California Housing Finance Agency

Bond Issuer Policies

INTRODUCTION

The California Housing Finance Agency (CalHFA) issues tax-exempt and taxable mortgage revenue bonds (MRB) through its Conduit Issuer Program (Conduit Program) statewide and through its traditional first lien Multifamily Lending Programs. The goals of both programs are to increase and preserve the supply of affordable rental housing, maintain a quality living environment, leverage private sector funds to the greatest extent possible, and to cooperate with local jurisdictions to advance affordable housing goals.

Bond proceeds originating from the Conduit Program and Multifamily Lending Programs can be used to construct new affordable and mixed-income multifamily projects or acquire and rehabilitate existing multifamily projects to create or preserve affordability. The interest rate on the loans financed through the bond proceeds will vary depending upon market conditions at the time of issuance, the type of bond structure, and lender requirements. CalHFA retains no obligation for repayment of the bonds issued through the Conduit Program. The debt is repaid from project revenue, collateralized by the underlying property and other guarantees, and may be credit enhanced for public sale or privately placed with institutional investors.

TYPES OF BONDS

CalHFA has the ability to issue a variety of bonds through the Conduit Program, including tax-exempt, taxable, and 501(c)(3) bonds. Each bond type has different characteristics:

Tax-exempt Bonds: The interest on tax-exempt mortgage revenue bonds (MRB) is not subject to federal taxation. However, MRB financing is subject to federal volume “cap” limitations; requiring an allocation of bond authority from the California Debt Limit Allocation Committee (CDLAC). This CDLAC-authorized MRB financing is typically utilized in conjunction with 4% Low Income Housing Tax Credits (LIHTC) financing awarded by the California Tax Credit Allocation Committee (TCAC). To obtain a bond allocation, CalHFA must submit an application to CDLAC on behalf of the project’s developer (Project Sponsor). The Project Sponsor must pay all required CDLAC fees and deposits in advance of application submittal.

Taxable Bonds: The interest on taxable bonds is subject to federal taxation but is exempt from State taxation. Taxable bonds are not subject to federal volume "cap" limitations and therefore do not require allocation authority from CDLAC. Taxable bonds are generally issued in combination with tax-exempt bonds. Taxable bonds can also be used in combination with 9% LIHTC awarded by TCAC. Taxable bond issues must meet all applicable requirements of the Conduit Program including credit rating requirements.

501 (c)(3) Bonds: The interest on 501(c)(3) bonds is exempt from federal taxation but do not require an allocation from CDLAC. 501(c)(3) bonds can be issued on behalf of qualified nonprofit organizations. They cannot be used in conjunction with the LIHTC. CalHFA can only issue 501(c)(3) bonds for qualified non-profit organizations that are actively involved in the development and operation of multifamily projects and have adequate staff to carry out the proposed development. Non-profit organizations must be involved in the day to day operations of the project and have the financial ability to operate, contribute to the project, and avoid default.

They must be the final recipient of at least 70 percent of the developer fee for the project. Lastly, non-profit organizations must be able to demonstrate they have a successful history of developing similar projects.

AFFORDABILITY REQUIREMENTS

Federal law requires affordability restrictions to be coupled with MRB financing. The Conduit Program and the Multifamily Lending Programs have the following affordability requirements:

(a) 20% of the units must be rent restricted and occupied by individuals whose incomes are 50% or less of the area median income as determined by HUD ("AMI") with adjustments for household size ("20% @ 50% AMI"), or
(b) 40% or more of the units must be both rent restricted and occupied by individuals whose income is 60% or less of the AMI, with adjustments from HUD for household size ("40% @ 60% AMI") in the latter case, state law requires a minimum of 10% of the 40% @ 60% AMI units must be at 50% or less of AMI.

For those units restricted by CalHFA, in adjusting rents for household size, the Borrower will assume that 1 person will occupy a studio unit, 1.5 persons will occupy a one-bedroom unit, 3 persons will occupy a two-bedroom unit, 4.5 persons will occupy a three-bedroom unit, and 6 persons will occupy a four-bedroom unit.

Borrower will be required to enter into a Regulatory Agreement which will be recorded against the affordable housing development for the Qualified Project Period (as defined in the Regulatory Agreement). This includes the later of the federally-required qualified project period, repayment of the loan, redemption of the bonds, or the full term of the CDLAC Resolution requirements.

FEES

The fee structure associated with a bond issuance under the Conduit Program and the Multifamily Lending Programs are outlined below:

Application Fee: A $5,000 non-refundable application fee is due at time of application. This fee will be credited to the bond issuer fee.

Issuer's Fee: An Issuer's Fee in the following amount is due at construction loan closing

(a) The greater of $15,000 or 0.20% of the bond amount if less than $20 million
(b) If greater than $20 million, $40,000 + .10% of the amount above $20 million

Public Sale

a) An additional fee from the State Treasurers Office of up to $12,000 for all transactions applies in circumstances when bonds are sold to the public.

Annual Administration Fee:

a) $7,500 is due and payable in advance in annual installments, commencing upon bond issuance through the term of regulatory period.

TEFRA Fees: None.

CDLAC Allocation Fee: 0.035% of the bond amount, $1,200 due at time of application submittal with the remaining fee due at bond closing.

CDLAC Performance Deposit: 0.50% of the requested bond amount, not to exceed $100,000, due at time of application submittal. Deposit to be refunded after bond closing, upon receipt of authorization letter from CDLAC.

The Borrower shall be responsible for all other costs of issuance including fees of the underwriter, trustee, rating agencies, lender, compliance administrator, all bond counsel, and any other parties required to complete the transaction.

CREDIT CONSIDERATIONS

Bonds issued through the Conduit Program that are publicly sold, are required to have a minimum rating of “A” or higher as determined by Moody’s, Standard & Poor’s, and/or Fitch. Bonds issued through our Multifamily Lending Program that are publicly sold are backed by the CalHFA’s credit rating.

Credit Enhancement: If publicly sold, credit enhancement is a standard requirement for bonds issued through the Conduit Program. Credit enhancement may be in the form of a bank letter of credit, bond insurance, surety, financial guaranty, mortgage-backed security or credit enhancement instrument (e.g., Fannie Mae, Freddie Mac or Ginnie Mae) or other type of credit enhancement generally accepted by the market. If CalHFA has not previously issued bonds with a particular kind of credit enhancement, CalHFA will determine whether such credit enhancement is acceptable subject to the minimum credit rating requirements.

Privately Placed Bonds: If bonds are privately placed, credit enhancement is not required. CalHFA will require privately placed bonds to be sold to Qualified Institutions (SEC definition) or Accredited Investors (SEC Regulation D definition) where the party is related to or familiar with the project. Purchasers will be required to sign an investor letter certifying the investor's sophistication to understand the risk associated with the purchase of the debt instrument and restricting transfer of the bond issue to other Qualified Institutions in denominations of $250,000 and greater.

LOCAL GOVERNMENT ISSUERS

A number of local governments have conduit bond issuance programs. In jurisdictions with such programs, where that local government has committed any form of monetary resource to a proposed to a MRB financed project, CalHFA will not issue bonds for the subject project, absent the approval of that local government unless CalHFA is providing resources through its Multifamily Lending Programs.

PROCESS

Application: An application for the Conduit Program in the attached Exhibit 1 and available electronically on the CalHFA website. CalHFA will accept complete applications via mail or e-mail. However, CalHFA shall not begin to process an emailed application until the $5,000 application fee is received. The application process for CalHFA’s Multifamily Lending Programs is outlined in the Underwriting Standards Reference Manual (USRM),

Conduit applications will be reviewed for completeness within 5 business days of application submittal. If there are deficiencies, the applicant will be contacted and asked to provide all required information and/or make corrections as needed. Once an application has been deemed complete, CalHFA will review the application for compliance and consistency with the adopted Conduit Program guidelines. After staff has determined that the project is consistent with the Conduit Program and the local review period has elapsed (please see Local Review Section below), a TEFRA hearing will be scheduled. To ensure adequate processing time, CalHFA requests that applications be submitted 6 weeks in advance of the targeted CDLAC application due date. Prior to submitting an application, an applicant must make contact with CalHFA to discuss the proposed project and timeframes. CalHFA will make every effort to work with Project Sponsors to ensure timeliness of approvals and submission to CDLAC.

TEFRA: In accord with the federal Tax Equity and Fiscal Responsibility Act (TEFRA) a public hearing is required when tax-exempt bonds are issued. The purpose of the TEFRA hearing is to provide an opportunity for interested persons to express their views on the proposed bond issuance and the nature and location of the project. CalHFA will hold the required TEFRA hearing at its main Sacramento Office.

Local Review: CalHFA understands and recognizes the value of local input. Upon receipt of an application, CalHFA will contact the Local Reviewing Agency (LRA) as designated by TCAC and request that they complete a Conduit Issuer Local Review (Local Review) which is attached (Exhibit 2). The LRA will have 10 business days from the receipt of the document to respond and will be provided a $500 payment for timely completion of the review. If returned within the 10 business day period, comments from the Local Review will be considered before the TEFRA hearing and Inducement Resolution.

Inducement: All projects requesting a new allocation of bond authority must be induced. An inducement is evidenced by an Inducement Resolution (Inducement). An Inducement is not a commitment to issue bonds. It is a conditional statement of intent by CalHFA to consider the future issuance of tax- exempt bonds for a specific project. The inducement date is significant as only eligible costs 60 days prior to the inducement date can be reimbursed with bond proceeds. Therefore, it is vital for the Project Sponsors to contact CalHFA staff as early as feasible to discuss the project and its related anticipated timeframe for approval and issuance.

Application to CDLAC: The Project Sponsor must prepare the electronic CDLAC application two weeks in advance of the CDLAC application date for CalHFA's review. CalHFA will submit the electronic copy of the application to CDLAC for bond allocation. The Project Sponsor must pay all fees required by CDLAC including the application fee ($1,200) and deposit (0.50% of requested bond allocation amount, $100,000 maximum.)

Bond Allocation: Prior to the issuance of bonds for projects, CalHFA must receive an allocation of bond issuing authority from CDLAC.

Bond Counsel: Orrick Herrington & Sutcliffe LLP serves as Bond Counsel for the Conduit Program. Additionally, CalHFA's internal Counsel will review all of the financing documents for consistency with the Conduit Program and CalHFA requirements.

Bond Trustee: CalHFA reserves the right to select the Bond Trustee in its sole and absolute discretion.

Approval of Financing: Assuming the project receives an award of bond allocation, CalHFA staff will work with the CalHFA-approved financing team to execute the project financing plan and prepare the necessary bond documentation. If the bonds are offered for public sale, the California State Treasurer's Office acts as the agent of sale for the bonds and must provide additional approval. An additional fee of up to $12,000 applies in circumstances when bonds are sold publicly.

CDLAC Resolution and Regulatory Agreement: The Regulatory Agreement should be drafted in a matter consistent with the CDLAC Resolution with respect to term and affordability, Program Staff are responsible to check the Regulatory Agreement against the CDLAC resolution. If there are discrepancies between the Bond documents and the CDLAC resolution, either the Bond documents need to come into alignment with the CDLAC Resolution or the CDLAC resolution needs to be revised to be consistent with the Bond documents.

Termination of Regulatory Agreements: Pursuant to Section 5144 of the CDLAC regulations**,** CDLAC should approve the termination of any regulatory Agreement. In order to approve a termination of an existing agreement, CDLAC requires the new Regulatory Agreement to include affordability requirements that are at least as restrictive as those in the original agreement or for the CDLAC affordability period to have lapsed.

When a termination of an existing Regulatory Agreement occurs in conjunction with a refinance or a resyndication, in advance of the termination of a Regulatory agreement where a new Regulatory agreement will replace an existing agreement, staff from Loan Administration (for projects with CalHFA first lien loans) or Conduit Bond Staff (for Conduit only transactions) should send a request to CDLAC to approve the termination the existing Regulatory Agreement along with a copy of the existing Regulatory agreement that is to be terminated and the draft of new Regulatory Agreement that includes the ongoing CDLAC affordability provisions. The existing Regulatory Agreement should not be terminated without CDLAC's consent. The termination should not be executed by CalHFA before receiving CDLAC approval.

When a loan pay-off occurs in conjunction with the end term of the Regulatory Agreement and the CDLAC affordability period as referenced in the CDLAC Resolution, the Regulatory Agreement can be terminated upon CDLAC's approval. When a pay-off occurs, Legal will be contacted by Fiscal regarding the pay-off. Legal will be responsible to check the provisions of the Regulatory agreement and the CDLAC resolution to ensure both allow for the Regulatory Agreement termination. If the termination is consistent with both the existing Regulatory Agreement and CDLAC resolution, If the termination is consistent with the Regulatory Agreement and CDLAC resolution, Multifamily Loan Administration should send a request to CDLAC to approve the termination the existing Regulatory Agreement. The termination should not be executed by CalHFA before receiving CDLAC approval.

REFUNDING AND REMARKETING

CalHFA will allow refundings of previously-financed CalHFA bond issues that meet the following conditions:

(a) The property must be in compliance with the current Regulatory Agreement, as confirmed by CalHFA staff.
(b) The Project must demonstrate that the proposed refunding furthers CalHFA's housing goals.
(c) The Project Sponsor agrees to cover all costs and financing fees of CalHFA.
(d) CalHFA reserves the right to impose additional requirements including, but not limited to, the extension of the existing regulatory agreement. All specifics of refunding proposals must be approved by CalHFA.
(e) CalHFA will not charge an issuance fee if no new bonds are issued in relation to a refunding but will charge an annual administrative fee in accordance with the current policy on issuances for new projects. If new (supplemental) bonds are issued in connection with the refunding, an issuer fee in accordance with the current policy will be charged.

A Project Sponsor may need to remarket outstanding bonds under one of the three basic scenarios: converting variable rate bonds to fixed rate bonds, a mandatory tender of bonds, or substituting a new credit enhancement for the bonds in accordance with the existing documentation.

A remarketing of bonds may require amended documentation as well as additional disclosure documentation. As a result, CalHFA will require a payment of $15,000 to cover administrative costs associated with such remarketing requests.

ASSET MANAGEMENT

CalHFA's Asset Management division will ensure ongoing compliance with the applicable CDLAC Resolution and CalHFA's Regulatory Agreement, and be responsible for providing reporting materials to CDLAC related to their ongoing requirements.

CalHFA encourages local participation in the ongoing asset management of projects resulting from this program. For jurisdictions with capacity, CalHFA will offer the opportunity to conduct the annually required property inspection for a fee to be negotiated at that time; payable by CalHFA. Jurisdictions pursuing this option must enter into a contractual agreement with CalHFA and adhere to CalHFA inspection criteria.

ADDITIONAL REQUIREMENTS

CalHFA will require standard indemnification from the Project Sponsor and guarantor with respect to the financing and the project in the appropriate bond documents. For publicly-offered transactions, CalHFA will also require standard indemnification with respect to the issuance and sale of bonds by the underwriter in the purchase contract.

This document is intended as a guide for CalHFA and for Project Sponsors. In its discretion, CalHFA may grant exceptions to the Conduit Program in its sole and absolute discretion.

Applications should be submitted to:

- Kevin Brown, Housing Finance Specialist
- 500 Capitol Mall, Suite 1400, Sacramento, CA 95814
- Phone: 916.326.8808
- Email address: kbrown@calhfa.ca.gov

Questions regarding the Conduit Program can be directed to:

- Kevin Brown, Housing Finance Specialist
- Phone: 916.326.8808
- Email address: kbrown@calhfa.ca.gov

Effective Date

CalHFA's Conduit Program as set forth herein shall be effective immediately upon its adoption on March 2, 2015.