



CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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Sean L. Spear

To: CDLAC Committee Members

From: Sean L. Spear, Executive Director

Date: December 10, 2014

RE: Revised Enforcement of CDLAC Compliance Monitoring Requirements

Background

Under the federal Internal Revenue Code (IRC), Issuers and Project Sponsors have varying levels of responsibility for confirming that tax-exempt private activity bond proceeds are used for qualifying purposes to deliver the intended public benefits under the law. For the most part, there are minimal ongoing monitoring responsibilities for the parties once the intended project or asset purchase is completed and all the bond proceeds have been expended. A notable exception to this is the Qualified Residential Rental Program (QRRP) and its ongoing requirement that only qualifying households occupy the bond-financed residential units. In addition to the federal IRC requirements, there are a number of additional State-imposed public benefit and administrative requirements for volume cap-governed private activity bond projects, memorialized in the CDLAC Regulations and the individual CDLAC Award Resolutions.

To insure compliance with the IRC and CDLAC requirements, the Committee incorporated the Compliance Certification Form (“QRRP Compliance Certification”) into the CDLAC QRRP project resolution as an ongoing reporting requirement in 2000. As noted in the QRRP resolution, Project Sponsors were required to provide the form on the anniversary of the Bond closing date, or when reasonably requested by the Committee. This reporting information was collected and logged throughout the calendar year with a low percentage of Project Sponsor compliance.

In 2007, the Committee began a more aggressive effort to ensure annual reporting. For the first time, a letter was mailed to the Applicant (Issuer) of each non-compliant QRRP project indicating that it was both the responsibility of the Issuer and Project Sponsor to ensure the terms and conditions of the Committee Resolution were met. The letter also stated that the outstanding certification was required to be submitted within 45 days of the notice to ensure compliance and avoid possible penalties. This was part of CDLAC’s compliance reporting process until 2011.

In 2011, staff developed an Annual Applicant Public Benefits and Ongoing Compliance Self Certification (“Self-Certification”) requirement that would provide confirmation that the applicable initial and on-going public benefits of not only QRRP projects, but all CDLAC projects and programs were being adequately tracked and accounted for by the Issuer. Again, given the minimal ongoing IRC-based requirements for non-QRRP projects, the Self-Certification essentially just asked the Issuers if they: 1) knew of any ownership or usage changes to the projects; and 2) knew of any violation of the CDLAC Resolution.

As instructed in the Self-Certification, the Issuer would now be responsible for collecting and forwarding the Project Sponsor’s complete QRRP Compliance Certification. Although an Issuer would be responsible for collecting Self-Certifications for all projects dating back to 1990, QRRP Compliance Certifications would only be required for those dating back to 2000.

On July 5, 2011, CDLAC staff conducted a publicized stakeholders’ meeting to discuss the proposed Issuer Self Certification regulation requirements. The Issuers present expressed general concern regarding the proposed deadline of March 1, 2012 for the Self-Certification submittal. Those with large portfolios were particularly concerned that the deadline would not provide the time necessary to verify all project information. In response, staff modified the proposed text to include a one-time extended deadline of September 1, 2012 for all pre-2011 bond issuance Projects. At this meeting, Issuers also indicated that historically, they had performed limited monitoring of Project public benefits and that for high volume Issuers, fulfilling the self-certification requirement would take considerable time and effort on their part. Nevertheless, CDLAC concluded that confirmation of the legal usage of the bond proceeds and compliance with the CDLAC Resolutions would more importantly benefit the Issuers by presenting the opportunity to identify and address any issues before a potential default and/or IRS Examination would occur. Further, after the initial year’s work of re-establishing sometimes long-dormant contact with the project sponsors, the work required in subsequent years would be much easier since the Issuers would only be seeking any update to information that they already had on-hand.

On December 9, 2011, the following proposed regulations incorporating the Issuer Self Certification requirement were approved by the Office of Administrative Law:

Section 5144: Annual Applicant Public Benefits and On-going Compliance Self Certification. All Projects that receive an Allocation shall be monitored for compliance with the terms and conditions of the Committee Resolution by the Applicant (Issuer). The Applicant shall complete and submit the Annual Applicant Public Benefits and On-going Compliance Self Certification provided on the Committee website certifying whether or not the Project meets the terms and conditions of the Committee Resolution. The self-certification must be submitted by the Applicant to the California Debt Limit Allocation Committee no later than March 1 of each year (or at such other time as requested by the Committee). For calendar year 2012 only, Issuers shall submit self-certifications for pre-2011 bond issuances no later than the extended deadline of September 1, 2012. The requirement shall be enforceable by the Committee through an action for specific performance or other available remedy.

CDLAC expects the Self-Certification and QRRP Compliance Certification, when applicable, to be submitted by March 1st of each year. After ninety days, which is typically the amount of time it takes CDLAC staff to review the certifications that have been submitted, a non-compliance letter is sent to all Applicants that have not submitted one (or for many QRRP projects, both) of the required certifications for each of their projects.

Discussion

Since the implementation of the self-certification requirement, Applicant response has gradually improved. Staff understands that many Issuers were required to develop first-time compliance programs in order to meet this obligation. To-date, CDLAC has tracked three reporting deadlines (program years 2012, 2013, and 2014) for **3,163 projects**.

Below is a performance breakdown for 2014:

- As of the March 1, 2014 deadline, CDLAC received certifications for a total of 1,577 projects
- As of May 1, 2014, CDLAC received certifications for a total of 2,200 projects
- On June 24, 2014, Non-Compliance letters were mailed to 131 Issuers listing a total of 963 non-compliant projects (this included instances where one or both certifications were missing or where the certification(s) provided was incomplete)
- After the Non-compliance letters were mailed, CDLAC received additional certifications for 676 projects
- The current number of projects with completed certifications is 2,886 (leaving 277 outstanding).
- 69 Issuers still have certifications outstanding with 21 Issuers having never reported since the Issuer compliance requirement was implemented three years ago
- Issuers with the most outstanding certifications as of today are as follows:
 - City of Los Angeles = 45 projects (26% of post-2001)
 - California Statewide Communities Development Authority = 17 projects (3% of post-2001 projects)
 - County of Orange = 16 projects (100% of post-2001 projects)

Additional Compliance Options

At this point, CDLAC staff believes we have exhausted the options available for insuring voluntary compliance by the Issuers with the self-certification requirements. After three (3) years of operation, there remains a notable amount of non-compliance (16%), with a set of Issuers who have not responded at all.

CDLAC staff believes there are four (4) options available:

1. Continue to send reminder letters to the non-compliant Issuers seeking their voluntary compliance;
2. Publish the list of non-compliant Issuers to heighten the level of awareness of the Issuers and the broader development community, with mention that additional enforcement actions may be contemplated by CDAC at a later date;
3. Subject the applications of all non-compliant Issuers to Negative Points for failure to comply with the CDLAC Resolution (specifically, for failure to comply with CDLAC Regulation Section 5144); and/or
4. Bar non-compliant Issuers from submission of applications until said Issuer is compliant with all CDLAC resolutions and regulations.

Since the utilization of negative points and debarment under the current CDLAC Regulations are currently limited to project sponsor non-compliance, Options 3 and 4 above would first require a change to the regulations to allow enforcement against an Issuer as well.

Request of the Committee

To address this compliance issue, CDLAC staff is seeking policy guidance from the Committee as to the possible next steps.