ASSOCIATION OF BAY AREA GOVERNMENTS
ABAG Finance Authority for Nonprofit Corporations

ABAG

Authority Successor

- Request was to determine whether it would be possible to appoint Advancing California Finance Authority (“ACFA”) as the successor authority to the ABAG Finance Authority for Nonprofit Corporations (“Authority”).
- Multi-step process
  - Phase I involved a preliminary review of about 10 transactions
  - Phase II included a larger transaction sample, including community facilities districts, direct purchases with U.S. Bank, and swaps
  - Phase III will be the execution of the plan

Outstanding Transactions

- As of June 30, 2019, the Authority had 96 outstanding transactions.
- Of the 96 transactions:
  - 5 were classified as community facilities and assessments districts
  - 18 were for educational purposes
  - 23 were for health care purposes
  - 41 were for housing purposes
  - 9 were for other purposes
- Some of the transactions have an associated swap. Currently, we estimate that there is approximately 6 outstanding swaps.

Phase I Review

- During July 2019, Nixon Peabody LLP reviewed primary documents for 10 transactions.
  - Examples of documents reviewed include indentures, loan agreements, master loan agreements, continuing covenant agreements, security agreements, letter of credit and reimbursement agreements.

- The Phase I Review included a sampling of diverse transactions, including public transactions and privately placed transactions.

Phase I Review - Summary

- There were several takeaways from the initial review of the primary financing documents of approximately 10 transactions.
- Generally, for publicly traded bonds issued pursuant to an indenture, there was language in the indenture that provided that references to the Authority included a successor or assign of the Authority
    - Such language was not used consistently in each transaction document.
- In some documents (but not all), Authority was defined to include a successor or assign.
- The privately placed loans with U.S. Bank in Drew School had restrictions that prohibited the Authority from assigning its rights. However, an amendment is permitted but require consent of the borrower.

Phase II Review

- For Phase II, the following transactions were reviewed by Nixon Peabody:
    - All community facilities district transactions
    - Insured transactions/credit enhanced
    - Direct purchase transactions with U.S. Bank
    - Those transactions that contained swap
    - A portion of the remaining transactions
        - The remaining transactions were randomly selected

Phase II Review - Summary

- JPA Agreement
  - Article VI, clause L of the JPA Agreement: The ABAG Board has the power to assign, delegate or contact with a Member Entity or a *third party* (emphasis added) to perform any of the duties of the Board, including but not limited to, acting as administrator for the Authority.
  - The Authority cannot be dissolved, but its responsibilities will be transferred to ACFA.
  - Article XXI of the JPA Agreement provides that the JPA Agreement cannot be terminated until all the principal of an interest on the Authority's revenue bonds and other evidence of indebtedness has being paid in full and 2/3 of the Member Entities have consented.

Phase II Review - Summary

- Community Facilities Districts
  - Generally, the Authority is the legislative body.
  - Several establishing documents contained provisions that the agreements were binding on the Authority’s successor and assigns.
  - The indentures used in community facilities districts generally included language that the references to the Authority included successors.
  - Language served to put bondholders on notice regarding a successor in the future.

Phase II Review - Summary

- Swaps
  - In connection with certain bonds, interest rate swap agreements were executed for purposes for hedging interest rate risks.
  - The Authority was not a party to the swap documentation that was reviewed.
  - While Nixon Peabody believes that the appointment of ACFA as the administrator of the Authority’s Board does not materially affect the underlying documents, they would want to do additional research and review on this matter.

Phase II Review - Summary

- U.S. Bank Direct Purchases
  - Both of the Drew School transactions and Santa Cruz Montessori have language that restricts the Authority's assignment right.
  - Nixon Peabody recommends amending the affected transaction documents.
  - Such amendments require consent of the related borrowers.
  - For the U.S Bank direct purchases that do not contain the restrictive language, we recommend providing a notice.

Phase II Review - Summary

- Additional Transactions (including insured and credit enhanced)
  - Generally, the primary issuing documents of transactions include provisions regarding the successor or assigns or are silent.
  - There are inconsistences in the documents. Some documents include a provision that addresses a successor or assigns or define the Authority to include successors or assigns, while others are silent on the matter.
  - For the transactions that are inconsistent, Nixon Peabody believes that if the “primary” documents included the “assignment/successor” language that should serve as notice that appointing a successor or assign was a possibility.
  - For transactions with letters of credit, it wasn’t clear if the letters of credit had been extended or had expired.
  - Nixon Peabody recommends providing notices to credit providers.

Phase III - Plan

- Obtain consent from any required parties (example, the borrowers on certain U.S. Bank transactions)
- Prepare amendments for the transactions that require amendments
- Draft a resolution for the Board to adopt in order to make the official appointment
- Draft and distribute notices to all rating agencies, trustees, swap counterparties, credit enhancement provides, borrowers and direct purchasers regarding the appointment of ACFA pursuant to the ABAG FAN JPA Agreement
- File all necessary notices pursuant to continuing disclosure agreements for public transactions

Phase III – Timing/Costs

- Nixon Peabody proposed cap of $200,000 for Phase III
- Estimated completion date no later than June 30, 2020.