

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

October 19, 2016

Consideration and Approval of Non-Qualified Residential Rental Program Compliance Policy

(Agenda Item No. 4)

ACTION:

Approval of Non-Qualified Residential Rental Program Compliance Policies

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 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. CDLAC’s regulatory verbiage reflects all projects that receive 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 all QRRP projects be monitored for the compliance period outlined in the CDLAC Committee Resolution. Although non-QRRP projects are not subject to a CDLAC imposed regulatory or compliance period, CDLAC has interpreted the provision 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 all public benefits associated with the resources are bestowed upon project completion, CDLAC has been concerned about its ability to ascertain information about project use and default events might threaten the tax-exemption of the bonds (Qualifying Default Event). Although this has been identified by the Committee as important information to retain, brequiring 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. CDLAC is proposing in the next set of regulation changes that CDLAC be included in the noticing provisions incorporated into the bond documents. To the extent CDLAC were to receive notice of specified events, the notices could replace the ongoing annual reporting requirement. This would significantly reduce the amount of annual reporting necessary by an Issuer and Sponsor but still facilitate CDLAC’s ability to receive the information.

In the proposed draft regulations which the CDLAC Committee will hear in November, CDLAC has moved to create baseline post-issuance compliance policies for all Project Sponsors and Applicants for QRRP projects. Additionally, for non-QRRP projects, CDLAC has created specific baseline reporting which Project Sponsors must provide to project Applicants to inform them regarding their submission of the CDLAC Self-Certification including documentation that the project has been completed. CDLAC also

proposes to be named to receive notices of default, foreclosure and regulatory termination (QRRP properties only). Additionally, to the extent CDLAC is interested in understanding whether bonds remain outstanding on any particular transaction, the passage of Senate Bill 1029, a bill sponsored by the State Treasurer, will require all bond issuers from 2017 forward to report bond balances on hand annually.

DISCUSSION:

For non-QRRP projects financed in 2017 forward, CDLAC supports an Annual Self Certification reporting cycle beginning when the bonds are issued and concluding when the project is completed. The project completion would mark the point in time when the public benefits are realized and quantified. From this point forward, to the extent the Committee adopts the regulations changes in November, CDLAC would rely on notices from the responsible parties regarding change of use and a Qualifying Event of Default.

For existing Non-QRRP projects there are a number of options:

- 1) CDLAC could continue its current practice of collecting Self Certifications until the bonds are redeemed; or
- 2) Consistent with the proposed process for new non-QRRP projects, CDLAC would conclude the Annual Self Certification compliance reporting at project completion and, instead, require all notices received regarding change in use and a Qualifying Event of Default received by the Issuer to be passed on to CDLAC.
- 3) CDLAC could pursue #2 and additionally but encourage Issuers to incorporate the language into already closed transactions, providing an increased number of point is an Issuer would commit to pursuing this option.

RECOMMENDATION:

Staff recommends the approval of policy direction for new non-QRRP projects to limit the Annual Self Certification compliance reporting from the time of bond issuance through project completion. For existing projects, staff recommends Option #2 above where after project completion, CDLAC would require only notices regarding change in use and a Qualifying Event of Default.

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