

CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

November 13, 2013

Consideration and Approval of Proposed CDLAC Regulations for Submittal to the Office of Administrative Law for Regular Rulemaking Consideration

ACTION:

Approve an update to the proposed CDLAC regulations regarding the Department of Finance (“DOF”) Final and Conclusive Determination letter (“Letter”).

BACKGROUND:

On May 15, 2013, the Committee approved proposed CDLAC regulations that among other changes included the addition of a “Final and Conclusive Determination Letter” regulation.

Since the emergency regulations approval, it has been found that DOF will not issue a Letter unless a particular enforceable obligation is required to be funded with funds from a successor agency’s redevelopment property tax trust fund (RPTTF). Affordable housing project enforceable obligations placed on a successor agency’s ROPS can be funded from any number of redevelopment-related sources that are not RPTTF. These might include funding from encumbered housing bond proceeds or Low and Moderate Income Housing Fund balances allowed to be retained by the successor agency under the Housing Fund Due Diligence Reviews prepared and approved pursuant to Health and Safety Code Sections 34179.5 and 34179.6. Additionally, there may be circumstances where a Letter may be unnecessary; such as when all funds for a subject project may have been fully disbursed as approved by DOF under a previous ROPS review. As a result, CDLAC staff has adjusted the language to broaden what CDLAC will allow as an acceptable form of communication from DOF.

The newly proposed language is as follows: “Those Qualified Residential Rental Pool Projects with redevelopment-related project financing subject to the approval of the Department of Finance (DOF) are required to have obtained a Final and Conclusive Determination letter, or other written communication from DOF stating that DOF does not issue, or concludes is unnecessary, a Final and Conclusive Determination for this form of redevelopment financing obligation, prior to submitting an application to the Committee.”

To assist CDLAC Applicants with quickly determining the type of DOF confirmation that will be required, DOF has assigned a designated staff person to review, process, and provide a determination on the applicability of the Letter in a specific case. Those projects for which a Letter is either not applicable or unnecessary will receive the appropriate written confirmation of this determination from DOF. This written confirmation may in turn be submitted to CDLAC for the purposes of meeting the requirements of Section 5190(b) of the CDLAC Regulations. However, if it is determined that a Letter is applicable, the Successor Entity must follow up with the submission of a formal Final and Conclusive Enforceable Obligation Request Form to DOF via their established process. Those applicants unable to obtain the proper written determination prior to submitting a CDLAC application will not be considered for an award of bond allocation.

RECOMMENDATION:

Staff recommends the approval of updated proposed CDLAC Regulation language for submittal to the Office of Administrative Law for regular rulemaking consideration.

Article 3. Minimum Requirements

Section 5190. Readiness. In its Application, the Project Sponsor must demonstrate its readiness to use the Allocation as set forth in this section.

(a) Demonstrated site control. The Applicant shall provide evidence that the Project site is at the time of Application submission within the control of the Applicant or Project Sponsor. A current title report, completed no more than ninety (90) days prior to Application deadline as provided in section 5030, shall be submitted with all applications for the purposes of this requirement.

(1) Site control may be evidenced by any of the following:

(A) The Applicant or Project Sponsor holds fee title as evidenced by the title report;

(B) An executed lease agreement or lease option for the length of time the Project will be regulated under this program between the Applicant or Project Sponsor and the owner of the subject property;

(C) An executed disposition and development agreement for the length of time the Project will be regulated under this program between the Project Sponsor and a public agency; or

(D) A valid, current, and enforceable contingent purchase and sale agreement or option agreement between the Project Sponsor and the owner of the subject property, including evidence that all extensions necessary to keep the agreement current through the date of the award of Allocation have been executed.

(E) Valid, current and enforceable purchase and sale agreements, contingent purchase sale or option agreements in combination between the Project Sponsor, a third party and the owner of the subject property such that the Committee can determine that upon a grant of Allocation the Project Sponsor has a right to acquire the subject property.

(F) The Executive Director may determine that site control has been demonstrated where a local agency has documented its intention to acquire the site, or portion of the site, through eminent domain proceedings as evidenced by order(s) of possession.

(b) Local Approvals and Zoning. The Project Sponsor shall provide evidence, at the time the Application is filed, that the site is zoned for the Project, as proposed, and that all applicable local land use approvals that are subject to the discretion of local elected officials and/or subject to public appeal have been obtained. Examples of such approvals include, but are not limited to, general plan amendments, re-zonings, and conditional use permits. The Applicant may include a completed Verification of Zoning and Local Approvals form signed by an appropriate local government planning official of the applicable local jurisdiction for the purpose of satisfying this requirement. Those Qualified Residential Rental Pool Projects with redevelopment-related project financing that is subject to the approval of the Department of Finance (DOF) are required to have obtained a Final and Conclusive Determination Letter, or other written communication from the DOF stating that the DOF does not issue, or concludes is unnecessary, a Final and Conclusive Determination for this form of redevelopment financing obligation, prior to submitting an application to the Committee.

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a), and 8869.85(b), Government Code.