

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

**FINAL STATEMENT OF REASONS**

**INTRODUCTION**

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 to allocate 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 volume cap for tax-exempt debt to be issued for private projects based on 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 Internal Revenue Service. 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**

In 2019, Assembly Bill 101 passed, appropriating \$500,000,000 to the California Tax Credit Allocation Committee (CTCAC) for award to specified low-income housing projects. Those tax credits are dependent on the applicant's successful award of tax-exempt bond allocation from CDLAC. This 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 3 times more than 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 equitable distribution of Bond Allocation throughout California. Through an intense 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 Committee apply pressure to CDLAC to create more efficient, competitive processes, which in turn creates additional regulations and builds on the complexity and multitude of rules to calculate when reviewing the applications. The amendments proposed by this promulgation will assist the Committee to meet those goals

#### **LIST OF REGULATIONS TO BE MODIFIED**

Title 4, Section 5000. Definitions  
Title 4, Section 5010. Determination of State Ceiling, Competitiveness, & 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 5036. Appeals to Preliminary Recommendations  
Title 4, Section 5037. Final 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 5062. Private Placement Sales  
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 5103. Five Day Hardship Extensions.  
Title 4, Section 5133. Use of Carryforward.  
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 5194. Project Sources & Uses and Project Costs.  
Title 4, Section 5205. Minimum Requirements  
Title 4, Section 5210. Minimum Expenditures  
Title 4, Section 5211. Tenant Relocation.  
Title 4, Section 5212. Capital Needs Assessment.  
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  
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, Section 5432. Non-Solid Waste Projects  
Title 4, Section 5480 – 5550 Recovery Zone Economic Development Bond Program  
Title 4, Section 5700 - 5731. Qualified Public Education Facility Bonds

## **SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT**

Section 5000. Changes to "Bond Regulatory Agreement" are made to align with the elimination of the Qualified Public Educational Facility Project (QPEF) bond authority in the CDLAC regulations. CDLAC's responsibility was removed by legislation since there was redundant allocation authority within state agencies. The Education Code 17199.6. allows California School Finance Authority (CSFA) exclusive control over the use and allocation of the volume cap described in Section 142(k) of the federal Internal Revenue Code, or successor provisions of the Internal Revenue Code. The board of the authority [CSFA], by resolution, may use the volume cap for obligations issued by the authority or allocate the volume cap to any party. Since this provision changed in legislation, it no longer applies to CDLAC and needs to be removed from the regulations.

Section 5000. Changes to "Competitive Application Process." At a January 15, 2020, CDLAC committee meeting the committee delegated to staff the authority to determine if an application is complete. Thus, reducing the need for a Committee determination that could delay the application review and inevitably the award process. This change clarifies that staff has the authority to deem an application incomplete.

Section 5000. The elimination of "Deemed Waived" is in alignment with the elimination of the Chapters 9 and 10 relating to Recovery Zones. Since a Recovery Zone no longer exists, removing the definition of "Deemed Waived" is necessary since its only meaning was related to a Recovery Zone application even though the Recovery Zone definitions are not being removed since it still relates to previous transactions.

Section 5000. Additions to "Distressed Community" are to add areas affected by disaster or a state of emergency as a target for development of affordable housing. The additional language expands the definition of distressed community to include counties affected by a state of emergency or disaster declared by several Federal or State Administrations. This is necessary to capture those applicants affected by disasters such as wildfires, earthquakes, landslides and other similar disasters to support Community Revitalization Plans. The Committee supports Community Revitalization Plans as they make specific efforts to improve economic conditions in certain areas that create a better quality of life for Californians in those areas.

Section 5000. The definition of "Mixed Income Project" is being eliminated and reintroduced. The new definition is aligning with California Housing Finance Agency's Mixed-Income Program to ensure the successful layering of public resources in the development of such projects. Additionally, the new definition clearly limits the amount of tax-exempt bonds available to

such projects, requiring that they be a ratio to the number of affordable units in the project. This clarification prevents the over allocation of bonds and ensures equitable distribution of allocation.

Section 5000. "Mixed Income Project Pool" definition is being eliminated since the concept is replaced with the Mixed Income set-aside in the New Construction Pool outlined in Article 3: State Ceiling Pools. All projects that meet the definition of New Construction will compete in the same pool consisting of set-asides and Geographic Apportionments. This structure affords projects more opportunity for award (by allowing projects that are eligible to compete both in a set-aside and a geographic apportionment) while ensuring only the most critical projects that aid the State in meeting its affordable housing goals are awarded.

Section 5000. The elimination of "Net Proceeds" is in alignment with the elimination of the Chapters 9 and 10 relating to Recovery Zones. Since a Recovery Zone no longer exists, removing the definition of "Net Proceeds" is necessary since its only meaning was related to a Recovery Zone application even though the Recovery Zone definitions are not being removed since it still relates to previous transactions.

Section 5000. The elimination of "Plan of Issuance" is in alignment with the elimination of the Chapters 9 and 10 relating to Recovery Zones. Since a Recovery Zone no longer exists, removing the definition of "Plan of Issuance" is necessary since its only meaning was related to a Recovery Zone application even though the Recovery Zone definitions are not being removed since it still relates to previous transactions.

Section 5000. "Qualified Business" is being eliminated because in alignment with the elimination of the Chapters 9 and 10 relating to Recovery Zones. Since a Recovery Zone no longer exists, removing the definition of "Qualified Business" is necessary since its only meaning was related to a Recovery Zone application even though the Recovery Zone definitions are not being removed since it still relates to previous transactions.

Section 5000. The elimination of "Qualified Public Educational Facility Bond Pool" is in alignment with the elimination of sections 5700-5731 relating to the Qualified Public Educational Facility Bonds. Since CDLAC's responsibility for QPEF bonds was eliminated by legislation, removing the definition of "Qualified Public Educational Facility Bond Pool" is necessary as it no longer applies to CDLAC.

Section 5000. For CDLAC purposes, the definition of "Restricted Rental Units" applies only to bond requirements. Reference to CTCAC is being eliminated since CTCAC's definition is different and includes income averaging and up to 80% AMI units. For this reason, reference to the CTCAC regulatory agreement in the definition of Restricted Rental Unit is being removed as it is contradictory to CDLAC requirements.

Section 5000. The additions of New Construction Project to "Rural Project" are intended to create a pathway for New Construction Projects in rural areas to compete against like projects for award and to encourage this type of development in rural areas. Stakeholder, local government, CDLAC Committee member feedback as well as an audit conducted by the

State Auditor's office place emphasis on the development of pathways for rural housing development.

Section 5000. The changes to "State Ceiling" remove reference to Qualified Public Educational Facility Bonds in alignment with the elimination of sections 5700-5731 relating to the Qualified Public Educational Facility Bonds.

Section 5010. The addition of the categories New Construction, Preservation, Other Rehabilitation and BIPOC pools to 5010 conform to proposed changes in 5000 and 5020 regarding terminology that coincides with the competitive processes put in place at CDLAC.

The changes to section 5020 establish five sub-pools with the QRRP Pool. The pools and set asides were discussed in depth at the Committee meeting on September 25, 2020. Draft regulation text was later posted to the CDLAC website for public comment in late October 2020. At the December 9, 2020 Committee meeting updated regulation text was presented by staff and additional Committee and public discussion was heard. A final draft of the updated pools and set asides was presented at the December 21, 2020 meeting and was approved by the Committee. Throughout these discussions emphasis was placed on policy goals of the Governor set forth in Secretary Lourdes Castro Ramirez's recommendation memo dated September 12, 2020, aims of various proposals in the legislature, and recommendations from the Office of the State Auditor. These goals include, but are not limited to: establishing truly integrated, inclusive and balanced living patterns that offer opportunity and upward mobility for residents, by creating units of housing that stretch widely across the income brackets in lower income communities building more deeply affordable units in well-resourced areas with higher opportunities; cost containment solutions that better leverage public resources; increased unit production; alignment between CDLAC and CTCAC; and removing the barriers of inclusion for new development partners (specifically "Black and Brown") in the affordable housing space.

The 5 pools are as follows:

1. New Construction Pool, which consists of 3 set-asides within the pool: Homeless Set-Aside; Extremely Low-Income/Very Low-Income Set-Aside, and Mixed Income Set-Aside. Each set-aside aims to target specific types of housing development deemed vital to reaching the State's affordable housing goals. See in depth descriptions of set asides below.
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. Segregating Rural new construction projects ensures awards will be made in rural areas, thus ensuring development there.
3. Preservation Pool, which would now include rural Preservation Projects. This pool focuses on preserving existing affordable units that may potentially be losing subsidy. This ensures existing units are not lost.

4. Other Rehabilitation Pool, which would include rural projects. This pool also focuses on retaining affordability that is at risk of being lost and allows existing affordable and naturally affordable projects to make necessary building improvements.
5. Black, Indigenous, or Other People of Color (BIPOC) Pool, a new pool in which eligibility is established in the new definition of BIPOC Project in Section 5170. Unlike the other four pools above that 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. The addition of the BIPOC Pool aims to remove barriers for the inclusion of emerging BIPOC developers.

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 that at least 25% of the tax credit units were designated for homeless households, as defined consistent with Section 10315(b)(1) of the California Tax Credit Allocation Committee (CTCAC) Regulations, 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 (CTCAC) homeless apportionment). This set aside meets many policy goals by targeting groups with the greatest need
2. Extremely Low-Income/Very-Low Income (ELI/VLI) 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. The ELI/VLI set-aside is focused on deep affordability and coupled with scoring emphasis on high resource areas, directly meeting a major policy goal of the Governor outlined by Secretary Lourdes Castro Ramirez.
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). This set aside places emphasis on the layering of public resources in the development of affordable housing.

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.

Section 5022. The addition of section 5022 was to ensure an equitable geographic distribution of bonds remaining in the New Construction Pool after allocation to set-asides. The Geographic Apportionments were discussed in depth at the Committee meeting on September 25, 2020. Draft regulation text was later posted to the CDLAC website for public comment in late October 2020. At the December 9, 2020 Committee meeting updated regulation text was presented by staff and additional Committee and public discussion was had. A final draft of the updated pools and set asides was presented at the December 21, 2020 meeting and was approved by the Committee. The Geographic Apportionments were later adjusted after public comment and Committee discussion at the April 28, 2021 meeting. The addition establishes six regions encompassing the counties of the State that are not exclusively rural. The proposal combines several of the regions from CTCAC Regulations Section 10315(i) to ensure larger apportionments in these "super regions" than would otherwise be the case if CDLAC were to mirror the CTCAC regions. The ranges reflect CTCAC's regional allocations with possible adjustments to reflect projects in higher-cost regions require additional bonds to meet the mandated 50% test to access 4% tax credits.

Section 5033. Changes to section 5033 change the requirements for performance deposits. This addition 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 CTCAC Regulations Section 10335(e). In the current highly competitive environment, allocation is not guaranteed and only approximately 1/3 of projects that apply are being awarded. This added language reduces the administrative burden of posting and then subsequently returning hundreds of performance deposits. In addition, this helps developers avoid the unnecessary use of predevelopment capital.

Section 5033. Deletions to 5033 eliminate 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 an unnecessary redundant element in CDLAC regulations.

Section 5035. Additions and deletions to 5035 proposes new regulation changes to the application process during a competitive round of allocation. It also clarifies the evaluation and award process that substantially mirrors the process used by the California Tax Credit Allocation Committee (CTCAC). Section 10317(g)(4) of CTCAC regulations require applicants to demonstrate a tax-exempt bond allocation has been received or applied for to receive a 4% tax credit allocation which creates a funding dependency between CTCAC and CDLAC. This alignment will eliminate potential issues with conflicting awards from either agency while adopting the long-standing competitive process used by TCAC. Since tax credits awarded by CTCAC are reliant on the allocation of bond authority by CDLAC, alignment of applications and evaluation is necessary.

Section 5036. Additions to 5036 clarifies the appropriate process for addressing appeals to the Committee. It is not reasonable for an appellant to deliver the appeal to the Committee since staff would need to place the request on a meeting Agenda for it to be heard and voted on at a committee meeting. This clarifies delivery of the appeal is presented to the Executive Director, who in turn will present it to the committee.

Section 5037. This change is necessary to correct a typographical error.

Section 5050. Additions and deletions to 5050 conform with the proposed changes to Section 5033. This addition 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 CTCAC Regulations Section 10335(e). In the current highly competitive environment, allocation is not guaranteed and only approximately 1/3 of projects that apply are being awarded. This language reduces the administrative burden of posting and then subsequently returning hundreds of performance deposits. In addition, this helps developers avoid the unnecessary use of predevelopment capital.

Section 5052. Additions and deletions to 5052 (e) add necessary clarity regarding the forfeiture of a performance deposit for situations when an extension to the bond issuance deadline may be granted. This change aligns the forfeiture of a performance deposit with the bond issuance deadline should it be extended. This clarifies that if a bond issuance deadline is extended by the Committee, that the forfeiture of the performance deposit is now tied to the extended issuance deadline. This will give applicants confidence that should they receive an extension to the bond issuance deadline, they will not be forfeiting the project's performance deposit.

Section 5052. The addition of (f) is necessary to provide guidance for joint applications who are not awarded tax credit in conjunction with an award of bond allocation. Joint applications to CDLAC and CTCAC that obtain the bond allocation yet cannot obtain state tax credits be allowed to fill the financing gap or return the allocation within 90 days to the committee without penalty. This clarity is necessary to continue to issue bonds regardless of the availability of tax credits. It allows a safeguard to the applicant not to lose their performance deposit or be assessed negative points if no tax credits are available. The safeguard to the committee is that it incents applicants to return scarce resources so they potentially can be utilized for other projects that may not need as much or any tax credit.

Section 5053. These additions account for the disposition of a performance deposit that an applicant unnecessarily posts prior to its award and then withdraws the application or fails to receive an award. It also provides an avenue for the applicant to return an allocation without threat of negative points in the event they decide not to utilize the bond authority as an incentive to recapture scarce resources of the state that can be used for other projects.

Section 5060. Additions 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" allowed by the Housing and Economic Recovery Act of 2008. These provisions will greatly simplify recycling transactions once these projects undergo permanent conversion and ensure that this available resource is utilized and require the issuer to report such redemption of bond conversion to CDLAC for record keeping and reporting purposes. Recycled bonds are specifically for affordable residential rental projects. Issuers using this program will help expand the states volume cap to create more affordable housing projects.

Section 5062. This deletion of language eliminates a duplicative application instructions and eliminates a regulation that is no longer a requirement in all instances. This information, when available is already collected within the application process. The project sponsor acceptance

of the commitment terms is not a requirement of the lender at the time of application, therefore not always available or necessary.

Section 5100. Changing the language for 90 days to 180 days better aligns expiration dates during a Competitive Application process with the Non-Competitive Application process. It has been noted by bond issuer stakeholders in the past that the bond issuance process for the types of bond programs in this section has taken longer than 90 days as bond transactions become more complex over time and market uncertainties are constant. This change will reduce staff time to process extension requests of projects that cannot execute bonds in the 90-day time frame. In addition, the increase in demand and related awards has caused high volume issuers to experience logistical challenges closing multiple projects at a time. Extending the issuance deadlines relieves some of this administrative burden. Amending this section assists more successful projects being placed into service. Deletions in this section, reference repealed programs that are being removed.

Section 5101. Deletion of language removes reference to obsolete Recovery Zone programs and allows the authorization for the Executive Director to grant extensions to any program without specificity during an Open Application Process, that is often necessary and inconsequential to the process during low demand.

Section 5102. This section is being eliminated to align with the elimination for the Recovery Zone Bond program. Since a Recovery Zone no longer exists, removing guidance for "Recovery Zone Bond Extensions" is necessary since its only related to a Recovery Zone bonds issued before January 1, 2011.

Section 5103. The change removes a reference to Section 5102 since section 5102 no longer exists, as it was removed from regulation in 2020.

Section 5133. 26 U.S. Code § 146 (f)3 (A) and (B) describes how bond issuers must retain and apply carryforward allocation of a state's volume cap. This change addresses how CDLAC applies that carryforward in the competitive allocation process. During times of competition, 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 specify the procedure by which CDLAC would allow the application of carryforward allocation to newly funded projects in a competitive scoring system while removing the current ambiguity in the process.

Section 5141. This addition conforms to changes in 5060 that establishes that projects receiving new volume cap incorporate language in their bond documents that will facilitate the preservation of volume cap through "bond recycling" allowed by the Housing and Economic Recovery Act of 2008. These provisions will greatly simplify recycling transactions once these projects undergo permanent conversion and ensure that this available resource is utilized and require the issuer to report such redemption of bond conversion to CDLAC for record keeping and reporting purposes. Recycled bonds are specifically for affordable residential rental projects. Issuers using this program will help expand the states volume cap to create more affordable housing projects.

Section 5144. This change is correcting a typographical error to a referred citation to the CTCAC Compliance Manual.

Section 5153. The proposed additions maximize consistency between CTCAC and CDLAC joint application 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 in Regulation Section 10325(c)(4)(A), particularly the site amenity points within the proposed affirmatively furthering fair housing category. This change will further ensure consistency in program implementation.

Section 5170. The definition of "At-Risk Project" is replacing and expanding on the definition of "Federally Assisted At-Risk Project" which gives preference to projects at risk of losing Federal subsidy within 2 years. to the addition of "At-Risk Project" expand that preference to State subsidy and expand the timeframe to 5 years. This will ensure subsidy is not lost and existing affordable housing units are not removed from the market, further exacerbating the current affordable housing crisis.

Section 5170. The introduction of "BIPOC Entity" by the Committee aims to incentivize and encourage participation of affordable housing development entities that have leadership and ownership by Black, Indigenous, or Other People of Color, in recognition that they continue to be underrepresented in the affordable housing development community.

Section 5170. "BIPOC Project" creates a pathway for emerging BIPOC Entities to compete amongst themselves where they may lack the experience to compete against projects by more experienced developers, giving the emerging developers a greater chance of award and ability to gain necessary experience to be independently competitive in the future with more experienced developers.

Section 5170. In 2019, the passage of AB101 linked the allocation of CTCAC's State tax credit and CDLAC's bond allocation in Section 12206 of the Revenue and Taxation Code by requiring a state low income housing tax credit applicant qualify under Section 42(h)(4)(B) of the Internal Revenue Code, relating to special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. "Bond and State Credit Allocation" is being included in the regulations to define individual projects who are applying for these linked resources.

Section 5170. The definition of "Community Revitalization Area" that are HUD-designated geographic areas authorized by Congress under provisions of the National Housing Act, is being expanded to include Federally identified areas as well as areas negatively impacted by environmental degradation which disproportionately affect low-income communities of color. This expansion creates better alignment with Federal and State resources and targets.

Section 5170. "CTCAC/HCD Opportunity Area Map" is being added to align CDLAC requirements with Section 10302(zz) of CTCAC Regulations, necessary for the joint application process. Opportunity Zones are economically distressed communities, defined by individual census tract, nominated by America's governors, and certified by the U.S. Secretary of the

Treasury via his delegation of that authority to the Internal Revenue Service. The Map used by CTCAC and CDLAC is housed at and maintained by HUD.

Section 5170. "Federally Assisted At-Risk Project" is being eliminated and replaced with "At-Risk Project" defined in this section to effect greater affordability preservation in the State.

Section 5170. changes to "Gross Rent" align with the elimination of "Federally Assisted At-Risk Project" and the introduction of "At-Risk Project."

Section 5170. "High Quality Transit" is being eliminated since it is not a defined term in the CTCAC regulation and as such it does not align with the transit amenity requirements in CTCAC regulation section 10325(c)(4)(A)(1) that are tied to the joint application of CDLAC and CTCAC

Section 5170. "New Construction" is being eliminated and reintroduced with new naming convention as "New Construction Project."

Section 5170. "New Construction Project" is expanding on the eliminated "New Construction" to include other projects that may not have previously been considered New Construction but are nonetheless bringing new affordable housing units to the market.

Section 5170. "Other Rehabilitation Project" is added to replace the "Substantial Renovation Project" definition being removed from the regulations. This definition includes clarification of which projects qualify for this section and aligns construction costs per unit with the more robust requirements in CTCAC regulation section 10302(x).

Section 5170. "Other Restricted Units" is being removed from the definitions and being replaced by the addition of "Preservation Project" to the definitions.

Section 5170. "Preservation Project" is added to the definitions. Projects in this category include At-Risk projects as described in this section. This category also includes projects not at-risk of losing affordability but performing various forms of loan restructuring, property replacement or rehabilitation, and other projects meeting various funding and rehabilitation criteria.

Section 5170. "Public Funds" is being eliminated. References to public funds in CDLAC regulations will refer to the definition found in section 10325(c)(9)(A) of CTCAC regulations for consistency.

Section 5170. Changes to "Qualified Project Period" are made to align with changes to 5192 and reduce the possibility of conflict within the regulations.

Section 5170. "Substantial Renovation Project" is being removed from the definitions and replaced by "Other Rehabilitation Projects."

Section 5170. The definition of "VOC" is being eliminated because VOC is no longer referenced in the regulations.

Section 5180. Additions to this section establishes a structured pathway and a defined process for applicants to cure deficiencies in their original application. This more formalized process is necessary to allow an applicant the opportunity to cure a deficiency rather than have its application rejected. Including this process in the regulations ensures transparency and equal treatment of applications.

Section 5190. Additions to 5190 clarifies acceptable title documents such as a title report, clarifying a title insurance policy is not valid. Changes to the Local Approvals and Zoning clarify that the Project Sponsor provide evidence as specified in CTCAC regulations. This was done for consistency purposes to better align the CDLAC and CTCAC joint process. There are also changes that Project Sponsors and Project Developers include a summary of experience and list of projects that can be submitted using the CTCAC Experience Form, again to establish consistency with CTCAC rules. There is a change to request that Applicants provide a legal status in a less restrictive way than attaching a separate sheet. This will eliminate attachments for ease of the application submittal process and technology upgrades. There was a change to the way an applicant reports Prior Tax-Exempt Allocation Award that is less restrictive than answering yes or no questions. This will eliminate attachments for ease of the application submittal process and technology upgrades. There was a change in the way an applicant must submit a project description in a less restrictive way than attaching a separate sheet. This will eliminate attachments for ease of the application submittal process and technology upgrades. There is a change that reflects 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. This information is not currently centralized in our application process causing challenges with validating the referenced pool and set-aside qualifications. This clarification will create a more formal and transparent process for receiving this information.

Section 5191. Additions to this section establish that all QRRP projects use Gross Rents as a threshold criterion. Previously, the use of Gross Rents is a scoring category which is now proposed for elimination in Section 5230.

Section 5192. The proposed changes 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 previous competitive rounds the minimum affordability term is 30 years and applicants received 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 and will increase the long-term affordability of these units.

Section 5194. The change to 5194 clarifies the requirements of reporting project sources and uses through the CTCAC application utilized by CDLAC and CTCAC. The changes also clarify the itemized breakdown of hard construction costs is only required for rehabilitation projects and removes outdated labeling of attachments no longer used as well as outdated reporting requirements.

Section 5205. Changes to this section align these regulations with the requirements in CTCAC Regulations Section 10325(f)(7)(A) thru (K) related to energy efficiency and minimum construction standards to create consistency.

Section 5210. This change reflects the updated term of At-Risk Projects and elimination of the term Federally Assisted At Risk Project in section 5170.

Section 5211. These changes align tenant relocation requirements with those of CTCAC Regulations Section 10322(h)(28) which were revised in 2020 to require compliance with California relocation law unless federal relocation law applies. This change will ensure these relocation standards are also available to tenants of housing developments that are being rehabilitated with tax-exempt bond financing and aligns CDLAC and CTCAC requirements for consistency.

Section 5212. Changes to this section align CDLAC requirements relating to capital needs assessments with those of CTCAC Regulations Section 10322(h)(35). This will ensure consistency for developers and streamline staff application reviews. The change permits assessment reports to be included in a re-application when an applicant has been unsuccessful in competing for a bond allocation and then reapplies. In this interim time between application cycles, little variation in the project site and building conditions reported in the assessment report will have occurred, making a new report unnecessary.

Section 5220. Changes to this section as it relates to the term of income and rental restrictions conform to changes in 5192 with regards to affordability for consistency. It also adds a method in which a property owner will notify CDLAC if the project-based rental assistance or operating subsidy is terminated through no fault of the owner. It also corrects a previous typographical error by adding the previously missing word "order".

Section 5230. The proposed changes wholly replace the current QRRP scoring categories. The following categories of the current scoring are eliminated: 1) use of gross rents (this is proposed in Section 5191 to become a threshold); 2) exceeding the minimum term of restrictions (proposed changes in Section 5192 would require a 55-year affordability term for all QRRP Projects in both open and competitive rounds); 3) community revitalization area criteria; 4) sustainable methods; 5) new construction and substantial rehabilitation projects; and 6) foregone eligible developer fee. Wholly new scoring categories include 1) density and local incentives for new construction projects; 2) general partner and management company experience; 3) readiness to proceed; 4) affirmatively furthering fair housing; and 5) cost containment. In addition, the changes alter the criteria of various other existing point categories. The new system was developed and vetted by stakeholders, housing developers, bond issuers, staff, and the Committee to be in alignment with the State's goals. The new scoring system was discussed in depth at the Committee meeting on September 25, 2020. Draft regulation text was later posted to the CDLAC website for public comment in late October 2020. At the December 9, 2020 Committee meeting updated regulation text was presented by staff and additional Committee and public discussion was had. A final draft of the updated scoring system was presented at the December 21, 2020 meeting and was approved by the Committee. Throughout these discussions emphasis was placed on policy goals of the Governor set forth in Secretary Lourdes Castro Ramirez's recommendation memo dated September 12, 2020, aims of various proposals in the legislature, and recommendations from the Office of the State Auditor. These goals include, but are not limited to: establishing truly integrated, inclusive and balanced living patterns that offer opportunity and upward mobility for residents, by creating units of housing that stretch widely across the income

brackets in lower income communities building more deeply affordable units in well-resourced areas with higher opportunities; cost containment solutions that better leverage public resources; increased unit production; alignment between CDLAC and CTCAC; and removing the barriers of inclusion for new development partners (specifically “Black and Brown”) in the affordable housing space. The new point scoring system would be as follows:

Preservation and Other Rehabilitation Project Priorities (20 points maximum). This point category seeks to prioritize among rehabilitation projects. . This prioritization places emphasis on preserving affordability subsidy and retaining existing units. The Preservation or Other Rehabilitation Pools the following points:

- 20 points for a project meeting the At-Risk definition or for a project outside of the At-Risk definition in which lower-income rent and income restrictions on at least 50 percent of the total units pursuant to a regulatory agreement with a public entity will terminate or be eligible for termination within five years of application with no other rent and income restrictions remaining. Adding the latter type of project is intended to prioritize all projects eligible to convert to market rate within five years, even if not currently cited in the TCAC statutes which the At-Risk definition cross-references.
- 14 points for a project being rehabilitated under HUD Section 18 or 22, RAD, or AB 1699 for a pre-2000 HCD loan.
- 6 points for a project that has never before received low-income housing tax credits and in which at least 50% of the units are assisted by specified federal or HCD programs.

New Construction Density and Local Incentives (10 points maximum). This new scoring category seeks to encourage local governments to support affordable housing through density bonuses, streamlined reviews, and being prohousing in general. Projects meeting the New Construction definition may receive 10 points for any of the following:

- Receiving SB 35 streamlined approval
- Obtaining a density bonus, concessions, or waivers pursuant to state Density Bonus Law or (for the density bonus only) a local ordinance.
- Developing the project at a net density of 100 bedrooms per net acre in a metropolitan county; 60 bedrooms per net acre in a suburban jurisdiction; or 40 bedrooms per net acre in all other areas, as those terms are defined. Projects that obtained land-use approvals prior to January 1, 2022 are grandfathered in and receive full points.
- Location in a city or unincorporated area of a county that HCD has identified as “Prohousing.”

Exceeding Minimum Income Restrictions (20 points maximum). All projects may receive points for income targeting as follows:

- 2 points for each full percent that the average affordability of tax credit units is less than 60% AMI; or
- 20 points if the average affordability of tax credit units is less than or equal to 60% AMI, provided that at least 10% of tax credit units are restricted at 30% AMI and an additional 10% of tax credits units are restricted at 50% AMI.

Exceeding Minimum Rent Restrictions (10 points maximum). All projects may receive up to 10 points for each full 1% that the project's average rental rates are more than 10% below the

average adjusted rental rates of comparable market-rate units, encouraging deeper affordability.

General Partner and Management Company Experience (10 points maximum). This new scoring category seeks to enhance project completion, compliance, and permanent affordability by rewarding developer and manager experience while also promoting the ability of BIPOC's to gain experience. All projects may receive up to 7 points for general partner experience as follows:

- The number of general partner experience points for which it is eligible under Section 10325(c)(1)(A) of CTCAC regulations.
- 7 points if 7 points if the project is a joint venture between an entity which receives maximum general experience points pursuant to Section 10325(c)(1)(A) of the CTCAC regulations and a BIPOC, provided that the partnership agreement (i) allocates a share of the developer fee, cash flow, and net sale proceeds to the BIPOC that is equal to or greater than the share to the entity with maximum general experience points and (ii) provides the BIPOC Developer an option to purchase the development.
- 7 points if the sole sponsor is a BIPOC that (i) is a general partner in at least one Low-Income Housing Tax Credit development that has received a certificate of occupancy, or if a rehabilitation project, completed rehabilitation, within five years of the date of application, (ii) submits the certification from a third party certified public accountant referred to in Section 10325(c)(1)(A)(i) of the CTCAC regulations for that development, (iii) demonstrates to the satisfaction of the Executive Director adequate in-house or contracted knowledge, skills, experience, and financial capacity to successfully develop, own and operate the proposed project, and (iv) completes training as prescribed by CTCAC prior to a project's placing in service.

A project shall receive management company experience points in one of the following manners:

- The number of management company points for which it is eligible pursuant to Section 10325(c)(1)(B) of the CTCAC regulations.
- 3 points if the management company will be the BIPOC for which the project receives general partner experience points pursuant to paragraph (1)(C).

Housing Types (10 points maximum). All projects may receive 10 points for proposing one of the following housing types:

- A housing type eligible for points under the TCAC 9% Housing Type point category (i.e., Large Family, Special Needs, SRO, At-Risk, or Senior)
- A project that receives full points under the New Construction Density and Local Incentives above.

Leveraged Soft Resources (8 points maximum). A project shall receive 1 point for each full percent that leveraged soft resources defraying residential costs represent as a percentage of total residential project development costs, except that a New Construction Project that receives points as a Large Family, or Special Needs project pursuant to the conditions specified in Section 5230(j)(1)(A) and is located in a High or Highest Resource Area as specified on the CTCAC/HCD Opportunity Area Map shall receive 2 points for each full percent of leveraged soft resources. For purposes of this subdivision, leveraged soft resources shall have the same meaning as in Section 10325(c)(9) of the CTCAC regulations.

Readiness to Proceed (10 points maximum). Enforceable financing commitment, as defined in TCAC Reg. § 10325(f)(3), for all construction financing; and commitment to begin construction within 180 days of the bond allocation as documented by the requirements described in TCAC Reg. § 10325(c)(7).

Affirmatively Furthering Fair Housing (AFFH) (20 points maximum): This point category combines TCAC 9% tax credit site amenity scoring with incentives for the development of Large Family projects in higher resource areas and for achieving a broad range of incomes and other policy goals in Large Family projects in lower resource areas. All projects may receive up to 20 points as follows:

- 20 Points if the project receives points as a (1) Large Family project or (2) Special Needs project with at least 50% of its units set aside as permanent supportive housing for the homeless; and the project is located in a High or Highest Resource Area as specified on the TCAC/HCD Opportunity Area Map; and at least 10% of tax credit units shall be restricted at 30% of area median income; and for Large Family projects only, an additional 10% of tax credits units shall be restricted at 50% of area median income.
- 9 points if the project receives points as a Large Family project; and the project is located in a Moderate (Rapidly Changing) or Moderate Resource Area as specified on the TCAC/HCD Opportunity Area Map; and at least 10% of tax credit units shall be restricted at 30% of area median income; and an additional 10% of tax credits units shall be restricted at 50% of area median income.
- 9 points if the project receives points as a Large Family project; and the project is located in a Low Resource or High Segregation and Poverty Area as specified on the TCAC/HCD Opportunity Area Map; and has income and rent restrictions:
  - At least a 40% AMI spread between the lowest restricted unit (which shall be no lower than 30% AMI) and the highest restricted unit, with at least 10% of the units at the upper end of the range, provided that the upper-end restricted rents are at least 10% below market rents.
  - All requirements of Option 1 are met except the spread may be 30% AMI if a 40% AMI spread is not achievable as evidenced by the market study, or if the Low Resource or High Segregation and Poverty Area in which the project is located is adjacent to a High or Highest Resource Area. In no case shall the upper-end restricted units exceed 60% AMI.
  - Restrictions are consistent with the restrictions of a public funding source awarded under NOFAs issued on or before December 31, 2020.

And meets one of the following two requirements:

- The sponsor is a BIPOC that has maintained a headquarters or office within five miles of the project for a period of five years prior to the application.
- The sponsor is a Community Housing Development Organization (CHDO) as certified by the local participating jurisdiction in which the project will be located.
- The sponsor has previously developed affordable housing within the community in which the QRRP will be located in the past 20 years.

- The sponsor has continually, during the prior 10 years preceding the application date, provided educational, health or economic development services to the community in which the QRRP will be located

Or

- The project is located within a Community Revitalization Area
- The project is funded in part with an award from the California Department of Housing and Community Development prior to December 31, 2020
- 9 points if the project does not receive points as either a (1) Large Family project or (2) 50% homeless Special Needs project located in a High or Highest Resource Area as specified on the TCAC/HCD Opportunity Area Map; and receives the maximum points for Exceeding Minimum Income Restrictions.

Projects scoring in any of the 9 point categories may earn up to an additional 10 site amenity points under TCAC regulation section 10325(c)(4)(A).

Service Amenities (10 points maximum). In order to incentivize appropriate resident services, all projects may receive up to 10 points for providing services consistent with the service amenity scoring in TCAC regulation section 10325(c)(4)(B).

Cost Containment (12 points maximum). In order to incentivize cost reductions where possible and stretch scarce bond allocations, all projects may receive up to 12 points for achieving cost efficiencies with respect to regional and project-specific benchmarks as follows:

- A project shall receive 1 point for each full percent that the project's eligible basis is less than the project's CDLAC adjusted threshold basis limit.
- A New Construction Project that:
  - Receives AFFH points as a Large Family or Special Needs project pursuant to the conditions specified in Section 5230(j)(1)(A); and
  - Is located in a High or Highest Resource Area as specified on the TCAC/HCD Opportunity Area Map shall receive 2 points for each full percent that the project's eligible basis is less than the project's CDLAC adjusted threshold basis limit.

Negative Points (no maximum). This scoring category is retained from the current regulations without change.

Section 5231. Changes to this section 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 BIPOC 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-Income/Very Low-Income Set-Aside. 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-sides 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 seek 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.

Section 5232. The change to this section adjusts the Maximum Allocation Amount from \$50 million per project to \$75 million per project. This increase is to compensate for an increase in development and infrastructure costs, inflation, and to improve the chances of meeting the states goals to develop more units of affordable housing in California.

Section 5233. 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 and 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). Additionally, CDLAC is establishing a maximum eligible basis of 55% to ensure the limited allocation can be awarded to as many projects as possible.

Section 5240. Changes to this section reflect updated language regarding the supplemental allocation process by clarifying that a supplemental allocation associated with a previous allocation are subject to the same requirements as the initial allocation. It also clarifies that supplemental allocation requirements are upheld during a competitive round. In addition reference to TEFRA Resolution is removed since TEFRA is a requirement for a bond closing therefore an unnecessary redundant element in CDLAC regulations. Due to the removal of an item, renumbering was necessary.

Section 5241. Additions to this section clarify the bond issuance deadline for supplemental allocations to be that of the original allocation, if bonds have not yet issued. The clarification is necessary to ensure the supplemental allocation process is not an avenue to receive an extensions of the allocation deadline, thus circumventing the prescribed process. Additionally, authority is being granted to the Executive Director to extend the supplemental deadline if necessary.

Section 5250. CDLAC is inserting clarification language allowing for New Construction to be consistent with CTCAC. CTCAC 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 CTCAC, clarification language is suggested to include both types of scattered site projects.

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

Section 5422. This change 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.

This change effectually shortens the amount of advanced time that these projects must apply for allocation. It better aligns with the intent also in this section that applicant are not required to obtain ministerial approvals at the time of application.

Section 5432. The deletion from this section removes the redundancy in public benefit requirements for Exempt Facility Projects. Public benefit justification is already required in 5420 and this redundancy has caused confusion in the past. In addition, the ranking of these projects as prescribed in 5440, is on the basis of type of business (First Tier or otherwise) and regulatory mandate (in response to a mandate or not), not public benefit. The additional requirement of public benefit consideration in 5432 is not only redundant, but in conflict with the prescribed ranking in 5440. Therefore, it is being eliminated.

Sections 5480 – 5550. This section outlines Recovery Zone programs authorized under the American Recovery and Reinvestment Act of 2009 (ARRA). Bond allocation authority granted to California as a result of ARRA expired on December 31, 2010. As a result, this section is being eliminated.

Changes to 5700-5731 eliminates the QPEFB allocating authority within the CDLAC regulations, as this allocating authority resides with California School Finance Authority pursuant to the CSFA Act. There is Qualified Public Educational Facility Bond (QPEFB) allocating authority within CDLAC regulations and the CSFA Act, Section 17199.6 of the Education Code. The change eliminates the QPEFB allocating authority within the CDLAC regulations, as this allocating authority resides with California School Finance Authority pursuant to the CSFA Act.

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

### **ANTICIPATED BENEFITS**

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**

CDLAC concludes 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**

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 bond issuers and affordable housing developers.

---

#### **UPDATE TO INITIAL STATEMENT OF REASONS**

No changes to the original notice were proposed by the public or Committee members. As a result, no changes to the proposed action have been made.

#### **LOCAL MANDATE DETERMINATION**

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

#### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD**

No public comment was received regarding the proposed action during the 45-day comment period.

#### **ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

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

#### **ALTERNATIVES DETERMINATION**

The Committee 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 the Committee are the only regulatory provisions identified by the Committee 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 the Committee's attention.

#### **STATEMENT OF MAILING NOTICE (Section 86 of Title 1 of the California Code of Regulations)**

The California Debt Limit Allocation Committee complied with the provisions of Government Code section 11346.4, subdivision (a)(1) through (4), regarding the mailing of the Notice of Proposed Regulatory Action. The Notice was mailed on February 11, 2022, 45 days prior to the close of the public comment period on March 28, 2022.