

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

July 15, 2015

REVISED

Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit and Waiver of Negative Points for the Rancho California Apartments Project (14-131)

(Agenda Item No. 4)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit and Waiver of Negative Points for the Rancho California Apartments Project.

BACKGROUND:

An Applicant bears the risk of forfeiting all or part of their performance deposit and 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 and negative points if the allocation is not used to issue the bonds within the set timeframe given.

The Rancho California Apartments Project (“Project”) received allocation on November 12, 2014 and had its issuance deadline extended by the Committee to July 6, 2015, as permitted under the CDLAC Regulations.

Shortly before the expected closing date of the Bonds, Orrick, Herrington & Sutcliffe, LLP (“Orrick”) became aware that the Project Sponsor, AMCAL, had acquired the Project and placed it in service more than 18 months before the expected closing date of the bonds. Treasury Regulation 1.150-2(d)(2) permits bond proceeds to be used to reimburse expenditures provided that a reimbursement allocation, which can only be made once bonds have been issued, is made not later than 18 months after the later of (a) the date of the original expenditure or (b) the date the project is placed in service or abandoned, but in no event more than three years after the original expenditure is paid. Because the Project had been acquired more than 18 months prior to the expected date of issuance of the Bonds, and because it had been continually operated as a multifamily residential rental facility during that period (i.e. had been placed in service), the Project Sponsor’s cost of acquiring the Project was not eligible to be reimbursed from proceeds of the Bonds. There were insufficient additional capital costs of the Project to which Bond proceeds could be allocated to permit the Bonds to meet the “95% Good Costs” test, and Orrick was therefore unable to deliver a final bond opinion on the proposed closing date of the Bonds. Due to this unforeseen circumstance the Project Sponsor was not be able to close their loan and the bond allocation awarded to the Issuer, the California Municipal Finance Authority, was subsequently returned to CDLAC.

STAFF COMMENTS:

Based on the information provided to staff, this was an unfortunate oversight on the part of the assigned bond counsel who staff considers to be a member of the Project’s development team. In consideration of the circumstances, staff recommends that the Committee waive the Negative Points penalty and that the Committee uphold the Forfeiture of the Performance Deposit penalty. This would allow for a partial penalty for the failure to issue bonds that would not impact future projects submitted by the Project Sponsor.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waiver of Negative Points and that the Committee uphold the forfeited performance deposit penalty for the Rancho California Apartments Project (14-131).

Prepared by Richard Fischer