

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

**November 21, 2017**

**REVISED**

**Consideration and Approval of Proposed CDLAC Regulations for Submittal to the Office of Administrative Law for Emergency and Regular Rulemaking Consideration**  
**(Agenda Item No. 3)**

**ACTION:**

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

**BACKGROUND:**

CDLAC will submit, if approved by Committee, a request for emergency approval of the proposed regulation changes to the Office of Administrative Law on November 21, 2017 with an anticipated approval and adoption date of December 1, 2017.

The purpose of these regulation changes is to correct and clarify previous regulation changes and regulation language that has been inaccurate or unclear. Emergency regulations are also necessary to allow CDLAC to allocate all remaining bond authority for 2017. This is necessary because Tax Cuts and Jobs Act (the Act) introduced in the House of Representatives on November 2, proposes the elimination of the Bond Program. Should the Act pass, bond allocation that has not been issued by December 31, 2017 will be swept. The proposed regulations will facilitate navigation of the text with a Table of Contents and clarify sections where language may have been ambiguous.

**PROPOSED REVISIONS:**

**Forms to be Incorporated by Reference**

**“Standard QRRP Competitive Application” (06-01-2017)**

**Necessity:**

- On the first page, remove letterhead as the information it contains (names of Committee members and the Executive Director) is more frequently updated on the CDLAC’s website.
- In addition, add confirmation that valid Issuance and Compliance policies have been submitted by the Issuer and approved by CDLAC. See Page 5, item 5.
- Change the signature page to "Senior Official or Designee" on page 2 of application, and Attachment V-2, to allow those individuals with signature delegated authority by Joint Power Authorities to sign, without naming them as Senior Officials.
- Include the managers unit in the CDLAC application for high cost calculations. See page 7, item 6.
- On page 10, capitalize "special needs" because it is to be defined in Section 5170.
- On the QRRP Application Documents Checklist, page 24, Item D, require the commitment letter to include lender's letterhead as evidence of authenticity.
- To reconcile the distance CDLAC requires a project to be from a Public Transit Corridor for points, on the QRRP Application Documents Checklist page 25, Item T-1 should be changed

from one quarter mile to one third of a mile. This was partially addressed in the prior round of regulation revisions. However the QRRP applications checklist needs to be updated.

- Create Attachment E3 to reconcile outstanding liens as recorded against the property, and listed in the development budget.

#### "Standard QRRP Open Application" (06-01-2017)

##### Necessity:

- On the first page, remove letterhead as the information it contains (names of Committee members and the Executive Director) is more frequently updated on the CDLAC's website.
- In addition, add confirmation that valid Issuance and Compliance policies have been submitted by the Issuer and approved by CDLAC. See Page 5, item 4.
- Change the signature page to "Senior Official or Designee" on page 2 of application, and Attachment V-2, to allow those individuals with signature delegated authority by Joint Power Authorities to sign, without naming them as Senior Officials.
- Include the managers unit in the CDLAC application for high cost calculations. See page 7, item 6.
- On page 10, capitalize "special needs" because it is to be defined in Section 5170.
- On the QRRP Application Documents Checklist, Item D, page 24, require the commitment letter to include lender's letterhead as evidence of authenticity.
- To reconcile the distance CDLAC requires a project to be from a Public Transit Corridor for points, page 25, Item T-1 should be changed from one quarter mile to one third of a mile. This was partially addressed in the prior round of regulation revisions. However the QRRP applications checklist needs to be updated.
- Create Attachment E3 to reconcile outstanding liens as recorded against the property, and listed in the development budget.

## **PROPOSED REGULATION CHANGES**

### Table of Contents

Necessity: A Table of Contents is proposed to be added at the beginning of the regulations text to facilitate finding relevant sections.

### Chapter 1, Article 1, Section 5000.

#### "Placement Agent or Underwriter Statement"

Necessity: To address instances where it would be appropriate for an underwriter as opposed to a placement agent to provide a summary of the proposed bond structure, the existing Placement Agent Statement term has been expanded to include "or Underwriter Statement".

### Chapter 1, Article 1, Section 5033. Minimum Application Requirements

Necessity: In subsection (b)(5)(C) CDLAC proposes moving the words "copy of the" from after to before the words "fully executed" for clarification on requirements regarding a TEFRA Resolution.

### Chapter 1, Article 4, Section 5035. Preliminary Recommendations

Necessity: The phrase "During competitive rounds the list will be" is proposed to be added prior to "in ranked order". The reason for the change is that during non-competitive rounds, the ranking of

applications by points does not provide information of value, so long as those applications passed the threshold requirement for points.

Chapter 1, Article 4, Section 5037. Final Recommendations

Necessity: The sentence “During competitive rounds the list will be in ranked order.” is proposed to be added. The reason for the change is that during non-competitive rounds, the ranking of applications by points does not provide information of value, so long as those applications passed the threshold requirement for points.

Chapter 1, Article 5, Section 5054. Filing Fees.

Necessity: Insert a comma in the fee “\$1200” for consistency with application forms.

Chapter 1, Article 6, Section 5060(1). Minimum Requirements

Necessity: CDLAC proposes revising the word “issues” to “issued” as it was a misspelling in this context.

Chapter 1, Article 6, Section 5064. Unenhanced Bond Sales with a BBB Category Credit Rating

Necessity: The word “marketing” was misspelled. CDLAC proposes spelling it correctly by changing it from “marking” to “marketing”, as in, “a marketing plan”.

Chapter 1, Article 8, Section 5101. Extensions to Expiration Dates

Necessity: Revise wording by adding the word “for” before “Allocations” as it’s currently awkward without.

Chapter 1, Article 8, Section 5102. Recovery Zone Bond Extensions.

Necessity: The proposed regulations will clarify the existing 30-day extension option.

Chapter 1, Article 9, Section 5120. Transfer Requirements

Necessity: The text has been expanded to specify the conditions of a transfer and the requirements for doing so. It is CDLAC’s expectation that applicants that obtain an award of allocation via a transfer allocation from another issuer have met all CDLAC minimum threshold requirements of the program associated with the award of allocation.

Chapter 1, Article 11, Section 5144(a). Annual Applicant Public Benefits and On-going Compliance Self Certification

Necessity: The following sentences are proposed to be added to subsection (a): “The new Issuer takes on responsibility of reporting on projects that have resyndicated after Year 15. CDLAC approves termination of original bond regulatory agreements to ensure the new agreement has at least the same levels of service.” The sentences are in response to a major issuer commenting to CDLAC staff that once a project has resyndicated it’s not clear if the first issuer has compliance responsibilities. CDLAC management also wanted to clarify that in such a case CDLAC approves the termination of the old bond regulatory agreement to ensure the new agreement has the same levels of service, at least.

Chapter 1, Article 11, Section 5144(d)(4). Annual Applicant Public Benefits and On-going Compliance Self Certification

Necessity: the proposed regulation will memorialize the federal election requirement that must be included in the CDLAC Application. This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not included in the CDLAC regulations.

Chapter 2, Article 1, Section 5170. Definitions

“Special Needs” Provides a definition of “Special Needs” consistent with the current TCAC definition. Analysts brought up this requests to facilitate the review of applications, due to the variety of possible interpretations by applicants.

"State of California Universal Application for the Development of Affordable Rental Housing"

Necessity: This form is to be removed from CDLAC’s regulations as a Joint application is being introduced in its stead, and applicants have not used the Universal application.

“Supplemental Allocation Request Letter”

Necessity: CDLAC proposes adding “from the applicant” to the definition as some have been coming from project sponsors, which is not CDLAC’s intent.

“Table 1”

Necessity: Term will be repealed in regulations due to proposed elimination of Section 5250(a)(1) requirement.

“Table 2”

Necessity: Term will be repealed in regulations due to proposed elimination of Section 5250(a)(1) requirement.

"Universal Competitive Addendum"

Necessity: This form is to be removed from CDLAC’s regulations as a Joint application is being introduced in its stead, and applicants have not used the Universal application.

"Universal Open Addendum"

Necessity: This form is to be removed from CDLAC’s regulations as a Joint application is being introduced in its stead, and applicants have not used the Universal application.

Chapter 2, Article 3, Section 5190(c). Project Sponsor, Developer, and Property Management information.

Necessity: Applicants shall provide information pertaining to the following Project entities: The Project Sponsor and its partners and principals; the Developer; and the Property Manager. The experience of all shall also be provided. This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not included in the CDLAC regulations.

Chapter 2, Article 3, Section 5190(d). Legal Status of Project Sponsor and Developer.

Necessity: Applicants shall disclose the legal status of the Project Sponsor and the Developer of the Project.

This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not included in the CDLAC regulations.

Chapter 2, Article 3, Section 5190(e). Current Owner of Project site.

Necessity: Applicants shall disclose the information regarding the current owner of the Project site. The information shall contain the name and address of the current owner and the anticipated escrow closing date. This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not included in the CDLAC regulations.

Chapter 2, Article 3, Section 5190(f). Legislative Districts and Census Tracts

Necessity: Applicants shall provide the Federal Congressional District, State Senate District, State Assembly District, and Census Tract of the Project. This requirement currently exists in the CDLAC

QRRP application, a document incorporated by reference, but was not included in the CDLAC regulations.

Chapter 2, Article 3, Section 5190(g). Prior Tax-Exempt Allocation Award.

Necessity: Applicants shall provide information related to any prior allocation award and the reason for the new request. This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not previously included in the CDLAC regulations.

Chapter 2, Article 3, Section 5190(h). Project Description.

Necessity: Applicants shall provide a description of the proposed Project. The description must contain at minimum the number of acres of the site; a description of the surrounding neighborhood; the targeted population for the project; the expected start and completion dates of construction; physical features of the project; unit configuration; unit amenities; scope of work; and any unique features of the project. This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not previously included in the CDLAC regulations.

Chapter 2, Article 3, Section 5190(i). Detailed Unit Affordability Information.

Necessity: Applicants shall provide a breakdown of Project unit types, size, number of units, proposed tenant-paid rent, monthly utility allowances (if any), subsidies (if any) and unit percentage of Area Median Income (AMI) level based on monthly Gross Rent. This requirement currently exists in the CDLAC QRRP application, a document incorporated by reference, but was not previously included in the CDLAC regulations.

Chapter 2, Article 3, Section 5191(c). Utility Allowance Evidence.

Necessity: Points will no longer be awarded to Projects subject to the use of Gross Rent as defined by Section 5170. In addition, the utility allowance evidence previously used to validate Gross Rent Points, will now be a threshold requirement. This evidence will be used to confirm that the Gross Rent figures identified in the QRRP application are consistent with local government utility allowance limits and tax credit rent limits; and do not result in an overpayment of tenant-paid rent.

Chapter 2, Article 3, Section 5193 (b) and (c). Debt Service Coverage Ratio.

Necessity: the proposed regulation will memorialize debt service coverage ratio requirements that must be included in the CDLAC Application. These requirements currently exist in the CDLAC QRRP application, a document incorporated by reference, but were not included in the CDLAC regulations.

Chapter 2, Article 3, Section 5194 (a) thru (e). Project Sources and Costs.

Necessity: the proposed regulation will memorialize various sources and uses requirements that must be included in the CDLAC Application. These requirements currently exist in the CDLAC QRRP application, a document incorporated by reference, but were not included in the CDLAC regulations.

Chapter 2, Article 6, Section 5212. Capital Needs Assessment.

Necessity: To ensure the Capital Needs Assessment contains the most current outline of project rehabilitation needs, the proposed regulations will now require that not only the report date be within 180 days of the applicable application deadline but that the inspection date of the property also be within the 180 days of the application deadline as opposed to one year from this deadline. This requirement is also consistent with the current California Tax Credit Allocation Committee (TCAC) requirement. In addition, the proposed changes will require resyndication projects to demonstrate in the pre-rehabilitation capital needs assessment a rehabilitation need of at least \$5000 per unit over the first three years (i.e., the short-term work period), unless the project receives a waiver from the transfer event requirements of Title 4, Division 17, Chapter 1, Section 10320(b)(4). The proposed change is to ensure that tax exempt bond allocation is awarded only to projects facing at least some minimal rehabilitation need in the near future.

Staff believes that projects that do not face short term needs but want to upgrade can wait to resyndicate until such time as the property has minimal rehabilitation needs. CDLAC remains committed to providing bond allocation to resyndications, but absent an immediate rehabilitation need, staff sees no need to award allocation to such a large number of projects on a 15-year cycle as opposed to a longer cycle. A later award also has the added benefit of extending the original term of affordability out even further.

Chapter 2, Article 7, Section 5220(d)(2)

Necessity: Capitalize “special needs” as it is proposed to be a defined term in the regulations.

Chapter 2, Article 8, Section 5230(d)(1).

Necessity: Gross Rent points will no longer be awarded to projects that are required to utilize Gross Rent as defined in Chapter 2, Article 1, Section 5170. Instead, the utility allowance evidence previously provided under this point category for those projects required to utilize Gross Rent will be a CDLAC threshold requirement as specified in Section 5191(c) of these proposed regulations. Given that the specified projects are already required to use Gross Rent when calculating maximum rents, it is important that the evidence be provided to CDLAC staff in the application so that it can be confirmed that the applicant has not overstated the amount of rent that may be collected.

Chapter 2, Article 8, Section 5230(d)(B)2.

Necessity: The California Utility Allowance Calculator (CUAC) is a tool to establish utility allowances that are project-specific based on the energy efficiency and energy generation of a project. The current regulations restrict use of the CUAC to new construction projects and to those projects in the existing TCAC portfolio that receive Multifamily Affordable Solar Housing (MASH) program awards and offset tenant loads. The regulations also require submittal of a CUAC to a TCAC-contracted quality control review at placed in service.

The proposed changes direct Applicants to the Tax Credit Allocation Committee’s (TCAC) aligning requirements for bond and 4% tax credit projects while also expanding the universe of projects that may use the CUAC to 1) all rehabilitation projects seeking a new or renewed reservation of tax credits (i.e., both resyndication and first-time syndication projects), and 2) projects in the existing TCAC portfolio with new photovoltaics installed through a municipal utility or joint powers authority solar program, which offset tenant loads. Allowing these projects to use the CUAC will facilitate greater energy efficiency and the increased usage of on-site energy generation. The CUAC is designed to set a more accurate project-specific utility allowance for more sustainable projects (all rehabilitation projects must improve energy efficiency by at least 10%), which in turn increases the portion of the gross rent that can be leveraged to finance improvements. The tenants continue to benefit from a utility allowance that is appropriate to their units.

Like projects that may already use the CUAC, the proposed regulations require all projects using the CUAC to submit the CUAC at placed in service for quality control review and pay a fee to cover the cost. While not a requirement, TCAC highly encourages rehabilitation projects seeking tax credits also to submit their inputs relevant to the existing conditions of the building for quality control review at application (for which the cost will also be charged to the applicant but which will not delay the review of the application or reservation of credits). This will avoid a situation in which the applicant makes design and expenditure decisions based on projected CUAC allowances that later prove to be inaccurate as a result of the PIS quality control review. TCAC reports that the assumption selected for the existing building conditions often require adjustment. In the absence of a quality control review at application, the applicant bears full risk for a change in the CUAC allowances based on the PIS quality control review. TCAC will not approve CUAC allowances other than those substantiated by the quality control review. Similarly, the proposed changes expand the requirement to notify tenants in advance of the utility allowance change and the requirement to report actual rent increases to TCAC to rehabilitation projects.

The proposed changes do not subject rehabilitation projects seeking tax credits to the cash flow requirements as these projects already must meet the cash flow parameters of Section 10327(g)(6).

Lastly, the proposed changes allow CUAC projects with existing buildings (i.e., rehabilitation projects seeking tax credits and existing building with awards from the specified programs) to use either of two calculators to determine solar values: 1) the CEC Photovoltaic Calculator already cited, and 2) the Expected Performance Based Buydown (EPBB) calculator, in which case the applicant shall use monthly scalars to be determined by TCAC to convert annual values to monthly values. The EPBB calculator is not appropriate for new construction projects.

Chapter 2, Article 8, Section 5230(k)(1) and Section 5230(k)(2) – Sustainable Methods

Necessity: At the request of the licensed architect community, a reference to the Business and Professions Code’s definition of “certification” has been added to clarify that certification by a licensed architect does not constitute a warranty or guarantee. Instead, the licensed architect’s certification constitutes a professional opinion regarding the facts and/or findings that are the subject of the certification.

Chapter 2, Article 8, Section 5233(b). Allocation Limits.

Necessity: The annual state ceiling on tax exempt bonds is a limited resource. In California, a large percentage of the annual state ceiling is reserved by CDLAC for Qualified Residential Rental Program (QRRP) Projects as a priority. In an effort to ensure that this limited resource is allocated in the most economical manner possible and that it assists the greatest number of QRRP projects possible, the proposed regulations will limit the amount of allocation a QRRP Project may request while still allowing Projects utilizing 4% tax credits to meet the CA Tax Credit Allocation Committee’s 50% test which requires that CDLAC allocation account for at least 50% of the Project’s aggregate basis (land plus depreciable assets). To ensure that the test is met and to account for possible cost overruns that are common among multifamily housing projects, the proposed regulations establish that an allocation award per Project will be limited to a maximum of 65% of the Project’s total aggregate basis as determined by a 3rd party certification prepared in accordance with Title 4, Division 17, Chapter 1, Section 10322(e)(2).

Chapter 2, Article 9, Section 5240. Supplemental Allocation Process

Necessity: Subsection (a) is proposed to have the word “electronically” added to ensure requests for supplemental allocations are submitted by that means. Subsection (b) would have the additional words “submitted by the Applicant and” to mirror CDLAC’s intent that Issuers, not project sponsors, submit requests for supplemental allocations. Subsection (b) also would list two additional requirements, Attachment N and Attachment Y. These are Attachment N: Evidence of local approvals and zoning (form provided by CDLAC). (See Section 5190(b) of the CDLAC Regulations.) Attachment Y: Responses to PART V – Legal Status of Applicant and Project Sponsor.

Chapter 2, Article 10, Section 5250(a)(1) – Scattered Site Application requirements

Necessity: This subsection proposes that project sites within a Scattered Site Applications are no longer required to meet Section 5191 of the CDLAC regulations as individual project sites. Instead the scattered site application and all sites within it will be evaluated as a single project. This is consistent with the existing CA Tax Credit Allocation Committee evaluation methodology and reflects CDLAC’s understanding that from an underwriting perspective, the property portfolio or “Scattered Site” project is evaluated by various funding sources as a single project for financing and debt service purposes. To require individual site evaluation contradicts this idea.

Chapter 2, Article 10, Section 5250(a)(3)(A). Application Requirements

Necessity: Capitalize “special needs” as it is proposed to be a defined term in the regulations.

Chapter 2, Article 13, Section 5259. Allocation Request Requirements

Necessity: Released November 2, 2017, H.R. 1, the Tax Cuts and Jobs Act, proposes the elimination of tax exempt private activity bonds that have not been issued by December 31, 2017. To meet the elimination deadline, CDLAC is proposing an additional allocation round with a modified application and award process scheduled in December.

Chapter 10, Article 3, Section 5540(f)(3). Evaluation Criteria

Necessity: The term "Renewable Energy" should be capitalized because it is a defined term in the CDLAC regulations.

**DISCUSSION:**

Should the Committee approve these proposed revisions, staff will submit the emergency rulemaking package to OAL immediately. A 5-day public comment period will commence on the day of submittal, with possible enactment of the regulations within 5 days thereafter. If approved as scheduled, the Emergency Regulations would be in place in time for a December 20, 2017 ~~December 27, 2017~~ Committee allocation meeting.

**RECOMMENDATION:**

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

*Prepared by: Felicity T. Wood*



# FORMS

# **Proposed Regulations**