

**STATE OF CALIFORNIA
OFFICE OF THE TREASURER
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The California Debt Limit Allocation Committee (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 for allocating the 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 the volume cap for tax-exempt debt to be issued for private projects based on Internal Revenue Service (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 IRS. 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

Government Code section 11346.2(b)(1) requires "a statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute."

In 2019, Assembly Bill 101 (Chapter 159, Statutes of 2019) appropriated \$500,000,000 to the California Tax Credit Allocation Committee (CTCAC) to award to specified low-income

housing projects. Allocations of those tax credits are dependent on the applicant's successful award of a tax-exempt bond allocation from CDLAC. This has 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 three times 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 for the equitable distribution of bond allocation throughout California. Following an intense, publicly involved effort, emergency Regulations were adopted, and an entirely new joint application was developed 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 governing board -- apply pressure to CDLAC staff to create more efficient, competitive processes, which in turn creates the need for additional regulations and builds on the complexity and multitude of rules to calculate when reviewing the applications. The regulations have been amended multiple times over the last three years with heavy engagement from the public. The amendments proposed by this promulgation will assist CDLAC to meet those evolving goals.

LIST OF REGULATIONS PROPOSED TO BE AMENDED

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 NECESSITY 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 sections 5035 and 5036.

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's regulations (Cal. Code Regs., tit, 4, § 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, a 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 change makes a number of changes to the regions by regrouping some counties with outlier FMRs.

Sections 5035 and 5036. Additions and deletions to these sections additionally clarify the notice and appeal processes for both the application review and the preliminary recommendations.

Section 5052. The deletion of section 5052 (f) is necessary to align with changes proposed in section 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 the submission of a reasonable 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 is 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.

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 the likelihood of successful bond closures.

Section 5105. The addition to the section clarifies that allocations that expire are treated differently depending on whether the allocation is a reversion or a carryforward.

Section 5133. 26 U.S. Code § 146 (f) (3) describes how bond issuers must retain and apply carryforward allocation of a state's volume cap. This change addresses how CDLAC applies that carryforward. During times of oversubscription, 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 CDLAC to ensure the 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 additional unnecessary requirements that do not align with that manual.

Section 5146. This addition gives CDLAC authority to disqualify an application if the parties involved have a documented history of violating fair housing laws.

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 that require 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 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 AFFH point category outlined in section 5230. This definition also aligns the 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, CDLAC 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 5190 require the Project Sponsor and Developer to disclose any investigations of previous developments related to fair housing. This addition aids the Committee in exercising its authority under Section 5146.

Section 5193. The addition in this section reduces confusion and aligns with CTCAC's debt service coverage requirements.

Section 5200. The deletion in this section is to remove unnecessary barriers for rural development and align with CTCAC's current requirements.

Section 5230(b). Changes to this section separate the point scoring for Other Rehabilitation Projects and Preservation Projects to increase clarity and reduce confusion.

Section 5230 The additions to this section are to more clearly outline the original intent of the section.

Section 5230(f). The deletion in this section removes an unnecessary and ambiguous requirement that is satisfied through the application review process.

Section 5230(i). The additions in this section require that projects show the ability to start construction within 180 days of bond allocation at the time of application, but clarify that should allocation be awarded, the true readiness deadline will align with the issuance deadline of the bond. Without this alignment, relief to the industry of the staggered bond issuance deadlines is lost.

Section 5230(j). The changes to this section serve three purposes: 1. move site amenity scoring to its own section; 2. open eligibility for the maximum 10 AFFH points under (A) to SRO and all Special Needs projects, expanding the housing types able to receive these points; and 3. once 50% of bonds in a pool or set-aside are awarded to 10 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(n)(1)(B). The deletion to this section removes a loophole that inhibits CDLAC's ability to assess negative points in certain situations if bonds are not issued. This deletion honors

the original intent of this section. The deletion of section 5230(n)(4) removes an unnecessary and ambiguous provision.

Section 5230(m). Previously, site amenities 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 amenities 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 10 point score and to use the CTCAC site amenities scoring criteria, except that specified projects in higher opportunity areas are allotted three opportunity area site amenities points instead of seven under the CTCAC scale.

Section 5231. The addition to this section restricts the award to bond allocation to projects that are either not requesting State Tax Credits or are requesting State Tax Credits and are also scheduled to be awarded 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. Additionally, CDLAC is appropriately referencing the CTCAC regulations section to honor the intent of the requirement.

Sections 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 skipping process when awarding allocation. In 2021, CDLAC did not allow skipping in Round 1, but allowed it liberally in Rounds 2 and 3. Both processes had pitfalls and drew criticism. The proposed skipping process is a more moderate and measured approach and falls somewhere in between.

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. CDLAC met multiple times in late 2021 and narrowed down public benefit to the combination of: production benefit; rent savings benefit, population benefit, and location benefit. This formula was the conclusion of hours of meetings, a review of 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 public benefit. The public benefit numerator is comprised of five components: 1) a unit production benefit adjusted for bedroom sizes; 2) a 15-year rent savings benefit, with an assumed 30% AML 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 ELI unit; 4) a population benefit for each special needs or veterans 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 AHSC or 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 CDLAC to delegate authority to the Executive Director to award Supplemental Allocation. This authority is vital to keep projects 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 remove unnecessary and ambiguous language.

ANTICIPATED BENEFITS

Government Code section 11346.2(b)(1) requires an enumeration of “the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.”

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.

ECONOMIC IMPACT ASSESSMENT

Government Code section 11346.2(b)(2) requires the inclusion of an economic impact assessment for a regulation that is not a major regulation. Government Code section 11346.3(b) requires the economic impact assessment to assess whether to what extent the proposed regulations will affect (1) the creation or elimination of jobs within the state; (2) the creation of new businesses or the elimination of existing businesses within the state; (3) the expansion of businesses currently doing business within the state; and the benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the state's environment.

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 the limited tax-exempt bond allocation is awarded competitively to projects most aligned with the State's 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 that place additional burdens, obligations, or expenses on existing businesses.

CDLAC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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.

OTHER REQUIRED DISCLOSURES

Technical, theoretical, and empirical 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.

Significant adverse effect on businesses, including the ability of California businesses to compete with businesses in other states (Gov. Code, §11346.5(a)(8)): None.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose a mandate on local agencies or school districts. (Gov. Code §11346.5(a)(5))

ALTERNATIVES DETERMINATION

Government Code section 11346.2(b)(5)(A) requires the inclusion of the evidence, documents, testimony, or other evidence relied upon to support the initial determination that the regulation will not have a significant adverse economic impact on business.

The amendments adopted by CDLAC are the only regulatory provisions identified by CDLAC 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 CDLAC's attention.

Pursuant to Government Code section 11346.5(a)(13), CDLAC declares it has determined that no reasonable alternative it considered or that was otherwise been 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.