

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

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.

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.

Statement of Reasons/Informative Digest

List of regulations to be modified:

Title 4, Section 5000. Definitions
Title 4, Section 5010. Determination of State Ceiling, Competitiveness, and Minimum Points
Title 4, Section 5020. Determination of State Ceiling Pools
Title 4, Section 5022. Geographic Apportionments
Title 4, Section 5033. Minimum Application Requirements
Title 4, Section 5035. Preliminary Recommendations
Title 4, Section 5050. Performance Deposit Requirements
Title 4, Section 5052. Forfeiture of Performance Deposit
Title 4, Section 5053. Withdrawn or Denied Applications
Title 4, Section 5054. Filing Fees
Title 4, Section 5100. Program Expiration Dates
Title 4, Section 5153. Measurement of Distance
Title 4, Section 5170. Definitions
Title 4, Section 5180. Application Process
Title 4, Section 5190. Readiness
Title 4, Section 5191. Income and Rent Restrictions
Title 4, Section 5192. Minimum Term of Restrictions
Title 4, Section 5205. Minimum Requirements
Title 4, Section 5210. Minimum Expenditures
Title 4, Section 5220. Regulatory Compliance

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Title 4, Section 5230. Evaluation Criteria
Title 4, Section 5231. Ranking
Title 4, Section 5232. Competitive Application Process Maximum Allocation Amount
Title 4, Section 5233. Allocation Limits
Title 4, Section 5422. Permits
Title 4, Section 5251. Evaluation Criteria
Title 4, 5432. Non-Solid Waste Projects

The Committee is authorized to adopt regulations relating to an allocation system to administer the state unified volume ceiling as emergency regulations (California Government Code 8869.94).

The changes to section 5010 updates the list of Qualified Residential Rental Project (QRRP) pools to reflect the revised list of pools proposed in Section 5020.

The changes to Section 5020 below establish a Mixed Income Set Aside within a New Construction Pool. As a result, the definition of Mixed Income Project Pool is no longer relevant, and the definition of Mixed Income Project requires a limitation to New Construction Projects. The changes also provide that in a competitive round Mixed Income Projects may only apply for bonds for that are restricted by California Tax Credit Allocation Committee (CCTCAC). Lastly, the changes limit Rural Projects to New Construction Projects. Non-new construction projects (i.e.; rehabilitation projects) in rural areas would then compete in either the Preservation or Other Rehabilitation Pools proposed in Section 5020.

The changes to section 5020 establish five subpools with the QRRP Pool:

1. New Construction Pool, which would retain the same eligibility criteria used for the 2020 New Construction Pool, except that Mixed Income Projects would now compete under a Mixed Income Set Aside of the New Construction Pool, as opposed to in a separate Mixed Income Pool. Rural new construction projects would continue to compete in the Rural Pool.
2. Rural Pool, which pursuant to the proposed Rural Project definition in Section 5000 would be limited to New Construction Projects in rural areas. Non-New Construction Projects (*i.e., rehabilitation projects*) in rural areas would now compete in the Preservation or Other Rehabilitation Pools below.
3. Preservation Pool, which would now include rural Preservation Projects but otherwise maintain the same eligibility criteria used for the 2020 Preservation Pool.
4. Other Rehabilitation Pool, which would now include rural projects but otherwise maintain the same eligibility criteria used for the 2020 Other Affordable Pool.
5. Persons of Color / Woman-Owned Business Enterprise (PCWBE) Pool, a new pool whose eligibility is established in the new definition of PCWBE Project in Section 5170. Unlike the other four pools above which are mutually exclusive,

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projects eligible for the PCWBE Pool that do not receive a bond allocation would be able to compete also in a second pool for which they qualify.

The changes further establish three set asides within the New Construction Pool:

1. Homeless Set Aside, which would be open to New Construction Projects in which at least 25% of the tax credit units were designated for homeless households, as defined consistent with the California Tax Credit Allocation Committee (CCTCAC) 9% tax credit homeless apportionment except for the lower threshold percentage of units serving persons who are homeless (i.e., 25% homeless units for this pool, as opposed to 50% for the California Tax Credit Allocation Committee (CCTCAC) homeless apportionment).
2. Extremely Low/Very Low Income Set Aside, which would be open to New Construction Projects that have received any level of award from specified HCD programs or local public funding equivalent to 15% of more of total development costs. With respect to projects qualifying under the 15% local funding option, all of the following would apply: a) a Large Family project located in a High Segregation and Poverty Area would need to achieve a range of at least 30% AMI between the highest and lowest 10% of income-restricted units; b) a Large Family project located in a High or Highest Resource Area would need to include at least 10% of tax credit units at 30% AMI and an additional 10% of tax credits units at 50% AMI; and c) a Large Family project located in a Moderate (Rapidly Changing), Moderate, or Low Resource Area, or a project meeting any housing type other than Large Family, would need to receive maximum points for exceeding minimum income restrictions.
3. Mixed Income Set Aside, which would be open to New Construction Projects that are Mixed Income Projects (i.e., projects with less than 50% restricted units or that receive CalHFA Mixed Income Program loans).

Pursuant to the existing Section 5020, the Committee establishes pool and set aside allocations as soon as practicable after the beginning of each calendar year and before any Applications are considered.

Changes to section 5022 ensure a reasonable geographic distribution of bonds remaining in the New Construction Pool after allocations to set asides, the changes establish six regions encompassing the counties of the state that are not exclusively rural. The proposal combines a number of the regions from California Tax Credit Allocation Committee (CCTCAC)'s 9% tax credit program to ensure larger apportionments in these "super regions" than would otherwise be the case if CDLAC were to use all California Tax Credit Allocation Committee (CCTCAC)'s 9% tax credit regions. It is staff's intent that the Committee will establish the percentage apportionments to each region when it adopts the final regulations in December 2020. The Working Group convened at the Treasurer's request by the California Housing Consortium suggested apportionment ranges as follows. The ranges reflect California Tax Credit Allocation Committee (CCTCAC)'s regional allocations with possible adjustments to reflect that projects in higher-cost regions require additional bonds to meet the 50% test to access 4% tax credits. The percentages in parentheses represent

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the unadjusted aggregation of regional percentages from California Tax Credit Allocation Committee (CCTCAC)'s 9% tax credit program.

Changes to section 5033 changes the requirements for performance deposits.

Applicants for private activity bonds are currently required to post a performance deposit with their application. In a competitive environment where applicants are uncertain whether or not they will receive an allocation, this practice results in the unnecessary use of predevelopment capital for developers of QRRP's while burdening both CDLAC staff and project issuers with processing requirements. This change would amend the performance deposit requirements for QRRP's by moving the obligation to make the deposit until after an allocation is made, similar to how California Tax Credit Allocation Committee (CCTCAC) treats deposits and allocation fees for low-income housing tax credits.

Changes to 5035 proposes new regulation changes to the application, evaluation and award process that substantially mirrors the process used by California Tax Credit Allocation Committee (CCTCAC).

Changes to 5050 and 5053 conforms the proposed changes to Section 5033.

Changes to 5153 maximize consistency between CTCAC and CDLAC programs, many of the point scoring categories proposed for revision in Section 5230 refer to CTCAC scoring criteria and standards. The change to this section clarifies that CDLAC would utilize CTCAC standards for measuring distance in those point categories that employ CTCAC standards, particularly the site amenity points within the proposed affirmatively furthering fair housing category. This change will further ensure consistency in program implementation.

Changes to 5170 add, delete, and alter various definitions applicable to the QRRP Pool.

Changes to 5180 is proposing to adopt a process similar to what CTCAC uses with regard to application deficiencies.

Changes to 5190 clarifies acceptable title documents. The changes to these sections reflect the updated terms of At Risk Projects and Preservation Projects and require that applicants additionally state their eligibility for the PCWBE Pool and the Homeless and ELI/VLI Set Asides.

Changes to 5191 reflect that Mixed Income Projects are proposed to compete in a New Construction Pool Set Aside, as opposed to a QRRP Pool, and 2) require all QRRP projects to use Gross Rents as a threshold criterion. Currently, use of Gross Rents is a scoring category, which is now proposed for elimination in Section 5230.

Changes to 5192 will now require 55-year affordability, known as a 55-year Qualified Project Period, for all QRRP projects in both open and competitive CDLAC rounds. Currently, a 55-year term is only required in open rounds. In competitive rounds, the minimum affordability term is 30 years, and applicants receive points for agreeing to 55-year affordability. This point category is now proposed for elimination in Section 5230. A

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55-year affordability term is the standard across most state multifamily rental housing finance programs.

Changes to 5205 align these regulations with the proposed requirements in the CTCAC Regulations related to energy efficiency and minimum construction standards.

Changes to 5210 reflects the updated term of At Risk Projects.

Changes to 5220 describes required contents of the bond regulatory agreement reflects the proposal in Section 5192 to require 55-year affordability for all QRRP Projects.

Changes to 5230 replace the current QRRP scoring categories. In addition, the changes alter the criteria of various other existing point categories.

Changes to 5231 reflect the revised pools and new set asides proposed in Section 5020 and determine the order in which the Committee would make allocations. The changes also specify that projects may only compete in one of the Rural, Preservation, Other Rehabilitation, and New Construction Pools but that Persons of Color / Woman-Owned Business Enterprise (PCWBE) Projects may compete in the PCWBE Pool and one other Pool. Within the New Construction Pool, a project may compete in both the Homeless Set Aside and the Extremely Low/Very Low Income Set. All projects in the New Construction Pool that do not receive an allocation from a Set Aside are eligible for an allocation from their respective geographic region. Projects receiving allocations outside of the New Construction Pool or in any of the New Construction Pool Set Asides are not counted against regional allocations.

For purposes of the Homeless Set Aside only, the changes give absolute priority within the Set Aside to 100% homeless projects regardless of score or tiebreaker. The changes to the CDLAC tiebreaker seeks to include the amount of bonds requested along with any request for California state tax credits while adjusting the total to reflect to at least some extent project cost differences based on regional location and bedroom size and to further incentivize specified project types in higher resource communities.

Change to 5232 reflects the updated term of At Risk Projects.

Change to 5233 maintains the applicability of CDLAC's bond allocation limits to all QRRP projects, reflecting the proposed changes in Section 5020 to the QRRP Pools.

Change to 5422 allows for Exempt Facilities Applications for Allocation to be submitted by a project sponsor (Applicant) and deemed acceptable for submittal with the condition that all final discretionary use permits will be received prior to Committee approval.

Change to 5432 provides clarification as it pertains to the CDLAC application for Exempt Facility projects as this section is referenced in connection with public benefits.

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Change to 5251 deletes a cross reference that is no longer applicable given the proposed changes to the scoring categories in Section 5230.

CDLAC believes each of these proposed changes will benefit each applicant and consequently California residents in need of affordable housing. All of these proposed changes are compatible and consistent with the existing CDLAC regulations.

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**Other Matters Prescribed by Statutes Applicable to the Specific State Agency
or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the Committee or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the California Government Code pertaining to the Emergency Regulations or to the Committee.

Mandate on Local Agencies or School Districts

The Executive Director of the Committee has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Executive Director of the Committee has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the California Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted.

Application for and participation in CDLAC's Programs is discretionary and the proposed revisions pertain to program eligibility, compliance and administration issues. Neither the proposed revisions nor the CDLAC Regulations as a whole require any person or entity to take any action, make any monetary expenditure, or refrain from taking any action or making any expenditure. The proposed revisions will not have an effect on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing business within the State of California, the expansion of businesses currently doing business within the State of California, or on small businesses.

Creation or Elimination of Jobs within the State of California

The proposed revisions will not have an effect on the creation or elimination of jobs within the State of California. Application for and participation in CDLAC's Programs is discretionary and the proposed revisions pertain to program eligibility, compliance and administration issues. Neither the proposed revisions nor the CDLAC Regulations as a whole require any person or entity to take any action, make any monetary expenditure, or refrain from taking any action or making any expenditure.

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**Creation of New or Elimination of Existing Businesses Within the
State of California**

The proposed revisions will not have an effect on the creation of new businesses or the elimination of existing business within the State of California, the expansion of businesses currently doing business within the State of California, or on small businesses. The California School Financing Authority maintains that its facility funding programs do not have any private sector cost impacts.

Benefits of the Regulations

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.

Fiscal Impact Estimates

Cost or savings to any State agency: **None**

Cost to any local agency or school district that is required to be reimbursed Part 7 (commencing with Section 17500) of Division 4: **None**

Other nondiscretionary cost or savings imposed on local agencies: **None**

Cost or savings in federal funding to the State: **None**