

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
November 13, 2013

Consideration of a Request for a Waiver of the Forfeiture of Penalties
for San Tomas Gardens Apartments (# 13-003) and Chestnut Apartments (#13-018) -
Qualified Residential Rental Project Program
(Agenda Item No. 8)

ACTION:

Consider the approval of Waivers of the Forfeiture of Performance Deposits for the San Tomas Gardens Apartments (# 13-003) and Chestnut Apartments (#13-018).

BACKGROUND:

An Applicant bears the risk of forfeiting all or part of their performance deposit and/or receiving negative points if the Allocation is not used in accordance with the conditions and timeframes set forth in the California Debt Limit Allocation Committee (“CDLAC”) Resolution. As provided for under the Government Code, CDLAC permits an Applicant to request the waiver of the forfeiture of the performance deposit if the allocation is not used to issue the bonds within the set timeframe given. For a waiver to be approved, the CDLAC Executive Director subjects the request to two tests: 1) was the issue or event that prevented the issuance of the bonds unforeseen; and 2) was the issue or event wholly outside the control of the Applicant and Project Sponsor. A request must pass both tests.

San Tomas Gardens Apartments (#13-003)

On March 13, 2013, the San Tomas Gardens Apartments Project (“Project”) was awarded \$27,262,340 in tax-exempt bond allocation. Due to issuance delays and after various standard extensions, the Executive Director approved a Carryforward extension moving the issuance deadline to October 11, 2013. The approval of the Carryforward extension required that the Project’s performance deposit be forfeited to the Committee. San Tomas Gardens, L.P. (The “Project Sponsor”) is now requesting consideration of a waiver of this penalty due to the unexpected delay of Raymond James’ (the Tax Credit investor) equity funds commitment. The commitment was delayed until a proposed rule change regarding Low Income Housing Tax Credits (LIHTC) accounting treatment passed the Senate Banking Committee.

The Senate Banking Committee was originally set to hear and approve the change in mid-September, but unexpectedly put it off until the November 14th meeting. As a result of this delay, the investor withheld funds and the Raymond James equity fund could not close, which delayed the deliverance of equity to the San Tomas development and the Project’s closing. The Project Sponsor has been re-assured by Raymond James that regardless of the Senate Banking Committee outcome or investor's timing to fund, Raymond James is committed to getting the financing closed by early December.

The rescheduling of the proposed Senate rule change vote and the anticipated outcome of the vote has delayed the Project financing. In light of the circumstances that appear to be both unforeseen and outside the control of the Applicant and Project Sponsor, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit.

Chestnut Apartments (#13-018)

On March 13, 2013, the Chestnut Apartments Project (“Project”) was awarded \$8,700,000 in tax-exempt bond allocation. Due to issuance delays and after various standard extensions, the Executive Director approved a Carryforward extension moving the issuance deadline to December 15, 2013. The approval of the Carryforward extension required that the Project’s performance deposit be forfeited to the Committee. Chestnut Family Apartments, L.P. (The “Project Sponsor”) is now requesting consideration of a waiver of this penalty due to unexpected delays outside of their control; the most crucial of which was resolving all issues related to the project based Section 8 HAP contract. For financing underwriting purposes, the closing of the transaction had to be contingent upon the Project Sponsor obtaining a 20 year extension of the Housing Assistance Program (HAP) contract. Before the local HUD office could review and approve these requests, they had to submit their own separate requests to HUD HQ for two items: (1) a waiver of the requirement for third party RCS (allowing HUD to use the study submitted by the developer); and (2) consent to approve the post-rehab rent schedule. It was unexpected that these HUD HQ approvals would be required. In addition, once the requests were submitted to HUD HQ it was out of the local HUD office's hands and the process could not be controlled or expedited. Although the requests were granted, the process took much longer than even the local HUD office anticipated, despite their diligence.

Based on the explanation above and confirmation from HUD, the Project Sponsor is now requesting that CDLAC waive the requirement that the Project Sponsor forfeit the CDLAC performance deposit.

DISCUSSION:

In light of the circumstances that appear to be both unforeseen and outside the control of the Applicants and Project Sponsors, staff recommends the approval of the Waivers of Forfeiture of the Performance Deposit for both Projects noted above.

RECOMMENDATION:

Staff recommends the approval of Waivers of Forfeiture of the Performance Deposits for the San Tomas Gardens Apartments Project (# 13-003) and Chestnut Apartments Project (# 13-018).

Prepared by Richard Fischer