

California Debt Limit Allocation Committee
Jesse Unruh Building
915 Capitol Mall, Room 587
Sacramento, CA 95814

August 26, 2009

1. Call to Order and Roll Call

Bettina Redway, Chairperson, called the California Debt Limit Allocation Committee meeting to order at 1:33pm.

Members present were: Thomas L. Sheehy for Gov. Schwarzenegger; Marcy Jo Mandel for Deputy Controller for State Controller John Chiang; Bettina Redway for State Treasurer Bill Lockyer.

Advisory Members present: Elliott Mandell for Lynn Jacobs; Bruce Gilbertson for Steve Spears.

The chairperson declared a quorum.

2. Approval of the Minutes of the July 22, 2009 Meeting (Action Item)

Marcy Jo Mandel moved approval of the minutes of the July 22, 2009, meeting. Tom Sheehy seconded, there were no objections and the July 22, 2009, minutes were approved by unanimous vote.

3. Executive Director's Report (Informational Item)

Sean L. Spear reported the following:

Per member Sheehy's request to have update on the status of the allocations for each of the pools, the following is what the current uses of the allocation to date are: Out of the \$3.3 billion, \$465 million has been allocated. The staff is currently reviewing over \$1 billion in applications currently, which will be presented with recommendations at the next meeting September 23rd. We would presume that there will be some unexpended allocation at the end of the year, and we will be coming to the Committee at that point with some recommendations on how to have that taken care of going into the next year as a carry-forward, essentially.

- Tom Sheehy asked what it means under item D, for - sub-award.
- Sean Spear responded this was the carry-forward portion that was granted to CPCFA earlier. It's not counting in the overall number that was previously mentioned.

- Tom Sheehy asked if it has already been counted once and an effort not to double count?
- Sean Spear responded that is correct. It is out of that carry-forward that we gave them earlier.
- Tom Sheehy asked if Sean could continue this presentation for the rest of our meetings this year.
- Sean Spear responded in affirmative that with each director's report he will give you a synopsis of where we're at.

4. Consideration of the Adoption of a Resolution Delegating Authority to the Executive Director to Enter Into Contracts on Behalf of the Committee (Action Item) – Misti Armstrong

Misti Armstrong reported:

Since the committee's inception, the State Treasurer's Office has provided CDLAC with various administrative services through interagency agreement. The committee is also authorized by statute to enter into these and other agreements and the committee also delegates this authority to the Executive Director to approve on behalf of the committee. This item requests authorization for the new CDLAC Executive Director, Sean L. Spear, to execute contracts and interagency agreements in an amount not to exceed \$250,000 without specific committee approval. This amount is neither an increase nor decrease to the previous ED authority. Staff's recommendation is to approve the resolution in front of you, authorizing Sean L. Spear to execute contract interagency agreements and amendments to contracts on behalf of the committee.

- Bettina Redway asked if this delegates authority for Sean Spear to sign contracts, not to exceed \$250,000, do we have a provision where you report to the board any contracts over a certain amount to the board, or not?
- Bettina Redway further added that the other authorities report amounts over \$50,000 to the board. They don't have to seek approval, but they have provided feedback-- that's something we might want to consider.
- Misti Armstrong responded that she will find out more information.
- Tom Sheehy asked how the \$250,000 dollar limit compares with the delegated authority with other entities in the Treasurer's Office. Most all the authorities have a limit up to which they can go without board approval. Is this more than the others, or about the same?
- Bettina Redway responded she thought it was the same and referred to Mike Papanian for explanation.
- Michael Papanian, Executive Director CPCFA, responded that his delegated authority is \$300,000, and he reports to the board between \$10,000 and \$300,000.

- Tom Sheehy requested that the Committee consider \$50,000 or above \$50,000 reporting threshold. Not that it needs to be approved in advance, just a reporting back of information.
- Misti Armstrong stated that STO contracts typically exceed the \$50,000 amount. Would the board like for staff to report annually when it's time for that contract to be renewed?
- Bettina Redway responded yes and to just inform the Committee if entered into other contracts or interagency agreements.

Tom Sheehy moved for approval. Marcy Jo Mandel seconded. There were no objections and the resolution delegating authority to Sean L. Spear was unanimously approved.

5. Approval of the Proposed Recovery Zone Bond-Related Revisions to CDLAC Procedures (Action Item) - Crystal Alvarez

Crystal Alvarez reported on the following:

On February 17th, 2009, the American Recovery and Reinvestment Act of 2009, was enacted. Recovery zone bonds provide tax incentive and lower borrowing costs for local government and private entities to promote job creation and economic recovery in areas particularly affected by employment decline. Recovery zone bonds are allocated by the Department of Treasury to the states based on proportion of each state's 2008 employment decline, bears to the national 2008 decline. The allocation has been further sub allocated by the Department of Treasury among counties and large municipalities as published on the IRS website and presented to you today. For those types of recoveries on bonds, the locality must designate a recovery zone area prior to the issuance of tax-exempt bonds or taxable tax credit bonds. A recovery zone is defined as an area designated because of significant poverty, unemployment, rate of home foreclosures, or general distress. Or economically distressed because of a military based closure or realignment. Or any area which is designated as an empowerment zone or renewal community as already in effect. There are two types of recovery zone bonds. The first is a recovery zone facility bond. The total California allocation is \$1.2 billion, out of \$15 billion in recovery zone facility bonds nationwide. These are a new category of bonds; they will be treated as tax-exempt private activity bonds for issuance in 2009 and 2010. Second, there's a recovery zone economic development bond. The total California allocation is \$806 million out of \$10 billion in tax credit bonds. For recovery zone economic development bonds nationwide. These are taxable tax credit bonds for issuance in 2009 and 2010. Recovery zone facility bonds are treated as an exempt facility bond under federal code, Section 142. The interest would be tax-exempt. At least 95% of net proceeds must be used for recovery zone property. As defined by ARRA legislation, facility bonds or private activity bonds in that an allocation is made by the Department of Treasury to the local issuer for use by a private entity. Recovery zone economic development bond is a taxable tax credit bond to be used for governmental purposes. The issuer may elect to receive payment from the federal government equal to 45% of the interest payable by the issuer on the interest payment date. Authorized recovery zone economic development projects include capital expenditures for property, located in a recovery zone, expenditures for public infrastructure and construction of public facilities. And expenditures for job training and

educational program. CDLAC will have no immediate role in the recovery zone to counties and large municipalities. However, the Treasury has issued guidance permitting states to reallocate any allocation waived by those counties or municipalities. CDLAC will request a report of action be submitted to CDLAC upon the issuance of bonds not more than three days following the issuance of the facility bond or economic development bond. This report should include the date and amount of the issuance and the designated recovery scope in which the proceeds will be used. CDLAC will develop a process for distribution of an allocation that has been waived by locality. CDLAC will reallocate this waived allocation in a manner that will maximize public benefit for the state of California. CDLAC will return to the committee to present the reallocation procedures, application, and waiver form at a later date. Counties and large municipalities receiving facility bonds and economic development bonds allocation should provide CDLAC with a plan of issuance no later than January 31, 2010. The plan should include a recovery zone bond resolution and a description of the project to be funded. In addition, counties and municipalities are encouraged to include a project issuance time line. At the plan of issuance. Allocation that after July 1, 2010, has not been issued or included in any notice of intent to issue is automatically deemed waived and returned to CDLAC for allocation. On July 22nd, 2009, the committee approved the allocation of the ARRA recovery zone bond allocation and the distribution of draft recovery facility bond procedures and recovery zone economic development bond procedures for 30-day public comment period. The procedures design recovery zone bond and include the timetables for reallocation of recovery zone bond. CDLAC received three public comments regarding the proposed bond procedures presented to the committee at the July 22nd meeting. Two comments suggested expanding the proposed procedures to allow joint power and authority and other conduit issuers to issue on behalf of local government. Staff has revised the proposed procedures by adding the defined term qualified recovery zone bond issuer and deleting the local issuer definition. The qualified recovery zone bond issuer definition has been taken directly from the U.S. treasury notice, 2009-50. This federal guidance notice provides a more detailed definition of those state governments, local governments and joint power authorities qualified to issue recovery zone bonds. One commenter suggested develop procedures in a review process with an allocation priority system and to seek input from the various constituents that will utilize the program. Staff believed it would be premature to begin developing a process to reallocate the recovery zone facility and economic development bond. At this time staff is unable to anticipate the amount of allocation that will be waived and what the priorities of the committee will be based on the demand of local government. However, after the initial waiver of allocation has been received, staff will develop reallocation procedures to present to the committee. Staff will seek input from potential recovery zone bond applicants and constituents at that time. One commenter requested that the required plan of issuance be removed from the proposed procedures. The commenter stated the plan of issuance CDLAC has presented is unreasonable and is not mandated by the ARRA legislation. In keeping with the spirit of ARRA, the commenter proposed in place of a plan of issuance to provide a copy of the inducement resolution for each proposed project, as they become available. In addition, the commenter could provide the amount of bond being issued and issuance date and project name. The commenter also opposed the deadline of July 1, 2010, as the city's and municipalities final date to provide a plan of issuance. The commenter indicated that the ARRA legislation does not mandate the waiver of bonds that allows municipalities to electively waive any portion of the allocation at their discretion. Counsel of the State Treasurer's Office has confirmed the committee is not prohibited from establishing issuance deadlines or reporting requirements that will ensure the effective utilization of the ARRA bond assigned to California. Staff received

comments from one commenter, with technical comments. These changes have been incorporated into the proposed procedures. Staff recommends approval of the recovery zone facility bond and recovery zone economic development plan procedures as modified.

- Marcy Jo Mandel asked: When you deleted the local issuer definition and then you added this qualified recovery zone bond issuer "qualified issuing entity" definition, in looking through the procedures themselves, there are a lot of references to the local issuing entity and I don't know if that phrasing was used because you used to have a definition of local issuer. Should this now say the qualified issuing entity?
- Misti Armstrong replied yes.
- Tom Sheehy asked who is the entity that challenged the reallocation.
- Bettina Redway replied Los Angeles.
- Tom Sheehy asked if Los Angeles is the biggest consumer for the recovery zone and to why they are objecting.
- Sean Spear responded that some of their objection was the notion of the requirement for them to provide a waiver if they were electing to waive the usage of their allocation. It was more just a procedural identification that they felt like it was something that wasn't within our power to strictly require of them.
- Tom Sheehy asked if we have any legal exposure.
- Sean Spear replied no and it would be very unlikely that they would raise any other issue beyond stating their objection to our terminology.
- Tom Sheehy asked if we're going to stay with this term, local issuance entity.
- Bettina Redway responded that no, it was changed -- Los Angeles' concern was with the plan of issuance. If I understand, the ARRA, U.S. Treasury, IRS posted a list of allocation and the legislation allows for a waiver, but doesn't clarify how you waive it or if you were to waive it who then gets it. So we are trying to establish some time line that would allow for an entity that is waiving or is unable to use this allocation to waive so that we could reallocate it to an entity that either didn't get any original location, or one of these other entities that might want to use it. So I think that's what LA is objecting to, because that process isn't clearly established in the ARRA legislation, they're questioning whether we have the authority, and we have verified, Bob Hedrick who should be here somewhere, that we are not prohibited from doing this.
- Tom Sheehy asked we're not prohibited, but is somebody going to challenge our authority to do it? Some amount of this doesn't get used or planned to be used by next year. So we are, under our process, taking back the allocation, and then we go through a process to reallocate. Is our process to be merit based?

- Sean Spear answered that is correct. We go through some sort of merit based process to allocate which would be objective and fair. Let's say somebody doesn't agree with us, then do they have the ability to challenge us and say you didn't really have the authority? The IRS didn't say you didn't have the authority. They didn't say you did have it, therefore we don't like the way you did it, now we're going to challenge it.
- Bob Hedrick in response, Bob Hedrick, senior staff counsel, State Treasurer's Office. In conversations with the IRS, directly on this issue, we posed the question straight up, can we do this, and the response from IRS was there is nothing in ARRA that addresses this one way or another. We cannot tell you that you can and we cannot tell you that you cannot. Based on that, California along with on a very, very quick Internet search, just yesterday, along with probably close to a dozen other states, are doing exactly what we are proposing to do here. The idea being that with the drop-dead date that the Feds have set in legislation, at the end of 2010, that the states need some advance notice for allocations that are not going to be used to avoid having the allocation just fall off the end of the table and be lost to the state. The legislation does not speak to how reallocation will be done. It merely says that the state is to do it.
- Tom Sheehy asked if the legislation says the state shall reallocate.
- Bob Hedrick replied it says we are responsible for reallocation. Allocations that waived or deemed waived in the guidance.
- Bettina Redway stated all we're really asking, if I understand this, we're basically saying you have to tell us in January, at the beginning of the year, how you plan to use it. And if you're going to waive any of it. And then because we expect you'll tell us a plan but then things may change, by July again they have to tell us more concretely how they plan to use it. And if they can't, we're going to waive it.
- Bettina Redway stated that's all we've established in this set of procedures. We haven't even set up a process yet for how we will reallocate because we haven't gotten there yet.
- Tom Sheehy asked if that's a process we will set up and we'll talk about publicly.
- Sean Spear replied that's correct.
- Tom Sheehy asked if folks that want input into that process will be able to.
- Sean Spear replied that's correct.
- Bettina Redway asked if L.A.'s objecting to having to tell us how they plan to use allocation by July 1st.
- Sean Spear stated that is right.
- Marcy Jo Mandel stated they just have to provide some other things that sound very similar to what the plan of issuance would be.

- Bettina Redway said I think L.A.'s making clear they want to protect their full authority to allocate. But I think it will all get worked out. So this motion, if there's one made, would be to actually adopt these as procedures. We sent them out for 30-day comment at the last board meeting. So the motion should include the recommendation to make this internally consistent with the changed definition of local issuer.

Marcy Jo Mandel motioned to approve. Tom Sheehy seconded. There were no objections, the procedures were unanimously approved.

6. Approval of the Proposed Qualified Energy Conservation Bond-Related Revisions to CDLAC Procedures (Action Item) - Brady Hill

Brady Hill reported:

IRS notice 2009-29, of the American Recovery and Reinvestment Act of 2009, provided that the state of California would receive \$381,329,000 in allocation. This allocation was distributed to large local governments. For purposes of the QECB program large local government means any municipality or county that has a population of 100,000 or more. It is important to note that Indian tribal governments shall be treated as a large local government as well. The notice also requires that the calculation of the QECB allocation for counties and municipalities be based on information released by the United States census bureau for the period that is closest in time to that used for the state and consists of information as of July 1, 2007. CDLAC verifies the methodology used to calculate the QECB allocations with bond counsel. This results in an allocation for the counties and municipalities of \$367,847,336, which is 96% of the total allocation of the State's QECB location. The remaining 4% of the State's allocation is reserved for state entities and Indian tribal governments, specifically 3% of the State's allocation or \$12,746,103 is reserved for state entities and approximately 1% of the State's allocation is reserved for Indian tribal governments or \$739,561. Exhibits A-C, give a breakdown of state, county, municipality and Indian tribal government allocation amounts. It should be noted that the total number of counties that receive QECB allocation is 35. And the total number of municipalities that received allocation is 61. The notice further requires that allocation to a state or large local government be allocated and turned by the state or large local government to issuers within the state and in a manner their results in the use of not less than 70% of the allocation to designate bond that are used for governmental purposes. Conversely mandates no more than 30% of the allocation to such state or large local government entities be used to designate bonds that are private activity bonds. The proceeds of the QECBs can be used for qualifying conservation purposes, as defined by the notice. Allocation and reallocation of the QECB. CDLAC will administer the state's portion of the QECB allocation. As such, CDLAC has developed procedures and application for the state's portion of the QECB allocation. CDLAC will have no immediate role in the administering of the QECB allocation to municipalities, counties and Indian tribal governments. However, pursuant to the proposed CDLAC procedures, the following shall apply. First, CDLAC will require that a report of action taken form be submitted upon the issuance of bonds not more than three days following the issuance of the bonds. This report should include the date and amount of the issuance, and the designated locality in which proceeds will be used. Secondly, CDLAC will develop a process for administering allocation that has been waived by these parties. CDLAC will reallocate this waived allocation that will maximize public

benefit for the state of California. And in addition, CDLAC will return to the committee to present the reallocation procedures and application at a later date. Counties and large municipalities receiving QECCB allocation must provide CDLAC with a plan of issuance no later than January 31, 2010. The plan should include a description of the projects to be funded; in addition counties and municipalities are encouraged to include a project issuance time line as part of the plan of issuance. Lastly, allocations that after July 1, 2010, have not been issued or included in a notice of intent to issue are automatically deemed waived and returned to CDLAC for reallocation. On July 22, 2009, the committee approved the allocation of the ARRA qualified energy bond allocation, and the distribution of proposed qualified energy conservation bond procedures for the 30 day public comment period. The procedures define QECCB's include the process for distribution of the state QECCB allocation, and include the timetable for the reallocation of the QECCB. CDLAC received no public comment regarding the proposed QECCB procedures that were presented to the committee at the July 22, 2009, meeting. Upon adoption of the proposed procedures, staff will post the QECCB state allocation application to the committee website. In addition, staff will post the qualified energy conservation bond allocation waiver form to the committee website. Local governments wishing to return unused allocation to the committee may utilize this form at any time prior to July 1, 2010. Staff recommends the approval of the proposed qualified energy conservation bond procedures, as attached and presented by staff on July 22, 2009.

- Tom Sheehy asked if any state agency showed any interest.
- Brady Hill replied that the Department of Corrections has mentioned that they might apply.
- Tom Sheehy asked how do we let the state agencies know about the funding.
- Bettina Redway responded that there have been several workshops already, where we've talked to them. Some of them were done with members from the Governor's office.
- Brady Hill added also Southern California. They met with Orange County and L.A. to get the word out. So that we could direct possible interest.
- Bettina Redway added also CAIFA has been active in trying to talk to state entities about the allocation.
- Sean Spear added that CDLAC is looking into actually posting the application today to help get the work out.

Tom Sheehy moved for approval. Marcy Jo Mandel seconded. There were no objections; the motion to approve the procedures was unanimously approved.

7. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects and Awards of Allocation (Action Item) – Richard Fischer

Richard Fischer reported:

Consideration of appeals and applications for allocation of the state ceiling on qualified private activity bonds for qualified residential rental projects and awards of allocation.

There are no appeals. This is a two-action item that I'm going to be presenting to the committee. It will be self-explanatory as soon as I read through it.

This is a general pool item that I am presenting this afternoon. It's the 740 South Olive Street Senior Apartments, submitted by the California Statewide Community Development Authority. As the issuer, and exceeds the \$30 million project cap per project imposed by the section 17.4 of the CDLAC procedures. Project is located in the city of Los Angeles. And is requesting an allocation of \$53,304,650. The recommendation of staff is recommends the committee waive the maximum allocation amount for the application 09-043, based on the demand for rental projects is such that the maximum amount allocation amount is not warranted due to the lack of competition. There will be an excess allocation for the current round. As one of the action items that the committee needs to be taking up this afternoon. And staff also recommends approval of the \$53,304,650 in tax-exempt bond allocation for the 740 South Olive Street Senior Apartments project.

- Bettina Redway asked for any questions or comments from board members? Or from the public? I think for the first item we need a motion to waive the \$30 million maximum allocation amount on the project.

Marcy Jo Mandel moved for approval to waive \$30 million cap. Tom Sheehy seconded. There were no objections. The motion to approve waive the \$30 million allocation cap was unanimously approved.

Marcy Jo Mandel moved to approve the allocation request. Tom Sheehy seconded. There were no objections. The motion to approve the allocation request was unanimously approved.

8. Public Comment (Action Item)

There was no public comment.

9. Adjournment

The meeting was adjourned at 2:11 p.m.