

**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 Action being on the agenda of November 17, 2021, Committee meeting. 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).

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 private activity bonds adjusted for inflation for calendar year 2021 and 2022 was \$110 multiplied by the state's prior year estimated population. The U.S. Bureau of the Census releases the most recent resident population estimate before the beginning of each calendar year. For the last two calendar years the State Volume Cap for which CDLAC is responsible to allocate has been over \$4.3 billion.

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 2020 for the 2021 volume cap year revealed a demand for Private Activity Bond Projects totaling \$11,196,290,227, resulting in an oversubscription of 2.58 times more than the available \$4,330,488,580 volume cap for 2021. The Demand Survey conducted in 2021 for the 2022 volume cap year revealed a demand for Private Activity Bond Projects totaling \$13,218,510,710, resulting in an oversubscription of more than 3 times more than the available \$4,316,161,960 volume cap for 2022.

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 5000. Definitions
Title 4, Section 5020. Determination of State Ceiling Pools
Title 4, Section 5022. Geographic Apportionments
Title 4, Section 5035. Preliminary Recommendations
Title 4, Section 5036. Appeals to Preliminary Recommendations
Title 4, Section 5052. Forfeiture of Performance Deposit
Title 4, Section 5054. Filing Fees
Title 4, Section 5100. Program Expiration Dates
Title 4, Section 5105. Reversion to Committee
Title 4, Section 5133. Use of Carryforward
Title 4, Section 5144. Annual Applicant Public Benefits and On-Going Compliance
Title 4, Section 5146. Disqualification
Title 4, Section 5170. Definitions
Title 4, Section 5190. Readiness
Title 4, Section 5193. Debt Service Coverage Ratio
Title 4, Section 5200. Minimum Requirements – Market Study
Title 4, Section 5230. Evaluation Criteria
Title 4, Section 5231. Ranking
Title 4, Section 5240. Supplemental Allocation Process
Title 4, Section 5241. Realignment of Expiration Dates

SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT

Section 5000. Changes to "Competitive Application Process." The final sentence of this definition is being removed as it does not add substance to the definition. The process for staff to identify and for applicants to resolve and/or appeal deficiencies in the application are outlined in section 5035 and 5036.

Section 5000. Adding a definition for a new Pool to be established for the Supplemental Allocation Pool outlined in Section 5020(a)(6).

Section 5020(a)(1)(A)(ii). This change is a non-substantive clarifying change to the Extremely Low/Very Low Income Pool. First, "public funds" is defined in CTCAC section 10325(c)(9)(A)(i). Second, the opportunity mapping resource area of Moderate (Rapidly Changing) was previously classified as an area of opportunity but was discontinued due to its lack of reliability in predicting whether a Moderate Resource Area would soon become a High Resource Area. Since (1) the Moderate (Rapidly Changing) designation is included in past opportunity maps,

(2) past maps are accepted in relation to site control timing, and (3) CDLAC and CTCAC are no longer accepting the designation, the term should be removed from CDLAC regulations.

Section 5020(a)(6). This change establishes a Supplemental Allocation Pool. Prior to CDLAC's oversubscription, Supplemental Allocation was simply requested and awarded to projects needing additional allocation to meet the IRS 50% test. As tax-exempt bond allocation continues to be in short-supply in comparison to demand, a separate pool is needed to manage the Supplemental Allocation requests for Qualified Residential Rental Projects. This separate pool ensures that projects continue to move forward and are not delayed or permanently stalled due to rising costs.

Section 5022. The tiebreaker proposed for Section 5231 includes a rent savings benefit based on the county's Fair Market Rent (FMR). To minimize geographic allocation disparities that may result from large disparities in FMRs within a region, the proposed language makes a number of changes to the regions by regrouping some counties with outlier FMRs and consequently adjusts the percentage of apportionment for the Coastal Region and the Northern Region.

Section 5035. Additions and deletions to this section additionally clarify the notice and appeal processes for both the application review and the preliminary recommendations. No procedural changes are being made, all edits are for clarity.

Section 5036. Addition to this section clarifies that the referenced appeal process for the published preliminary recommendation list and not the appeal process for application deficiencies references in 5035.

Section 5052. The deletion of 5250 (f) is necessary to align with changes proposed in 5231 prohibiting the allocation of bonds to projects that are not scheduled for a tax credit award.

Section 5054. Additions to this section are to clarify the requirement of a fee for the review of applications to retain a Difficult Development Area/Qualified Census Tract (DDA/QCT) designation. This fee is not new, but instead being listed separately to avoid confusion. Deletions in this section are to remove over specificity with regards to fee payment and offer flexibility to staff to implement more technologically relevant payment methods in the future, and re-number due to the addition of (c).

Section 5100. The deletion in this section streamlines the process of assigning expiration dates. By delegating the authority to the Executive Director instead of random drawing, expiration dates can be thoughtfully spread between issuers and align with tax credit deadlines. The addition to this section allows for a third issuance deadline should a majority of the year's available allocation be assigned in a single round. In this case, it will be extremely difficult for lenders, investors, title companies, bond counsel and other practitioners to close the financing on such a high volume of transactions. Adding a third expiration date in such a situation will help alleviate this pressure and increase likelihood of successful bond closures.

Section 5105. The addition to the section clarifies that it is the issuance deadline that expires, not the Allocation. It also clarifies that bond allocation authority that subsequently is not fully

utilized be treated differently depending on whether the allocation is a reversion of current year allocation or a carryforward of prior year allocation.

Section 5133. 26 U.S. Code § 146 (f)3 (A) and (B) describes how bond issuers must retain and apply carryforward allocation of a state's volume cap. This change addresses how CDLAC applies that carryforward in addition to but in accordance with those rules. During times of over subscription, it is important to ensure prior year carryforward is applied to projects in a fair and consistent manner, that does not circumvent the competitive ranking process. This provision would adjust the procedure by which CDLAC would allow the application of carryforward allocation to newly funded projects in a targeted and intentional manner. This will allow the Committee to ensure net effect of the carryforward further progresses the housing goals of the State.

Section 5144. This change is further clarifying the correct reference material and removing requirement that does not align with that manual and the current process and requirements.

Section 5146. This addition gives the Committee authority to disqualify an application if the parties involved have a documented history of violating fair housing laws, further protecting the scarce resources of the State.

Section 5170. The deletion in this section is removing a forward perspective from the "BIPOC Entity" requirement.

Section 5170. The addition to "Community Revitalization Area" requires that the designated area be a part of a "Community Revitalization Plan" to be considered a "Community Revitalization Area." This requirement ensures that in addition to the previous requirement that investment by the local community has also been made in the area. This increases the likely success of the project and elevates the area in which the development is being built. Thus, creating a better environment for future tenants.

Section 5170. The definition of "Community Revitalization Plan" is being expanded to increase specificity and reduce the ambiguity of the deleted definition. This term is proposed as a result of changes to section 5231 requiring that all projects seeking the tiebreaker community revitalization benefit be located in a Distressed Area for which a Community Revitalization Plan has been adopted and efforts specific to the plan have occurred.

Section 5170. "Other Rehabilitation Project" is being cleaned up to standardize language in order to add clarity and reduce confusion.

Section 5170. "Permanent Supportive Housing" is being added so that projects that meet this definition receive incentive in the tiebreaker and the Affirmatively Furthering Fair Housing (AFFH) point category outlined in section 5230. This definition also aligns requirements for units designated for homelessness households with the Housing and Community Development's Multifamily Housing Program guidelines.

Section 5170. "Preservation Project" is being altered to remove projects with rental assistance contracts that have a remaining duration of more than five years. In December 2021, the

Committee determined that these projects are not at risk of conversion to market rate rentals in the short- or medium-term and should compete in the Other Rehabilitation Pool.

Section 5190. Additions to section 5190 requires the Project Sponsor and Developer to disclose any investigations of their work related to fair housing. This addition aids the Committee in exercising its authority in section 5146.

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

Section 5200. The deletion in this section is to remove unrequired barriers and provide additional opportunity for rural development, as well as align with CTCAC's current requirements. Re-numbered as a result of the deletion.

Section 5230(b). Changes to this section separate the point scoring for Other Rehabilitation Projects and Preservation Projects to increase clarity and reduce confusion since they have different criteria and are awarded in separate pools.

Section 5230(c). The additions to this section are to more clearly outline the original intent of the section by indicating that each criteria in (1) is independent of itself by specifying "or".

Section 5230(f). The deletion in this section removes ambiguous language that is not required and is already satisfied through the application review process.

Section 5230(i). The additions in this section require that at the time of application projects show the ability to start construction within 180 days of bond allocation, but clarify that should allocation be awarded, the true readiness deadline will align with the issuance deadline of the bond as indicated in Section 5100(b)(3)(i). Without this alignment, relief to the industry of the staggered bond issuance deadlines is lost. This section also separates the rescission of bond allocation for failure to meet the deadlines and the negative point penalties that may be imposed.

Section 5230(j). The changes to this section serve two purposes: 1. move site amenity scoring to its own section; and 2. once 50% of bonds in a pool or set-aside are awarded to ten point projects, remaining projects in that pool or set-aside would receive only nine maximum points. This has been referred to as a "soft cap." Any further developments in higher resource areas would remain eligible to compete with all remaining applications but would no longer have the advantage of the additional point.

Section 5230(m). Previously, site amenity points were embedded in the Affirmatively Furthering Fair Housing point category, and specified projects in higher opportunity areas received full points even when ineligible for any site amenity points. To ensure a degree of access to site amenities for projects in all locations, the proposed changes separate site amenities into a separate point category. This new category continues to have a maximum ten-point score and to use the CTCAC site amenity scoring criteria, with the exception that specified projects in higher opportunity areas are allotted three opportunity area site amenity points instead of the seven awarded under the CTCAC scoring criteria. scale.

Section 5230(n)(1)(B). The deletion to this section removes a loophole that inhibits the Committee's ability to assess negative points, in certain situations, if bonds are not issued. This deletion honors the intent of this section at drafting. The deletion of section 5230(n)(4) removes an unnecessary and ambiguous provision.

Section 5231. The addition in the Ranking prelude restricts the award to bond allocation to projects that are either not requesting State Tax Credits or are requesting State Tax Credits that are also scheduled to be awarded to them. Previously, projects were able to be awarded bond allocation even if they were not being awarded the requested State Credits. This resulted in over \$400 million in bond allocation that was returned and needed to be re-awarded, further delaying the construction of new affordable housing projects. This change will prohibit the award of bond allocation to projects that are not scheduled to receive the requested State Tax Credits.

Section 5231(e). The proposed change to this section alters the priority within the Homeless Set-aside to benefit projects with 45% or more homeless units, as opposed to the previous 100%. This will provide additional flexibility to developers while still incentivizing a significant percentage of homeless units in projects receiving awards in this set-aside. The previous 100% requirement created a barrier to affordable housing development, not allowing for example a project with a percentage of homeless units along with a percentage of special needs units. Additionally, CDLAC is appropriately referencing the CTCAC section to honor the intent of the requirement.

Section 5231(e)(3) and (4). The deletions in these sections allow Rural New Construction projects to be allocated from surplus allocation at the end of the year, thus removing this barrier to rural housing development. The final deletion in section 5231(e)(4) removed an unnecessary and ambiguous item.

Section 5231(f). The changes in this section clarify and revise the parameters required in order to award a lower ranking project over a higher ranking one when there is not enough allocation available to award the higher ranking project. This is known as skipping. In 2021, the CDLAC regulations did not allow skipping during Round 1, but did allow skipping without the currently proposed parameters in Rounds 2 and 3. Both processes had pitfalls and drew criticism. The proposed skipping process allows for skipping, but within certain limits and is a more moderate and measured approach than before without prohibiting skipping altogether.

Section 5231(g). The changes to the CDLAC tiebreaker in this section seek to capture a ratio of measured resources (bonds and tax credits) to public benefit. The Committee met multiple times in late 2021 and narrowed down the public benefit criteria to a combination of: production benefit; rent savings benefit, population benefit, and location benefit. This formula represents the culmination of hours of meetings (and hundreds of pages of minutes) and hours of public comment and engagement. In concept, this new tiebreaker measures public benefit per dollar of specified, adjusted state resources, incentivizing projects with the greatest impact. The public benefit numerator is comprised of the following five components, each as explained below:

- a unit production benefit, adjusted for bedroom sizes;

- 2) a 15-year rent savings benefit, with an assumed 30% Area Median Income (AMI is a HUD report and calculation) for all units with rental assistance and a cap on benefits when non-rental assistance units achieve an average 40% AMI targeting;
- 3) a benefit for each Extremely Low Income (ELI is a HUD report and calculation) unit;
- 4) a population benefit for each special needs or veteran unit, unless the unit is receiving a highest or high resource area opportunity benefit;
- 5) a multi-layered location benefit: a tiered opportunity benefit for large family and special needs projects in highest, high, or moderate resource areas, a community revitalization benefit, and transit and walkability benefit options, including a benefit for projects with Affordable Housing and Sustainable Communities (AHSC) or Transient-Oriented Development (TOD) funding.

The state resource denominator includes tax-exempt bonds under the state ceiling and state tax credits and is adjusted for prevailing wages, Type I or III construction, and by the statewide basis delta weighted at 25% of its current weighting.

Section 5240. Changes to this section remove an outdated process for requesting Supplemental Allocation and allow the Committee to delegate authority to the Executive Director to award Supplemental Allocation. This authority allows projects to keep moving forward and in compliance with the IRS 50% test during times of rapid inflation and market volatility. The addition of the Supplemental Allocation Pool in section 5020 was added to accommodate this authority.

Section 5241. The deletions in this section create an alignment of expiration dates on Supplemental Allocations that will be the same during a Competitive or Open Application process. This will provide consistency.

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.