

**STATE OF CALIFORNIA
OFFICE OF THE TREASURER
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

**REQUIRED NOTICE OF PROPOSED EMERGENCY ACTION
(Cal. Code Regs, Title 1, Section 48)**

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. The Committee has provided that notice to all such persons at least five days before submitting the emergency regulations to the Office of Administrative Law by virtue of the proposed Emergency being published on the Committee's website of February 13, 2024. Upon receiving the proposed emergency regulation, OAL shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6

FINDING OF EMERGENCY

Pursuant to Section 8869.94 of the California Government Code (the "Code"), the regulations being amended by the California Debt Limit Allocation Committee (the "Committee") as emergency regulations (the "Emergency Regulations") are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Pursuant to Government Code section 11346.5(a)(3)(D) the Committee must provide "An evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations." During bond allocation processes during the last twelve months, CDLAC received numerous comments from applicants regarding specific existing regulations. After performing an internal examination and search on specific regulations on this topic CDLAC concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

The California Debt Limit Allocation Committee has complied with the requirements to provide notice of proposed rulemaking action pursuant to Government code section 11346.1(a)(2).

Since initial adoption the emergency circumstances are unchanged.

AUTHORITY AND REFERENCE

Authority: Section 8869.94, California Government Code. Section 8869.94 of the Code authorizes the Committee to adopt regulations relating to an allocation system to administer the state unified volume ceiling as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be "necessary for the immediate preservation of the public peace, health and safety or general welfare."

Reference: California Government Code Sections 8869.80-8869.94 8869.82, 8869.84,

8869.84(c), 8869.85(a), 8869.85(b), and 8869.87.

INITIAL STATEMENT OF REASONS/ INFORMATIVE DIGEST

INTRODUCTION

CDLAC was established by Chapter 943, Statutes of 1987, in response to the Federal Tax Reform Act of 1986, which placed a cap on the volume of tax-exempt private activity bonds that could be issued within a state in a calendar year.

CDLAC is the sole entity responsible to allocate tax-exempt private activity bond volume cap authority for the State of California through a variety of programs including multifamily housing, single-family housing, tax-exempt facilities, and industrial development bonds. Private Banks or investors purchase the bonds and since the investment is tax exempt, they require a lower level of return and can accordingly loan resources to a project owner/developer for below market interest rates which results in cost savings to the project. This financing method is usually the only way for a housing developer to make an affordable housing project financially feasible.

Each year CDLAC calculates volume cap for tax-exempt debt to be issued for private projects based on IRS guidelines. CDLAC's programs are primarily used to finance affordable housing developments for low-income Californians, build solid waste disposal and waste recycling facilities, and to finance industrial development projects. Federal law limits how much tax-exempt debt a state can issue in a calendar year. This cap is determined by a population-based formula pursuant to a Revenue Procedure published annually by the Internal Revenue Service. The volume limit on qualified tax-exempt private activity bonds adjusted for inflation for the calendar year 2023 is \$120 multiplied by the state's population. This is a \$10 decrease from the 2022 amount. On December 22, 2022, the U.S. Census Bureau estimated 2022 population as 39,029,342. The population decreased from 2021. The change in the IRS inflation adjustment and the Census Bureau population estimate results in a new 2023 State Ceiling of \$4,683,521,040 on qualified tax-exempt private activity bonds. In terms of dollars, this is a \$367,359,080 increase from the 2022 State Ceiling.

PROBLEM STATEMENT

In 2019, Assembly Bill 101 passed, appropriating \$500,000,000 to the California Tax Credit Allocation Committee (CTCAC) for award to specified low-income housing projects. Those tax credits are dependent on the applicant's successful award of tax-exempt bond allocation from CDLAC. This created a demand for bond allocation that far exceeds the annual volume cap. A Demand Survey is conducted annually to measure the variety, number of requests and funding amounts to expect during the following year. The Demand Survey conducted in 2022 for the 2023 volume cap year revealed a demand for Private Activity Bond Projects totaling over \$11 billion resulting in an oversubscription 2.56 times more than the available volume cap for 2023. Demand survey oversubscription has been consistent and unrelenting since 2021.

As a result, it was necessary for CDLAC to develop and implement a competitive system to provide equitable distribution of Bond Allocation throughout California. Through an intense effort, Emergency Regulations were adopted, and an entirely new joint application was

created to align the CDLAC application with the CTCAC application. As the competitive process continues, affordable housing stakeholders and local governments, as well as the State Controller's Office, the Governor's Administration, and the Treasurer's Office that make up the CDLAC Committee apply pressure to CDLAC to create more efficient, competitive processes, which in turn creates additional regulations and builds on the complexity and multitude of rules to calculate when reviewing the applications. The amendments proposed by this promulgation will assist the Committee to meet those goals.

LIST OF REGULATIONS TO BE MODIFIED

Title 4, Section 5020. Determination of State Ceiling Pools

Title 4, Section 5170. Definitions

Title 4, Section 5190. Readiness

Title 4, Section 5193. Debt Service Coverage Ratio

Title 4, Section 5231. Ranking

Title 4, Section 5233. Allocation Limits

SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT

Section 5020(a)(1)(B)(ii)(aa). The change to this sections removes an obsolete reference. Emergency regulations adopted in July 2022 and made permanent in May of 2023 updated the tiebreaker and scoring for Qualified Residential Rental Projects. Through this process the removed reference was eliminated.

Section 5170. The change to this section removes "Supplemental Allocation Request Letter." Emergency regulations adopted in July 2022 and made permanent in May of 2023 created a new process for requesting supplemental allocation. This new process no longer relies on the submission of a "Supplemental Allocation Request Letter."

Section 5190(a)(1)(d). The proposed change in this section reduces confusion aligns with CDLAC's requirements with CTCAC's for site control as it related to the joint application.

Section 5193(a). The addition in this section reduces confusion and aligns with CTCAC's debt service coverage requirements as it relates to the joint application.

Section 5231 (e)(3). The deletion in this section allows Preservation and Other Rehabilitation projects to be allocated from the surplus allocation at the end of the year. Because Preservation and Other Rehabilitation projects are not eligible for the same amount of points as New Construction projects, New Construction projects will still have funding priority.

Section 5233. The changes to this section add clarity and reduce redundancy in order to eliminate confusion regarding the application of the allocation limits.

ECONOMIC IMPACT ASSESSMENT

The proposed regulation changes pertain to program eligibility, project scoring and ranking, and administrative issues relating to the allocation of tax-exempt bonds for Qualified Residential Rental Projects (affordable housing projects). The proposed changes are to ensure limited tax-exempt bond allocation is awarded competitively to projects most aligned with the States affordable housing goals and targets and to encourage the construction and rehabilitation of low-income housing developments to alleviate the State's housing crisis and its disproportionate impact on underserved communities. Application for tax-exempt bond allocation is discretionary and not required to construct affordable housing. Neither the proposed revisions nor the CDLAC Regulations require any person or entity to take any action, make any monetary expenditure, or refrain from taking any action or making any expenditure.

CDLAC is unaware of any reason awarding bond allocation would result in the elimination of jobs. Tax-exempt bond allocation Qualified Residential Projects will only sustain the need for California's construction workforce. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses.

CDLAC has concluded that it is unlikely that the proposal will (1) eliminate any jobs, (2) create any jobs, (3) create any new businesses, or (4) eliminate any existing businesses or result in the expansion of businesses currently doing business within the state.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose a mandate on local agencies or school districts.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

There were no alternatives proposed to the Committee that would lessen any adverse economic impact on small businesses.

ALTERNATIVES DETERMINATION

The Committee determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Committee are the only regulatory provisions identified by the Committee that accomplish the State's goal of increasing the units of affordable housing for underserved communities by leveraging Federal tax-exempt bond allocation. No other alternatives were proposed or otherwise brought to the Committee's attention.

ANTICIPATED BENEFITS

The benefits derived by these proposed regulations include the fair, efficient, and equitable administration of the Qualified Residential Rental Project (QRRP) Program in compliance with state and federal law.

OTHER REQUIRED DISCLOSURES

Studies, Reports, or Documents Relied Upon (Gov. Code §11346.2(b)(3)): None.

Reasonable alternatives that would be less burdensome and equally effective (Gov. Code §11346.2(b)(4)(A)): None.

Reasonable alternatives that would lessen the impact on small businesses (Gov. Code §11346.2(b)(4)(B)): None.

Evidence relied upon to support the initial determination that the regulation will not have a significant adverse economic impact on business (Gov. Code §11346.2(b)(5)(A)): As explained in the Economic Impact Assessment, these regulations only affect bond issuers and affordable housing developers.

EVIDENCE OF SUBSTANTIAL PROGRESS

Pursuant to Title 1 CCR section 52(b), the California Debt Limit Allocation Committee (the "Committee") hereby asserts that it has made substantial progress and has proceeded with diligence to comply with Government Code §11346.1(e) by undertaking these readopting activities. CDLAC solicited public comment in October 2023 receiving 171 comments and

continue working through the process.

ADDENDUM

Updated Required Notice of Proposed Emergency Action (Cal. Code Regs, Title 1, Section 48): Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Update to proposed emergency text submitted to the Office of Administrative Law: Non-substantive changes were made to sections 5170, 5190, and 5231. Erroneous reference citations to 8869.85(a) and 8869.85(b) were removed from 5170 and an ellipsis was added following 5190(a)(1)(D). In section 5231, "shall not" is being underlined in order to correct the publication of the regulations. It was previously approved by the Committee, however it was not underlined in the rulemaking package and publisher did not include the words "shall not" in the publication.

Authorization to submit regulations to the Office of Administrative Law: Signed Committee Resolution 23-029 was included in the rulemaking package.

Fiscal Impacts:

The agency has conducted a fiscal impact analysis in accordance with SAM 6601-6616 and made the following determinations:

There are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq.

There are no costs or savings to any state agency.

There are no other non-discretionary costs or savings imposed upon local agencies.

There are no costs or savings in Federal funding to the state.