

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 2161 (Chau) – As Amended: April 23, 2014

SUBJECT: Affordable housing.

SUMMARY: Authorizes the Department of Housing and Community Development (HCD) at the request of a borrower of any loan issued by the department, that has reached maturity, to modify the loan. Specifically, this bill:

- 1) Authorizes HCD at the request of a borrower of any loan issued by the department that has reached maturity to do either of the following:
 - a) Reloan the original amount of the matured loan plus any accrued interest on the same terms and conditions as the original loan; or
 - b) Restructure the loan pursuant to a streamlined process authorized by AB 1699 (Torres) (2012), Chapter 780.

EXISTING LAW

- 1) Allows HCD to approve an extension or subordination of a loan or an investment of tax credit equity for affordable housing developments financed through Rental Housing Construction Program (RHCP), Family Housing Demonstration Program (FHDP), California Housing Rehab Program (CHRP), and Deferred Payment Rehabilitation Loan Program (DPRLP).
- 2) Allows HCD to extend the term of an existing rental housing development loan with the following conditions:
 - a) The development is being operated consistent with the regulatory agreement;
 - b) The development requires an extension in order to continue to operate; and,
 - c) The interest rate of the new loan is 3%.
- 3) Provides that the extension of terms for an existing rental housing development loan must be for a period of not less than 10 years and the total term shall not exceed 55 years or not more than 58 years if necessary to match tax credit restrictions.
- 4) Provides that, for developments financed through RHCP, the rent for low-income units may be increased up to a maximum of 30% of 60% of area median income (AMI) and for very-low income units up to a maximum of 30% of 35% of AMI.
- 5) Provides that for developments financed under DPRLP, CHRP, and FHDP rents may be increased as follows:

- a) In counties with an AMI of 110% or less of state AMI, rents for at least 35% of assisted units must be restricted to no more than 30% of 30% of state median income; and,
 - b) In counties with an AMI of more than 110% of state AMI rents for at least 35% of assisted units shall be restricted to no more than 30% of 35% of state median income and rents for the balance of assisted units may be increased to up to a maximum of 30% of 60% of AMI.
- 6) Provides that for existing tenants in a development financed by any program, rents may be increased as follows:
- a) For existing tenants with incomes that are not more than 35% of AMI, increases must be limited to 5% per year until the rents reach the levels described above;
 - b) For existing tenants with incomes more than 35% of AMI, increases are limited to 10% per year until they reach the rent levels described above; and,
 - c) For existing tenants who move, rents may be increased immediately to the rent levels described above.
- 7) Provides that once rents reach their new ultimate level, any future increase will be in response to increases in the AMI.
- 8) Provides that when a tenant vacates a unit, the new tenant's income level must correspond to the new income limits described above.
- 9) Provides that when a development is refinanced or restructured, the income levels and rent limits will be calculated consistent with the methodology used for the Low-Income Housing Tax Credit Program and the Multifamily Housing Program.
- 10) Provides that when a loan is extended or subordinated or when a new tax credit investment occurs, the regulatory agreement must include provisions that do the following:
- a) Include standards for tenant selection to ensure eligible households;
 - b) Restrict rents for assisted units;
 - c) Provide for periodic inspection, occupancy, and financial reports and financial audits of the development;
 - d) Govern the use of operating income and reserves for the development; and,
 - e) Have a term that is not less than the term of the loan, including extensions.
- 11) Provides that a new or amended regulatory agreement is binding on the development's owner and successor regardless of pre-payment of the loan.

12) Requires the new or amended regulatory agreement to be recorded in the county recorder's office in which the development is located.

FISCAL EFFECT: Unknown.

COMMENTS:

HCD has financed a variety of affordable multi-family housing projects under different state-funded programs. From 1980 to 1995, HCD operated multiple programs that provided low-interest loans for affordable multifamily housing. The programs provided 3% interest rate, deferred payment loans for rehabilitation or new construction of housing for low-income families, single-room occupancy hotels, and other special needs populations. Many of these housing developments are 20 to 30 years old and are in need of capital improvements or have significant operating deficits.

HCD's current program to finance affordable rental housing is the Multifamily Housing Program (MHP). Created in 1999, this program is the department's omnibus rental housing program, able to finance different types of rental housing for various populations under a uniform structure. This program funds the new construction, rehabilitation, and preservation of affordable rental housing through loans to local governments, non-profit developers, and for-profit developers. Affordable units are those affordable to households earning no more than 60% of the county AMI, but HCD gives heavy priority to projects that serve households at even lower income levels. Loans are for a term of 55 years at a rate of 3% simple interest. All payments are deferred except for a standard annual interest payment (currently .42%) to cover HCD's ongoing monitoring and management duties.

In 2012, AB 1699 (Torres) gave HCD the authority to extend and modernize the loans in its older portfolio through conversion to MHP. As noted above, many of these loans were awarded in the late 1990s and are coming close to their term. Once the loan is paid off, the regulatory agreement which requires the units to remain affordable is extinguished. Many affordable housing providers would like to keep their projects affordable but need to take on additional debt financed with a low interest rate. AB 1699 set up the framework for a streamlined process for sponsors to restructure their HCD loans or extend the term of loans without new debt. The terms of the process will be spelled out in guidelines so that both an affordable housing sponsor and HCD can anticipate the process.

AB 2161 is a follow up to AB 1699 (Torres). Although AB 1699 was passed in 2012, the guidelines have not been adopted. Some of the loans for projects that want to use the AB 1699 guidelines to restructure have reached maturity. These projects are in limbo and would like to extend the term of their loan and the accompanying affordability covenants, to continue to provide affordable housing to their tenants, using the AB 1699 process. It is unclear if HCD has discretion to modify a loan that's term has ended. AB 2161 would explicitly give HCD two options for loans that have reached maturity: reloan the original loan amount plus the accrued interest with the same terms and conditions as the original loan or restructure the loan. Without this bill project owners who are in good standing and did not default on their loans would have to go through a workout process.

Projects that go into workout risk receiving a notice of default from HCD. Sponsors typically have to disclose in HCD funding competitions whether they have ever experienced a default or have gone through "workout." These experiences can make sponsors and a project less competitive. The stigma of being in workout, which suggests non-compliance and default, can impact a sponsor's critical and longstanding relationships with local public and/or philanthropic funders. While a workout can be helpful in some instances because HCD can waive some provisions which are otherwise unwaivable, it's also true that every solution is a one-off, with no predictability and no rules.

Arguments in support: According to supporters, owners of affordable housing properties who are complying with HCD requirements and renting to low-income and, in many cases, special needs tenants are sometimes not aware when their existing HCD loan matures. In most of these cases, owners are willing to enter into extended regulatory agreements with the State in exchange for extended loan terms. They typically have no means to repay an HCD loan other than selling the property. The public benefits by extending these loans since the affordable housing is preserved at no additional out of pocket cost to the state. If the loans were to be repaid, the proceeds are generally so small that they could not meaningfully contribute to the cost of creating new replacement units.

REGISTERED SUPPORT / OPPOSITION:

Support

Bridge Housing
Community Housing Partnership
Community Economics
EAH Housing
Non-Profit Housing Association of Northern California
Rubicon Programs

Opposition

None on file.

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