

**Proposed Regulations Changes  
(09-20-17)  
(Proposed new language is underlined)**

**Proposal for a 90 Day Extension of Emergency Regulations 03-23-2018**

**Chapter 1. General Provisions**

**Article 1. Definitions**

**Section 5000. Definitions.** In addition to the definitions set forth in Government Code section 8869.82 and unless otherwise required by the context, the following terms as used in this division are defined as follows:

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“Bond Default” means a material default as defined within an Issuer’s Bond documents, but does not include for the purposes of this definition, defaults that are technical in nature such as a failure to maintain covenants, failing to charge rates sufficient to meet rate covenants, failing to maintain insurance on the Project, or failing to fund various reserves.

“Bond Regulatory Agreement” means the agreement between the Issuer, Project Sponsor, and any third party related to the ownership, financing, and management of a proposed Qualified Residential Rental Project or Qualified Public Educational Facility Project that binds the parties to the commitments made in the Application that resulted in the Allocation for the Project and any other requirements mandated by 26 U.S.C. section 142.

“Bond Issuance and Post Issuance Compliance Policies” means policies established by an Applicant to guide the process of issuing private activity bonds and ensuring post-issuance compliance including but not limited to a description of the fee structure, application and approval process (including TEFRA), threshold eligibility criteria for applicants and Projects, long term regulatory requirements (if any), and monitoring practices.

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“CSFA” means the California School Finance Authority.

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“Qualified Private Activity Bond” means a Bond that satisfies the requirements of 26 U.S.C. sections 141 et seq.

“Qualified Public Educational Facility Bond Pool” means the reserve of Qualified Public Educational Facility Bonds established by the Committee for Qualified Public Educational Facilities pursuant to IRC section 142(k).

“Qualified Recovery Zone Bond Issuer” means eligible Issuers of Recovery Zone Bonds including states, political subdivisions as defined for purposes of U.S. Treasury Regulations, section 103, and entities empowered to issue Bonds on behalf of any such entity under rules similar to those used to determine whether a Bond issued on behalf of a state or political subdivision constitutes an obligation of the state or political subdivision for purposes of U.S. Treasury Regulations, section 103 and subchapter A, 1.103-1(b), or eligible Issuers in conduit financing issues as defined in U.S. Treasury Regulations, subchapter A,

1.150-1(b). An eligible Issuer may issue Recovery Zone Bonds based on a volume cap allocation received by the eligible Issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of the Bonds.

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“Standard Permanent Bonds” means Bonds issued for the purposes of providing permanent Project financing which (i) meet CDLAC’s Debt Service Coverage Ratio requirement in Section 5193 or (ii) are not Cash Flow Permanent Bonds.

“State Ceiling” means the amount of Qualified Private Activity Bonds that can be issued in California for each calendar year specified by 26 U.S.C. section 146(d), the amount of Qualified Public Educational Facility Bonds that can be issued in California for each calendar year specified by 26 U.S.C. section 142(k), and the amount reserved to California pursuant to sections 1112 and 1401 of the American Recovery and Reinvestment Act of 2009 as established by and announced by the Committee in accordance with article 2 of this chapter.

“State Ceiling Pools” means the individual pools created by the Committee and as defined in this chapter.

“Annual Applicant Public Benefits and Ongoing Compliance Self-Certification (Revised ~~11-16-16~~ 9/20/17)”, hereby incorporated by reference, means the document in the online compliance certification system to be completed by the Issuer in which the Issuer certifies that the Project is in compliance with all of the terms and conditions set forth in the Committee Resolution.

“Certification of Compliance II for Non-Qualified Residential Rental Projects” (~~11-16-16~~ 9/20/17), hereby incorporated by reference, is a form for Applicant/Issuers awarded allocation in 2017 forward. Applicant/Issuers retain the Certification form for a period of three years in place of the Certification of Compliance I (11-16-16) to ensure that the Project Sponsor is reporting all relevant compliance and possible changes to the Project or program to the Applicant.

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Note: Authority cited: Section 8869.94, Government Code. Reference: Section 8869.84(c), Government Code.

### **Article 3. State Ceiling Pools**

**Section 5020. Determination of State Ceiling Pools.** As soon as practicable after the beginning of each calendar year, and before any Applications are considered, the Committee will:

(a) Determine and announce what amount, expressed both as a percentage and as a dollar amount of the State Ceiling, shall be available for Allocation during the year and in each Allocation Round to Qualified Residential Rental Projects from the Qualified Residential Rental Project Pool.

(1) Subsequent to the determination made pursuant to subdivision (a) of this section, determine and announce whether a portion of the Qualified Residential Rental Project Pool, expressed as a dollar amount and as a percentage (not to exceed twenty-five percent (25%)) of the Qualified Residential Rental Project Pool shall be reserved in a Mixed Income Pool to be available for allocation to Mixed Income Projects, and determine what amount, if any, shall be available in each Allocation Round.

(2) Subsequent to the determination made pursuant to subdivision (a) of this section, determine and announce whether a portion of the Qualified Residential Rental Project Pool, expressed as a dollar amount and as a percentage (not to exceed ten percent (10%)) of the Qualified Residential Rental Project Pool shall be reserved in a Rural Project Pool to be available for allocation to Rural Projects and determine what amount, if any, shall be available in each Allocation Round.

(b) Determine and announce what amount, expressed both as a percentage and as a dollar amount of the State Ceiling, shall be available for allocation during the year and in each Allocation Round to Single Family Housing Programs.

(1) Subsequent to the determination made pursuant to subdivision (b) of this section, determine and announce what portion of the Single Family Housing Program Pool will be reserved and allocated to state Issuers.

(2) Subsequent to the determination made pursuant to subdivision (b)(1) of this section, the remainder of the Single Family Housing Program Pool will be reserved by county, for Local Issuers. Each county shall receive a proportionate share of the amount reserved for Local Issuers based on the population of the county relative to the state's total population. Populations will be based on data published by the California State Department of Finance Demographics Unit. Where there is more than one Local Issuer in a county, each Local Issuer shall receive a proportionate share of the county's reservation based on the population of the jurisdictions served by an Issuer relative to the county's total population, or as agreed upon by the participating Local Issuers. Local Issuers may apply independently of the county level Issuer. Any allocation awarded specifically to a Local Issuer shall reduce the amount available for the county level Issuer accordingly.

(c) Subsequent to the determinations made pursuant to subdivision (b) and (b)(1) of this section, determine and announce whether a portion of the Single Family Housing Program Pool, expressed as a dollar amount and as a percentage of the Single Family Housing Pool, shall be reserved in a separate Single Family Housing Program Bonus Pool to be available for allocation by the Committee during the year and in each Allocation Round. The Single Family Housing Program Bonus Pool may be made available for allocation at any Allocation Round subsequent to the first Allocation Round in a given calendar year. The Committee will also designate which Applicants will be eligible for consideration for this pool.

(d) Determine and announce what amount expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Extra Credit Teacher Home Purchase Programs.

(e) Determine and announce what amount expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Small-Issue Industrial Development Bond Projects.

(f) Determine and announce what amount expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Exempt Facility Projects.

(g) Determine and announce what amount expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Student Loan Programs.

(h) Determine and announce what amount, expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Beginning Farmer Projects.

(i) Determine and announce what amount, expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Home Improvement and Rehabilitation Programs.

(j) Determine and announce what amount, expressed both as a percentage and as a dollar amount, of the Qualified Public Educational Facility Bonds State Ceiling that shall be available for allocation during the year and in each Allocation Round to the Qualified Public Educational Facility Bond Program.

~~(k)~~ (k) The Committee shall sub-allocate resources to any particular pool in a manner that is consistent with maximizing public benefits associated with the use of allocation.

Note: Authority cited: Section 8869.94, Government Code. Reference: Section 8869.82 and 8869.84, Government Code.

## **Article 8. Expiration of Allocations**

### **Section 5100. Program Expiration Dates.**

(a) The expiration date of the Allocation shall be specified in the Committee Resolution and shall start from the date on which the Committee awards the Allocation.

(b) Notwithstanding extensions as provided in sections 5101, 5102 or 5103; the limitations prescribed by section 5104; or Allocations awarded on a carry-forward basis as provided in section 5131; the expiration dates for issuing Bonds or converting Bonds to Mortgage Credit Certificate authority shall be:

(1) Ninety (90) days for the issuance of Beginning Farmer Bonds, Mortgage Revenue Bonds, Small-Issue Industrial Development Bonds, Exempt Facility Bonds, Recovery Zone Facility Bonds, Recovery Zone Economic Development Bonds, Qualified Public Educational Facility Bonds, Qualified Energy Conservation Bonds and the conversion of Bonds to Mortgage Credit Certificate authority.

(2) One-hundred twenty (120) days for the issuance of Student Loan Bonds and for the issuance of at least one (1) Mortgage Credit Certificate.

(3) For Qualified Residential Rental Project Bonds, the following expiration dates shall be assigned randomly by a lottery drawing conducted by the Executive Director within five (5) business days following each Allocation Round:

(i) Projects receiving an allocation during a Competitive Application Process shall be assigned an expiration date of ninety (90) days, one-hundred (100) days or one-hundred ten (110) days.

(ii) Projects receiving an allocation during an Open Application Process shall be assigned an expiration date of one-hundred eighty (180) days or one-hundred ninety-four (194) days.

(iii) A Project's applicant may request an expiration date of less than one-hundred eighty (180) days by submitting a written request to the Executive Director. The request shall be submitted no later than the final posting date for the round in which the Project is seeking an allocation.

Note: Authority cited: Section 8869.94, Government Code. Reference: Section 8869.84(c), 8869.84(e), 8869.89, Government Code.

## **Chapter 13. Qualified Public Educational Facility Bond (QPEFB) Program**

### **Article 1. Definitions**

**Section 5700 Definitions.** To the extent any of these definitions conflict with definitions set forth in Government Code section 8869.82 and Chapter 1 of these regulations, the definitions contained in this section 5700 shall apply to this Chapter 13:

"Chartering Authority" means a State educational agency, local education agency, or other public entity that has the authority pursuant to State law to authorize or approve a Charter School.

"Public elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, which provides elementary education, as determined under State law.

"Public secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, which provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12.

"Qualified Public Educational Facility" means any school facility which is part of a Public Elementary School or Public Secondary School, and owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local education agency pursuant to Internal Revenue Code § 142(k)(2).

“Qualified Public Educational Facility Bond Application” (hereafter “Application”) means the Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Public Educational Facility Bond Project” (QPEFB 9-20-17 03-15-2018), which is hereby incorporated by reference.

“Qualified Public Educational Facility Bonds” (QPEFB’s) are tax-exempt private activity bonds issued to finance the construction, rehabilitation, refurbishment, or equipping of a Qualified Public Education Facility.

“Qualified Public Educational Facility Project Sponsor” (hereafter “Project Sponsor”) means a private, for-profit corporation that undertakes the financing or refinancing of a qualified public education facility in conjunction with a school district, charter school, county office of education, or community college district in compliance with IRC section 142(k).

“School Facility” means any school building; any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events; and any property to which Internal Revenue Code § 168 applies or would apply but for section 179, for use in such a facility.

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a), and 8869.85(b), Government Code.

## **Article 2. Applications.**

**Section 5710. Application Process.** Applications for an Allocation of the Qualified Public Educational Facility Bond Pool shall be considered in accordance with the provisions of Chapters 1 and 13 and the submission of an Application.

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a), and 8869.85(b), Government Code.

## **Section 5711. Allocations.**

- (a) The Committee may award a Qualified Public Educational Facility Bond Allocation to the California School Finance Authority (“CSFA”) for the purposes of:
  - (1) administering the Qualified Public Educational Facility Bond Pool. In awarding the Allocation to CSFA, the Committee will authorize CSFA to allocate portions of the award to Project Sponsors for purposes of issuing Bonds; or
  - (2) sub-awarding Qualified Public Educational Facility Bond Allocation to Applicants on behalf of the Committee. In awarding the Allocation to CSFA, the Committee will authorize CSFA to transfer portions of the Allocation to Local Issuers and the CIEDB for purposes of issuing bonds under the Qualified Public Educational Facility Bond Program.
- (b) The Committee may also directly award a Qualified Public Educational Facility Bond Allocation to Applicants for purposes of issuing bonds in connection with a specific Project in compliance with this Chapter.

Note: Authority cited: Section 8869.94, Government Code. Reference: Section 8869.84, Government Code.

## **Article 3. Eligibility.**

**Section 5720. Project Readiness.** The Applicant must provide evidence of Project readiness to the satisfaction of CSFA. The Applicant must provide the following readiness information as applicable:

- (a) A description of the Project(s) that will be financed with the bond proceeds;

- (b) Estimated beginning and ending date of Project construction;
- (c) Evidence of site control as described in section 5190;
- (d) For Projects involving charter schools, a copy of the charter or other evidence that a charter is in place, and evidence that the school is in good standing with its Chartering Authority; and
- (e) Evidence of a public-private partnership agreement for the Project that complies with the requirements of Internal Revenue Code section 142(k)(2).

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a), and 8869.85(b), Government Code.

**Section 5721. Permits.** The Applicant must provide documentation of the applicable discretionary use permits and approvals from local planning agencies, as described in section 5190(b), for the proposed Project at the time of application.

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a), and 8869.85(b), Government Code.

**Section 5722. Eligibility Requirement.** Projects financed with an allocation of Qualified Public Education Facilities Bonds shall comply with the Political Reform Act and Government Code section 1090 at the time of application and throughout the life of the bonds.

Note: Authority cited: Section 8869.94, Government Code. Reference: Section 8869.84(c), Government Code.

#### **Article 4. Reporting and Regulatory Requirements.**

**Section 5730. Specific Reports.** CSFA will report each transfer of Allocation to the Executive Director of the Committee. Applicants receiving Allocation, including CSFA where it serves as the issuer, under the Program shall comply with the reporting requirements contained in article 11 of chapter 1.

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a), and 8869.85(b), Government Code.

**Section 5731. Regulatory Compliance.** An Applicant that receives an allocation of Qualified Public Educational Facility Bonds must enter into a regulatory agreement with the Project Sponsor that requires the Project to be used for public school purposes for the life of the bonds. At a minimum, the regulatory agreement shall be recorded against the property and include the following:

- (a) Language incorporating by reference the CDLAC allocation resolution and all of its terms and conditions;
- (b) A term consistent with the CDLAC allocation resolution and, at a minimum, be no less than the term of the bonds;
- (c) Include all applicable requirements contained in 26 U.S.C. section 142 and Education Code section 17170, et seq.;
- (d) A requirement that the Project be maintained for public school purposes during the life of the bonds;
- (e) Designate CDLAC to receive notice of changes in ownership, Issuer, school that utilizes the Project, and Project name;
- (f) Designate CDLAC to receive all notices regarding defaults associated with the bonds; and
- (g) Language reflecting that Projects financed with an allocation of Qualified Public Education Facilities Bonds shall comply with the Political Reform Act and Government Code section 1090 throughout the life of the bonds.

Note: Authority cited: Section 8869.94, Government Code. Reference: Sections 8869.84(c), 8869.85(a) and 8869.85(b), Government Code.