

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**  
**September 16, 2015**

**Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit and Waiver of Negative Points for the Normandie Senior Housing Apartments (14-027 and 137)**  
**(Agenda Item No. 5)**

**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 Normandie Senior Housing Apartments Project (“Project”) received allocation on March 19, 2014 and a supplemental allocation on December 10, 2014. Its initial issuance deadline extended by the Committee to August 18, 2015, as permitted under the CDLAC Regulations.

After the receipt of the supplemental allocation from CDLAC, the Sponsor, Normandie Senior Housing Preservation, L.P. and the Issuer, the City of Los Angeles, became aware that the project, as structured, was not able to meet the 50% test due to the significant amount of assumed debt associated with the purchase of the property and the decrease of the property’s value through the financing process. Section 42 (h)(4)(B) of the Internal Revenue Code sets forth the “50% test” which states that if 50% or more of the aggregate basis of the building and the land on which the building is located are financed with tax-exempt bonds, the tax credits can be obtained with no need to go through a competitive process. If a project is unable to meet the 50% test they are ineligible to receive 4% tax credits. After the identification of the concern, the Sponsor and the Issuer tried to work through a number of scenarios that might have assisted to ameliorating the 50% test issue but were unable to resolve it. Specifically, the Issuer, who is also the holder of considerable existing subordinate debt related to the property subject to the allocation request tried to restructure the existing debt to the benefit of the project, but given the constraints of the subordinate debt’s funding sources, was unable to reach terms that would alter the 50% test determination. Due to this unforeseen circumstance the Project Sponsor was not able to close their loan and the bond allocation awarded to the Issuer, was subsequently returned to CDLAC.

**STAFF COMMENTS:**

Based on the information provided to staff, this was an unfortunate oversight of the 50% test rules that should have been identified at the initial application stage by the assigned accountant and bond counsel who staff both considers to be a members 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 Normandie Senior Housing Apartments (14-027 and 137).