

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

**May 17, 2017**

*REVISED*

**Approval of a Resolution to Change Compliance Reporting Status of Projects for Certain Qualified Residential Rental Project Programs (QRRP) and Non-QRRP Programs**  
**(Agenda Item No. 5)**

**ACTION:**

Approval of a resolution to change the compliance reporting status of projects for certain Qualified Residential Rental Project Programs (QRRP) and Non-QRRP Programs.

**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 state law and, additionally, in the CDLAC Regulations and the individual CDLAC Award Resolutions.

On December 9, 2011, the Office of Administrative Law approved an Issuer reporting requirement, the Annual Applicant Public Benefits and Ongoing Compliance Self Certification (“Self-Certification”), which 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. CDLAC’s regulatory verbiage reflects all projects that have received an allocation, and are within an existing regulatory period or compliance period, shall be monitored for compliance. CDLAC’s interpretation of this provision has been to require Issuers of all QRRP projects to be monitored for the compliance period outlined in the CDLAC Committee Resolution.

It has also been CDLAC’s practice, although most non-QRRP projects are not subject to a CDLAC-imposed regulatory or compliance period, to require ongoing reporting for all non-QRRP projects until it can be determined that the bonds have been redeemed. Given that non-QRRP projects are not subject to any long-term CDLAC or federal regulatory period, and that the majority of public benefits associated with the resources are bestowed upon project completion, CDLAC has wanted to retain the ability to ascertain information about project use and default events that might threaten the tax-exemption of the bonds (Qualifying Default Event). Although this has been identified by the Committee as important information to retain, requiring the Issuers to solicit this information every year from the Project Sponsors is not the most efficient way to ensure consistency of the information CDLAC is receiving. In its 2016 regulatory revisions, the Committee addressed this issue for all projects receiving allocation in 2017 and going forward. Specifically, CDLAC was included in the noticing provisions incorporated into the bond documents and Issuers are now required to notice CDLAC in the event of a change in use or Qualifying Event of Default. These notices replace the ongoing annual reporting requirement. This has significantly reduced the amount of annual reporting necessary by an Issuer and Sponsor but still facilitates CDLAC’s ability to receive the pertinent information.

CDLAC staff is seeking approval from the Committee to remove all QRRP projects from reporting status for which a regulatory or compliance term is excluded from the respective resolution. This will include all projects that received allocation prior to 2000. Additionally, CDLAC staff is seeking approval from the Committee to remove all Non-QRRP projects from reporting status for which a regulatory or compliance

term is excluded from the respective resolution after the implementation of the 2012 Issuer reporting requirements.

Qualified Residential Rental Program:

Prior to 2000, no QRRP project resolution included a regulatory or compliance period. CDLAC has made diligent efforts over the last two years to reach out to Non-Compliant QRRP Issuers of pre 2000 deals to explain their reporting requirements. Issuers that are non-compliant and issued during this time are generally not aware that they are subject to the reporting requirements that went into place in 2012 nor are they active in the program any longer. Reaching out to this subset of non-compliant issuers has taken a significant amount of CDLAC resources with very little result. Given the only repercussions for non-compliance have to do with access to additional allocation, CDLAC has sought legal counsel regarding ways in which it could compel compliance. It has been determined by CDLAC's legal counsel that for projects which received allocation prior to the implementation of the 2012 reporting requirement, CDLAC has no ability to enforce requirements beyond those incorporated into the resolution granting allocation for the projects. Requirements that are only present in the staff summaries are not enforceable as they are not part of the documentation that precedes with the deal. Given CDLAC's inability to enforce the requirement and the need to allocate staff resources in a prudent manner, CDLAC staff requests that the Committee approve a resolution clarifying that these pre 2000 projects can be placed in non-reporting status. It should be noted that the inability of CDLAC to actively enforce the monitoring of this portfolio of projects does not obstruct other local, state and federal governments from monitoring and enforcing like requirements. In most instances, multifamily projects also received an allocation of tax credits from the Tax Credit Allocation Committee (TCAC) and continue to be regulated by TCAC.

Non-Qualified Residential Rental Programs:

Although CDLAC has required non-QRRP projects to provide compliance reporting, CDLAC has not embedded a compliance period or regulatory period into most non-QRRP resolutions apart from some past Industrial Development Bond (IDB) projects. CDLAC has made diligent efforts over the last two years to reach out to Non-Compliant Non-QRRP Issuers that issued bonds prior to the implementation of the reporting requirement. Issuers that are non-compliant are generally not aware that they are subject to the reporting requirements that went into place in 2012, nor are they active in the program any longer. Reaching out to this subset of non-compliant issuers has taken a significant amount of CDLAC resources with little result. As in the QRRP arena, given that the only repercussions for non-compliance have to do with access to additional allocation, CDLAC has sought legal counsel regarding ways in which it could compel compliance. For projects that received allocation prior to the implementation of the 2012 reporting requirement that have no regulatory or compliance period, it has been determined by the CDLAC's legal counsel that CDLAC has no ability to enforce the 2012 Issuer reporting requirements. Given CDLAC's inability to enforce the requirement and the need to allocate staff resources in a prudent manner, CDLAC staff requests the Committee approve a resolution clarifying that projects receiving allocation prior to the 2012 Issuer reporting requirement be placed in non-reporting status. It should be noted that the inability of CDLAC to actively monitor this portfolio of projects does not obstruct other local, state and federal governments from monitoring and enforcing like requirements.

**STAFF COMMENTS:**

Given that CDLAC has no ability to enforce requirements beyond those incorporated into the resolution, staff recommends removing all pre-2000 QRRP projects from reporting status. Additionally, given that the Issuer reporting requirement was established in CDLAC regulation December 9, 2011 and CDLAC does not have the ability to enforce requirements in a retroactive manner unless a regulatory or compliance period was incorporated into the original resolution, Staff recommends removing all pre-2012 non-QRRP projects from an active status in the CDLAC Compliance Reporting System. A CDLAC resolution will memorialize this action and a copy of the resolution will be placed in the permanent file of all effected projects.

**RECOMMENDATION:**

Staff recommends approval of a resolution to change the compliance reporting status of projects for certain Qualified Residential Rental Project Programs (QRRP) and certain Non-QRRP Programs as noted above.

*Prepared by Misti Armstrong*