

# California Debt Limit Allocation Committee (CDLAC)

**Jesse Unruh Building  
915 Capitol Mall, Room 587  
Sacramento, CA 95814**

## **November 17, 2010 Meeting Minutes**

### **1. Call to Order and Roll Call**

Bettina Redway, Chairperson, called the California Debt Limit Allocation Committee meeting to order at 1:15 p.m.

Members present were Cynthia Bryant for Governor Arnold Schwarzenegger, Bettina Redway for State Treasurer Bill Lockyer.

Advisory Members present were Howard Iwata for Cal-HFA.

The chairperson declared a quorum.

### **2. Approval of the Minutes of the September 22, 2010, Meeting**

Cynthia Bryant made a motion to approve the minutes of the September 22, 2010, meeting. Bettina Redway seconded the motion. There were no objections and the September 22, 2010 minutes were approved by unanimous vote.

### **3. Executive Director's Report (Informational Item)**

CDLAC Executive Director, Sean L. Spear reported:

- Staff proposed regulations to be submitted to OAL will be discussed this meeting
- The CDLAC 2011 meetings have been changed to the 3<sup>rd</sup> Wednesday of the month and will begin at 11:00am.
- The Extenders Bill is held up in Congress and it is unknown if the Recovery Zone Program will be extended.

There were no questions or comments.

### **4. Consideration of and Approval to Proposed Permanent CDLAC Regulations for Submittal to the Office of Administrative Law**

Sean Spear reported that as of July 29, 2010, the California Debt Limit Allocation Committee (Committee) has been operating under approved emergency regulations that set forth the priorities and process by which potential issuers of qualified private activity bonds may apply for, and be awarded, an allocation of the annual state ceiling in accordance with the provisions and requirements of 26 U.S.C. Sections 141, et seq., as amended, and California Government Code Sections 8869.80, et seq., as amended. As a part of the process to implement permanent regulations, on September 22, 2010, the Committee approved draft revisions to the Emergency Regulations and made them available for public review and comment. Staff accepted comments during a 30-day public comment period commencing Wednesday September 22, 2010 and ending October 22, 2010. The draft revisions resulting from this public comment review would be incorporated into the draft permanent regulations to be submitted to the Office of Administrative Law (OAL) for final review and OAL will have a 45 day public comment period before approval.

The revisions under consideration concerned the specific additional items needed for staff to thoroughly analyze and underwrite non-credit enhanced public sale applications, as well as confirm a set of minimum approval conditions for all such transactions. The specifics of the proposed revisions were presented at the September 22<sup>nd</sup> CDLAC Meeting, as well as published with the notice of public comment hearing issued by CDLAC in October.

Mr. Spear stated that staff received two (2) written comments on the proposed language and heard from three (3) people who attended the October 20<sup>th</sup> Public Hearing. Although many of the recommendations were not accepted outright, staff did recommend revisions that addressed most of the directly-related concerns that were expressed.

In addition, staff also conducted its own evaluation of the Emergency Regulations to ensure that all the minimum threshold requirements and evaluation criteria relating to the review of applications were consistent and clear. This review resulted in a set of recommended revisions to a number of ad hoc sections of the CDLAC Regulations; each of which were made a part of the final draft revisions.

Mr. Spear advised that the staff recommends the approval of revisions to the Committee's draft Permanent Regulations and their submission to OAL for approval and implementation.

The Chair recognized the arrival of Chris Westlake, representing advisory member HCD.

James Hamill, CSCDA Program Manager requested to comment. His concern was the bond default provision related to issuers. The concern is that the default issue has been minimal and the concern is the numbers proposed appear to be arbitrary. They cannot control what a company does once the bonds are issued and they should not be penalized. It would limit their issuing capabilities. All other changes are well deserved.

The Chair reminded Mr. Hamill that the proposed changes will be submitted for a 45 day public comment period by the OAL.

There were no other comments or questions. Cynthia Bryant moved for approval. Bettina Redway seconded the motion. The motion was unanimously approved.

#### **5. Consideration and Approval of an Issuance Date Extension for Various Qualified Residential Rental Projects**

Sarah Lester reported that the Committee received 6 issuance date extensions requests for the following projects:

##### **Lion Creek Crossings Phase IV Apartments Project (10-018)**

The bond issuance deadline is currently is November 17, 2010. The extension request is for December 31, 2010.

##### **Harrison Street Apartments Project (10-023)**

The bond issuance deadline is currently November 17, 2010. The extension request is for December 15, 2010.

##### **Casa Grande Apartments Project (10-027 & 10-074)**

The bond issuance deadline is currently November 22, 2010. The extension request is for December 22, 2010.

##### **Georgia Street Apartments (now City View Apartments) (10-043)**

The current bond issuance deadline is November 17, 2010. The extension request is for December 17, 2010.

##### **Oak Valley Apartments Project (10-052)**

The current bond issuance deadline is December 6, 2010. The extension request is for December 31, 2010.

##### **Fanita 48 Family Apartments**

The current bond issuance deadline is November 17, 2010. The extension request is for December 31, 2010.

Ms. Lester advised that the Staff recommends the approval of the issuance date extensions as previously described.

There were no questions or comments. Cynthia Bryant moved for approval. Bettina Redway seconded the motion. The motion was unanimously approved to extend the issuance deadlines as recommended.

#### **6. Consideration and Approval of a Revision to Various Qualified Residential Rental Projects Resolutions**

Richard Fischer reported that the Committee has awarded private activity bond allocation to multiple Projects that have recently issued their bonds. However, some of these Projects did not issue 100% of the awarded allocation amount, yet greater than 80% of the allocation awarded. Under Section 8869.84(e) of the California Government Code, for any awarded allocation amount not issued, a proportional share of the applicant/issuer's performance deposit shall be subject to forfeiture to CDLAC.

To avoid a forfeit, staff recommends revising the current CDLAC Resolutions for the following Projects to reflect the actual amount used.

- # 09-036 Toner Hills Apartments
- # 09-79 Kings Crossing Apartments
- # 10-20 Cynara Court Apartments
- # 10-28 Lake View Apartments I
- #10-29 Lake View Apartments II
- #10-31 Meadowview Apartments II
- #10-44 Vintage at Snowberry
- #10-54 Meadowview Apartments I Supplemental
- # ARRA-12 Mariani Packing
- #ARRA-19 Foster Dairy Farms Project
- #ARRA-29 Highland Hospital Acute Tower Supplemental

Mr. Fischer advised that Staff recommends approval of a revision to the CDLAC Resolutions for all projects noted above.

The Chair recognized the arrival of Cindy Aronberg representing State Controller John Chiang.

There were no questions or comments. Cynthia Bryant moved for approval. Cindy Aronberg seconded the motion. The motion was unanimously approved to revise the current CDLAC Resolutions for the described Projects to reflect the actual amount used.

#### **7. Consideration of a Request for Return of Forfeited Performance Deposit for the SolarPower Qualified Energy Conservation Bond Project, CDLAC Resolution ARRA-16**

Sean Spear reported that the intent of the performance deposit is to insure that bond issuers make use of the limitedly available private activity bond allocation awarded to them for a given project or program. Once allocation is provided by the Committee, the bond issuer must make all effort to complete the issuance of the bonds or risk losing their deposit. Section 8869.84 (e) of the California Government Code states that if a bond issuer awarded private activity bond allocation from CDLAC ultimately issues bonds in an amount less than what was awarded by the Committee (or no bonds at all), then a proportional share of the performance deposit held for that issuance shall be forfeited to CDLAC. This potential loss of the performance deposit is clearly highlighted in the CDLAC Application Package, the CDLAC Regulations, and the individual Committee Approval Resolution Cover Letters.

For the May 26<sup>th</sup> reallocation round, the Qualified Energy Conservation Bond (QECB) Program received nine (9) complete applications for projects requesting a total allocation of \$306,587,710. However, there was only \$195,710,345 available in QECB allocation at that time; providing only enough allocation to award authority for the five highest scoring projects. The remaining four applications did not receive their requested amounts, and were placed on an allocation waitlist. The SolarPower project

(Resolution ARRA -16) received the highest score in that competitive round, and thus received the full amount of their \$58,713,103 request. CSCDA and the project sponsor, SolarPower, Inc. (SolarPower), were given the issuance deadline of August 24, 2010.

On August 10, 2010, CDLAC staff received a letter from SolarPower, both: 1) requesting the extension of the issuance deadline for their companion Recovery Zone Facility Bond (RZFB) allocation (Resolution ARRA-11); and 2) waiving (returning) the awarded QECB allocation and requesting the waiver of the forfeiture of the corresponding performance deposit. For both allocations, SolarPower cited the continuing difficulties in negotiating a final power participation agreement (PPA) with their intended client. In returning the QECB allocation (but not the RZFB allocation), SolarPower stated that there wouldn't be sufficient time to close this transaction.

Mr. Spear continued that subsequent to the receipt of the August 10<sup>th</sup> letter, CDLAC staff independently learned that there was an undisclosed federal tax credit eligibility issue for SolarPower's QECB project. CDLAC staff then sought confirmation from CSCDA staff, who confirmed this issue with SolarPower. On August 24, 2010, Mr. Spear denied SolarPower's request to waive the forfeiture of its performance deposit, as required under Section 7.V. of the previous CDLAC Procedures, Section 5054 of the current CDLAC Emergency Regulations, and Section 8869.84 (e) of the California Government Code.

On September 21, 2010, SolarPower sent another letter to CDLAC, both: 1) waiving (returning) the awarded RZFB allocation and requesting the waiver of the forfeiture of the corresponding performance deposit; and 2) providing further detail on the necessity for the return of its QECB allocation and reiterating its request to waive the forfeiture of that award's performance deposit. In the letter, SolarPower provided an explanation of the tax credit eligibility issue, and cited that as a contributing factor to their inability to issue the QECB allocation by the CDLAC-imposed issuance deadline. While the Mr. Spear approved the request to waive the forfeiture of the \$100,000 performance deposit associated with RZFB allocation (due to the PPA issue), Mr. Spear has maintained his earlier decision denying the waiver request for the QECB allocation.

Mr. Spear stated that there is no appeal process for performance deposit determinations; however, the Committee does have the ultimate authority under statute to make a final determination on whether or not a performance deposit can be returned to an applicant when no bonds are issued.

For a waiver to be approved, it is subject to two tests: 1) was the issue or event that prevented the issuance of the bonds unforeseen; and 2) was the issue or event wholly outside the control of the applicant and project sponsor. A request must pass both tests.

Mr. Spear continued that for the subject project, CDLAC only learned on its own that the federal tax credit conflict was the true issue impacting the financial feasibility of the project and causing SolarPower to return the awarded allocation. This critical issue was not disclosed in both the original application for the Committee to consider, nor later in the August 10<sup>th</sup> SolarPower letter explaining why the allocation needed to be returned. However, SolarPower has admitted that they were informed of this issue by both their tax advisors and bond counsel prior to the submission of the CDLAC application, but had hoped to receive a favorable clarification from the U.S. Treasury prior to the bond issuance deadline. This situation was later confirmed by SolarPower staff via a phone conversation on September 21<sup>st</sup> and in a follow-up letter dated that same day.

Given the facts associated with this waiver request, Mr. Spear determined that the request did not meet the first test (i.e. that the issue was unforeseen), but did meet the second test (i.e. that the issue was out of the control of the project sponsor). SolarPower was fully aware of the tax credit conflict and its potential to prevent the project from moving forward and using the QECB allocation. Since the request didn't meet the first test, the request was denied.

Mr. Spear went on to say that it should be noted that this project was awarded QECB allocation in a competitive round, with four (4) other worthy projects not receiving an allocation at that time. Once SolarPower did return their allocation, those four waitlisted projects did receive allocation; but only after a three month delay. If the tax credit issue had been disclosed, the Committee would have had the ability to consider its potential effect on the feasibility of the SolarPower bond transaction.

Mr. Spear advised that the Staff recommends the denial of the request to return the forfeited performance deposit for the SolarPower, Inc. American Recovery and Reinvestment Act – Qualified Energy Conservation Bond application (Resolution ARRA-16).

Representatives of Solar Power Inc. asked to address the Committee. Solar Power was represented by Jeff Pontius, EVP, and Joe Bedewi, CFO. Mr. Pontius explained they are requesting the refund of the deposit as no final agreement with the PPA could be reached; and in their estimation, the project was no longer viable. Given this, Solar Power decided to return the allocation. Mr. Pontius stated that he feels Solar Power followed the procedures and that this was out of their control and the performance deposit should be refunded.

Cindy Aronberg asked if the application addresses this issue. Sean Spear advised that there is a form that explains the need for the performance deposit and the potential of forfeiture and is signed by the applicant on behalf of the project sponsor, which the project sponsor has to issue the payment so they are aware of the conditions.

Cynthia Bryant asked why Solar Power did not disclose the tax issue. Mr. Pontius stated that his bond counsel advised they otherwise qualified for the QECB and that they had great hope that the tax conflict could be resolved with the U.S. Treasury Department. Counsel did not think there was a need to disclose, so there was no discussion of the issue in their application. They

felt it was a minor matter. However, they acknowledged that the tax conflict, in addition to the PPA delay, caused the project to become infeasible.

Cynthia Bryant moved for approval of the staff recommendation. Cindy Aronberg seconded the motion. The motion was unanimously approved to deny the request to return the forfeited performance deposit for the SolarPower, Inc. American Recovery and Reinvestment Act – Qualified Energy Conservation Bond application (Resolution ARRA-16).

**8. 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**

Sarah Lester stated that The Mixed Income Pool received two (2) applications for projects requesting a total allocation of \$81,247,016; The Rural Pool received one (1) complete application requesting an allocation of \$7,095,000; and the General Pool received eleven (11) complete applications requesting a total allocation of \$97,897,130.

In addition, the following applications exceed the \$30 million project cap per project imposed by Section 5232 of the CDLAC Regulations:

10-065	NoHo Senior Artists Apts.	\$32,587,016	CSCDA
10-090	Highland Point Apts.	\$48,660,000	CalHFA

Ms. Lester advised that the Staff recommends:

- 1) Approval of a waiver of the maximum allocation amount for the above Applications based on the demand for rental projects is such that, the maximum allocation amount limit is not warranted. Due to the lack of competition, there will be excess allocation for the current round; and
- 2) Approval of \$186,239,146 to fund all 14 QRRP projects.

There were no comments or questions. Cynthia Bryant moved for approval. Cindy Aronberg seconded the motion. The motion was unanimously approved to fund \$186,239,146 for 14 QRRP projects and approval of a waiver of the maximum allocation amount for the 2 requested projects. The projects and corresponding awarded amounts are as follows:

10-065	NoHo Senior Artists Colony Apartments (NIBP)	\$32,587,016
10-090	Highland Point Apartments (NIBP)	\$48,660,000
10-077	Jackson Hills Apartments (NIBP)	\$7,095,000
10-050	Village II Apartments (NIBP)	\$12,192,130
10-053	Providence Gardens Apartments (NIBP)	\$14,575,000
10-060	Eden Lodge Apartments (NIBP)	\$10,000,000
10-061	Rodeo Drive Meadows Apartments (NIBP)	\$8,000,000
10-063	Aster Place Apartments (NIBP)	\$5,000,000
10-067	636 El Camino Phase II Apartments	\$12,000,000
10-075	LA Pro I Apartments (NIBP)	\$13,115,000
10-080	Bellwood Park Apartments (NIBP)	\$7,150,000
10-081	Jerron Place Apartments (NIBP)	\$3,300,000
10-089	Westview Terrace Apartments (NIBP)	\$6,650,000
10-091	Village Meadows Apartments (NIBP)	\$5,915,000

**9. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Single Family Housing Programs and Awards of Allocation**

John Weir stated that there are no appeals and that the Committee received two (2) applications requesting their 2010 Fair Share Single Family Housing allocations for a total of \$74,161,447 for the issuance of Mortgage Credit Certificates; and one (1) application requesting \$25,000,000 in 2010 CalHFA/Cal-Vet Single Family Housing Pool allocation for the issuance of Mortgage Revenue Bonds under their Cal-Vet Mortgage Revenue Bond Program.

Mr. Weir stated that Staff recommends approval of \$99,161,447 to fund all three (3) programs in the Single Family Housing Program.

Cynthia Bryant moved for approval. Cindy Aronberg seconded the motion. The motion was unanimously approved. The programs and corresponding awarded amounts are as follows:

10-085	MCC Program	\$20,493,580
10-086	MCC Program	\$53,667,867
10-084	MRB Program	\$25,000,000

**10. Consideration of Appeals and Applications for a Re-Allocation of American Recovery and Reinvestment Act - Recovery Zone Facility Bonds and Awards of Allocation**

Crystal Alvarez stated that there were no appeals and the Recovery Zone Facility Bond (RZFB) Program received five (5) complete applications for projects requesting a total allocation of \$58,100,000.

Ms. Alvarez stated that the Staff recommends approval of \$58,100,000 in reallocated American Recovery and Reinvestment Act – Recovery Zone Facility Bond authority to fund five (5) projects.

There were no comments or questions. Cynthia Bryant moved for approval. Cindy Aronberg seconded the motion. The motion was unanimously approved to fund \$58,100,000 in reallocated American Recovery and Reinvestment Act – Recovery Zone Facility Bond authority to fund five (5) projects. The projects and corresponding awarded amounts are as follows:

ARRA-066	Fairplex Business Park Project (Tier 1)	\$9,000,000
ARRA-079	City of Huntington Beach Solar (Tier 1)	\$5,800,000
ARRA-080	SunPower Headquarters-RioRobles Project (Tier 2)	\$30,000,000
ARRA-072	Emmissions Testing Faciltiy Project	\$9,600,000
ARRA-075	DataSafe, Inc. Project	\$3,700,000

**11. Consideration of Appeals and Applications for a Re-Allocation of American Recovery and Reinvestment Act – Qualified Energy Conservation Bonds and Awards of Allocation**

Brady Hill reported that there are no appeals and that the Qualified Energy Conservation Bond Program received two (2) complete applications for projects requesting a total allocation of \$25,971,000.

Mr. Hill stated that the Staff recommends the approval of \$25,971,000 in reallocated American Recovery and Reinvestment Act - Qualified Energy Conservation Bond authority to fund the two (2) projects as mentioned above.

There were no questions or comments. Cynthia Bryant moved for approval. Cindy Aronberg seconded the motion. The motion was unanimously approved for \$25,971,000 in reallocated American Recovery and Reinvestment Act - Qualified Energy Conservation Bond authority. The projects and corresponding awarded amounts are as follows:

ARRA-074	City of Salinas Municipal Buildings Energy Consumption Reduction Project	\$1,605,000
ARRA-078	Santa Clara County Photovoltaic Project	\$24,366,000

**12. Consideration and Adoption of the Qualified Residential Rental Program Non-Competitive Application Process for 2011 Program Year**

Misti Armstrong reported that the staff recommends that the Committee approve and maintain an open application process for the 2011 Qualified Residential Rental Program (QRRP) year. This recommendation is made on the basis that the QRRP pool continues to be non-competitive in 2010 and is expected to be non-competitive for the 2011 program year. However, if at any time during the open application process the QRRP pool appears to become competitive, staff will return to the Committee with a recommendation to close the open application process and return to a competitive allocation round process.

Ms. Armstrong advised that the Staff recommends approval of an open, non-competitive application process for the Qualified Residential Rental Program for 2011.

There were no comments or questions. Cindy Aronberg moved for approval. Cynthia Bryant seconded the motion. The motion was unanimously approved for an open, non-competitive application process for the Qualified Residential Rental Program for 2011.

**13. Public Comment**

There were no public comments; however, Sean Spear wished to acknowledge the promotion of Brady Hill who will begin work at another committee within the Treasurer's Office. Mr. Spear highlighted Mr. Hill's accomplishments during his time with CDLAC, and thanked him for his service.

**14. Adjournment**

The meeting was adjourned at 2:05 p.m.