources where they can have the most impact.
- MFA seeks to cooperate, rather than compete, with the private sector to accomplish the goal of better housing within the State

## **MFA is prudent in how it uses its ability to issue bonds and manages risks accordingly:**

- For Multifamily projects, MFA has developed a debt management policy to ensure the financial integrity of each bond issue and to accommodate the various types of multifamily bond financings. For example, MFA policies are flexible enough to allow for fixed or variable rate bonds structured as private placements with large institutional banks or publicly offered transactions utilizing credit enhancement from Freddie Mac, Fannie Mae and FHA.
- With its Single Family program and related debt management policy, MFA has elected to require that loans sold to MFA for inclusion in its traditional bond program be “securitized” into mortgage backed certificates issued or guaranteed by Ginnie Mae, Fannie Mae or Freddie Mac. This allows MFA to achieve high ratings and bond market acceptance for this program.

- In addition to the requirements of State law, MFA frequently takes advantage of the opportunity to issue bonds the interest on which is exempt from federal income tax (“tax-exempt bonds”).
  - Tax-exemption generally permits MFA to issue bonds at a lower rate of interest.
  - As with most Federal “benefits”, there are a number of requirements that must be met for the Bonds to qualify.

This could take an entire presentation, below is a very brief general overview:

## Single Family loans:

- ❖ Must be to first time home buyers;
- ❖ Borrower's income and home purchase price can't exceed certain limits;
- ❖ MFA's return on the loans is limited to 1.125% above MFA's borrowing cost; and
- ❖ Volume limits, public hearings, governor's approval, etc.
- ❖ Efforts to place loans in under-served (targeted) areas.

## **Multifamily Loans require:**

- ✓ Among other things, that a designated portion of the residential rental project is leased to persons or families with incomes below a certain level; and
- ✓ Similar requirements apply for volume limits, public hearings and governor's approval, etc.
- ✓ Post bond issuance requirements such as filing IRS forms, annual income certifications, proper use of bond proceeds and arbitrage rebate.

- Over the years, MFA has assembled a staff of key people who, along with advisors and others, understand the process, watch the bond and mortgage markets and determine when and how to enter the bond market and where to set interest rates on the loans MFA offers.
- MFA's Governing Board reviews each proposed Bond Transaction and approves the issuance and the related documents.
- MFA's In-house financing team decides on key structural issues and assigns the workload.
- Outside Bond and Underwriters Counsel prepare the documents and the Financial Advisors and Underwriter's oversee marketing of the Bonds.

# Outside participants:

- MFA's Financial Advisor – CSG Advisors Inc. – led by David Jones.
- MFA's Bond Counsel - Ballard Spahr LLP – Blake Wade, Randy Larsen, Ryan Warburton and Preston Olsen.
- Bond Trustee – currently Zions First National Bank.
- Underwriters – RBC Capital Markets (Mina Choo and Paul Cassidy), JP Morgan (Jeff Gertz) on the single family program. Generally designated by developer for multifamily program.
- Underwriter's Counsel – Kutak Rock (Steve Likes), Dorsey & Whitney (James Smith), and Moddrall Sperling (Duane Brown).

# Disclosure Requirements.

- Many of MFA's bonds are publicly offered.
- While MFA's bonds are exempt from the Federal registration requirements that apply to corporations and others, there are a number of rules that MFA must abide by.

## **“Anti-Fraud” provisions of the Federal Securities Laws.**

- These rules generally prohibit any person from making an untrue statement of a material fact or omitting to state any material fact in connection with the offering or sale of securities.
- Violations of these provisions can lead to enforcement actions by the SEC (among other results).

## QUICK REVIEW OF MFA'S OFFICIAL STATEMENTS

- In marketing its Bonds, MFA provides an official statement or similar offering document to the Bond community.
- MFA has developed systems to review and periodically update this information.
- For its single family program, MFA established a Master Indenture in 2005. Over the years, this has allowed MFA to grow the collateral backing these bonds and achieve the highest possible ratings.

***Continuing Disclosure Requirements. In addition to the obligation to make certain the initial investment information is accurate when MFA markets its bonds, MFA also has ongoing disclosure requirements.***

- These include annual filings updating key information provided to investors and filings required upon the happening of certain material events.
- In 2014, the SEC conducted a program requiring that bond issuers, like MFA, review their historical performance in this area and report to the SEC if they failed to live up to their covenants.
- Happy to report that MFA was among the leaders in compliance in this regard! MFA staff is to be commended for what they have done over the years.
- In addition, the Dodd Frank Wall Street Reform Act tasked issuers like MFA with additional duties and MFA was diligent in seeing they met these as well.