



CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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EXECUTIVE DIRECTOR

Sean L. Spear

To: All Interested Parties

From: Sean L. Spear, Executive Director

Date: March 15, 2013

Re: UPDATE to the CDLAC March 11, 2011 Memorandum on Existing and Future Redevelopment Agency-Financed Projects

Regularly, the California Debt Limit Allocation Committee (“CDLAC”) awards allocation to applicants for projects that may utilize former redevelopment agency (“RDA”) funds as a source of financing. Given their unclear future at that time, CDLAC issued an informational memorandum on March 11, 2011 describing how projects that failed to issue awarded allocation and/or deliver their required public benefits as a result of the loss of RDA participation would be fully subject to all penalties as prescribed by the CDLAC Regulations.

In the two years since the issuance of the memorandum, related state law, court decisions, and regulatory procedures have been enacted which provide a clearer understanding to the development community of the steps needed in order to fully confirm and secure whatever RDA support a project may be relying upon. Based upon this, CDLAC feels compelled to provide an update to the March 11, 2011 memorandum detailing CDLAC’s new application requirement for RDA-supported projects in the future; as well as CDLAC’s revised policy position on projects that fail to proceed due to an RDA-related issue.

Background - AB1484 and the Option to Receive a Final Determination Letter from the Department of Finance

In the wake of the passage of AB1X26 and the elimination of the redevelopment agencies, Project Sponsors have continued to pursue projects with reliance on commitments involving former redevelopment agency funding and/or other assets. These RDA commitments are now administered by various Successor Entities, with periodic reviews and approvals from the State Department of Finance (DOF). The Recognized Obligation Payment Schedule (ROPS) review process has been commonly assumed as the way for a Successor Entity (and Project Sponsor) to finally confirm the validity of an RDA-related commitment.

While perhaps not widely known, awarded projects may still be subject to the denial of their RDA-related commitments even after receiving an earlier ROPS approval by DOF. Specifically, DOF reserves the right to re-evaluate obligations in subsequent periodic ROPS submissions. However, as

provided for through AB1484 (signed into law on June 27, 2012), Successor Entities now have the ability to request a Final Determination Letter from DOF on individual commitments if they so choose.

New Final Determination Letter Requirement

CDLAC believes that the parties involved in a RDA-supported project must now seek the strongest assurance possible; which is securing a DOF Final Determination Letter where applicable. For all awarded projects to date, CDLAC strongly encourages the Project Sponsors (via the applicable Successor Entity) to seek and secure a DOF Final Determination Letter. DOF has indicated a four-to-six week process for review and response following receipt of a written request. Assuming no other delaying issues, CDLAC staff is prepared to recommend issuance deadline extensions to provide awarded projects with sufficient additional time (if needed) to secure a DOF Determination Letter. Further, beginning with the **September 2013 Allocation Round** (applications due on July 17th, 2013), all project applications that include some form of RDA-support must include a copy of the applicable DOF Final Determination Letter as proof of a commitment of funds as provided for under Section 5230(h)(1) of the CDLAC Regulations.

Waivers of Penalties Due to Loss of RDA Support

CDLAC acknowledges that there has been an understandable level of confusion and lack of full knowledge of the RDA-related process to-date, and the options for securing an unconditional approval of an RDA-related commitment. Issuers, Project Sponsors and the project financiers have proceeded under the assumption, right or wrong, that the RDA-related element may have been fully secured with a ROPS approval. Nevertheless, CDLAC believes that the parties, by virtue of this memorandum and other sources, should now be fully aware of the potential risk to their project should they attempt to rely on a ROPS approval alone.

That being said, where the bonds have already closed as of this date, the RDA funding and/or amended agreements may already have been acted upon. It may be too late or unnecessary for the applicable Successor Entity to now seek a DOF Final Determination Letter. Nevertheless, if a fatal RDA-related issue should arise for such a closed transaction, CDLAC staff will consider recommending a waiver for Committee consideration.

For projects that have not closed yet, if a Project Sponsor elects to proceed without the Letter and then later revert allocation or default on the bonds as a result of a subsequent DOF denial, then the Committee may elect to not waive the resultant CDLAC penalties since this was a now-known risk. Lastly, as was originally intended by the policy described in the March 2011 CDLAC Memorandum, projects that failed to ever receive a DOF ROPS approval should continue to be subject to all applicable penalties for failure to issue an awarded allocation.

As always, do not hesitate to contact CDLAC should you have questions regarding this matter.

ATTACHMENT A

**CDLAC MARCH 13, 2013 MEETING
Item 3 – Executive Director’s Report**

PROPOSED REVISED POLICY FOR RDA-SUPPORTED PROJECTS

<p align="center"><u>Project Scenario 1</u> <i>Bond-Closed Projects Submitted Before AB1484 Enactment</i></p>	<p align="center"><u>Project Scenario 2</u> <i>Yet-To-Close Projects Submitted Before AB1484 Enactment</i></p>	<p align="center"><u>Project Scenario 3</u> <i>Projects Submitted After AB1484 Enactment</i></p>
<p align="center"><i>28 Projects Closed (+5 Post-AB1484 Projects Closed)</i></p>	<p align="center"><i>2 Projects Pending Closing</i></p>	<p align="center"><i>3 Projects Pending Closing (+4 Pending Award 3/13/13)</i></p>
<p>Though they may have received DOF ROPS approvals to-date, these projects may still be subject to a denial of their commitment at a later date. These projects may even be in-construction and/or have completely expended their RDA funding; in which case, a subsequent denial would probably be fatal to the project. At the time of CDLAC approval, the DOF ROPS approval was commonly seen as the final hurdle to concluding that the RDA-related commitment was valid and could be relied upon, even though DOF included conditional language in their approval correspondence.</p>	<p>In this case, the project may still be addressing other development issues preventing them from closing on their bonds. Like the first scenario, these projects are still subject to subsequent denial from DOF, though their financial and legal facilitators may be willing to move forward with the closing once the other issues are resolved.</p>	<p>A small (but increasing) group of newer projects fall into this category. Though it may not be widely known, these projects have had the option to still seek a DOF Final Determination Letter. Such a letter should now be considered a critical assurance for any project that their RDA-related commitment is valid and enforceable into the future.</p>
<p align="center"><i>Staff Recommendation</i></p>	<p align="center"><i>Staff Recommendation</i></p>	<p align="center"><i>Staff Recommendation</i></p>
<p>The RDA funding and/or amended agreements may already have been acted upon. It may be too late or unnecessary for the applicable Successor Entity to now seek a DOF Final Determination Letter. Nevertheless, if a fatal RDA-related issue should arise, staff does not believe that CDLAC should penalize the Project Sponsor for relying upon the Bond Counsel’s Opinion, the good-faith actions of the Successor Entity, and the financing entities that understood all necessary commitments to be in-place at the time of issuance. As a matter of course, CDLAC relies upon the Bond Counsel’s determination that a project can proceed based upon a review of the legal and regulatory circumstances at the time. Staff does not believe that we should call this practice into question now for this situation.</p>	<p>Short of attempting to revise the existing CDLAC Resolutions, CDLAC does not have the ability to require the subject project’s Successor Entities to seek a DOF Final Determination Letter prior to the bond closing. So for such cases, staff recommends that CDLAC publicly state that a DOF ROPS approval is no guarantee of future RDA support; and that such projects <u>are strongly encouraged</u> to seek a DOF Final Determination Letter in order to be assured that the RDA-related commitment is confirmed and enforceable. As provided for in the CDLAC Regulations, Staff would recommend to the Committee that they grant issuance date extensions to currently-awarded projects in order to secure the Letter where applicable. Staff would note that in these cases, if a Project Sponsor elects to proceed without the Letter and then later revert allocation or default on the bonds as a result of a subsequent DOF denial, then the Committee may elect to not waive the resultant CDLAC penalties since this was a known risk.</p>	<p>As provided for under Section 5230(h)(1), CDLAC will no longer consider any RDA funding as a truly committed funding source unless the subject Successor Entity has secured a DOF Final Determination Letter for that funding commitment. Beginning with applications for the September Round, the Letter must be submitted with the CDLAC application. DOF has indicated that receipt of a Letter can be secured within 4-6 weeks after a Successor Entity requests it on behalf of a project. This should be sufficient time for a September applicant to receive a reply by the July 19th application deadline.</p>



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Executive Director

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*Edmund G. Brown Jr.
Governor*

*John Chiang
State Controller*

To: Interested Parties

From: Sean L. Spear, Executive Director

Date: March 11, 2011

Re: Existing and Future Redevelopment Agency-Financed Projects

Regularly, the California Debt Limit Allocation Committee (“CDLAC”) awards allocation to redevelopment agencies (“RDA’s) and/or other applicants that utilize redevelopment agency (“RDA”) funds as a source of financing. However, in light of the Governor’s recent proposal to abolish RDA’s, CDLAC strongly encourages these applicants to consider the risk of accepting any future awards of allocation at this time. For those in receipt of an existing award of allocation, CDLAC Staff plans to recommend the approval of a waiver of penalties should it be determined that RDA’s no longer have the authority to issue bonds and/or enter into contracts for funding. However, this consideration will not be extended to future allocation recipients. The assessment of non-issuance penalties will resume and all RDA-related projects that receive an award of allocation **after March 16, 2011** and subsequently fail to issue bonds will be subject to all non-issuance penalties as described in the CDLAC Regulations. Penalties may include a forfeiture of the performance deposit and the assessment of negative points for two calendar years.

In addition, CDLAC has tentatively scheduled an April 26, 2011 special meeting to accommodate the award of new allocation to projects that wish to return existing allocation awarded to an RDA prior to March 17, 2011. In exchange for the allocation awarded to the RDA, a new allocation will be awarded to a new qualified CDLAC applicant so that the project may move forward without delay. Applicants that are unable to submit a request to CDLAC by the April 26 meeting deadline will have a 2nd opportunity to be considered for an allocation exchange at the previously scheduled May 18th allocation meeting. Please note: Applications associated with a request for an allocation exchange must have no substantive proposed project changes. If the proposed project has changed as a result of the loss of the RDA’s participation, the application must be resubmitted through the regular CDLAC application process.

Attached are schedules of critical dates for the April 26, 2011 and the May 18, 2011 meetings. These schedules are exclusive to projects with an RDA as the issuer that were awarded allocation prior to March 17, 2011.

As always, do not hesitate to contact me should you have questions regarding this matter.