

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

August 26, 2009

**APPROVAL OF THE PROPOSED RECOVERY ZONE FACILITY BOND-RELATED
REVISIONS TO CDLAC PROCEDURES**

(Agenda Item No. 5)

ACTION: Approve proposed Recovery Zone Facility Bond and Recovery Zone Economic Bond Procedures as modified since presented to the Committee at the July 22, 2009 meeting. (see ATTACHMENT A and ATTACHMENT B).

BACKGROUND: CDLAC received comment from Dan Bronfman of Growth Capital Associates, Inc., Mona Dmitrenko, Executive Director of California Enterprise Development Authority (CEDA) and Miguel A. Santana, City Administrative Officer of the City of Los Angeles regarding the proposed Recovery Zone Facility Bond Procedures that were presented to the Committee at the July 22, 2009 meeting.

General Comments and Staff Responses:

Joint Power Authorities

Dan Bronfman and Mona Dmitrenko suggested expanding the proposed procedures to allow Joint Power Authorities and other conduit issuers to issuer on behalf of the local governments.

Staff's response: Staff has revised the proposed procedures by adding the defined term "Qualified Recovery Zone Bond Issuer" and deleting the "Local Issuer" definition. The definition that follows has been taken directly from 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.

Reallocation Procedures

Dan Bronfman suggested fully developing procedures and a review process with an allocation priority system and to seek input from the various constituents that will utilize the programs.

Staff's response: Staff believes is would be premature to begin developing a process to re-allocate the Recovery Zone Facility and Economic Bonds. 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 governments. However, after the initial waivers of allocation have been received staff will develop reallocation procedures to present the Committee. Staff will seek input from potential Recovery Zone Bond applicants and constituents at that time.

CDLAC Authority to Establish Reporting Requirements and a Waiver Process

Miguel A. Santana, City of Los Angeles has requested that the required Plan of Issuance be removed from the proposed procedures. The City has stated that the Plan of Issuance CDLAC has presented is unreasonable and is not mandated by the ARRA legislation. In keeping with the spirit of ARRA, Mr. Santana proposed in the 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 City of Los Angeles would provide the amount of bonds being issued, an issuance date and project name.

Mr. Santana also opposed the deadline of July 1, 2010 as the Cities and Municipalities final date to provide a Plan of Issuance. Mr. Santana indicated that the ARRA legislation does not mandate the waiving of bonds but allows municipalities to electively waive any portion of the allocation at their discretion.

Staff's response: Counsel of the State Treasurer's Office has confirmed that the Committee is not prohibited from establishing issuance deadlines or reporting requirements that will ensure the effective utilization of the ARRA bond allocations assigned to California.

Technical Comments:

Staff received technical comments from Dan Bronfman. These changes have been incorporated into the proposed procedures.

RECOMMENDATION: Approve proposed Recovery Zone Facility Bond and Recovery Zone Economic Bond Procedures as modified and attached.

Prepared by Crystal Alvarez.

ATTACHMENT – A**Section 2: Recovery Zone Bond Definitions:**

“Allocation Waiver” – An affirmative election by a county or municipality to return all, or a portion of its allocation to CDLAC for reallocation. The waiver may be made at anytime, however, a county or municipality planning to waive its allocation is encouraged to do so at the earliest possible time to allow reallocation of the RZFBs. In addition, CDLAC strongly urges counties and municipalities to include waivers in their Plans of Issuance for any allocation not covered by the plan.

“Deemed Waived” – Allocation that after July 1, 2010 has not been issued or included in a notice of intent to issue is automatically deemed returned to CDLAC for reallocation. Allocation included in a Notice of Intent to Issue may be deemed waived if not issued by September 30, 2010, or other date set forth in the timeline included in the Notice of Intent to Issue. In determining whether allocation included in a Notice of Intent to Issue is deemed waived, the Executive Director will look to the progress the county or municipality has made toward issuance, and the demand for waived allocation.

“Qualified Recovery Zone Bond Issuer” – Eligible issuers of Recovery Zone Bonds include States, political subdivision as defined for purposes of code 103, and entities empowered to issue bonds on behalf of any such entity under rules similar to those for determined whether a bond issued on behalf of a State or political subdivision constitutes an obligation of the State or political subdivision for purposes of code 103 and 1.103-1(b) of the Income Tax Regulations. Further, eligible issuers include otherwise-eligible issuers in conduit financing issues (as defined in code 1.150-1(b)). An eligible issuer may issue Recovery Zone Bonds based on a volume cap allocation received by the eligible issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of the bonds.

“Net Proceeds” - A minimum of 95% of net proceeds (as defined in section 150(a) (3)) are to be used for “recovery zone property” per section 1400-U-3(b)(1)(A). ARRA Bonds can not be used to purchase land

“Notice of Intent to Issue” – A report due to CDLAC not later than July 1, 2010 from a county or municipality receiving allocation, including a recovery zone resolution or proposed resolution, a description of the project to be funded within the recovery zone and project issuance timeline. Any allocation received by a county or municipality not included in the notice of intent to issue will be deemed waived.

“Plan of Issuance” – A report due to CDLAC not later than January 31, 2010 from a county or municipality receiving allocation including a recovery zone resolution or proposed resolution and a description of the projects to be funded within the recovery zone. In addition, counties and municipalities are encouraged to include a project issuance timeline as part of the Plan of Issuance

“Qualified Business”- any trade or business except as defined in section 168 (e)(2) and section 144(c)(6)(B):

- a) The rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not a residential rental property (as defined in section 168 (e)(2))

b) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B)

“Qualified Economic Development Purpose” – Expenditures for purposes of promoting development or other economic activity in a recovery zone: including public infrastructure and construction of public facilities, and expenditures for job training and educational programs.

“Recovery Zone” – An area designated by the local issuing entity per section 1400U-1(b) defined as meeting one of the following criteria:

- 1) Significant poverty, unemployment, rate of home foreclosures or general distress
- 2) Economically distressed because of military base closure or realignment
- 3) An area which has been designation as an empowerment zone or a renewal community

“Recovery Zone Economic Development Bonds”- Is a Build America Bond issued before January 1, 2011 the Issuer shall receive a credit from the Treasury Department equal to 45% of the interest payment.

“Recovery Zone Facility Bonds”- The American Recovery and Reinvestment Act (AARA) of 2009 created a new category of bonds that will be treated as exempt facility bonds for the purpose of code section 142, these bonds are limited to issuance in 2009 and 2010

“Recovery Zone Property” – Depreciable property subject to code section 168 or section 179:

Recovery zone property must be depreciable property if:

- a) The property was constructed, reconstructed, renovated or acquired by purchase (as defined in section 179 (d)(2)) by the taxpayer after the date on which the “recovery zone” took effect.
- b) The original use of which in the recovery zone commences with the taxpayer; and
- c) Substantially all of the use of the property is in the recovery zone and is in the active conduct of a “qualified business” by the taxpayer

“Report of Action Taken” – A report due to CDLAC from any county or municipality not more than three days following the issuance of RZFBs providing notice of the date and amount the issuance and the designated recovery zone in which the proceeds will be used.

“Sunset Date” –All bonds must be issued by January 1, 2011

Section 23. Recovery Zone Facility and Economic Development Bond Programs

RECOVERY ZONE FACILITY BONDS (RZFB)

I. Minimum Requirements

CDLAC will have no immediate role in the administering of the Recovery Zone Bond allocation to counties and large municipalities. Interested parties should contact localities directly for program assistance. An entity utilizing Recovery Zone Facility Bond Program (RZFB) must meet the following requirements:

- A. The local issuing entity must be a county or municipality (population of more than 100,000) with a significant decline of employment from 2007 to 2008. Counties and municipalities that have been excluded by The American Recovery and Reinvestments Act of 2009 are: Alpine, Colusa, Del Norte, Fresno, Imperial Inyo, Kern, Lassen, Madera, Marin, Mariposa, Merced, Modoc, Monterey, Napa, San Benito, San Diego, San Luis Obispo, San Mateo,

Santa Barbara, Santa Clara, Santa Cruz, Sierra, Sutter, Tehama, Tulare, Tuolumne, and Yuba. *The following cities have been excluded:* Bakersfield, Chula Vista, Daly City, Escondido, Fresno, Oceanside, Salinas, San Diego, San Francisco, San Jose, Santa Clara, Sunnyvale, and Visalia.

- B. The local issuing entity must designate the area that bonds will be utilized in, as a Recovery Zone to include the basis for the designation per ARRA section 1400-1 (b).

II. Reporting Requirements

- A. CDLAC will require a Report of Action form be submitted to CDLAC upon the issuance of bonds not more than three days following the issuance of RZFBs and RZEDBs. This report should include the date and amount of the issuance and the designated recovery zone in which proceeds will be used.
- B. Counties and large municipalities receiving RZFB allocation must 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 projects to be funded. In addition counties and municipalities are encouraged to include a project issuance timeline as part of the Plan of Issuance.
- C. 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.

RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS (RZEDB)

I. Minimum Requirements

CDLAC will have no immediate role in the administering of the Recovery Zone Bond allocation to counties and large municipalities. Interested parties should contact localities directly for program assistance. An entity utilizing Recovery Zone Economic Development Bond Program (RZEDB) must meet the following requirements:

- A. 1. The local issuing entity must be a county or municipality (population of more than 100,000) with a significant decline of employment from 2007 to 2008. Counties and municipalities that have been excluded by The American Recovery and Reinvestments Act of 2009 are: Alpine, Colusa, Del Norte, Fresno, Imperial Inyo, Kern, Lassen, Madera, Marin, Mariposa, Merced, Modoc, Monterey, Napa, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Sutter, Tehama, Tulare, Tuolumne, and Yuba. *The following cities have been excluded:* Bakersfield, Chula Vista, Daly City, Escondido, Fresno, Oceanside, Salinas, San Diego, San Francisco, San Jose, Santa Clara, Sunnyvale, and Visalia.
- 2. The local issuing entity must designate the area that bonds will be utilized in, as a Recovery Zone to include the bases for the designation per ARRA section 1400-1 (b).
- B. The maximum face amount of bonds which may be designated by an issuer shall not exceed the amount of the recovery zone economic development bond limitation awarded to such issuer under section 1400U-1.
- C. The proposed use of bond proceeds must meet the following requirements per section 1400U-2 (b)(1):

- D. 100% percent of the available project proceeds (i.e. sale proceeds, less cost of issuance not to exceed 2%, plus investment earnings), less the amount funding a reasonable reserve fund, must be used for one of more following qualified economic development:
 - 1. Capital expenditures paid with respect to property located in such zone,
 - 2. Expenditures for public infrastructure and construction of public facilities, and
 - 3. Expenditures for job training and education programs

II. Reporting Requirements

- A. CDLAC will require a Report of Action form be submitted to CDLAC upon the issuance of bonds not more than three days following the issuance of RZEDBs. This report should include the date and amount of the issuance and the designated recovery zone in which proceeds will be used.
- B. Counties and large municipalities receiving RZFB and RZEDB allocation must 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 projects to be funded. In addition counties and municipalities are encouraged to include a project issuance timeline as part of the Plan of Issuance.
- C. 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.



STATE OF CALIFORNIA

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ATTACHMENT - B

RECOVERY ZONE BOND ALLOCATION
WAIVER FORM

As the Authorized Representative of the _____ (the “Local Government“),

I hereby represent to CDLAC that the Local Government will be unable to use all or a portion of its designated Recovery Zone Bond Allocation, and hereby waives its right to use all or a portion of its designated Recovery Zone Bond Allocation in the amount of \$_____.

Signature of the Local Government’s Senior
Official

Print Name

Title

() _____

Contact number

Date _____