USDA BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM FINANCING WITH BONDS

In October 2008 the commercial banking system in the United States of America experienced significant difficulties resulting in a large number of banks exiting many of the commercial lending markets they had traditionally worked in. More recently, financial regulatory reform legislation was signed into law by President Obama on July 21, 2010 which mandates that banks set aside larger amounts of capital for substantially all of the loans they make. The combined effect of the economic crisis and the financial regulatory reform legislation has made it extremely difficult for the banking industry to entertain loans from a number of traditional commercial lending markets.

Conversely, institutional bond investors (*e.g.*, insurance companies, pension funds, hedge funds and other mutual funds) which purchase corporate and other taxable bonds are seeking to purchase both investment grade and high yield bonds to provide financing for creditworthy projects. These institutional bond funds are not constrained by the credit requirements imposed upon state chartered and national banks and are able to provide project developers with debt financing at substantially lower interest rates than those charged by commercial banks and with maturities up to 25 years. For these reasons, the Bond Loan Model provides a new opportunity to many project developers when combined with the B&I Loan Guarantee Program.

On August 5, 2010, Judith A. Canales, Administrator, of the Business and Cooperative Programs for the United States Department of Agriculture (the "USDA") signed Administrative Notice 4532 (the "Administrative Notice") approving the use of the Business and Industry Loan Guarantee Program ("B&I Loan Guarantee Program") with bonds as the funding source for a guaranteed loan. The materials which follow describe and compare a bond funded and commercial loan funded B&I Loan Guarantee Program transaction.

Introduction of Bond Financing

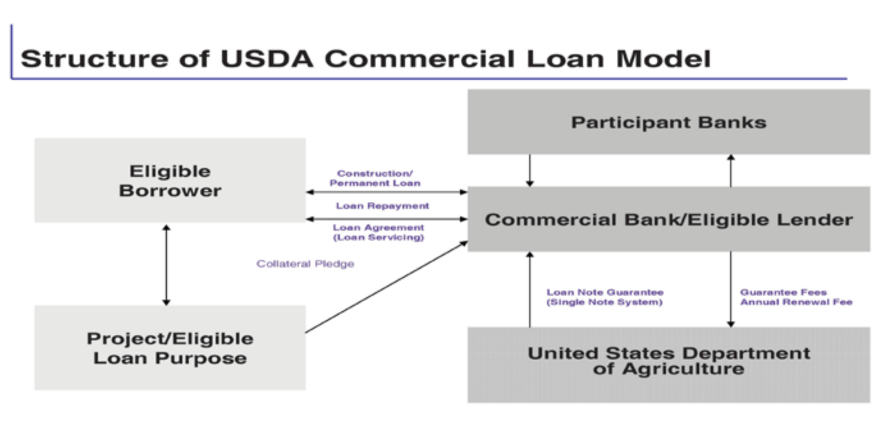
In the commercial lending markets, banks finance projects for borrowers using traditional bank loans which are either funded fully by the lead bank or are syndicated and/or participated out to other banks ("Commercial Loan Model"). Another method of financing projects which relies on banks is through the sale of bonds, with the proceeds from the sale of those bonds being deposited with a bond trustee and disbursed to a borrower ("Bond Loan Model"). Bondholders may include banks but are not limited to banks and generally include institutional investors such as insurance companies, pension funds, hedge funds and other mutual funds. In both the Commercial Loan Model and the Bond Loan Model, a commercial bank makes and services a loan to a borrower to finance a project. The material difference between the Commercial Loan Model and the Bond Loan Model is the source of funds from which the bank makes the loan and, thus, the identity of the parties who bear the ultimate risk on the loan. See "Commercial Loan Model Structure" and "Bond Loan Model Structure" described below.

Both the Commercial Loan Model and the Bond Loan Model can be sources of funding for the B&I Loan Guarantee Program as each such Model relies upon a bank that is an "<u>eligible lender</u>" to make and service a loan to an "<u>eligible borrower</u>" for "<u>eligible loan purposes</u>." In both the Commercial Loan Model and the Bond Loan Model, the bank (i) will serve as the "lender of record" to service the B&I Loan Guarantee Program and (ii) will be required to retain not less than 5% of the unguaranteed portion of the loan evidenced by the bonds. In the Bond Loan Model, the bank may also serve as trustee for the bondholders. Comparatively and substantively, both the Commercial Loan Model and the Bond Loan Model are the same structure, excepting for the funding source.

Commercial Loan Model Structure

The Commercial Loan Model structure depicted in the following diagram is that historically used by the USDA in the B&I Program Loan Guarantee Program. Pursuant to the Administrative Notice, certain industry practices of the Bond Loan Model must be modified in order to comply with USDA requirements.

In a typical taxable corporate bond issuance, an entity such as a corporation, limited liability company or partnership issues a debt instrument (typically, a taxable bond) pursuant to the terms and conditions of a trust indenture. The parties to the trust indenture are a corporate trustee (typically, a national or state bank having a corporate trust division) and the entity issuing the taxable corporate bonds (that is, the borrower). The taxable corporate bonds are sold or placed by an investment bank either pursuant to a bond purchase agreement or a bond placement agreement, depending

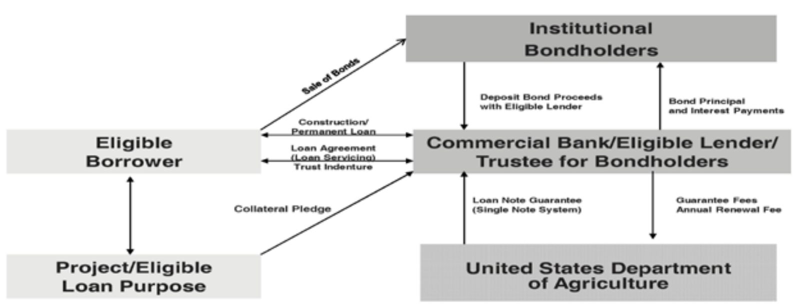


upon whether the transaction is an underwriting or a best efforts placement. The parties to the bond purchase/placement agreement are the entity issuing the taxable corporate bonds and an investment bank that is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended. At closing, the investment bank purchases the taxable corporate bonds or, in the case of a placement, causes its customer (a bond fund or other institutional investor) to deliver the purchase price of the taxable corporate bonds to the corporate trustee for holding under the trust indenture for the purposes specified therein (typically, paying cost of issuing the bonds, paying capitalized interest on the bonds during the construction period, funding a debt service reserve fund for the bonds and paying the cost of construction of the project to be financed with the net proceeds thereof). The Bond Loan Model structure is depicted in the diagram below. This Model is the same as the Commercial Loan Model, except that the lender of record and institutional bondholders combine to play the role of the participant banks.

Under the Administrative Notice, the bank serving as the "lender of record" for the USDA is required to initially purchase all of the bonds and then may sell the bonds to other bondholders, much the same as it would fund a participation under the Commercial Loan Model. In this situation, an investment bank would act as a placement agent for the lender of record and would commit to use its best efforts to place all of the bonds on the closing date with bondholders (excepting for the 5% minimum retention amount required to be held by the bank) in order to originate the proceeds necessary to fund the guaranteed loan.

During the term of the bonds the corporate trustee services the bonds (that is, confirms compliance with financial and other covenants imposed upon the entity issuing the taxable bonds, disburses proceeds of the taxable bonds for construction of the project, receives payments of principal and interest for the disbursement to DTC for the account of the bondholders, maintains the collateral and confirms that the lien on and security interest in such collateral is properly perfected and performs substantially all other functions that a lender would in a typical commercial loan transaction, including declaring default and acceleration and liquidating the collateral). Bondholders will typically receive quarterly or annual financial data obtained by the corporate trustee from the entity issuing the bonds, but any resultant actions regarding violation of financial covenants or otherwise will be undertaken by the corporate trustee. Typically, payment defaults are declared by the trustee (subject, to any applicable grace periods) without direction from the bondholders, whereas covenant defaults will generally not be declared unless the trustee is directed to do so by a majority of the bondholders.

Structure of USDA Bond Loan Model



Under the Administrative Notice, many of the traditional functions performed by a corporate trustee must be reserved to the lender of record. These reserve rights would include all aspects of servicing the loan of the proceeds of the bonds to the borrower and handling events of default of declarations thereof. In short, the Administrative Notice allows a corporate trustee to function solely as a paying agent for the bondholders, with the vast majority of other "lending functions" reserved to the lender of record who is acting on behalf of the USDA.

Following the closing of a taxable corporate bond issuance and prior to the maturity of such bonds, bondholders are generally free to transfer their interest in the bonds without restriction (excepting for any applicable compliance with Federal and State securities laws to the extent such bonds are not "exempt securities" within the meaning of the Securities and Exchange Act of 1933 and applicable State blue sky laws). Generally, taxable corporate bonds issued pursuant to a trust indenture contain no restrictions on transferability (except as noted above for securities law compliance) and any such restrictions would have a substantially negative impact upon their salability.

Under the Administrative Notice, each holder of a bond evidencing a guaranteed portion of the loan, will enter into an "Assignment Guarantee Agreement" among the USDA, the lender of record and the bondholder evidencing the right of such bondholder to the benefits of the B&I Loan Guarantee Program (that being a guarantee of the indebtedness evidencing the guaranteed portion of the loan). Consequently, while the bonds are still freely transferrable without restriction, due to the nature of the B&I Loan Guarantee Program, the assignment of a bond must be preceded by the completion of the Assignment Guarantee Agreement.

For more information regarding the Commercial Loan Model, the Bond Loan Model or the B&I Loan Guarantee Program, please contact:

Westar Trade Resources
18111 Preston Road, Suite 100, Dallas, TX 75252
214-320-0900 www.westartrade.com

westar