CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

March 15, 2017

Consideration of the Adoption of a Resolution Delegating Authority to the Executive Director to Grant Waivers of Forfeiture of Performance Deposits and Negative Points on Behalf of the Committee

(Agenda Item No. 4)

ACTION:

The Committee is authorized by the CDLAC regulations to waive performance deposit forfeiture and negative point's penalties under certain circumstances. This item requests authorization for the Executive Director to waive such penalties associated with an issuance extension request or full reversion of allocation if the Qualified Residential Rental Program (QRRP) Project Sponsor demonstrates that the need for the extension or full reversion is related to the disruptions that have occurred in the equity and debt markets associated with the potential of tax reform. This is consistent with the regulation changes and policy direction supported by Tax Credit Allocation Committee (TCAC) related to this matter.

BACKGROUND:

Per the CDLAC regulations, approval of a Carryforward extension requires forfeiture of a project's performance deposit and the full reversion of allocation to the Committee requires both the forfeiture of the project's performance deposit and the assessment of negative points for failure to issue bonds. The Committee may grant a waiver in both instances upon satisfactory evidence showing that: (1) the issue or event that prevented the issuance of the bonds was unforeseen; and (2) the issue or event was wholly outside the control of the Applicant and Project Sponsor. A waiver request must meet both parts of the test.

At the December allocation meeting, the Committee delegated authority to the Executive Director to waive the performance deposit forfeiture associated with an extension request until March 31, 2017. As discussed in December, the initially requested delegated authority resulted from the ushering in of the new President and the associated prospect of federal tax reform in 2017 which has caused uncertainty and disruption in the Low Income Housing Tax Credit (LIHTC) market as well as the bond markets. The disruptions have been prompted by the prospect of reduced marginal tax rates under the various tax reform proposals. To the extent marginal tax rates might decrease, companies have less need for tax credits or other tax-exempt investments such as tax-exempt bonds and, accordingly, are willing to pay less than they would have if the outlook was more stable. While some investors are holding pricing and terms for projects that are closing this year, others are repricing with very steep pricing discounts. In other instances, investors are rescinding on their equity commitments and lenders are repricing debt if issuance deadlines are not met. To the extent projects have delayed closing timeframes, bond pricing that was fixed is being renegotiated to incorporate the new market conditions.

While many Applicants and Project Sponsors believe the corrections in the equity markets have already occurred and that pricing will not drop further, projects receiving an allocation in 2016 now face a very different economic reality then when they submitted their application given the drop in the value of a tax credit. Most projects in this situation lost their initial tax credit investor and are working to secure another equity investor. This process takes time as the due diligence process has to be repeated. To both recognize this unforeseen market disruption affecting the equity and debt markets which is outside the control of the Applicant and Project Sponsor, and to further streamline the waiver approval process related to these particular projects, staff recommends extending the authorization for the Executive Director to waive such penalties associated with an issuance extension request if the Applicant and Project Sponsor demonstrate that the need for the extension is based on the current turmoil in the market until August 15, 2017. In exercising this authority, the Executive Director would only provide issuance extensions through August 15, 2017 without penalty. Any Applicant seeking an extension of the issuance timeframe beyond August 15, 2017 would be required to forfeit the project's performance deposit and seek a waiver of the performance deposit penalty directly from the Committee as is the general requirement.

Additionally, currently there are projects that can no longer mover forward as 4% transactions. Some are no longer feasible and others are going to restructure and resubmit as 9% projects. Staff recommends that projects in this situation be granted relief. More specifically, staff requests the Executive Director be granted delegated authority to waive the performance deposit forfeiture and the negative points associated with the reversion of a bond allocation until July 1, 2017 to the extent that it can be demonstrated that the reversion was based on the current turmoil in the market. The recommendation before you is generally consistent with the changes that the TCAC Committee approved for TCAC. This deadline will ensure the greatest potential for fully utilizing the reverted allocation.

RECOMMENDATION:

Staff recommends approval of the attached Resolution authorizing the CDLAC Executive Director, on behalf of the Committee, to:

1) Approve the waiver of certain forfeitures of performance deposit associated directly with the market disruptions that occurred in the tax credit and bond markets after the recent election. This provision will remain in effect until August 15, 2017.
2) Approve the waiver of certain forfeitures of performance deposit and assessment of negative points associated with the reversion of bonds associated directly with the market disruptions that occurred in the tax credit and bond markets after the recent election. This provision will remain in effect until July 1, 2017.

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