

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

January 18, 2012

Consideration and Approval of Proposed CDLAC Regulations for Submittal to the Office of Administrative Law for Emergency and Regular Rulemaking Consideration
(Agenda Item No. 5)

ACTION

Approve proposed CDLAC Regulations for submittal to the Office of Administrative Law for emergency and regular rulemaking consideration.

BACKGROUND

On January 1, 2012, statutory changes enacted under SB562 regarding performance deposits became effective. In an effort to align regulations with statute, staff proposes an emergency regulation process to modify current regulations to reflect said statute.

The following are the proposed revisions not previously considered by the Committee members:

- *All Program Pools: Performance Deposit*

1. Revision of CDLAC Regulations for Performance Deposit

Staff proposes changes to Section 5052 for the Performance Deposit regulation and to the Performance Deposit Certification Form in order to align regulations with statute that became effective January, 1, 2012. Under current CDLAC regulations, the Committee will approve the Allocation with the deposit fully refundable if 100% of the Allocation is used to issue bonds; or in the case of a Drawdown bond Issuance, the minimum amount of Allocation is used to issue bonds. For Mortgage Credit Certificate Programs, if the Allocation is converted to mortgage credit certificate authority and at least one mortgage credit certificate is issued. New language is proposed to reflect changes to statute, which provide the Committee the flexibility to incorporate a more realistic requirement that reflects the common practice of a bond issue. The proposed regulations would allow for a reduced issuance amount of 80% or more of the Committee's allocation award without penalty. Performance deposits would be fully refundable in this instance, but a partial forfeiture would be due to the Committee if less than 80% of the award is issued.

Proposed emergency CDLAC regulations are attached.

DISCUSSION

Should the Committee approve these revisions, staff plans to then submit the emergency rulemaking package to OAL immediately thereafter. A 5-day public comment period will commence on the day of submittal, with possible enactment within 10 days thereafter.

RECOMMENDATION

Staff recommends approval of the proposed CDLAC regulations for submittal to the Office of Administrative Law for emergency and regular rulemaking consideration.

Prepared by: Annie Ong

ATTACHMENT A
Proposed Regulations Changes
(Proposed new language is underlined and deleted language is struck)

Chapter 1. General Provisions

Article 5. Performance Deposits and Fees

Section 5052. Forfeiture of Performance Deposit. (a) If less than ~~40~~80% of the Allocation is used to issue Bonds or issue at least one (1) Mortgage Credit Certificate prior to the expiration date, a pro-rata portion of the deposit will be forfeited equal to the same percentage ratio as the amount of unused Allocation bears to the amount of awarded Allocation unless the Committee determines there is good cause to return all or part of the deposit. If 80% or more of the Allocation is used to issue bonds or issue at least one (1) Mortgage Credit Certificate prior to the expiration date, a full refund of the performance deposit will be authorized.

~~(b) If an Applicant issues or converts at least 80% of the Allocation awarded, the Committee shall consider revising the original award of Allocation at the next scheduled CDLAC meeting to reflect the amount issued. Applicants whose awards are amended to reflect the amount issued shall not be subject to any forfeiture of deposit as provided in subdivision (a) of this section.~~

(c) Applicants bear the risk of forfeiting all or part of their performance deposit if the Allocation is not used in accordance with the conditions and/or timeframes set forth in the Committee Resolution.

(d) The Applicant shall remit all forfeited performance deposits to the Committee within thirty (30) days of receipt of an invoice issued by the Committee.

Note: Authority cited: Section 8869.94, Government Code. Reference: Section 8869.84(c), 8869.84(e), and 8869.86(c)(3) Government Code.

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)
915 Capitol Mall, Room 311
Sacramento, CA 95814
(916) 653-3255

CERTIFICATION OF THE _____ (**Applicant**)
REGARDING AN APPLICATION FOR QUALIFIED PRIVATE ACTIVITY BOND ALLOCATION

In connection with the following Qualified Private Activity Bond Application:

APPLICANT:

AMOUNT OF ALLOCATION REQUESTED: \$

PROJECT NAME/PROJECT TYPE:

the undersigned officer of the _____ (**Applicant**) hereby certifies as follows:

1. I, _____ (Name), am the _____ (Title) of the _____ (**Applicant**), and am duly authorized to make the deposit required below.
2. The _____ (**Applicant**) has collected and has placed on deposit in an account in a financial institution \$_____, _____ dollars (write out dollar amount in words), which **equals one half of one percent** of the amount of the Qualified Private Activity Bond Allocation being requested, **not to exceed \$100,000**.
3. The deposit will be held until receipt of a written notification from the California Debt Limit Allocation Committee that the deposit is authorized to be released or forfeited, in whole or in part, pursuant to Article 5 of Chapter 1 of the Committee's Regulations.
4. To the extent that any portion of the deposit is forfeited, the Applicant agrees to send the required amount in a check made payable to "The California Debt Limit Allocation Committee." Such check shall be mailed to the Committee at the address noted above immediately upon receipt of the written notification from the Committee.
5. The undersigned has read the Regulations of the California Debt Limit Allocation Committee and understands that if a Qualified Private Activity Bond Allocation is not used for the purpose for which it was granted, the performance deposit must be fortified to the Committee.

Signature of Senior Official

Print or Type Name

Title

Date

1. Each Applicant for a Qualified Private Activity Bond Allocation must submit evidence to the Committee that it has on deposit in an account in a financial institution an amount **equal to one half of one percent** of the amount of Qualified Private Activity Bond Allocation being requested, **not to exceed \$100,000**. Applicants are advised to read Article 5 of Chapter 1 of the Committee's Regulations.
2. The Performance Deposit Certification Form (see other side) must be filed with the Committee in conjunction with the filing of an Application and by the Application Deadline.
3. The Committee will authorize release or require forfeiture of the deposit as follows:
 - a. If the Committee provides no Allocation, or grants an amount lower than requested by the Applicant, the Committee will authorize release of the deposit or release of a pro rata amount of the deposit so that only one-half of one percent (0.5%) of the Allocation granted is on deposit;
 - b. If the Applicant uses only a portion of the Allocation granted to issue bonds (or convert the Allocation to mortgage credit certificate authority), the Committee will authorize the release of the deposit in accordance with the conditions imposed at the time of Allocation. The Committee will approve the Allocation with the deposit fully refundable if ~~100% or more of the Allocation is used to issue bonds; or in the case of a Draw-down Bond Issuance, the minimum amount of Allocation is used to issue bonds.~~ If less than 80% of the Allocation is used to issue bonds, the refundable performance deposit will be pro-rated; or For Mortgage Credit Certificate Programs, if the Allocation is converted to mortgage credit certificate authority and at least one mortgage credit certificate is issued, the performance deposit will be refunded in full.
 - c. If the Applicant does not use any of the Allocation to issue bonds (or convert the Allocation to mortgage credit certificate authority), the entire deposit will be forfeited; and
 - d. If the Applicant or the Project Sponsor withdraws the Application in writing prior to the Committee's consideration of the Application, the performance deposit shall be automatically released and no written authorization from the Committee shall be necessary.
4. If the Applicant forfeits all or a part of a deposit pursuant to Article 5 of Chapter 1 of the Committee's Regulations, the Applicant shall send the required amount to the Committee in a check made payable to "The California Debt Limit Allocation Committee". Amounts received will be deposited in the Committee's Fund.
5. Project Sponsors bear the risk of forfeiting all or part of their performance deposit if the Allocation is not used in accordance with the conditions and timeframes set forth in the Committee Resolution.