SEYFARTH SHAW

Seyfarth Shaw LLP

FINANCING PROJECTS… WITH ACRONYMS! IDBs, NMTC, EB-5, and More!

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GETTING STARTED

ACRONYMS

- IDBs = Industrial Development Revenue Bonds
  - AKA: IRBs, TEBs (tax-exempt bonds), PABs (private activity bonds), revenue bonds
- NMTC = New Markets Tax Credits
  - AKA: tax credit equity, subordinated debt, sub debt, mezzanine finance, mezz debt, “forgivable loan”
- QCT = qualified census tract
- EB-5 = immigrant investor funding
  - AKA: permanent resident visa, 5th employment-based preference
- TEA = Targeted Employment Area

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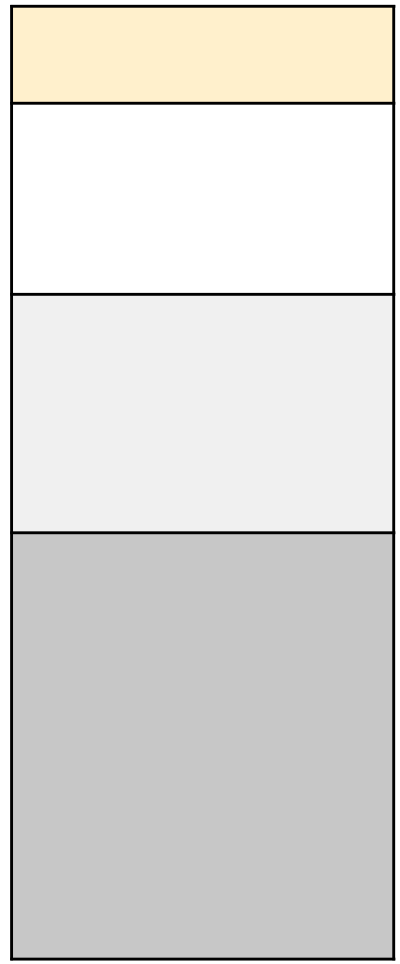
WATCH FOR WALDO

- YOU WILL SEE WALDO 5 TIMES IN THIS PRESENTATION
- MEANS YOU ARE LOOKING AT A CAPITAL STACK
- THE PRESENTATION IS ALL ABOUT HOW TO FILL UP YOUR PROJECT WITH CAPITAL



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CAPITAL STACK

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YOU NEED TO KNOW

- A PROJECT CAN'T HAPPEN UNLESS IT CAN BE FINANCED
- DEVELOPMENT AUTHORITIES NEED TO KNOW-
  - WHY THERE ARE FEWER TAX-EXEMPT BOND DEALS
  - WHAT OPPORTUNITIES TO ISSUE BONDS STILL EXIST
  - WHY A COMMUNITY HAS AN ADVANTAGE IF IT HAS A QCT OR A TEA AND ITS COMPETITOR DOES NOT
  - HOW TO HELP THE PROSPECT

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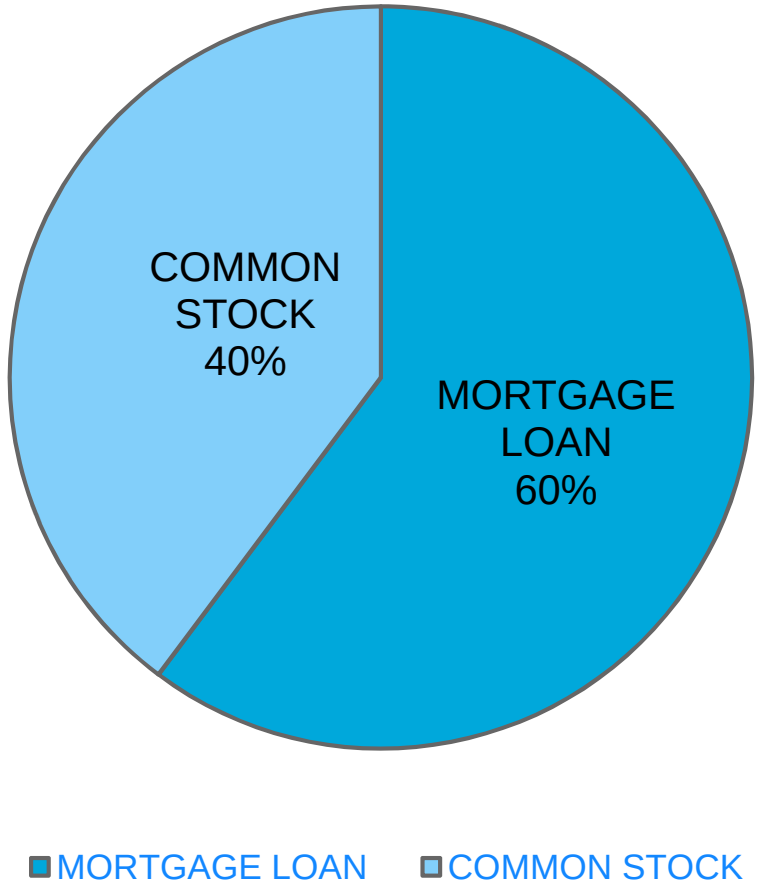
TWO DIMENSIONAL CAPITAL

IT'S NOT AROUND MUCH ANYMORE-



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BANKS- BEFORE AND AFTER

- BEFORE THE FINANCIAL CRISIS- BANKS WOULD PROVIDE A DIRECT PAY LETTER OF CREDIT AT VERY LOW COST
  - WHEN DEVELOPMENT AUTHORITY BONDS WERE FUNDED, MOST OF THEM WERE SUPPORTED BY A LETTER OF CREDIT
- JUST AFTER THE FINANCIAL CRISIS- FEW BANKS WERE RATED TO PROVIDE LOCs, AND THOSE THAT COULD, MOSTLY WOULDN'T
  - AND BANKS GENERALLY WOULDN'T BUY DEVELOPMENT AUTHORITY BONDS FOR THEIR PORTFOLIO
- NOW- GROWING MARKET FOR SOME BANKS TO INVEST IN BONDS DIRECTLY
- BUT STILL- THE RULES HAVE CHANGED…

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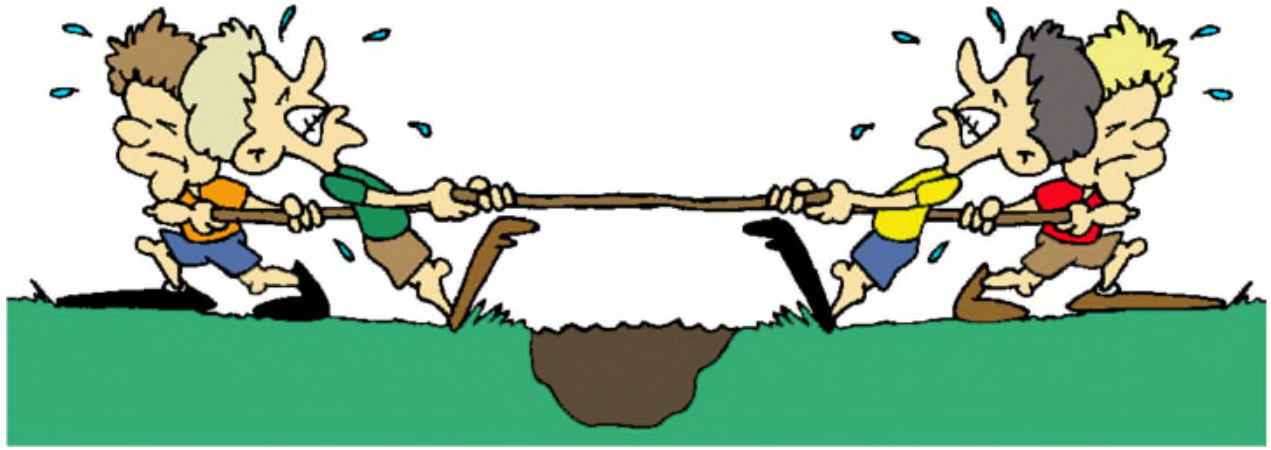
GAPS OPEN

CHANGES IN THE FINANCIAL MARKETS HAVE PULLED OPEN FINANCING GAPS (LAYERS) THAT HAVE TO BE FILLED



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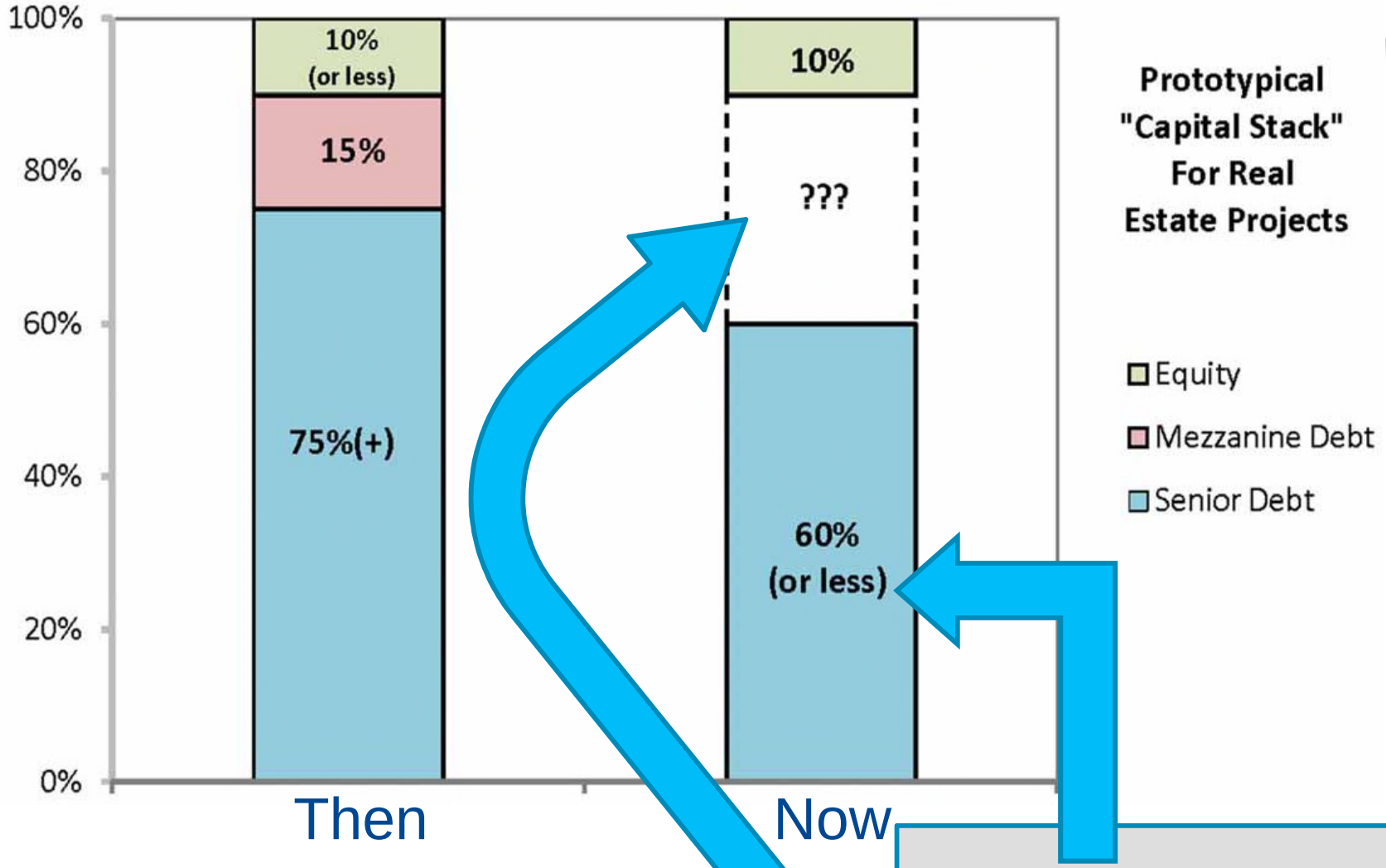
3D CAPITAL APPEARS

- TODAY, 3D CAPITAL, INSTEAD OF 2D CAPITAL, IS WHAT FINANCES PROJECTS
- 3D CAPITAL = CAPITAL STACK
- MIX AND MATCH TYPES OF CAPITAL
- MATCHING IS HARD
- YOU HAVE TO SATISFY *EVERYBODY!*

CAN IDBs BE USED?



Credit: Smith, "Closing the Gap"

THIS could be IDBs.
But in order to use IDBs,
THIS gap has to be filled.

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GAP- FILLERS APPEAR

- BUT FINANCIAL MARKET CHANGES ALSO CREATE NEW LAYERS FOR THE CAPITAL STACK
- FIRST- FIND A NEW LAYER
- NEXT- FIND A WAY FOR THE NEW LAYER TO WORK WITH THE OTHER LAYERS

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HERE ARE SOME LAYERS THAT WORK WITH BONDS

THE DEVELOPMENT AUTHORITY ONLY ISSUES THE BONDS. THE COMPANY IS THE ISSUER OF THE OTHER DEBT AND THE EQUITY INTERESTS.

First Loss Capital	SPONSOR EQUITY
Investor Capital	PRIVATE EQUITY
Lien on Ownership Interests	NMTC
Secured Lien Behind First Mortgage	JUNIOR IDBs
Junior Tranch of Senior Lien	EB-5
Secured 1st Lien Position	TRADITIONAL IDBs

Credit: Tremont

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BONDS

BONDS- “OLD SCHOOL”, BUT STILL THE BEST WAY TO BORROW MONEY

- The interest on bonds issued by a local authority or local government is either federally taxable or federally tax-exempt.
- Federally tax-exempt bonds are more desirable.
  - Advantages of tax-exempt financing
    - Lower interest rate
    - Longer term
    - Greater marketability
    - More availability of interest-only/capitalized interest
    - Smaller bond issues more do-able

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BONDS- WHO PAYS?

WHEN THE PUBLIC SECTOR ISSUES BONDS, A KEY QUESTION IS- HOW WILL THEY BE REPAID?

- LOCAL GOVERNMENT BONDS ARE OFTEN BACKED BY TAXING POWER
  - "GENERAL OBLIGATION"
  - REFERENDUM REQUIRED
- LOCAL AUTHORITY BONDS ARE USUALLY TRADITIONAL REVENUE BONDS
    - REPAID ONLY OUT OF PROJECT REVENUES

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HYBRIDS- CONTRACT REVENUE BONDS

- SOME LOCAL AUTHORITY BONDS ARE BACKED BY MILLAGE PLEDGE THROUGH INTERGOVERNMENTAL AGREEMENT ("IGA") WITH LOCAL GOVERNMENT
  - CALLED "CONTRACT REVENUE BONDS" (FORMERLY CALLED "BACK-DOOR G.O. BONDS")

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LIMITING OBLIGATIONS

CONTRACT REVENUE BONDS

- "LIMITED OBLIGATION"
- MILLAGE PLEDGE MAY BE LEGALLY LIMITED
  - EXAMPLE: ECONOMIC DEVELOPMENT MILLAGE
    - 1 MILL FOR COUNTY
    - 3 MILLS FOR CITY

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LIMITING OBLIGATIONS

CONTRACT REVENUE BONDS

- IF GOVERNMENTAL PURPOSE AND AUTHORIZED PROJECT, OBLIGATION COULD BE "FULL FAITH AND CREDIT" OR LIMIT COULD BE SET BY CONTRACT (NUMBER OF MILLS, OR NUMBER OF DOLLARS)
- NO REFERENDUM
  - Example of Exception: If O.C.G.A. Sec. 36-75-11(c) applies (in practice, this applies only to DeKalb County).

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EXAMPLE OF CONTRACT REVENUE BOND- "GUARANTY" STRUCTURE

DEVELOPMENT AUTHORITY

COMPANY

Rent

Lease with purchase option

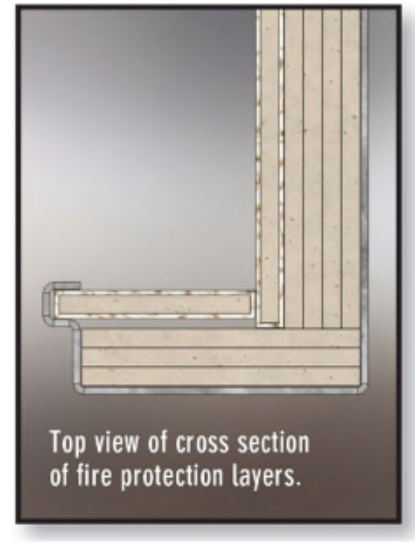
Intergovernmental contract

BANK

Bond + asst of lease with purchase option and commitment of intergovernmental contract + deed to secure debt

COUNTY

Contract revenue bond financing for Gary Safe Company, Waynesboro, Georgia



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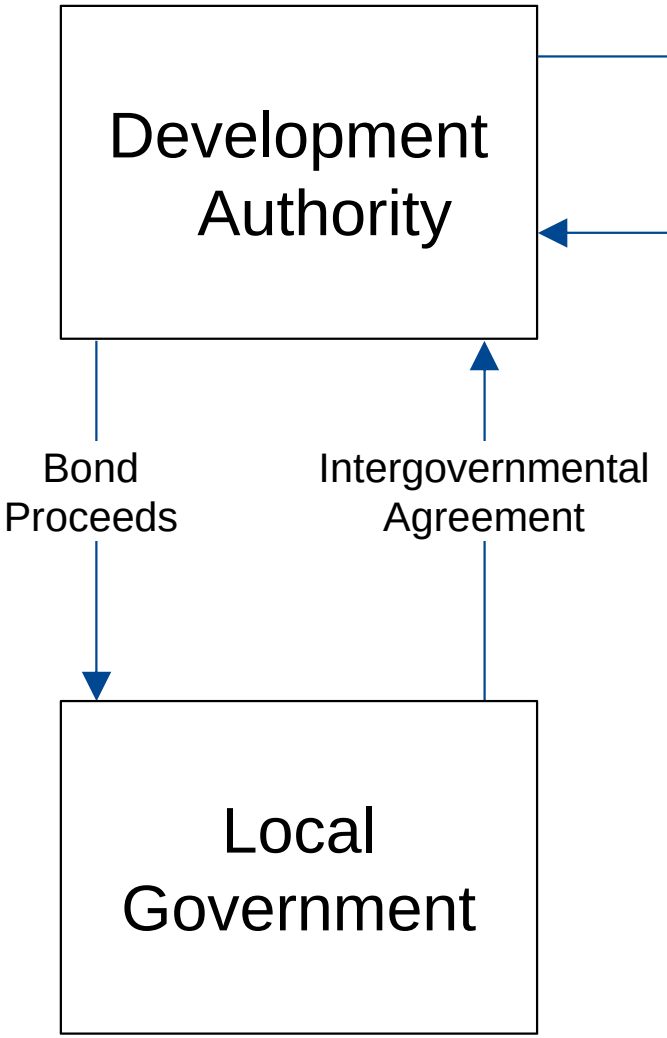
EXAMPLE OF CONTRACT REVENUE BOND-GRANT STRUCTURE



Contract revenue bond financing for business park, Whitfield County, Georgia

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BASIC RULE

- A PUBLIC BODY'S BONDS WILL BE TAX-EXEMPT, GOVERNMENTAL PURPOSE BONDS UNLESS THERE IS-
- TOO MUCH PRIVATE USE, AND
- TOO MUCH PRIVATE PAYMENT OR PRIVATE SECURITY

TAX-EXEMPT BONDS

- "TOO MUCH" USUALLY MEANS MORE THAN 10% OF
  - USE- BASED ON TOTAL COST, OR
  - PAYMENT/SECURITY- BASED ON TOTAL DEBT SERVICE
- Above assumes compliance with other tax rules
- "Private loan" test sometimes must be considered

PFA issued tax-exempt bonds for Washington County jail

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PRIVATE ACTIVITY BONDS

- THE OPPOSITE OF "GOVERNMENTAL PURPOSE" IS "PRIVATE ACTIVITY"
  - MEANS THERE IS
    - TOO MUCH PRIVATE USE, AND
    - TOO MUCH PRIVATE PAYMENT/PRIVATE SECURITY
  - "PRIVATE LOAN" TEST MIGHT APPLY

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PRIVATE ACTIVITY BONDS

- INTEREST ON PRIVATE ACTIVITY BONDS NOT FEDERALLY TAX-EXEMPT UNLESS THERE IS AN "EXEMPTION"
- EXEMPTIONS ARE HARD TO FIND
  - COMPLIANCE WITH OTHER TAX RULES REQUIRED
- HERE ARE A FEW

DEVELOPMENT AUTHORITY BONDS: "SMALL ISSUE" MANUFACTURING BONDS

Capital expenditure limit ($10 million tax-exempt bond proceeds + $10 million other) /$40 million national limit on tax-exempt bonds for the "Company"

PREMIUM WATERS, DOUGLAS, GEORGIA: EXAMPLE OF PRIVATE ACTIVITY BONDS- "SMALL ISSUE" MANUFACTURING BONDS

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DEVELOPMENT AUTHORITY BONDS: "SMALL ISSUE" MANUFACTURING BONDS

- Spending requirements –
  - 95% or more of the proceeds must be used for a "manufacturing" facility (only 5% may be "bad money")
  - less than 25% on land costs
  - at least 15% on rehabilitation expenditures, if acquiring an existing building (and the equipment therein)
    - calculated based on acquisition costs, not 15% of total bond proceeds
    - could use non-bond funds to pay for rehab
  - at least 70% on "core manufacturing" facilities (e.g., manufacturing part of the building and new manufacturing equipment)
  - no more than 25% on "directly related and ancillary" facilities
  - up to 2% can be spent for issuance costs (this 2% is a part of the 5% allowable "bad money")

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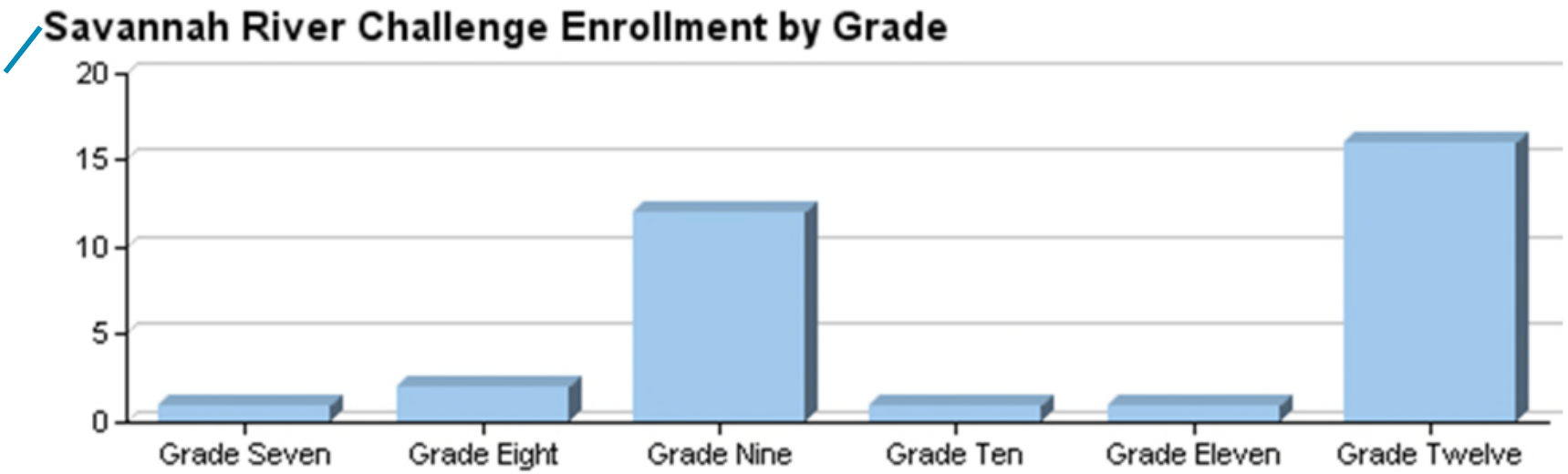
DEVELOPMENT AUTHORITY BONDS: "QUALIFIED 501(C)(3) BONDS"

- BONDS FOR ORGANIZATIONS THAT ARE TAX-EXEMPT 501(C)(3) ORGANIZATIONS UNDER THE INTERNAL REVENUE CODE WHICH ARE ISSUED FOR FACILITIES SUCH AS PRIVATE HIGH SCHOOLS AND COLLEGES AND MEDICAL FACILITIES.
- THESE ORGANIZATIONS ARE GENERALLY FAMILIAR WITH TAX-EXEMPT FINANCING (BECAUSE THEY TEND TO USE BOND FINANCING REPETITIVELY).

TAX-EXEMPT "QUALIFIED 501(C)(3) BONDS" FOR SAVANNAH RIVER CHALLENGE, SCREVEN COUNTY, GEORGIA



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DEVELOPMENT AUTHORITY BONDS: "QUALIFIED 501(C)(3) BONDS"

- NO "VOLUME CAP" FROM DCA NEEDED.
- CAN "SELF-INDUCE" (BUT AUTHORITY HAS TO ISSUE THE BONDS).
- TEFRA APPROVAL FROM LOCAL GOVERNMENT REQUIRED.
- ISSUED BY DEVELOPMENT AUTHORITIES AND SOME OTHER TYPES OF LOCAL AUTHORITIES; E.G., HOUSING AUTHORITIES.

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“EXEMPT FACILITY” BONDS

- Exempt facility bonds can qualify for tax-exemption under federal law.
- Not subject to capital expenditure limitation. Federal “volume cap” usually required.
- Local authority can issue if its state law powers permit. Some types issued by development authorities. Some types issued by Public Facilities Authorities or other specialized local authorities.

“EXEMPT FACILITY” BONDS

Here are a few examples of exempt facility bonds-

- airports
- docks and wharves
- facilities for furnishing of water
- sewage facilities

Example- Home Depot DC in Savannah

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“EXEMPT FACILITY” BONDS

- solid waste disposal facilities
- qualified residential rental projects

Example- "affordable housing" bonds to finance assisted living and memory care facility

Example- bonds issued to finance solid waste disposal portion of biomass-to-electricity project

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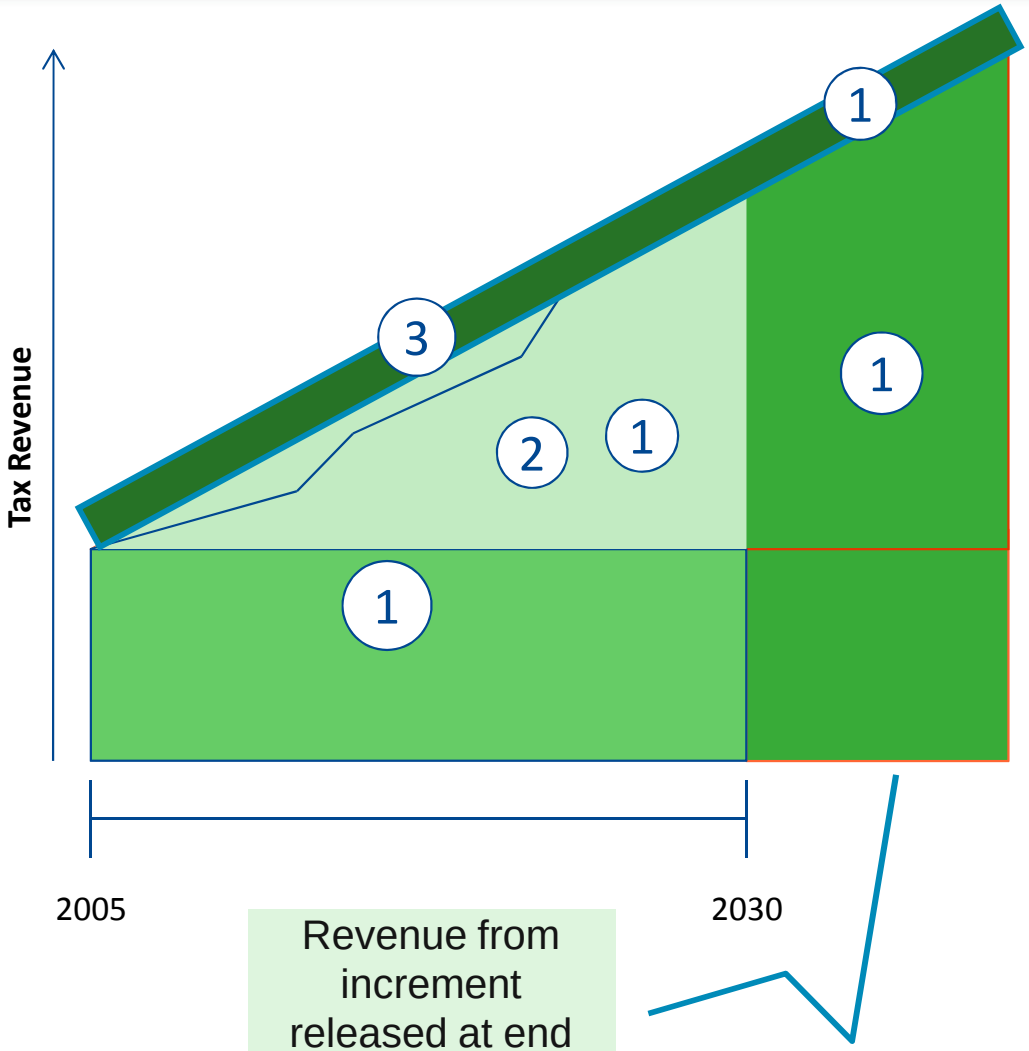
"PILOT BONDS"… AND OTHER WAYS TO "MONETIZE"PROPERTY TAXES



WHERE THE REVENUE COMES FROM

1.Payments in lieu of taxes. PILOT Bonds can potentially "monetize" equivalent of all taxes on project.
2.Incremental tax revenue. Tax allocation bonds "monetize" the increment (increase) within the TAD.
3.A new layer of additional taxes or assessments. CIDs "monetize" the new revenues within its district.
Note- Contract revenue bonds also can "monetize" property taxes, based on all of the tax digest, or on an increment.

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PILOT BONDS- HOW THEY WORK

- REVENUE TO REPAY THE BONDS COMES FROM PAYMENTS IN LIEU OF TAXES (PILOT payments)
  - to the extent normal taxes are not payable
  - In order to use PILOT payments, either the financing must not be subject to the PILOT Restriction Act, or compliance with the Act is required. See O.C.G.A. Sec. 36- 80-16.1
- DON'T CONFUSE WITH "BONDS FOR TITLE"
  - Property taxes aren't monetized when a typical bond-financed sale-leaseback structure is used for property tax savings ("abatement") purposes; i.e., "bonds for title"
  - PILOT Restriction Act doesn't apply

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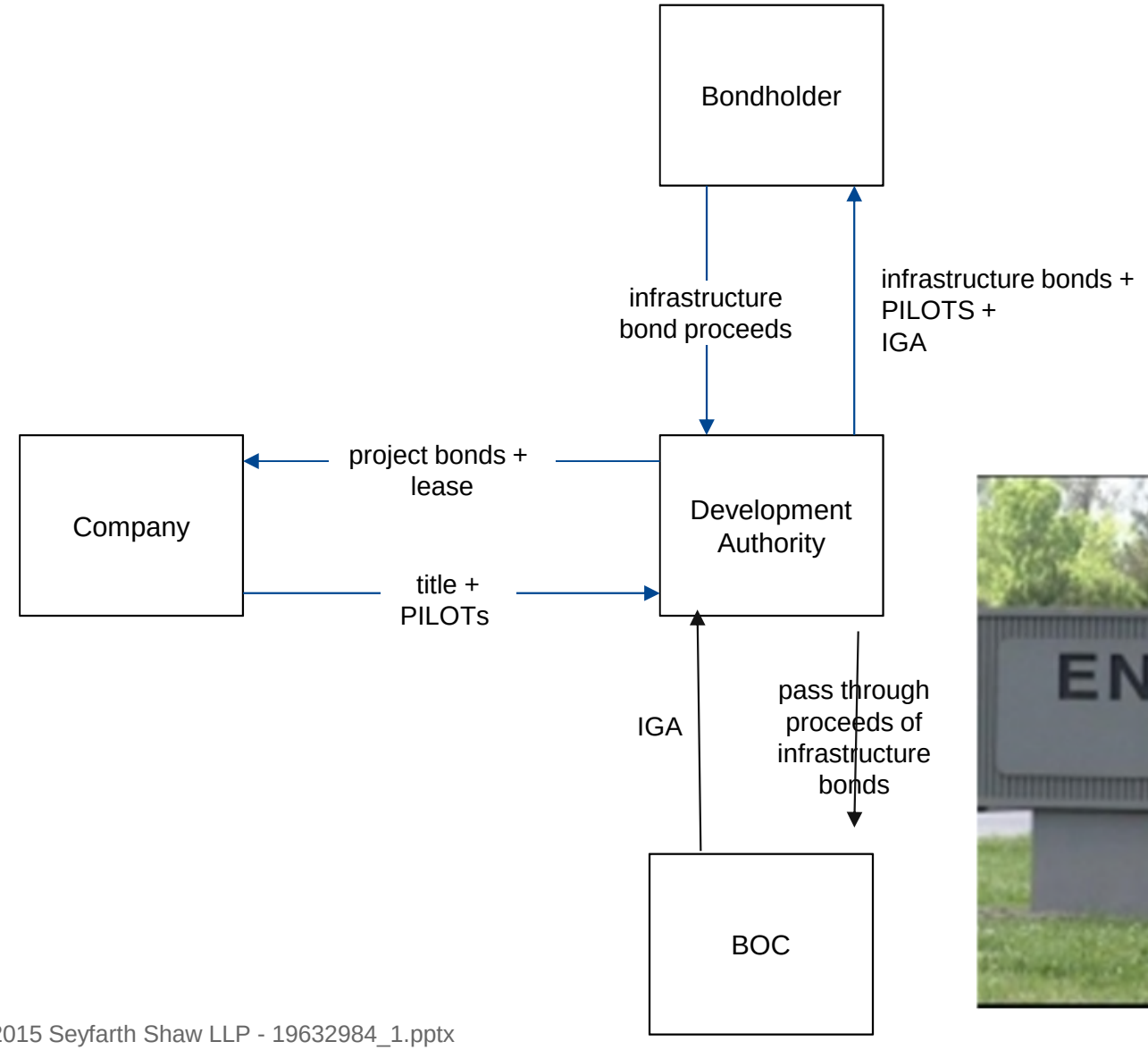
HOW TO USE PILOT BONDS- Infrastructure Bonds for GEDA “Deal of the Year”



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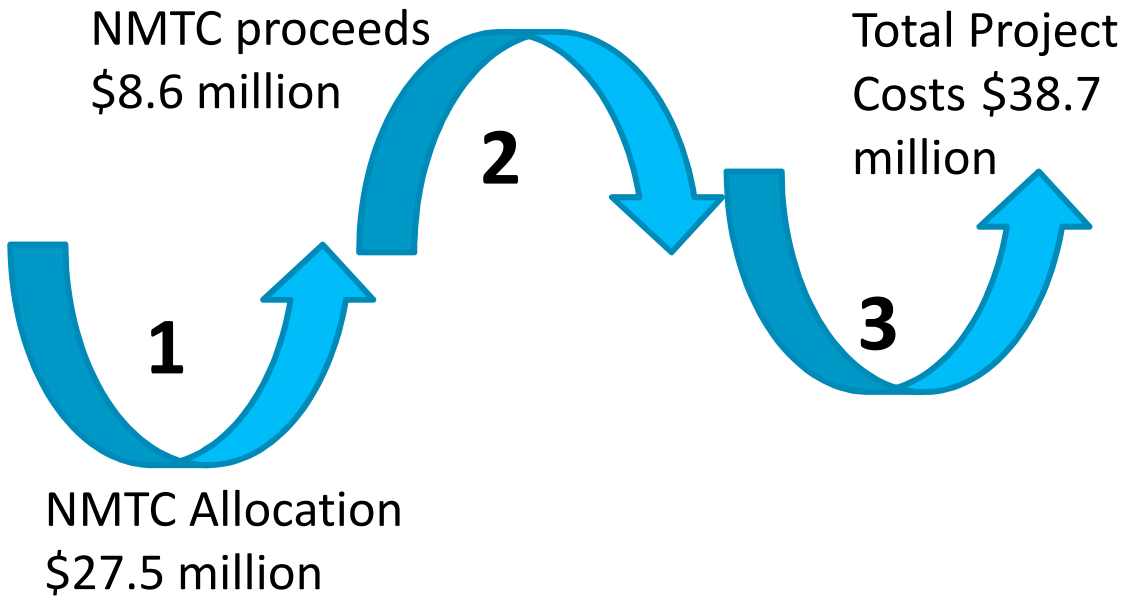
NMTC

HOW TO USE NMTC TO GET A "FORGIVABLE LOAN"

Meredian Bioplastics, Inc. (Meredian) is a green technology company that uses byproducts of the timber and agricultural industry to create bioplastics.Meredian utilized NMTC financing to acquire new equipment and expand from their previous facility to a 190,000 square-foot industrial, office and research facility in Bainbridge, Georgia. The continued success and growth of Meredian is vital to the economic health of the city of Bainbridge, and the new facility has brought significant investment into a low-income community in rural Georgia.
Source: Meredian



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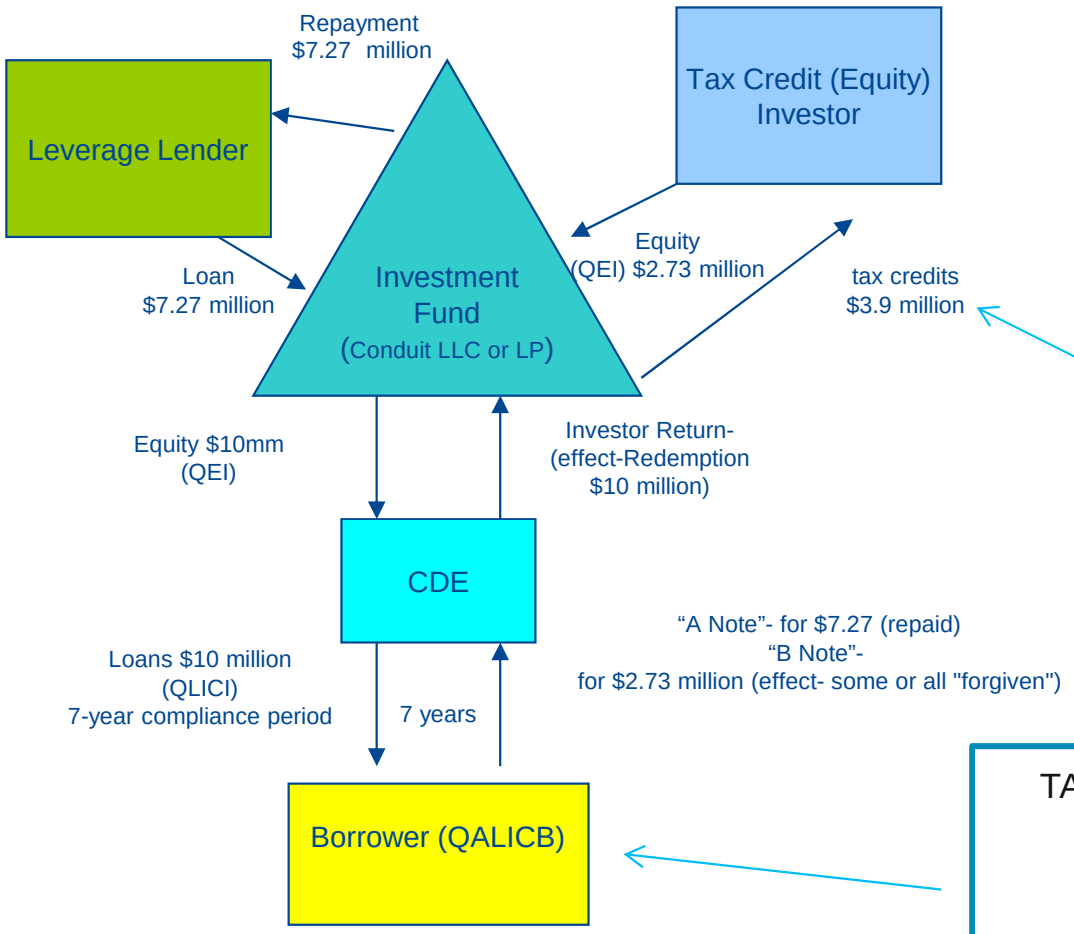
BASIC RULE

THE PROJECT TYPICALLY NETS SUB DEBT ("FORGIVABLE LOAN") EQUAL TO 20%-25% OF THE NMTC ALLOCATION

HOW NMTC SUB DEBT BECOMES TAX CREDIT EQUITY



Tax Credit Schedule for NMTC Investors		
Year 1	$500,000	5%
Year 2	$500,000	5%
Year 3	$500,000	5%
Year 4	$600,000	6%
Year 5	$600,000	6%
Year 6	$600,000	6%
Year 7	$600,000	6%
	$3.9 million	39%

TAX AND OTHER NMTC REQUIREMENTS INCLUDE
CENSUS TRACT QUALIFIED AS-
Most Favored: Severely Distressed
Practical Minimum: High Distress
Legal Minimum: Qualified (based on poverty or low income)

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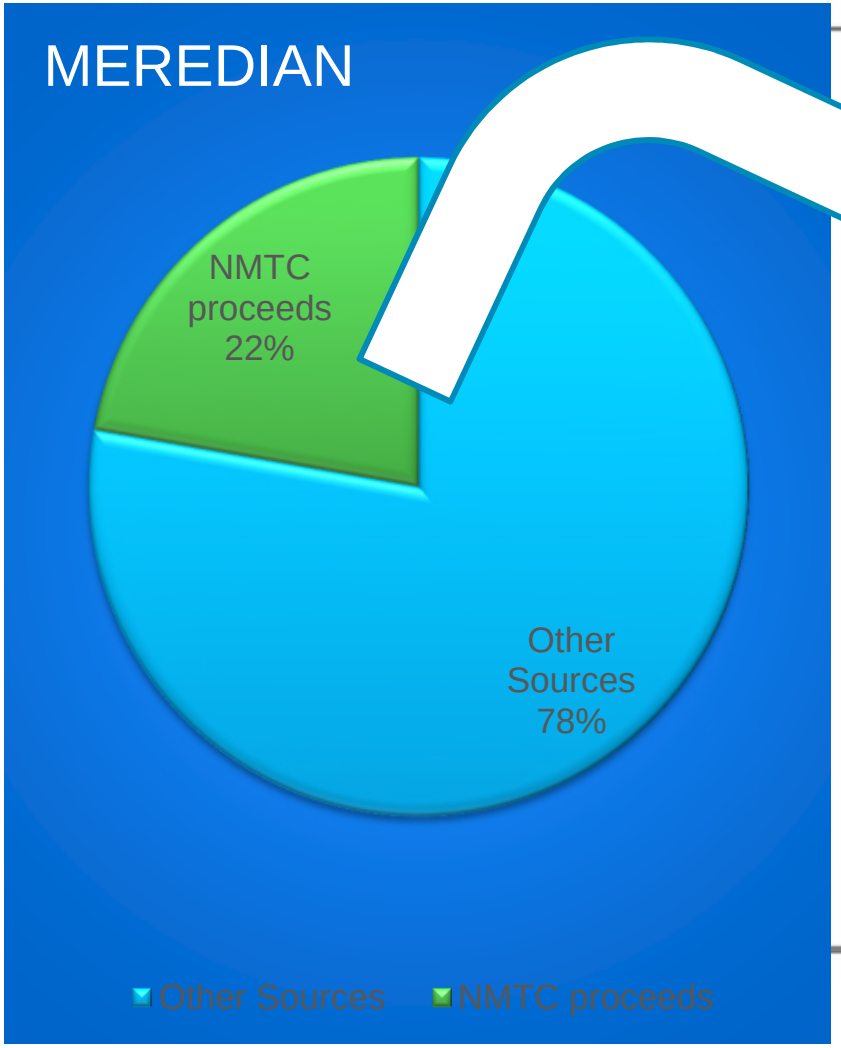
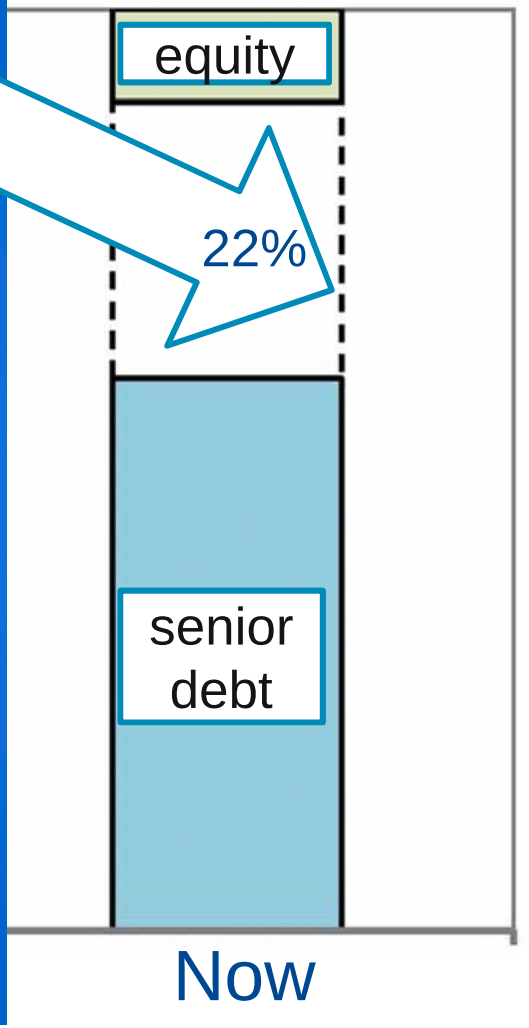
HOW NMTC FILLED THE GAP





Prototypical "Capital Stack" For Real Estate Projects

- Equity
- Mezzanine Debt
- Senior Debt

Taken From: Smith, "Closing the Gap"

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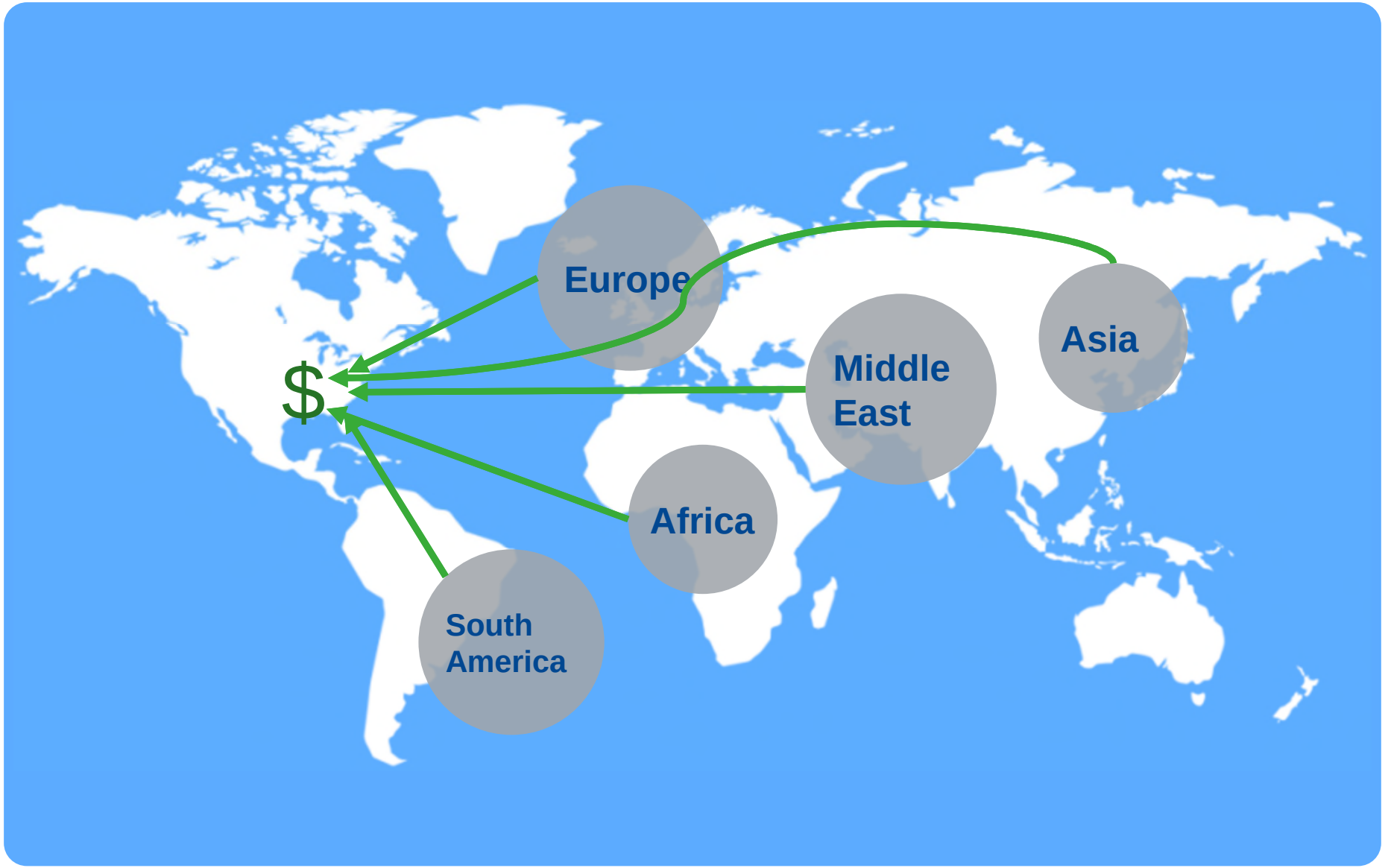
EB-5

EB-5

Maps



BASIC RULE

FOR A $500,000 INVESTMENT IN A TARGETED EMPLOYMENT AREA THAT CREATES AT LEAST 10 DIRECT OR INDIRECT JOBS, A FOREIGN INVESTOR WILL GET A "GREEN CARD"

QUALIFY THE PROJECT

- Per investor requirement is $1 million, unless project is located in a Targeted Employment Area (“TEA”)
  - Within TEA, allows minimum of $500,000 per investor
  - EB-5 market consistent – investors only willing to invest $500,000 each
  - So EB-5 funding really available just within TEAs
- TRENDS-
  - larger minimum investment
  - longer investment horizon
  - attractive projects more financeable even if outside TEA
    - means $1 million/investor minimum

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TARGETED EMPLOYMENT AREA (TEA)

- TEA
- A Rural Area
  - outside an MSA, and
  - city or town with population under 20,000, or
  - unincorporated county
- OR
- An area of high unemployment (areas with unemployment rates at least 150% of the national rate)
  - The state may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate)

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EB-5 PRIORITIES

Investor's priorities (in this order)-

1. **ultimate return of capital**
2. **obtain "green card" (permanent resident visa)**
3. **get small return (maybe)**

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THE REGIONAL CENTER IS THE CONDUIT

- REGIONAL CENTER (RC)
- EB-5 investment can be made by an investor on a stand-alone basis, or through a USCIS-designated Regional Center (RC)
- RCs are the norm
- Each investor's investment must create at least 10 jobs (direct and indirect)
  - If the investment is stand-alone, indirect jobs are not counted
  - RCs use an economic model to calculate and substantiate job creation
    - Models that are used are subject to USCIS approval

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BUSINESS MODELS

- Regional Center will have a business model
  - loan model
  - equity model
  - hybrid model
  - “lease” model
  - proprietary model
- Horizon for EB-5 investment is generally 5 years
  - need to plan for liquidity event
- EB-5 funding can be used to leverage NMTC funding

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WHY EB-5?

- IT'S NOT BECAUSE THE INTEREST RATE IS LESS THAN WITH A REAL ESTATE MORTGAGE.
- WHEN THE PROJECT BORROWS EB-5 FUNDS, INTEREST RATE EXAMPLES ARE OFTEN IN THE 5%-7% RANGE. NOT SO GREAT, COMPARED TO A PERMANENT LOAN IN THE REAL ESTATE INDUSTRY.

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WHY EB-5?

HERE'S WHY-

- COMPARE IT TO THE REAL ALTERNATIVE, AND IT COSTS LESS
- "… Compared with typical costs of between 9-20 percent annually for mezzanine capital, traditional equity or preferred equity (plus potentially points upfront and equity participation), EB-5 capital has obvious appeal." Source: Jahangiri & Tishler Mar 04, 2015
- IT'S OFTEN INTEREST-ONLY THROUGHOUT THE TERM.

WHY EB-5?

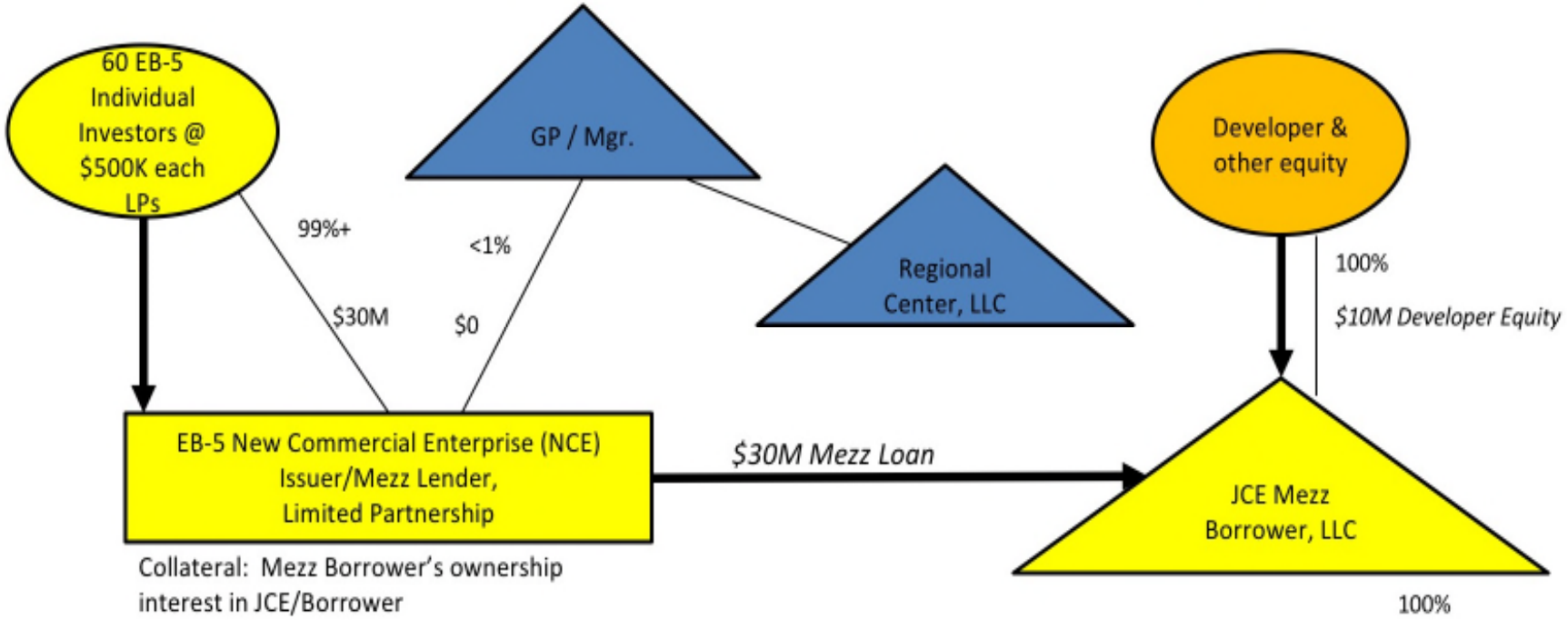
- "EB-5 capital rarely requires personal guarantees.
- EB-5 capital will often be unsecured and/or have deep subordination.
- In the form of preferred equity or as an unsecured loan, EB-5 capital may be permitted by senior lenders that would not permit other mezzanine-type structures." Source: Jahangiri & Tishler Mar 04, 2015

WHY EB-5?

- "Covenants are typically light and financial covenants are not common.
- EB-5 capital can be used to replace … equity or other more expensive bridge capital.
- Where EB-5 capital reduces …senior loans, it may enable better senior loan terms and/or easier covenant compliance." Source: Jahangiri & Tishler Mar 04, 2015

WHERE DOES EB-5 COME FROM?

MEZZANINE LOAN EXAMPLE:



Source: Calderon and Friedland

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HOW TO USE EB-5: Athens Conference Center Hotel Project

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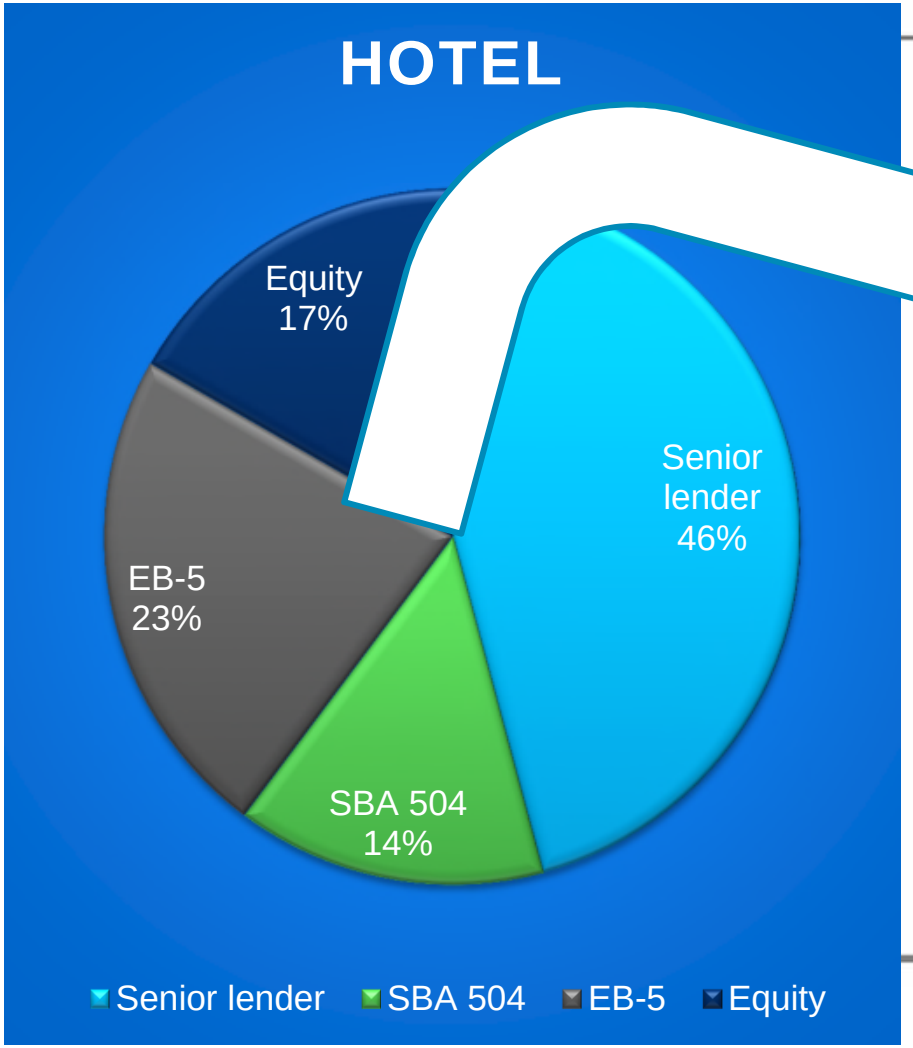
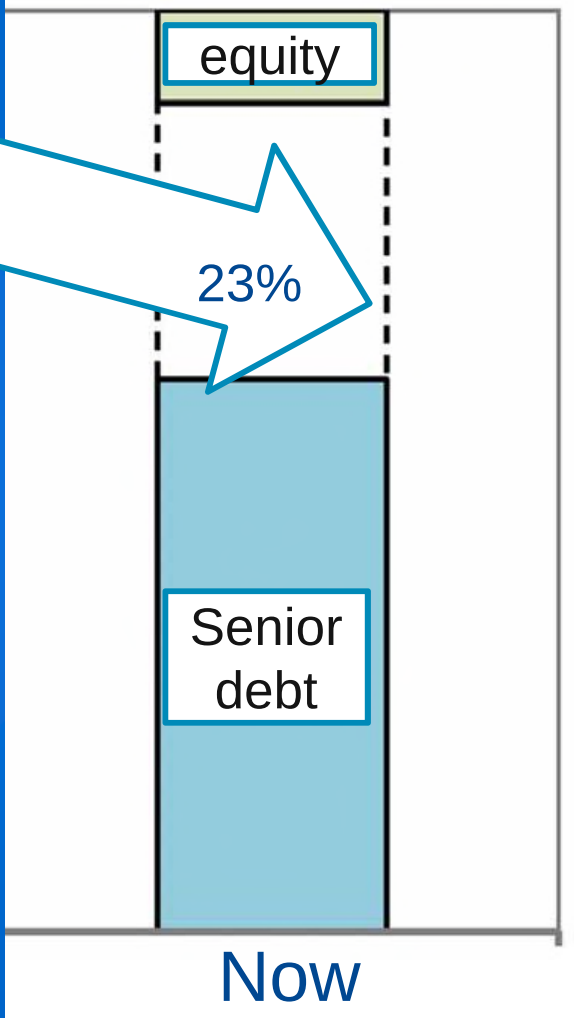
HOW EB-5 FILLED THE GAP





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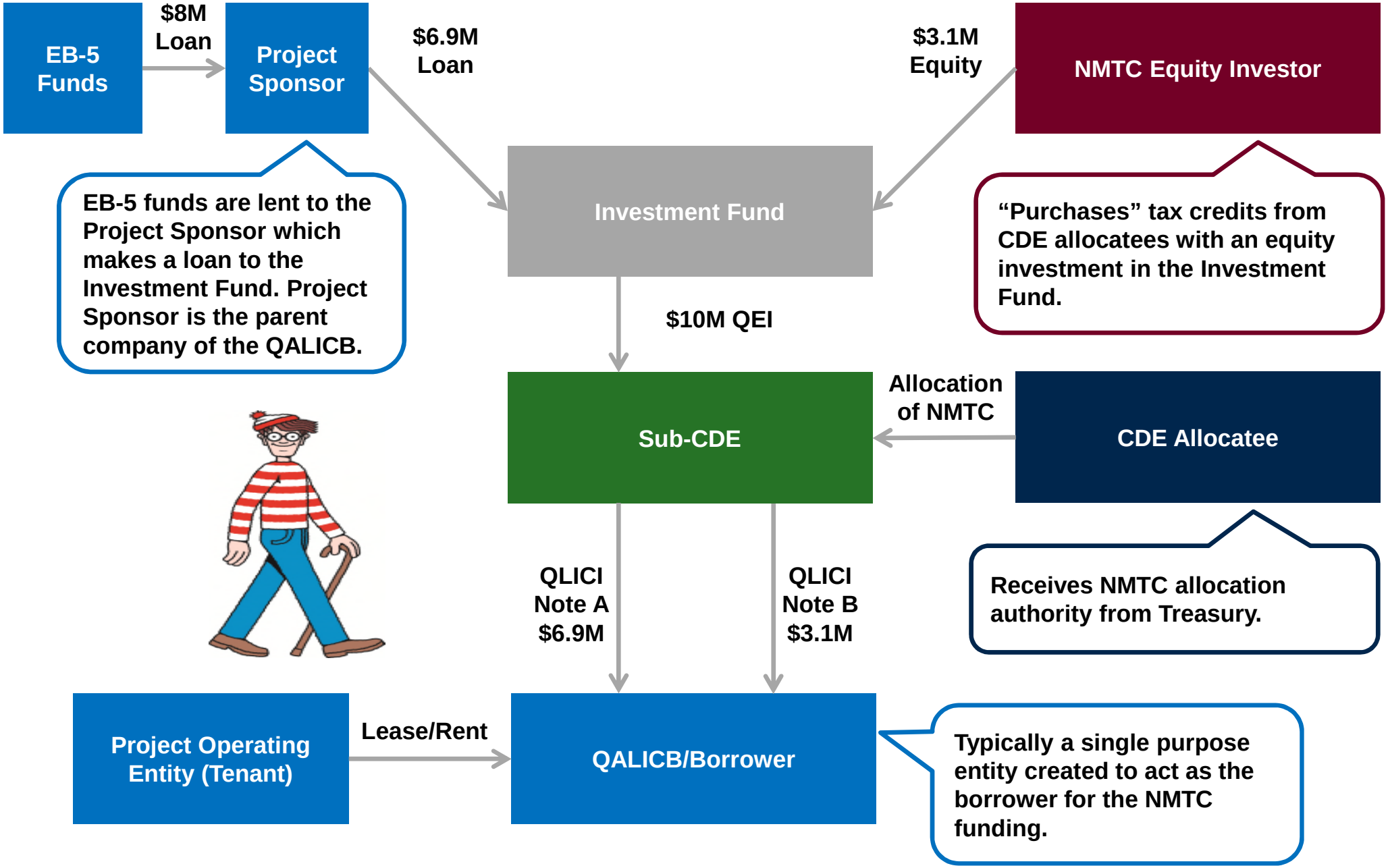
Taken From: Smith, "Closing the Gap"

CONCLUSION

CAPITAL STACKS CAN WORK FOR YOU!

- HERE ARE JUST A COUPLE OF EXAMPLES



Example assumes $0.80 NMTC pricing and ignores transaction costs.

EXAMPLE OF EB-5 RE-LENDER WITH NMTC

Source: Calderon and Friedland

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Bank Loan

$5M Loan

Project Sponsor

$6.9M Loan

$3.1M Equity

NMTC Equity Investor

Bank lends funds to the Project Sponsor who uses the bank funds plus additional equity to make the leverage loan to the Investment Fund.

Investment Fund

"Purchases" tax credits from CDE allocatees with an equity investment in the Investment Fund.

$10M QEI

Sub-CDE

Allocation of NMTC

CDE Allocatee

QLICI Note A $6.9M

QLICI Note B $3.1M

Receives NMTC allocation authority from Treasury.

EB-5 Loan

$ Loan

QALICB/Borrower

Typically a single purpose entity created to act as the borrower for the NMTC funding.

Example assumes $0.80 NMTC pricing and ignores transaction costs.

EXAMPLE OF EB-5 PROJECT LOAN WITH NMTC

Source: Calderon and Friedland

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THANK YOU FOR FINDING WALDO!

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MORE INFORMATION

QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- November 2013- P3 for D-B: “How the Public Sector and Design-Builders Can Survive and Thrive in the P3 World”
- August 2013- “P3- Understanding Public/Private Partnerships”
- May 2013- “P3- Public/Private Partnerships Done Right”
- November 2012- "In-Sourcing Capital: EB-5 Loans and Equity; NMTC Tax Credit Equity; and Non-Recourse Project Finance Bonds“
- August 2012- “Bonds 101”
- June 2011- "TIFs and TADs in Tough Times“; TIFs and TADs Questions and Answers
- January 2011 - “Introduction to Tax-Exempt Bonds”
- August 2010 – "Bonds For Title"

at http://danmcrae.info/whitepapers

- February 2013 – Quick Takes: “Projects – Money Comes Knocking”
- June 2011 – Quick Takes: “Easy Equity – the NMTC and EB-5 Programs”
- January 2011 – Quick Takes: “After ARRA – What Bonds Can We Use Now to Finance Projects?”

at http://danmcrae.info/quicktakes

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ADVICE

This presentation is a quick-reference guide for elected and appointed officials and their staffs, company executives and managers, economic developers, participants in the real estate and financial industries, and their advisors. The information in this presentation is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

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