



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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**STATE OF CALIFORNIA
OFFICE OF THE TREASURER
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
January 23, 2023**

**REQUIRED NOTICE OF PROPOSED EMERGENCY ACTION
(Cal. Code Regs, Title 4, Division 17, Chapter 1)**

The California Tax Credit Allocation Committee (CTCAC) organized and operating pursuant to Chapter 1 of Division 17 of Title 4 of the California Government Code proposes to adopt emergency regulations pursuant to sections 10327 and 10328.

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. CTCAC has provided that notice to all such persons at least five days before submitting the emergency regulations to the OAL by virtue of the proposed Emergency Action being on the agenda of February 1, 2023, Committee meeting. After submission of the proposed emergency regulations to OAL, 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.

In order to determine when CTCAC has submitted the emergency regulations to OAL for its review and the 5-day OAL comment period begins, please check the OAL website at https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/ where all emergency regulations submitted to OAL are posted on the day they are received.

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will be effective for one hundred-eighty (180) days.

Attached to this Notice is the specific regulatory language of the proposed emergency action in the Finding of Emergency.

All CTCAC questions, comments and processes about this notice should be directed Anthony Zeto at anthony.zeto@treasurer.ca.gov.

FINDING OF EMERGENCY

Pursuant to Section 50199.17 of the California Government Code (the “Code”), the regulations being amended by CTCAC 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 within the meaning or purposes of Government Code section 11346.1.

Pursuant to Government Code section 11346.5(a)(3)(D) CTCAC must provide “An evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations.” CTCAC received numerous comments from applicants regarding specific sections in the regulations. Following an internal examination CTCAC concluded the proposed changes in sections of the regulations are necessary.

CTCAC 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 cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

INITIAL STATEMENT OF REASONS / INFORMATIVE DIGEST

With the passage of the Tax Reform Act of 1986, Congress created the federal Low-Income Housing Tax Credit (LIHTC) program. The LIHTC provisions comprise the longest single section of the Internal Revenue Code (IRC). This program helps private developers/owners create and preserve affordable housing and raises project equity by providing tax benefits to investors who hold an ownership interest in the property. Congress made the LIHTC Program permanent with the passage of the Omnibus Budget Reconciliation Act of 1993. Over the years, the LIHTC program has become the primary funding source for the development of affordable rental housing throughout the country.

California's state LIHTC program authorized by Chapter 1138, Statutes of 1987, provides State-level investor tax benefits, supplements the federal tax credit, and provides additional investor tax benefits to further increase the supply of affordable housing. The state tax credit is only available to projects receiving an allocation of federal credits.

CTCAC administers both a federal and a state LIHTC program. These programs encourage private investment in qualified residential rental property development for low and very low-income families and individuals. From 1987 through 2020, CTCAC allocated more than \$51 billion federal and state tax credits.

Tax credits have helped fund the construction of over 500,000 affordable housing units since CTCAC's inception. CTCAC is the sole provider and administrator of tax-credit awards for California. High demand for tax credits created the need for a competitive process. Developers compete for tax credits within the different programs offered.

Existing law establishes a ceiling for which a project can access an increase to their basis limit if located within a county while meeting specific parameters. The increase will allow the project to access additional tax credits to fully finance the development of the project. Due to market conditions and recent construction cost increases, one of the parameters that must be met will prohibit any projects to access this increase rendering the project not financially feasible. The proposed emergency change will allow for the project to access additional tax credits immediately and continue housing production in an expeditious and effective manner.

Existing law establishes a process for specific projects to exchange their current reservations of tax credits from one year to the next allowing projects additional time to meet the federally mandated placed-in-service dates. The proposed change will broaden the provision to other projects reserved tax credits to provide comfort to lenders and tax credit investors of the timely development of the affordable housing projects and ensure those projects reserved tax credits have sufficient time to meet the federally mandated deadlines.

LIST OF REGULATIONS TO BE MODIFIED

Title 4, Section 10327. Financial Feasibility and Determination of Credit Amounts
Title 4, Section 10328. Conditions on Credit Reservations

SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT

Section 10327(c)(5)(F): The proposed change increases the dollar amount of the 9% threshold basis limit for a 2-bedroom unit from \$400,000 to \$500,000. Without this change, no projects would be eligible to receive a Highest or High Opportunity Area basis limit increase as the new 2023 threshold basis limits for every county exceeds \$400,000 for a 2-bedroom unit.

Section 10328(g): The proposed change allows projects that received a tax credit allocation from the Waiting List be eligible for a reservation exchange. Following the second round, the Committee may establish a Waiting List to ensure that any returned or remaining 9% tax credits are allocated prior to the end of each calendar year. If adopted, projects may be selected from the Waiting List for a tax credit allocation, which may take place up to 60 days after the second round. The delay in receiving a tax credit allocation could impact the construction start date and result in conflict with requirements from the lenders and tax credit

investors, ultimately impacting the project's ability to meet the federal placed-in-service deadline. Staff proposes to allow reservation exchanges for projects allocated 9% credits from the Waiting List and applying this retroactively to projects allocated credits from the Waiting List in 2022.

ECONOMIC IMPACT ASSESSMENT

The proposed regulation changes pertain to program eligibility, project scoring and ranking, and administrative issues relating to the allocation of low-income housing tax credits for multifamily affordable housing projects. The proposed changes are to ensure limited tax credit allocations are awarded competitively to projects most aligned with the States 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 LIHTC allocation is discretionary and not required to construct affordable housing. Neither the proposed revisions nor the CTCAC Regulations require any person or entity to take any action, make any monetary expenditure, or refrain from taking any action or making any expenditure.

CTCAC is unaware of any reason awarding tax credit allocation would result in the elimination of jobs. Tax credit allocations will only sustain the need for California's construction workforce. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses.

CTCAC 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.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose a mandate on local agencies or school districts.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

There were no alternatives proposed to CTCAC that would lessen any adverse economic impact on small businesses.

ALTERNATIVES DETERMINATION

CTCAC determined that no alternative it considered or that was otherwise 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.

The amendments adopted by CTCAC are the only regulatory provisions identified by the CTCAC that accomplish the State's goal of increasing the units of affordable housing for underserved communities. No other alternatives were proposed or otherwise brought to the CTCAC's attention.

ANTICIPATED BENEFITS

The benefits derived by these proposed regulations include the fair, efficient, and equitable administration of the LIHTC program in compliance with state and federal law.

OTHER REQUIRED DISCLOSURES

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.

Evidence relied upon to support the initial determination that the regulation will not have a significant adverse economic impact on business (Gov. Code §11346.2(b)(5)(A)): As explained in the Economic Impact Assessment, these regulations only affect affordable housing developers.