

# California Debt Limit Allocation Committee

Jesse Unruh Building  
Room 587  
915 Capitol Mall  
Sacramento, CA 95814  
**July 19, 2017**  
Meeting Minutes

## OPEN SESSION

### 1. Call to Order and Roll Call

Jeree Glasser-Hedrick, Chairperson, called the California Debt Limit Allocation Committee (CDLAC) meeting to order at 11:32 a.m.

Members Present: Jeree Glasser-Hedrick for John Chiang, State Treasurer  
Eraina Ortega for Edmund G. Brown, Jr., Governor  
Alan LoFaso for Betty T. Yee, State Controller

Advisory Members Present: Anthony Sertich for the California Housing Finance Agency (CalHFA)  
Ben Metcalf for the Department of Housing and Community Development (HCD)

Ms. Glasser-Hedrick took a minute to inform the dial-in participants that there were problems with the equipment and that those on the phone would be able to hear the conversation in the room; however, the Committee would be not be able to hear the phone participants.

Ms. Glasser-Hedrick then introduced Laura Whittall-Scherfee as the new Executive Director of CDLAC. She also thanked Geoff Palmertree for doing a great job as the Acting Executive Director in the interim. Ms. Glasser-Hedrick stated that she has known Ms. Whittall-Scherfee for several years and feels that she will bring all of her terrific experience to the Executive Director position.

### 2. Approval of the Minutes of the May 17, 2017 Meeting (Action Item)

Alan LoFaso moved approval of the minutes for the May 17, 2017 meeting. Upon a second by Eraina Ortega, the minutes passed 3-0 with the following votes: Alan LoFaso: Aye; Eraina Ortega: Aye; Jeree Glasser-Hedrick: Aye

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

Geoff Palmertree stated that at the last Committee meeting there was a discussion regarding compliance. Staff has been working with the IT Department to get the database to the point where the compliance information may be pulled directly from the database. The compliance letters were mailed out the week prior to this meeting. For the QRRP program, staff mailed forty-five (45) audit letters; five (5) audit letter, nine (9) non-compliance letters, sixteen (16) non-

compliance letters and two (2) Sponsor letters. The Sponsor letters are a result of the Issuer responding; however, the Sponsor had not provided the Certificate of Compliance.

Ms. Glasser-Hedrick responded that it sounded like a total of twenty-five (25) non-compliance letters were mailed. Mr. Palmertree stated that it was actually twenty-three (23) letters – five (5) plus sixteen (16) plus two (2).

Misti Armstrong clarified that the audit letters actually totaled fifty-four (54) and that the figures were possibly transposed. Those figures represent applicants that were fully compliant. The audit was a part of a 15% sample of what should have been collected from the Sponsors. There were sixteen (16) non-compliance letters. The last group had a combination of projects that had been reported on and other projects that they had not reported on for a total of five (5) Issuers under that circumstance which brings the total to seventy-five (75) Issuers.

Ms. Glasser-Hedrick stated that that was significantly less non-compliance letters than have been sent out historically. Ms. Glasser-Hedrick asked Ms. Armstrong if she would comment on why that is.

Ms. Armstrong believes that the outreach that was done last year by finding the Issuers that do not necessarily participate in the Program any longer and letting them know that the requirement existed helped a great deal. In addition to that, the Board approval eliminating the need for pre-2000 projects to report to CDLAC as well as for the pre-2012 non-QRRP applicants. Those projects were all removed from the list. Prior issues were reaching out to those Issuers that would have been a part of that pool of projects. Ms. Armstrong feels that the combination of these actions are what dropped the numbers significantly.

**4. Consideration of the Adoption of a Resolution Authorizing the Incoming Executive Director, the Committee Chair and his or her Designee to Execute Documents on Behalf of the Committee (Action Item)**

Misti Armstrong reported that effective July 17, 2017 Laura Whittall-Scherfee was designated the Executive Director of the California Debt Limit Allocation Committee. In order to ensure that the Executive Director is able to carry out the functions of the organization, this item provides the necessary authority to allow the Executive Director to execute all documents on behalf of the Committee.

Ms. Armstrong informed the Board that there was a white sheet in the change pages. It was brought to managements' attention during the briefings that a reference was made to an attached resolution which was not attached. This draft Resolution is for your records. This will be the Resolution that is signed granting the delegated authority to Ms. Whittall-Scherfee.

Mr. LoFaso took this opportunity to welcome Ms. Whittall-Scherfee.

Ms. Whittall-Scherfee thanked Mr. LoFaso and stated that her pen was ready to sign.

**RECOMMENDATION:**

Staff recommended approval of a Resolution authorizing Laura Whittall-Scherfee, the CDLAC Executive Director, to execute all CDLAC related documents, including but not limited to contracts, Resolutions, Resolution Amendments and tax certificates on behalf of the Committee.

Eraina Ortega moved approval of staff's recommendation. Upon a second by Alan LoFaso, the motion passed 3-0 with the following votes: Eraina Ortega: Aye; Alan LoFaso: Aye; Jeree Glasser-Hedrick: Aye.

**5. Consideration and Approval of Proposed Emergency/Permanent CDLAC Regulations for Submittal to the Office of Administrative Law (OAL) (Action Item)**

Ruben Barcelo stated that CDLAC recently drafted revisions to its regulations to address a new Bond program, the Qualified Public Educational Facility Bond (QPEF) Program. If approved by the Committee, CDLAC intends to submit a request for emergency approval of the proposed regulation changes to the OAL on August 7, 2017 with an anticipated approval and adoption date of August 16, 2017.

QPEF's are tax-exempt private activity bonds issued to finance the construction, renovation and furnishing of primary and secondary school facilities. This form of financing reduces the cost of financing for schools as interest earned by the lender is tax exempt. The volume cap for QPEF bonds that can be issued in California for each program year is specified in 26 USCA section 142(k). The limit for the Qualified Public Educational Facility Bond Program is calculated by multiplying the state population by \$10.00 which totals \$392,000,000 for the 2017 program year.

Should the Committee approve these proposed revisions, staff will submit the emergency rule-making package to OAL immediately following the five (5) day pre-notice period. The five (5) day public comment period will commence on the day of submittal with possible enactment of the regulations within five (5) days thereafter. If approved as scheduled, the emergency regulations would be in place in time for the November 15, 2017 application round. Any and all consequential comments received will be considered by staff and may result in reevaluation of the proposed regulation revisions. Should this occur, staff will withdraw its emergency rulemaking package from the OAL and provide updated proposed regulations to the Committee on September 20, 2017 for additional consideration.

In anticipation of any technical questions, Katrina Johantgen, California School Finance Authority (CSFA) Executive Director, and Eugene Clark-Herrera, Partner, Orrick, Herrington and Sutcliffe LLP, are in the audience and available to answer any questions.

Ms. Armstrong brought the Boards attention to the pink staff report in front of them. The revision to this particular item was not in the body of information that was reviewed. Staff added a form that will be going to the OAL called the Certification of Compliance II. After the binders were delivered, it was determined that it would be necessary to modify that form as well. It is an existing form that staff added a program specific question to on Item #8.

Ms. Ortega asked a clarifying question regarding the \$10.00 multiplier in the \$392,000,000. Is that dollar amount on top of the State's allocation, or is that a carve-out of the total allocation already in place?

Mr. Clark-Herrera replied that it was in addition to the total allocation.

Mr. LoFaso stated that he understood that many of the details of the program were to be developed by the CSFA. Given that the Controller is not on the CSFA Board, as this matter goes forward, the Treasurer's Office and the Department of Finance will continue to be involved while the Controller's Office will not.

Mr. LoFaso stated that he did some research and found that some of its most vigorous proponents have made some interesting claims. One article by a high level national organization suggested that this tax treatment would enable a housing developer to deliver a school facility turnkey to a district in lieu of paying some of the State imposed school developer fees.

Mr. LoFaso requested that this issue be addressed.

Mr. Clark-Herrera responded by asking if he might ask a clarifying question. When you make reference to developer fees, can you clarify?

Mr. LoFaso responded State imposed school fees administered by the State Allocation Board.

Ms. Ortega stated that these are fees that developers pay per new home constructed to contribute to the cost of building a new school.

Mr. Clark-Herrera asked Mr. LoFaso to restate the question.

Mr. LoFaso asked whether a housing developer could become a private partner in the public/private partnership anticipated in Section 142K of the Internal Revenue Code and use this tax-free financing vehicle as a way to deliver a school turnkey to a district instead of paying developer fees as Ms. Ortega explained. Mr. LoFaso reiterated that that was a claim being made.

Mr. Clark-Herrera would have to provide an answer after the meeting as he has never looked at that issue before.

Ms. Johantgen stated that it was her interpretation of the question that Mr. LoFaso was asking related to an ongoing revenue stream to support the bond, not the initial developer fee. An ongoing developer fee to support the bonds rather than an initial fee. They would have to seek clarification on that.

Mr. LoFaso thanked them for answers to his questions in advance. Mr. LoFaso stated that Ms. Johantgen suggested that generally speaking they are most efficiently used in a general obligation (GO) bond context. Mr. LoFaso gets the sense that it is not absolutely legally prohibited to use those fees to pay facility costs through a lease/revenue process; however, it would be so impractical as to not occur. Again, these are claims that proponents of this tax code have made.

Ms. Johantgen replied that she believes that school facilities that are financed using lease/revenue bonds do so on an annual basis out of their general fund. She does not believe that that is very practical when there are instruments like GO bonds that are backed by assessed property taxes on property owners to support those bonds.

CSFA has issued over \$1 billion in tax-exempt bonds for Charter School Facilities. Its area of expertise is not necessarily in school district financing but rather in charter school facility financing which is a complete different ball of wax.

Mr. LoFaso appreciated Ms. Johantgen's answer. He understands that the focus is Charter Schools.

Mr. LoFaso then asked whether the private entity engaged in the public/private partnership would have the ability to lease the facility during times when school is not in session, weekends and summer. Would the private developer be able to recoup some savings that they would then pass on to the school district? Is that how CSFA envisions the private developer's oversight of the

facility, or is the anticipation that the private developer would turn it over on a 24/7, 365-lease basis to the charter school or the school district whoever is the guardian. Would the charter school be in control of any renting of the school?

Mr. Clark-Herrera stated the later. Orrick's understanding of the federal regulations is that in order to qualify for volume cap, there has to be an agreement between the private for profit developer and the public school. They expect that agreement to take the form of a lease as stated in the federal regulations. The agreement would give the exclusive use and occupancy of the facility to the school and require that it be used as a public school during the term of the lease. Mr. Clark-Herrera has never heard of or seen suggested an arrangement like the one Mr. LoFaso described. It would seem inconsistent with the terms of the lease agreement or other agreement that conferred exclusive right of use and occupancy to the public school. Certainly public schools, in their own right, may make their gymnasium available on Saturdays for a basketball game. It would be in the purview of the school, though, not the developer/landlord.

Mr. LoFaso appreciated Mr. Clark-Herrera's response.

Mr. LoFaso asked what the IRS requirements are that CSFA will have to figure out. Are there any economic regulations in the lease payments to ensure that the windfall of the tax exemption is going to the schools from the developers in the transaction?

Mr. Clark-Herrera replied that the regulations before the Board today are sound on the economic arrangement. Market forces will sort those kind of issues out. Certainly if there were a more economically efficient way of financing available to school organizations, they would pass on this program. He cannot think of a time when a charter school would make a disadvantageous decision. The rents are set so the benefits of the tax exemption would be shared with the tenant.

Mr. LoFaso asked what CSFA's ultimate goal is?

Mr. Clark-Herrera replied that there are no economic regulations sitting in the conduit bond program at CSFA, generally. It would not have occurred to any CSFA staff who were involved in developing the regulations. In the conduit borrowing context, borrowers undertake themselves or in conjunction with a third party who is delivering the project an economic arrangement that makes sense for them. He feels this is just another flavor of tax-exempt financing that would be available for school organizations to evaluate and determine whether it is more or less efficient than the other types of financing are available.

Mr. LoFaso asked if the charter school financing programs that CSFA has in place now have conflict of interest protections that ensure that we do not have alter ego relationships between the private developer and the operators of the charter school.

Ms. Johantgen stated that the grant and loan programs do. When she listens in on the conduit bond due diligence calls, there are a number of questions that relate to conflicts of interest.

Mr. Clark-Herrera stated that conflicts of interest raise disclosure issues in the context of public capital market offerings. Those types of relationships would be disclosed. The regulations in front of the Board today are silent on that issue. If that is a risk that is identified by CSFA staff, certainly they may develop those types of rules.

Ms. Johantgen stated that those rules already exist in the SB740 program which would more than likely support this financing structure. The related party vetting that is conducted under the SB740 program looks at related parties and conflicts of interest.

Mr. LoFaso thanked the Chair, Ms. Johantgen and Mr. Clark-Herrera. He encourages good conflict of interest revisions for the program.

Ms. Johantgen stated that Mark Paxson, Counsel for CSFA, has recommended that CSFA bring an item to the CSFA Board, whether it be a policy issue or an informational item, to work through the item before the program is kicked off.

Ms. Johantgen stated that Mr. Clark-Herrera mentioned that this program will be folded into the conduit bond program which has sales restrictions and debt issuance and policy guidelines; however, it does not have a set of regulations. CSFA staff will be working through those issues internally then bringing something before the Board.

Ms. Ortega asked if the types of proposals expected to come are more along the lines of the conduit financing that is typically seen at CSFA, or will it be more like public/private partnerships and developers that may not be the type of project typically seen?

Ms. Johantgen replied the former. CSFA has two (2) developers: one (1) a housing developer and one (1) a charter school developer who have proposals in with Orrick, about bond financing that would look like the conduit bond program. They are for profit developers that are developing facilities for charter schools that don't have the capital or resources to undertake the bond financing and will be leasing the property from the for profit developer.

Ms. Glasser-Hedrick stated that none of the multifamily programs have governance over the agreements between the private parties and the entities that operate the facilities. The reason for the regulatory restrictions on the multifamily side are driven by federal and state law. In the non-multifamily realm, that body of law does not exist. There are states that have developed programs, but there is not a body of deals that have closed that can be worked from to see what was problematic and what should possibly be added to the regulations. For any new programs, start with something, understand the interaction of the deals and then make amendments as necessary. This program will include a long-term regulatory agreement on the property which is very abnormal for a non-multifamily application. The multifamily realm is the only one that requires a regulatory agreement that is not required by federal law; however, she feels that it is prudent moving forward to the extent that we want to ensure these facilitates are used by public schools.

Ms. Johantgen stated that CSFA is drawing from internal discussions and lessons learned. CSFA has had the benefit of working with different BCAs within the Treasurer's Office. CSFA is no stranger to new programs.

Ms. Ortega encourages collaboration between CDLAC and CSFA and to keep the Controller's representative in the loop as well. These items will be on both agendas going forward and the collaboration will help the process flow.

Ms. Ortega stated that in the future if developer fees are being used, she would encourage CSFA to reach out to the State Allocation Board (SAB) and the Office of Public School Construction (OPSC) staff that CSFA worked with closely as she feels the developer fee scheme in the statute is pretty straight forward; however, she is concerned about the two programs and the financing leaves her concerned about unintended consequences.

Ms. Johantgen stated that she would follow up with OPSC.

Ms. Johantgen reported that CSFA is projecting that for the first six (6) months, staff would bring in applications when seeking allocation rather than asking for a bucket of allocation.

Mr. Clark-Herrera feels this is an important step forward. The State legislature took action to expand CDLACs allocation authority a couple of years ago, and these regulations are being promulgated under that statutory authority. Let the State make these funds available to the education finance sector and see where it goes from there.

**RECOMMENDATION:**

Staff recommended approval of the proposed CDLAC Regulations for submittal to the Office of Administrative Law for emergency and regular rulemaking consideration.

Eraina Ortega moved approval of staff's recommendation. Upon a second by Alan LoFaso, the motion passed 3-0 with the following votes: Eraina Ortega: Aye; Alan LoFaso: Aye; Jeree Glasser-Hedrick: Aye.

**6. Consideration of Staff's Recommendation to Approve a Change of Issuer for Premier Apartments (16-502) (Action Item)**

Misti Armstrong reported that there was a blue revised staff report in front of the Members. Added to the first paragraph was the CalHFA Tax Equity and Financial Responsibility Act (TEFRA) hearing date which was July 5, 2017.

Premier Apartments is a 120-unit scattered site Project consisting of seven (7) sites located both in the City of Los Angeles and County of Los Angeles. The CDLAC Applicant and bond issuer California Statewide Communities Development Authority (CSCDA) received an award of allocation for the Project on September 21, 2016. The Project Sponsor is Premier Associates II, LP.

CSCDA, a Joint Power Authority (JPA) may only issue bonds within the jurisdiction of its members. In addition, the TEFRA hearing must be conducted and approved within the jurisdiction of its member. State issuers such as CalHFA have statewide jurisdiction to both approve the TEFRA and issue bonds. For this project, the Project Sponsor selected CSCDA as their bond issuer and proceeded with submitting a CDLAC application. CSCDA then worked to obtain membership from the County of Los Angeles so that the TEFRA could be held and approved by the County Board of Supervisors and bonds could be issued for the Project's three (3) sites located within the unincorporated County. Unfortunately, County membership could not be obtained with the County citing that it required additional time to consider membership. At that time, the City was already an existing member of CSCDA. The TEFRA was held and approved for the four (4) project sites located in the City on August 23, 2016.

Ms. Glasser-Hedrick stated that given that staff has seen two (2) of these transfers in the last six (6) months, Premier Apartments and Miracle Terrace Apartments, she feels that this may occur in the future given the dynamics local communities face, and the challenges with local jurisdictions joining JPAs. Jeree stated that Section 5120 of the CDLAC regulations should be further developed. It is the section that articulates how transfers are to occur. It was written during a time when CDLAC was competitive which it has not be for some time. The question that needs to be resolved is what the timeframe for the new TEFRA requirement is. She would like to see

consistency in how TEFRA's are handled. Staff should further specify I the regulations how a transfer should occur and what needs to be in place and when it needs to be in place.

Ms. Whittall-Scherfee stated that staff intends to look at that section of the regulations to make sure that it responds accordingly to what the needs are, and to have the broader discussion of how the transfer fits in with CDLAC's general TEFRA requirements.

**RECOMMENDATION:**

In light of the circumstances described above, staff recommended the approval of the change in issuer for the Premier Apartments (16-502) Project from CSCDA to CalHFA.

Eraina Ortega moved approval of staff's recommendation. Upon a second by Alan LoFaso, the motion passed 3-0 with the following votes: Eraina Ortega: Aye; Alan LoFaso: Aye; Jeree Glasser-Hedrick: Aye.

**7. 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 (Action Item)**

**a. Consideration of appeals\***

Shirley Hom stated that there were no appeals.

**b. Consideration of applications – See Exhibit A for a list of Applications\*\***

Ms. Hom reported that two documents in the Boards packet have had changes. The light green sheet and the orchid sheets. There was a change on the green sheet on the carryforward allocation amount for the prior year and the current year carryforward. The orchid pages had changes to the staff reports in the Sources and Uses.

The Mixed Income Pool reflected two (2) projects requesting a total allocation of \$148,000,000, and the General Pool reflected twenty-four (24) projects requesting a total allocation of \$437,419,663.

Ms. Glasser-Hedrick asked what the remaining CDLAC allocation is for the year.

Ms. Armstrong stated that there will be \$236,000,000 in carryforward allocation remaining after today's awards. For the multifamily housing program, there is \$2.3 billion of 2017 current cap remaining.

**RECOMMENDATION:**

Staff recommended approval of \$148,000,000 to fund two (2) projects in the Mixed Income Pool and \$437,419,663 to fund twenty-four (24) projects in the General pool. The combined request for both pools was \$585,419,663.

Eraina Ortega moved approval of staff's recommendation. Upon a second by Alan LoFaso, the motion passed 3-0 with the following votes: Eraina Ortega: Aye; Alan LoFaso: Aye; Jeree Glasser-Hedrick: Aye.



7.2	17-369	SH	California Statewide Communities Development Authority	Kensington Apartments	Sacramento	Sacramento	\$38,000,000
7.3	17-373	SL	California Statewide Communities Development Authority	Maple & Main Apartments	Hayward	Alameda	\$110,000,000
7.4	17-015	LE	Housing Authority of the City of San Luis Obispo	SLO 55 Apartments (Supplemental)	San Luis Obispo	San Luis Obispo	\$750,000
7.5	17-016	RF	California Municipal Finance Authority	Owendale Mutual Housing Community Apartments (Supplemental)	Davis	Yolo	\$355,000
7.6	17-017	RF	California Municipal Finance Authority	The Cannery Apartments (Supplemental)	Gilroy	Santa Clara	\$3,400,000
7.7	17-018	RB	California Statewide Communities Development Authority	Heninger Village Apartments (Supplemental)	Santa Ana	Orange	\$500,000
7.9	17-351	RB	City of Santa Rosa	Crossings on Aston Apartments	Santa Rosa	Sonoma	\$7,105,000
7.10	17-352	RF	Golden State Finance Authority	Montecito at Williams Ranch Apartments	Salinas	Monterey	\$12,471,000
7.11	17-353	RF	Golden State Finance Authority	Vineyard Gardens Apartments	Oxnard	Ventura	\$6,841,000
7.12	17-354	LE	California Municipal Finance Authority	Cornerstone Place Apartments	El Cajon	San Diego	\$20,000,000
7.13	17-355	SL	City of Los Angeles	Sun Valley Senior Veterans Apartments	Los Angeles	Los Angeles	\$29,300,000
7.14	17-356	LE	California Public Finance Authority	Beautiful Light Inn Apartments	San Bernardino	San Bernardino	\$10,500,000
7.15	17-358	SL	City and County of San Francisco	1150 3rd Street Apartments	San Francisco	San Francisco	\$51,000,000
7.16	17-359	SL	California Statewide Communities Development Authority	Lake Merritt Apartments	Oakland	Alameda	\$23,127,500

7.17	17-361	LE	City of Los Angeles	PATH Metro Villas - Phase 2 Apartments	Los Angeles	Los Angeles	\$36,405,000
7.18	17-363	SL	California Municipal Finance Authority	Desert Oasis Apartments	Indio	Riverside	\$15,500,000
7.19	17-364	LE	California Municipal Finance Authority	Fellowship Plaza Apartments	Saratoga	Santa Clara	\$63,000,000
7.20	17-365	RB	California Municipal Finance Authority	Casa Rita Apartments	Huntington Park	Los Angeles	\$17,984,322
7.21	17-366	RF	California Statewide Communities Development Authority	Alamo Garden Apartments	Vacaville	Solano	\$21,200,000
7.22	17-367	RB	California Housing Finance Agency	Riverside Street Apartments	Ventura	Ventura	\$7,000,000
7.23	17-368	RB	County of Contra Costa	Heritage Point Apartments and Retail	Unincorporated	Contra Costa	\$17,000,000
7.24	17-370	RB	California Municipal Finance Authority	Monterra Village Apartments	Gilroy	Santa Clara	\$7,100,000
7.25	17-371	SL	California Municipal Finance Authority	The Redwoods + Wheeler Manor Apartments (Scattered-Site)	Gilroy	Santa Clara	\$32,300,000
7.26	17-372	RB	California Municipal Finance Authority	Ormond Beach Villas Apartments	Oxnard	Ventura	\$14,463,641
7.27	17-374	RF	County of Alameda	Grayson Street Apartments	Berkeley	Alameda	\$10,117,200
7.28	17-375	RB	City and County of San Francisco	Britton Courts Apartments	San Francisco	San Francisco	\$30,000,000

**8. CLOSED SESSION: Litigation (Government Code Section 11126(e)(2)(c)) - Discussion with Legal Counsel Regarding Litigation (San Regis, LLC v. City of Los Angeles, et al., Los Angeles County Superior Court Case No. BC637630)**

On advice of counsel, the Committee did not meet in closed session to discuss litigation.

**9. Public Comment**

There was no public comment.

**10. Adjournment**

The Chairperson adjourned the meeting at 12:15 p.m.