

**FINDING OF EMERGENCY
OF THE
OFFICE OF THE TREASURER
CALIFORNIA DEBT LIMITATION ADVISORY COMMITTEE
CALIFORNIA CODE OF REGULATIONS
TITLE 4. BUSINESS REGULATION
DIVISION 9.5. CALIFORNIA DEBT LIMITATION ALLOCATION COMMITTEE
CHAPTERS 1 AND 2
SECTIONS 5000-5432, NONCONSECUTIVE SECTIONS**

**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, deemed emergency regulations and are 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.

Authority and Reference for Emergency Regulations

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) and (e), 8869.85(a), 8869.85(b), 8869.86(c), 8869.87, 8869.89, and 8869.94.

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

Background

California has been allocated \$4.3 billion in bond authority for 2021 of which \$3.9 billion is allocated by the Committee for the Qualified Residential Rental Project Program (QRRP). The schedule for awards includes a Committee meeting on December 8, 2021 by which time these emergency regulations must be in effect in order to allocate the prescribed \$1.5 billion subject to allocation at that meeting in a manner that complies with all statutory requirements and also provides fair and consistent requirements for applicants. The timely allocation of these funds will address the existence of an affordable housing crisis in California as proclaimed by the Governor and the State Legislature. The amendments proposed by this promulgation will assist the Committee to meet those goals.

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 5060. Minimum Requirements
- Title 4, Section 5100. Program Expiration Dates
- Title 4, Section 5101. Extensions to Expiration Dates
- Title 4, Section 5102. Recovery Zone Bond Extensions
- Title 4, Section 5141. Notification of Bond Issue
- Title 4, Section 5144. Annual Applicant Public Benefits and On-Going Compliance
- 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
- 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 5240. Supplemental Allocation Process

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

- Title 4, Section 5241. Realignment of Expiration Dates
- Title 4, Section 5250. Application Requirements
- Title 4, Section 5251. Evaluation Criteria
- Title 4, Section 5422. Permits
- 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).

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

Informative Digest

The changes to section 5000 updates and eliminates the list of definitions associated specifically with Qualified Residential Rental Project (QRRP).

For CDLAC purposes, the definition of “Restricted Rental Units” applies only to bond requirements. CTCAC’s definition would be different and would include income averaging and up to 80% AMI units. For this reason, we have also removed the reference to the CTCAC regulatory agreement in the definition of Restricted Rental Unit as that complicates the issue.

The changes to 5010 conforms to proposed changes in 5000 and 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 (CTCAC). 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. Black, Indigenous, or Other People of Color (BIPOC) Pool, a new pool whose eligibility is established in the new definition of BIPOC Project in Section 5170. Unlike the other four pools above which are mutually exclusive, projects eligible for the BIPOC Pool that do not receive a bond allocation would be able to compete also in a second pool for which they qualify.

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

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% or 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. 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 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. 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

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

Tax Credit Allocation Committee (CTCAC) treats deposits and allocation fees for low-income housing tax credits.

Changes to 5033 removes an unnecessary use of predevelopment capital for developers of QRRP's while burdening both CDLAC staff and project issuers with processing requirements.

CDLAC is eliminating the requirement for proof of public notice of the Tax Equity and Fiscal Responsibility Act (TEFRA) in Title 4, § 5033. TEFRA is required for a bond closing therefore a redundant element in CDLAC regulations.

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 (CTCAC).

Changes to 5050 conform the proposed changes to Section 5033.

Changes to 5052 account for joint applications on the TCAC waiting list that may be unable to obtain state tax credits. This provision allows the issuer to fill the financing gap or can return the allocation within 90 days to the committee without penalty.

Changes to 5053 conform the proposed changes to Section 5033.

Changes to section 5060 will require that projects receiving new volume cap incorporate language in their bond documents that will facilitate the preservation of volume cap through bond recycling. These provisions will greatly simplify recycling transactions once these projects undergo permanent conversion.

Changes to 5100 aligns expiration dates during a Competitive Application process with Non-Competitive Application process. Thus all expiration dates will be the same no matter if the application submitted is involved in a Competitive Application process or Non-Competitive Application process. It has been noted in the past that the bond issuance has taken longer than 90 days. Therefore to accommodate for larger allocation demands due to priorities of the current administration, amending this section assists more successful projects being placed into service.

Changes to 5141 conform to changes in 5060.

Section 5144 is correcting a referred citation in Title 4, § 5144 to Tax Credit Allocation Committee (TCAC) Compliance Manual.

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

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

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 BIPOC 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 and 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 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 BIPOC 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

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

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 and adjusts the Maximum Allocation Amount.

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. CDLAC is increasing its current allocation limits of bond allocation on a per unit basis (adjusted by the number of bedrooms). The current allocation limits in CDLAC regulations were developed in 2016. Construction costs have increased in the past couple of years. The adjustment is based on the change in total development costs between December 2016 applications and December 2019 projects (typically a high-volume month for CDLAC).

Changes to 5240 and 5241 reflects the updated language regarding the allocation process and expiration dates regarding applications not receiving an allocation.

Section 5250 is inserting clarification language allowing for New Construction to be in accordance with TCAC. TCAC has been allowing new construction scattered site projects as well as acquisition/rehabilitation scattered site projects. There is a need for clarification in CDLAC regulations as it does not explicitly exclude new construction scattered site projects. For clarification, consistency, and joint application alignment with TCAC, clarification language is suggested to include both types of scattered site projects.

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

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.

Change to 5480, 5490-5494, 5500, 5510, 5520, 5530, 5531-5534, 5540, and 5550 deletes language no longer applicable.

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

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.

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.

Regulatory Compatibility (Gov. Code §11346.5, subd. (a)(3)(D).)

The Committee has determined that the proposed regulations are not inconsistent or incompatible with exiting state regulations. Application for bond allocations is a nonmandatory activity and these regulations ensure a fair and efficient process for allocations as to both applicants and the Committee

Technical, Theoretical, or Empirical Studies, Reports, or Documents
Relied Upon (Gov. Code §11346.1)

None

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 are 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

FINDING OF EMERGENCY
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE (CDLAC)

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.

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. CDLAC 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**