

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
May 18, 2016

Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit
for Various Projects
(Agenda Item No. 4)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit for Various Projects.

BACKGROUND:

Approval of a Carryforward extension requires forfeiture of a project's performance deposit. The Committee may grant a waiver upon a satisfactory showing that: (1) the issue or event that prevented the issuance of the bonds 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.

Sylmar Court Apartments

The Sylmar Courts Apartments Project ("Project") received allocation on December 16, 2015 and had its issuance deadline extended by the Committee to March 15, 2015, as permitted under the CDLAC Regulations.

Sylmar Court experienced unforeseen construction cost increases just prior to the closing deadline. As a result, additional funding was needed to close the gap. An additional \$1,100,000 for the Project was approved by the Los Angeles City Council on March 15th to fill the funding gap. This necessitated that the City's loan, which had already closed and funded, be amended and restated. The other financing participants for the Project (Senior Lender, Tax Credit Investor, etc.) needed time to review and approve this documentation. Due to this, the transaction was unable to close by the March 22, 2016 allocation expiration date and required an extension to April 15, 2016. Bonds were subsequently issued on March 31, 2016.

Villa La Esperanza Apartments Project

The Project received an allocation on May 20, 2015 with a bond issuance expiration date of August 18, 2015. Thereafter, upon the Applicant's request, the Executive Director granted an issuance extension to September 15, 2015 and the Committee approved an extension to December 15, 2015. The Project was unable to issue bonds by the December 15, 2015 deadline and, as requested by the Applicant, the Executive Director granted a Carryforward extension to March 14, 2016. The Project issued bonds on December 23, 2015.

The Project experienced delays due to unforeseen circumstances that were outside of the developer's control which extended closing beyond the CDLAC extension dates. The project was unable to meet the CDLAC deadlines due to continued delays in issuing a new 20-year HAP contract by the HUD Los Angeles office. HUD had granted a conceptual approval nearly 12 months earlier and in February of 2015, the project received approval from the HUD Los Angeles office for a new 20-year HAP contract to extend the affordability of the Project, including approval to convert seven of the 8 five-bedroom units to smaller units to enhance project marketability. In November 2015, just prior to the Project's then-anticipated closing date, HUD informed the Project Sponsor that, despite HUD's prior written approval, a new 20-year HAP contract could not be issued with the revised unit mix. This necessitated a series of renegotiations, and cooperation from the HUD San Francisco office and former HUD employees to reach a resolution, which subsequently pushed the actual closing date beyond the final extension deadline of December 15, 2015 and necessitated the Carryforward extension.

The Applicant requests a waiver of the performance deposit forfeiture based upon unforeseen delays in HUD's approval of the HAP contract.

Camino Esperanza Apartments

The Camino Esperanza Apartments received allocation May 21, 2014 with a closing date of August 29, 2014. The developer then received a staff level extension to September 17, 2014 and a CDLAC Board approved extension to December 16, 2014. The project was unable to close by the December 16, 2014 deadline therefore a Carryforward extension was then approved, extending the close date to April 1, 2015. A supplemental application was submitted (Resolution No. 15-57) and received allocation on July 15, 2015, which extended the close date to 10/13/2015. The project sponsor then received a CDLAC Staff level extension to October 21, 2015 followed by a Board level extension to January 19, 2016.

The developer was unable to close because they secured a predevelopment loan from the Ventura County Housing Trust Fund (VCHTF) and when the VCHTF recorded various loan documents prior to completion of the environmental clearance, this inadvertently committed a regulatory technical violation of HUD 24 CFR Part 58.22. As a result, commitment and/or use of HOME funds (or any other federal funds subject to Part 58) was prohibited.

Because this is a regulatory technical violation, the only option available was to request a waiver of HUD's regulations. The developer was unaware that this chain of events would cause a technical violation with HUD.

The developer received the 58.22 waiver from HUD in October 2015, and was able to close on December 31, 2015.

Due to the delays in the HUD approval process being outside of the developer's control, they are requesting that the forfeited performance deposit be returned to the project sponsor.

Bellflower Friendship Manor Apartments

The Bellflower Friendship Manor Apartments received allocation July 15, 2015 with a closing date of October 13, 2015. The developer submitted a request to CDLAC for a deadline extension, however, due to some miscommunication, the extension did not get posted to the CDLAC agenda. Because it was not on the agenda, a Carryforward extension was granted by CDLAC, extending the deadline to December 16, 2015 and the performance deposit was forfeited.

The original delay in closing was due to delays in the HUD application review. These delays in review and award of the HUD contract delayed final lender and equity approval that was required to close. This delay by HUD was unforeseen to the developer which delayed their closing timeline. Because of the delay, the timing was outside the developer's control and was not caused by the project sponsor. The Developer was able to close on November 12, 2015.

Stevenson House Apartments Project

The Project received an allocation on May 21, 2014 with a bond issuance expiration date of September 8, 2014. Thereafter, upon the Applicant's request, the Executive Director granted an issuance extension to September 17, 2014 and the Committee approved an extension to November 16, 2014. The developer received a supplemental allocation on November 12, 2014 with a closing deadline for both allocations on March 2, 2015. The Executive Director granted an issuance extension to March 18, 2015 and a CDLAC board approved extension to June 15, 2015. Both allocation then returned their allocation and received a carryforward extension to August 1, 2015. The developer was unable to close by the August 1, 2015 deadline and requested a further Carryforward extension to October 30, 2015. The request was granted by CDLAC, extending the deadline to October 30, 2015 and the performance deposit was forfeited.

The developer was unable to close in time because HUD-SPRAC sent notice on April 24, 2015 that the number of possible vouchers had been reduced. A reduction of the SPRAC commitment created great difficulties with respect to the FHA Commitment underwriting. The developer sent a formal request to

HUD-SPRAC to honor its commitment and construction finance closing was delayed as a result. The developer submitted to HUD-SPRAC the Rent Comparability Study (“RCS”) on July 22, 2014. The HUD-SPRAC “Comfort Letter” confirming the number and value of vouchers was received 146 days later on December 15, 2014. The developer then submitted its HUD-FHA application on January 8, 2015.

On April 14, 2015, 96 days after submitting the loan application, HUD-FHA sent a Firm Commitment for financing, however HUD required that the developer wait to submit the Legal Closing Package until after the FHA loan was rate locked and some of the special conditions to the commitment were met. Upon advisement from the Lender the developer waited to rate lock until it received a SPRAC HAP agreement.

The developer was unaware that HUD-SPRAC would reduce the number of vouchers from its original commitment thus forcing the developer to submit waivers and delaying the closing. The bonds were issued October 8, 2015. The Applicant requests a waiver of the forfeiture of performance deposit based upon unforeseen delays as noted.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit for Various Projects noted above.

Prepared by Brian Clark/Louise Eller/Richard Fischer/Devon King