Date of Hearing: April 3, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Norma Torres, Chair
AB 523 (Ammiano) – As Introduced: February 20, 2013

SUBJECT: Department of Housing and Community Development: loans

SUMMARY: Allows the Department of Housing and Community Development (HCD) to reduce the interest rate on loans for affordable rental housing developments to as low as zero percent. Specifically, this bill:

1) Allows HCD to reduce the interest rate on loans for affordable rental housing developments to as low as zero percent if the following conditions are met:

   a) There is no other debt or regularly amortized debt service payments on the development;

   b) The development is using low-income housing tax credits; and

   c) The sponsor of the development can prove that a reduction in the interest rate is necessary for the HCD loan to be treated as debt for federal or state low-income housing tax credit purposes.

EXISTING LAW

1) Establishes the Multifamily Housing Program (MHP) to provide deferred payment loans for the acquisition, construction, or rehabilitation of housing affordable to low and very-low income families and individuals.

2) Requires MHP loans to be for a term of not less than 55 years and at 3% simple interest with payments due at the end of the term of the loan.

(Health and Safety Code 50675.6 et. al.)

FISCAL EFFECT: Unknown.

COMMENTS:

Rental housing developments that are affordable to low- and very-low income families and individuals typically require multiple sources of construction financing. Two key sources of funding are the Multifamily Housing Program (MHP) and the Low-Income Housing Tax Credit (LIHTC). The Tax Credit Allocation Committee (TCAC) administers the LIHTC program and awards credits to qualified developers who can then sell those credits to private investors who use the credits to reduce their federal tax liability. The developer in turn invests the capital into the affordable housing project. MHP provides deferred payment loans to developers for the construction of affordable housing to low- and very-low income residents. All loans are for fifty-five years at 3% simple interest and payments of principal and the accumulated interest are due at the end of the loan period. There is approximately $51 million currently available in MHP and $7 million available in the supportive housing component of MHP for funding.

Federal law requires TCAC to conduct a feasibility study on every project to ensure that the amount of tax credits allocated do not exceed the amount required for the project to make the project feasible. To calculate the amount of credits a project may receive, TCAC first determines the total project cost and then determines the "eligible basis" by subtracting the non-depreciable costs, such as land permanent financing costs, rent reserves, and marketing costs.

Under Federal Internal Revenue Service Law, a developer receiving LIHTC must demonstrate that all loans on a project can be repaid. Because MHP loans carry a 3% deferred interest rate, this can create a conflict for projects that receive an MHP loan and reduce the amount of "eligible basis" reducing the amount of federal tax credits for which a project can qualify.

Purpose of this bill: AB 523 would give HCD discretion in limited circumstances to reduce the interest rate on a project that receives an MHP loan is also awarded LIHTC. To qualify a sponsor would have to prove to the satisfaction of HCD that without the reduction in the interest rate on the MHP loan the amount of tax credit the project could qualify for would be reduced and there are no other loans on the development that require ongoing debt payments. MHP loans are considered "soft" debt because they are deferred and do not require debt and interest payments until the end of the term of the 55-year loan. Under federal law, a sponsor of a development that receives LIHTC must demonstrate a plausible set of circumstance under which the MHP loan could be repaid. The sponsor and/or investor will run a "true debt" analysis showing the project could conceivably generate enough net operating income to repay all debt, typically by showing the market rents the project could charge after the 55-year regulatory period ends. If a project fails this true debt test, loans are treated as grants for tax purposes and the project loses an equivalent amount of tax credits.

By reducing the interest rate on these loans to zero percent the program will not recover the 3% interest payments at the end of the 55-years; however, the principal will be due on the loan at the end of the term.

REGISTERED SUPPORT / OPPOSITION:

Support

BRIDGE Housing
California Rural Legal Assistance Foundation
Californian Housing Consortium
Community Economics
EAH Housing
Housing California
LeadingAge California
MidPen Housing Corporation
Non-Profit Housing Association of Northern California
Western Center on Law & Poverty

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085