



CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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California Debt Limit Allocation Committee

5-DAY PUBLIC NOTICE OF EMERGENCY RULEMAKING AND FINDING OF EMERGENCY

NOTICE IS HEREBY GIVEN that on August 5, 2025, the California Debt Limit Allocation Committee (CDLAC or the "Committee"), pursuant to its authority in Government Code (GC) section 8869.94, executed Resolution No. 25-006 and adopted emergency amendments to California Code of Regulations (CCR), title 4, section (Regulation or Reg.) 5033, Minimum Application Requirements, 5101, Extensions to Expiration Dates, 5233, Allocation Limits, 5240, Supplemental Allocation Process, and 5240, Realignment of Expiration Dates. CDLAC is issuing this 5-day public notice as part of the emergency rulemaking process with the Office of Administrative Law (OAL).

FINDING OF EMERGENCY

Pursuant to GC section 8869.94, any emergency rules or regulations adopted by the Committee pursuant to Chapter 11.8 of the GC shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of section 11346.1 of the GC.

GC section 11346.1, subdivision (a)(2), requires that, at least five working days prior to submission of the proposed emergency action to 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. After submission of the proposed emergency to OAL, OAL shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in GC section 11349.6.

All CDLAC questions regarding this emergency action should be directed to DC Navarrette at dc.navarrette@treasurer.ca.gov. CTCAC intends to submit this emergency action to OAL on August 29, 2025. The submitted action will appear on the list of "Emergency Regulations Under Review" on OAL's Internet website at

https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/.

CDLAC did not rely on any technical, theoretical, or empirical studies, reports, or similar documents in developing and adopting these emergency amendments.

Authority: GC section 8869.94.

Reference: GC sections 8869.80-8869.94 8869.82, 8869.84, 8869.84(c), 8869.85(a), 8869.85(b), and 8869.87.

INFORMATIVE DIGEST

Policy Statement Overview

CDLAC is the sole entity responsible for allocating 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.

CDLAC administers the volume cap in coordination with the California Tax Credit Allocation Committee (CTCAC), which administers the federal four percent low-income housing tax credit (LIHTC) program. Applicants receiving an award of tax-exempt bonds from CDLAC are eligible for an award of federal four-percent tax credits from CTCAC provided a sufficient percentage of the aggregate basis of the building and land upon which the building is located is being funded by tax-exempt private activity bonds.

On July 4, 2025, federal law changed and reduced the amount of tax-exempt private activity bonds required for an affordable housing development (technically referred to as a qualified residential rental project) to receive federal four percent LIHTCs from 50% to 25% of the aggregated depreciable basis plus land basis provided at least five percent of the aggregate basis is financed by tax-exempt bonds issued after December 31, 2025 and the project is placed in service after December 31, 2025, the “25% test” (Pub. L. 119-21, 139 Stats. 234).

As a result, it is necessary for CDLAC to revise the program regulations to conform with the changes in federal law regarding the new 25% test requirement. CDLAC determined additional regulation amendments are needed to address issues stemming from the change in federal law related to bond issuance deadlines and increased program demand.

Existing Laws and Regulations

26 USC sections 103, 142, and 146

Pursuant to section 103 of the Internal Revenue Code (IRC), the interest earned on private activity bonds which are qualified bonds is not subject to federal income tax. Subdivision (e) of section 141 of the IRC defines qualified private activity bonds to include exempt facility bonds and, per subdivision (a)(7) of section 142 of the IRC, exempt facility bonds include any bond issued where 95% of the issue is used to fund qualified residential rental projects, as further defined in subdivision (d) of section 142 of the IRC. Section 146 of the IRC uses a state population multiplier to apply a cap to the total amount of tax-exempt private activity bonds a state may allocate in any given year.

The One Big Beautiful Bill (OBBB) Act (Pub. L. 119-21, 139 Stats. 234)

Unit July 4, 2024, IRC section 42, subdivision (h)(4)(B), provided that for an affordable housing developer to receive federal four percent LIHTCs they must finance at least 50% or more of the aggregate basis of the building and land upon which the building is located with tax-exempt private activity bonds. On July 4, 2024, the OBBB Act amended IRC section 42, subdivision (h)(4)(B), to reduce from 50% to 25% the amount of tax-exempt private activity bonds required for an applicant to qualify for federal four percent LIHTCs, provided at least 5% of the aggregate basis of any project be financed by tax-exempt bonds issued after December 31, 2025, and the project be placed-in-service after December 31, 2025.

Chapter 11.8 of the GC. California Debt Limit Allocation Committee

The Tax Reform Act of 1986 (Pub. Law 99-514) established the cap on the volume of tax-exempt private activity bonds that could be issued within a state in a calendar year and required each state to allocate its volume ceiling according to a specified formula, unless a different procedure is established by state legislation. Accordingly, the legislature established CDLAC in 1987 in Chapter 11.8 of the GC, in response to the Tax Reform Act, to create an allocation system to administer California's state volume ceiling.

Pursuant to GC section 8869.84, CDLAC is empowered to announce procedures for receipt and review of applications for private activity bonds and establish priorities or reservations of any part of the state ceiling for certain categories of bonds or issuers. GC section 8869.85 permits CDLAC to require submission of any information it may require from applicants and to make allocations on any terms and conditions as the Committee may determine. Section 8869.90 permits CDLAC to charge fees to cover the committee's costs in carrying out the duties and responsibilities set out in Chapter 11.8 to be deposited into the CDLAC Fund.

GC section 8869.94 grants CDLAC the authority to adopt and amend regulations relating to the allocation of the state ceiling and administration of the volume cap.

At the beginning of each calendar year, CDLAC establishes state priorities via resolution and consistently sets aside approximately 90% of the state ceiling for qualified residential rental projects, more commonly known as affordable housing developments.

California Code of Regulations (CCR), Title 4, Division 9.5. California Debt Limit Allocation Committee

CDLAC implements its authority to administer the state volume cap on tax-exempt private activity bonds through its regulations in the CCR. Relevant to this rulemaking, Regulation 5033 establishes the minimum application requirements for agencies requesting an allocation of volume cap. Regulation 5101 establishes rules governing when applicants awarded an allocation of state ceiling may request an extension to a bond issuance expiration date. Through Regulation 5233, CDLAC limits the total amount of allocation any single applicant may receive to ensure equitable distribution of limited bond resources. Regulation 5240 permits projects to request supplemental allocations to maintain their qualification for the program in the event unforeseen financial issues. Finally, Regulation 5240 governs the realignment of bond issuance expiration dates following the receipt of a supplemental allocation.

Specific Purpose of, and Rational for, each Proposed Amendment

Amendments to Regulation 5033

Regulation 5033 details the minimum application requirements for bond applicants and details the application fees CDLAC charges to applicants who request review of an application for an award of volume cap. CDLAC amending Regulation 5033 to increase the application filing fee from \$1,200 to \$1,500 per applicant for increased costs related to necessary staffing to process the additional application workload anticipated by changes to the tax-exempt bond program recently enacted under the OBBB Act. Specifically, CDLAC anticipates the reduced bond funding threshold necessary to qualify for four percent LIHTCs will result in CDLAC being able to fund more projects with tax-exempt bonds. This will result in CDLAC needing to increase staffing capacity to meet the application review demand on the same timeline as it currently completes its work.

Amendments to Regulation 5101

Regulation 5101 explains when bond issuance deadlines may be extended. Generally, recipients of CDLAC awards receive points for demonstrating “readiness to proceed,” which includes a determination of the applicant’s ability to timely issue bonds and close construction financing. CDLAC regulations permit bond issuance deadlines to be extended when the circumstances requiring the extension are beyond the applicant’s control.

For 2025, CDLAC is offering three allocation rounds for applicants seeking to participate in the qualified residential rental project bond program. CDLAC awarded round 1 and accepted applications for round 2 prior to enacting of the OBBB Act. While the round 1 and 2 applicants only need to meet the 25% test to maintain their eligibility for federal four percent tax credits, CDLAC is not requiring round 1 and 2 applicants to comply with the 25% test (and return bonds exceeding 25%). Instead, CDLAC is establishing frameworks to encourage these applicants to voluntarily return bonds.

In furtherance of the Committee's program goals, CDLAC is amending Regulation 5101 to require projects that received an allocation under the 50% test (round 2 of 2025 or earlier) and who are requesting a bond issuance deadline extension to January 1, 2026, or later to restructure their financing to comply with the 25% test or demonstrate to the Executive Director's satisfaction why the project cannot be restructured. Further, CDLAC is amending Regulation 5101 to mandate that any project awarded an allocation in round 2 of 2025 that received maximum "readiness to proceed" points and receives an extension to after November 18, 2025, be assessed negative points on a future application.

Concurrently with the adoption of these emergency regulations, CDLAC adopted Resolution No. 25-007, to incentivize round 1 and 2 of 2025 applicants to voluntarily return excess bond award in exchange for a bond issuance deadline extension and either a tiebreaker benefit for a future project or a developer fee benefit, as administered by CTCAC.

Amendments to Regulation 5233

Regulation 5233 establishes the upper limits on the total bond allocation a qualified residential rental project may be awarded. Currently, consistent with the 50% test, CDLAC does not permit awards to exceed 55% of the aggregate appreciable basis plus land basis. CDLAC allows a five percent cushion above the federal 50% minimum threshold for four percent LIHTC eligibility to protect against anticipated cost overruns that may complicate an applicant's continued eligibility for four percent LIHTCs.

The amendments to Regulation 5233 implement the OMMB Act by clarifying that projects awarded up to the second round of 2025 may request up to 55% of the aggregate basis plus land and that projects awarded after the second funding round of 2025 may request up to 30% of the aggregate basis plus land. CDLAC maintains its policy of providing a five percent cushion to protect against cost overruns and requests for supplemental allocations.

Additionally, CDLAC believes there may be circumstances where a project's financing structure supports a bond award in excess of 30% and is amending Regulation 5233 to permit applicants to request up to 40% of the aggregated depreciable basis plus land basis if, to the Executive Director's satisfaction, the project's permanent financing supports the larger allocation award and the project is unable to obtain recycled bonds.

Amendments to Regulation 5240

Through Regulation 5240, CDLAC grants the Executive Director authority to award supplemental bond allocations up to a limit based on the 50% test. The goal of the supplemental allocation provision is to ensure projects continue to qualify for federal four percent tax credits in the event of unanticipated cost overruns. If a project requires additional supplemental allocation beyond the delegated authority, the applicant must make the request to the Committee. CDLAC delegated authority to the Executive Director to grant routine supplemental allocation requests due to the high volume of requests under the 50% test. With implementation of the 25% test, CDLAC does not anticipate needing to maintain delegated authority and is amending Regulation 5240 to limit the Executive Director's authority to grant supplemental allocations to applicants awarded allocations under the 50% test and that issued bonds prior to January 1, 2026. Projects with increased construction costs when the project places in service will still have the option to receive a supplemental allocation from the Committee.

Regulation 5240 is also being amended to remove unnecessary language restricting developer fee increases as the developer fee is administered by CTCAC and CDLAC does not administer rules concerning the developer fee.

Amendments to Regulation 5241

Regulation 5241 provides the rule for the realignment of expiration dates for projects receiving supplemental allocations. CDLAC is revising the rule to align the expiration for supplemental allocations with the expiration date of the original allocation, as opposed to the most recent allocation. This change is necessary to ensure that all projects requesting a supplemental allocation prior to December 31, 2025, would still be subject to the amendment in Regulation 5101.

This change also eliminates the ability to use a supplemental allocation request as a method of extending the bond issuance deadline without requesting an extension as outlined in Regulation 5101.

CDLAC has performed an evaluation of whether the proposed amendments to Regulations 5033, 5101, 5233, 5240, and 5241 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because the amendments are part of CDLAC's regulatory framework implementing, interpreting, and making specific the administration and allocation of California's private activity bond volume cap and CDLAC's regulations are the only state regulations that implement, interpret, or make specific the administration and allocation of California's private activity bond volume cap. Also, CDLAC has determined that there is no existing federal regulation or statute that is comparable to the proposed amendments to Regulations 5033, 5101, 5233, 5240, and 5241.

LOCAL MANDATE

CDLAC determined the adoption of the amendments to Regulations 5033, 5101, 5233, 5240, and 5241 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

FISCAL IMPACT/COST ESTIMATE

CDLAC determined the adoption of the proposed amendments to Regulations 5033, 5101, 5233, 5240, and 5241 will not result in any direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

PROPOSED REGULATORY TEXT

A copy of the 5-Day Public Notice of Emergency Rulemaking and Finding of Emergency, CDLAC Resolution 25-006, and the express terms of the proposed regulations (also known as the proposed regulatory text) are posted to CDLAC's Internet website at: <https://www.treasurer.ca.gov/cdlac/regulations.asp>.