

## Summary of Proposed CDLAC Changes

### List of forms to be incorporated by reference:

- Annual Applicant Public Benefits and Ongoing Compliance Self-Certification (11-19-16)
- Certificate of Completion for Qualified Residential Rental Projects (11-19-16)
- Certificate of Completion for Non-Qualified Residential Rental Projects (11-19-16)
- Certification of Compliance I (11-19-16)
- Certification of Compliance II for Qualified Residential Rental Projects (11-19-16)
- Certification of Compliance II for Non-Qualified Residential Rental Projects (11-19-16)
- Standard QRRP Application NON-COMPETITIVE (11-19-16)

The Committee is authorized to adopt regulations relating to an allocation system to administer the state unified volume ceiling as emergency regulations (California Government Code 8869.94).

These Regulations primarily address the statutory mandate, Section 8869.84(c) of the Code, to create an allocation system to administer the state unified volume ceiling. The proposed allocation system will provide tax exempt private activity bond allocation (state ceiling) to state, JPA and local agencies, and promote issuer accountability, and additional controls to ensure both projects and programs are structured in a fiscally responsible manner. More specifically, the proposed regulations will:

- ensure there are baseline post-issuance compliance standards for all issue for enhanced issuer accountability;
- ensure there is a ceiling on project cost to control high-cost projects;
- regulate the practice of cash flow-based bond debt being used with increasing frequency in the form of Tranche B financing;
- continue coordination with federal housing partners to ensure HUD projects are successful.

The objectives of these Proposed Regulations are to ensure compliance with state and federal law in a fair, flexible and streamlined manner so applicants may take full advantage of all CDLAC programs.

CDLAC has conducted an evaluation of existing state regulations and has determined that the Proposed Regulations are not inconsistent or incompatible with existing state regulations. (California Government Code 11346.5(a)(3)(D).

Revision of “Annual Applicant Public Benefits and Ongoing Compliance Self-Certification” Form (incorporated by reference)

Necessity: The form has been expanded to include specific questions for the Issuer that CDLAC has determined as essential to the ongoing monitoring of the program. Additional questions regarding the status of the project have been added to ensure that CDLAC has the most current information regarding the status of the project on record. This will ensure that CDLAC is kept abreast on any material changes to the project, the project’s ownership structure, etc. The revised date of the Certification form will be updated to “11-19-16” to ensure that only the most recent edition of the form is used for compliance verification.

“Certification of Compliance I” Form (incorporated by reference)

Necessity: The proposed revision changes the form name Certification of Compliance to Certification of Compliance I to consider the newly proposed form, Certification of Compliance II. This form is applicable to QRRP projects awarded allocation from 2002 through 2016. The revised date of the Certification form will be updated to “11-19-16” to ensure that only the most recent edition of the form is used for compliance verification.

“Certification of Compliance II” Form (incorporated by reference)

Necessity: The proposed form requires an Applicant/Issuer awarded allocation in 2017 forward to retain the Certification form for a period of three years in place of the Certification of Compliance (11-19-16). Note: This ISOR includes a proposed name change of this form from Certification of Compliance to Certification of Compliance I. A more in depth list of questions have been included in Certification of Compliance II to ensure that the Project Sponsor is reporting all relevant compliance and possible changes to the project or program to the Applicant. CDLAC has discovered through various communications with the Applicant community that there is currently only limited information provided regularly concerning Project/Program activity. For those that do not have an existing structure currently in place, this form will assist in establishing a standard for reporting. CDLAC understands several Applicants already utilize a similar form or forms to capture this information so unlike the Certification of Compliance form, the use of this form will be optional. However, the requirement that the Applicant collect the information contained in the form will be mandatory. CDLAC will conduct an annual audit requesting a sample of each Applicant’s collected Compliance Certification II forms or equivalent forms to ensure that this requirement is adhered to.

Chapter 1, Article 1, Section 5000. Definitions

“Bond Issuance and Compliance Policies”

Necessity: “Bond Issuance and Compliance Policies” means policies established by an Applicant to guide its process of issuing private activity bonds and to ensure its post-issuance compliance. This proposed revision defines a new requirement under Section 5031(c) in which all Applicants would be required to submit written Bond Issuance and Compliance Policies to CDLAC to be considered for an allocation. Written policies would address how an Applicant’s related risks are to be managed and would describe how it would comply with applicable law and regulation. The possible risks mitigated by an Applicant’s written policies include, for example, an Applicant’s inability to satisfy affordability requirements for the period prescribed by regulation and by a CDLAC Resolution, rent rate increases to levels that are not supported by

applicable regulation, and loss of an Applicant’s institutional memory relative to their history of bond issuance.

“Cash Flow Permanent Bond”

Necessity: “Cash Flow Permanent Bond” mean a bond where the identified payment source is based on cash flow availability with cash in the form of residual payments. The proposed revision differentiates permanent bonds that are subject to repayment based on available cash flow as opposed to bonds that are subject to repayment according to an established amortization schedule and which meet CDLAC’s debt service coverage ratio requirements, or do not meet those requirements but exceed 5% of the total development costs.

“Federally Bond-Restricted Unit”

Necessity: A Federally Bond-Restricted Unit is restricted pursuant to 26 U.S.C. Section 142 (d)(1)(A) and (B).

“Qualified Residential Rental Project (QRRP)”

Necessity: The proposed revision adds the acronym “QRRP” to the existing definition to provide readers with an efficient text search criterion.

“Standard Permanent Bonds”

Necessity: The proposed revision is the antonym of cash flow permanent bonds and defines and clarifies the nature of standard permanent bonds as bonds that are not subject to a repayment schedule based on cash flow availability or do not exceed 5% of the total development costs but subject to a cash-

“TEFRA Resolution (Tax Equity and Fiscal Responsibility Act of 1982)”

Necessity: The proposed revision simply expands the acronym TEFRA for reader clarification.

Chapter 1, Article 4, Section 5031(a). Eligible Applicants.

Necessity: The proposed revision to subdivision 5031(a) clarifies that a JPA may not apply for bond allocation to develop projects outside the JPA member’s jurisdictional boundaries. The proposed revision reiterates CDLAC’s current definition of Applicant in subdivision 5000. The purpose of the revision is to help ensure the Issuers understand CDLAC’s issuance policies.

Chapter 1, Article 4, Section 5031(c). Eligible Applicants.

Necessity: The proposed revision to subdivision 5031(c) requiring Applicants to submit written bond issuance and compliance policies is to ensure issuers have processes and procedures in place that are approved by the appropriate governing body. QRRP programs have the additional requirement that counsel review said policies given the long-term obligations associated with post issuance compliance. Furthermore, the policies will memorialize that the entity did indeed endeavor to issue bonds and will provide a record of such activity. During CDLAC’s recent compliance reporting cycles, cases have been identified where the Applicant itself has no record of ever issuing private activity bonds. It is CDLAC’s hope that this step will ensure such documentation is in place from this point forward.

Policies must be submitted by new Applicants. Non-active issuers, who have not received allocation from CDLAC since 2013, must also submit policies with any forthcoming applications. However, CDLAC recognizes the potential administrative burden to Issuers who are active; those who have already received an allocation after January 2013. For this reason, CDLAC is providing a due date of December 31, 2017 for active Issuers. In addition, new Applicants with a project pending for 2017 may request a one-year waiver.

Chapter 1, Article 4, Section 5033. Minimum Application Requirements.

Necessity: The proposed revision to subdivision 5033(b)(5)(C) clarifies that a jurisdiction must be a member of the Applicant at the time the TEFRA Resolution is adopted. This change provides context to the clarification made in Subdivision 5031 and provides specificity as to what constitutes acceptable jurisdictional membership for an Applicant.

Chapter 1, Article 5, Section 5051. Release of Performance Deposit.

Necessity: The proposed revision to subdivision 5051(a) requires a digital copy of the recorded Bond Regulatory Agreement be sent to Committee. This will enable CDLAC to catalog all Bond Regulatory Agreements and will facilitate the review of the agreements to ensure consistency with the CDLAC resolution and would provide immediate opportunity to take formal action if inconsistencies should arise.

Chapter 1, Article 5, Section 5054. Filing Fees.

Necessity: The purpose of this proposed revision to subdivision 5054(a) is to align the non-refundable filing fees with CDLAC's actual cost associated with application evaluation. Currently, Tax Credit Allocation Committee (TCAC) charges \$1200 to review a TCAC application, which is similar in nature to the review CDLAC conducts. The proposed revision to 5054(b) is to clarify that the supplemental awards filing fee will remain at \$600, as much of the evaluation work will have been performed previously. The proposed renumbering of items (b) and (c) to (c) and (d), respectively, is to allow for the insertion of the above referenced language describing the filing fee for supplemental awards. The existing policy of subtracting the initial portion of the filing fee from the CDLAC total filing fee (post issuance) and the calculation for the performance deposit will remain unchanged.

Chapter 1, Article 6, Section 5061. Credit Enhanced Sales.

Necessity: The proposed revision to subdivision 5061(d) is to acknowledge that other State Agencies, in addition to the California Housing Finance Authority, may provide Credit Enhancement, and that related applicable application requirements apply to said State Agencies.

Chapter 1, Article 6, Section 5062(a). Private Placement Sales.

Necessity: The proposed revision to subdivision 5062(a) is to ensure the applicant does not assume conditions have been met from (a) only, but along with (b).

Chapter 1, Article 6, Section 5062(b). Private Placement Sales.

Necessity: Proposed revision to subdivision 5062(b) applies to all applications submitted after December 31, 2016 so that projects already submitted would not be subject to inconsistent regulations post-submittal. It describes forms of financing occurring on a more frequent basis and associated with Cash Flow Permanent Bonds. Given Cash Flow Permanent bonds do not at the time of the CDLAC allocation meet CDLAC's debt service ratio requirements, CDLAC is

placing additional safeguards to ensure a certain level of sophistication among bond purchasers. CDLAC views this as a preventive measure to mitigate related risk. The additional provisions mimic regulations placed on bonds that are not credit enhanced and that are rated BBB, as described in subsection 5064.

Chapter 1, Article 6, Section 5063. Unenhanced Bond Sales with an A Category or Higher Rating, including sales where cash is the collateral.

Necessity: The proposed revision to the title of Section 5063 reflects an increasingly common form of collateral, cash, for which the minimum Bond sale requirements apply.

Chapter 1, Article 8, Section 5107. State Issuer Single Family Programs.

Necessity: The proposed revision categorizes all state issuers that operate single family programs similarly by including CalHFA. The change recognizes that all state issuers operating single family housing programs should be afforded the same program flexibility regarding issuance and conversion. Because state issuers serve a statewide population, they are regularly awarded large sums of allocation at a single time. As a result, additional flexibility related to issuance (for Mortgage Revenue Bonds) and conversion (for Mortgage Credit Certificates) is required to maximize federal usage periods.

Chapter 1, Article 11, Section 5144(a). Annual Applicant Public Benefits and On-going Compliance Self Certification.

Necessity: The proposed revision to Section 5144 (a) narrows compliance monitoring to the scope of applicable Resolution terms. The purpose of the change is to communicate to Sponsors that they are responsible to report annually only on the applicable provisions of the CDLAC resolution, not all CDLAC Resolution terms. This change is being made in conjunction with the introduction of new compliance forms in subsection 5145 (a). The proposed revision also provides CDLAC a means to enforce compliance with a performance remedy or disqualification from the program. The purpose of the inclusion of disqualification is to encourage Applicants to follow through on compliance requirements.

Chapter 1, Article 11, Section 5144(b). Annual Applicant Public Benefits and On-going Compliance Self Certification.

Necessity: The proposed revision to Section 5144 (b) specifies a Sponsor documentation protocol and seeks to ensure that Sponsors are relying on applicable standards outlined in the resolution to verify that incomes are being reviewed and, accordingly, that rents are being charged appropriately. These standards are consistent with the standard TCAC has established. A line was added to clarify when income verification documentation may be purged.

Chapter 1, Article 11, Section 5144(c). Annual Applicant Public Benefits and On-going Compliance Self Certification.

Necessity: The proposed revision to Section 5144 (c) specifies an Issuer compliance protocol. Specifically, Applicants must demonstrate units meet the “20-50” test, or the “40-60” test required by Federally Bond-Restricted Units. The proposal is to ensure bond issuers are performing due diligence and are relying on appropriate income and rental standards. Currently CDLAC does not have a CDLAC-imposed standard for ongoing compliance. This proposed system relies heavily on the compliance system already in place at TCAC, which includes on-site

file and physical inspections every three years. Given TCAC's protocol, and that the majority of projects utilize TCAC resources, CDLAC proposes that Applicants perform random audits of 20% of the tenant files every three years to ensure compliance with the long-term CDLAC obligations. Proposed regulations also specify the length for which documentation of review of income eligibility, and source income documentation, must be retained.

Chapter 1, Article 11, Section 5144(d). Annual Applicant Public Benefits and On-going Compliance Self Certification.

Necessity: The proposed Section 5144 (d) is specifically for projects not applying to TCAC. The proposal provides additional safeguards as projects not affiliated with TCAC have shown the greatest risk of non-compliance. Given that TCAC will not make annual site visits nor check files, the Applicant or assignee will be responsible for overseeing this responsibility. Given that TCAC will not make annual site visits nor check files, the Applicant or assignee will be responsible for overseeing this responsibility. Applicants for non-TCAC projects will have three compliance options, to be approved by the CDLAC Executive Director and included in the Committee Resolution. Each option will ensure a review of 20% of Federally Bond-Restricted Units every three years. Applicants with demonstrated robust policies will be authorized to conduct their own reviews, similar to the proposed Issuer compliance protocol described above for TCAC projects. Applicants without this capacity may enter into an agreement with a qualified third party compliance firm, or with CDLAC or its designee.

Chapter 1, Article 11, Section 5145(a). Certification of Compliance

Necessity: This section has been relocated from 5220 (a) to better align with the other subsection. In addition, new verbiage has been added for Qualified Residential Rental Projects (11-19-16) to draw a distinction between the different Certificates of Compliance, per Section 5145. The proposed revisions to subsection (a) clarify when and how a Certificate of Compliance I shall be utilized.

Chapter 1, Article 11, Section 5145(b). Certification of Compliance

Necessity: The purpose of the proposed new section introduce the concept of a QRRP and Non-QRRP Certificate of Compliance II and QRRP and Non-QRRP Certificate of Completion. The purpose of these new forms is to make very clear what information CDLAC would like Applicants to receive from the Sponsors each year. These forms are directly connected with the change made in subsection 5144(a) and constitute applicable CDLAC Resolution information. In recognition of comparable forms an Applicant may already be using for internal purposes, provisions are included that the Executive Director may accept alternate compliance forms in lieu of those created by CDLAC.

Chapter 1, Article 11, Section 5145(c.) Certification of Compliance

Necessity: This section has been relocated from 5220 (b) to provide better alignment with the other subsection.

Chapter 1, Article 11, Section 5145(d). Certification of Compliance

Necessity: The proposed new subdivision (d) requires Non-QRRP Applicants to designate CDLAC to receive notice of project ownership changes, project name changes, notices of default and foreclosure, and bond redemption, in the Bond Documents. This requirement will help

CDLAC learn of important changes related to Bond information outlined in the resolution, and assess related risk. The proposed reorganization is necessary for the inclusion of new provisions and enhances comprehension of the subdivision as a whole.

Chapter 1, Article 11 Section 5146. Disqualification.

This has been relocated from Section 5221 because it is a general requirement applicable to all pools.

Chapter 2, Article 1, Section 5170. Definitions.

“Hard Costs”

Necessity: Provides a definition of “Hard Costs” acceptable to CDLAC. This definition is consistent with the current TCAC definition. While this is a general construction term, a variety of variables may or may not be included. This definition provides clarity.

“HUD Asset Management Acknowledgement Letter”

Necessity: To differentiate between this and other kinds of letters from HUD.

“HUD Development Acknowledgement Letter”

Necessity: Added the descriptive “Development” to separate this definition from another, newly defined HUD letter.

“Other Restricted Unit”

Necessity: The phrase “Federally Bond-Restricted Unit” has been introduced in the current proposed regulations. Therefore, it is necessary to define units that are not Federally Bond-Restricted Units but are affordable and identified in the CDLAC resolution as being subject to the long-term rent and income restrictions.

~~“Sustainable Building Methods”~~

Necessity: The definition of Sustainable Building Methods will be struck from the proposed regulations. The definition is outdated, describing requirements from years past. In addition, the phrase “Sustainable Building Methods” does not appear in the regulations, and therefore does not need to be defined.

“Table 1”

Necessity: No change was made to the definition. However, it was placed in the incorrect alphabetical order, before “State of California.” Definition of Table 1 was moved to follow all definitions beginning with “S,” but before those beginning with “U.” The proposed changes correct this drafting error.

“Table 2”

Necessity: No change was made to the definition. However, it was placed in the incorrect alphabetical order, before “State of California.” Definition of Table 1 was moved to follow all definitions beginning with “S,” but before those beginning with “U.” The proposed changes correct this drafting error.

Chapter 2, Article 3, Section 5191. Income and Rent Restrictions.

Necessity: The proposed revision to Section 5191 (a) adds to the list of rent restricted units not subject to the requirement of having 10% of units with Gross Rents no greater than 50% of AMI. The additions are acquisition rehabilitation projects already subject to a Residential Rental Regulatory Agreement or a federal, state, or local operating or rental assistance agreement. The purpose of the proposed revision is to lift the general distribution requirement for certain projects and units where such a requirement would either require tenant relocation or forgone rental income.

Other additions to the regulation clarify that rents are “proposed tenant paid,” and that income targeting is considered a criterion. CDLAC is only concerned with the amount of rent paid by a tenant, not the total amount of rent collected by a landlord originating from a federal, state or local operating or rental subsidy agreement. This change is being made in tandem with TCAC.

Chapter 2, Article 3, Section 5192. Minimum Term of Restrictions.

Necessity: The proposed revision to Section 5192 (a) specifies CDLAC standards for income and rent restrictions to clarify that the 30- and/or 55-year affordability term applies to all units in a project and not just the 10% of the units restricted at 50% AMI. The later change expands the definition of CDLAC Qualified Project Period to include a special provision that exists for rehabilitation projects articulated in Revenue Procedure 2004-39 pertaining to Qualified Residential Rental Project in Section 142(d) of the Internal Revenue Code. The CDLAC Qualified Project Period is used as the starting point for the affordability term.

Chapter 2, Article 3, Section 5194. Project Costs.

Necessity: The proposed revision to Section 5194 is to raise the limit requiring special consideration by the Committee to \$500,000, in acknowledgement of the cost escalation that has occurred in the recent past, thereby reducing administrative burden caused by an increasing number of applications exceeding the existing limits.

Chapter 2, Article 4, Section 5200. Minimum Requirements

Necessity: The proposed revisions to Section 5200 (e) enhance Market Study requirements by requiring a current rent roll. In order to ensure compliance with CDLAC policies, a rent roll is to be included with the study. The revisions specify that rents are tenant-paid to facilitate compliance with Section 5191(a), which states that a minimum of 10% of units are restricted to households with incomes no greater than fifty percent (50%) of the AMI. For consistency with existing TCAC regulations, income targeting is also subject to the 105% limit.

Chapter 2, Article 7, Section 5220(a). Regulatory Compliance

Necessity: Proposed revisions replaces the verbiage that was moved to 5145(a).Section 5220 (a) describe conditions under which the Regulatory Agreement may terminate. Currently, federal law allows the termination of a regulatory agreement in the event of foreclosure. The drafted provisions ensure that the foreclosure of Cash Flow Permanent Bonds would not facilitate a valid termination before the CDLAC affordability term and the Bond Regulatory Agreement. CDLAC’s goal is to encourage capital flows to projects while at the same time protecting the regulatory restrictions associated with the resource.

Chapter 2, Article 7, Section 5220(b). Regulatory Compliance

Necessity: The proposed subdivision replaces the verbiage moved to 5145(c). 5220 (b) applies only to projects that are financed with Cash Flow Permanent Bonds and aims to protect the TCAC regulatory restriction in place for TCAC financed projects. TCAC's regulatory restrictions are subordinate to the CDLAC requirements, and to the extent a bond foreclosure occurs, the TCAC regulatory agreement would terminate. Given that at the time of allocation Cash Flow Permanent Bonds do not meet CDLAC's debt service ratio requirements, CDLAC is attempting to mitigate risk by ensuring all affordable units are memorialized in the Bond Regulatory Agreement which has been protected from foreclosure in subsection 5200(a).

#### Chapter 2, Article 7, Section 5220(c). Regulatory Compliance

Necessity: The addition of this subsection strengthens connections between the Bond Regulatory Agreement, CDLAC resolution, pertinent federal and state code, and responsibility of Sponsor to report compliance to Issuer. Furthermore, it provides a mechanism for CDLAC to learn of important changes to projects such as changes in ownership and foreclosure. The addition of these lines of communication enhances CDLAC's ability to mitigate against the risk of not fulfilling intended goals.

#### Chapter 2, Article 7, Section 5221. Disqualification

Necessity: This has been relocated to Section 5146 because it is a general requirement applicable to all pools.

#### Chapter 2, Article 8, Section 5230 (k). Evaluation Criteria

Necessity: The proposed revisions to Section 5230 (k), which describes evaluation criteria of Sustainable Methods, brings energy efficiency evaluation in alignment with those of TCAC. This section refers to methods of irrigation, nonsmoking, parking policies, and building standards to increase energy efficiency. The revisions simplify this section for the reader, reducing the need to cross-reference between TCAC and CDLAC regulations in this matter. TCAC has retained an energy consultant and is updating its regulations in technical detail. To reduce the risk of conflicting regulations, CDLAC will reference TCAC regulations for the majority of this section. However, CDLAC wishes to offer applicants additional opportunities for earning points in this category. For this reason, some subsections include language from CDLAC.

#### Chapter 2, Article 8, Section 5233. Allocation Limits

Necessity: The proposed new section delineates the per unit allocation limits allowed, reflecting number of bedrooms. Over the past two years CDLAC and TCAC have observed tremendous escalation in per unit costs. As a result, a joint CDLAC/TCAC task force was established to address the circumstance. The per-unit limits resulted from collaboration that occurred in that working group and complements a list of cost reduction changes being proposed by TCAC. This concept does not limit costs outright but does limit the amount of tax-exempt bonds, and thus 4% tax credits, that would be available to high-cost projects. Because bonds must finance at least 50% of aggregate basis (land plus depreciable assets), the effective limit on costs would be twice the CDLAC-identified limits.

#### Chapter 2, Article 10, Section 5250. Application Requirements

Necessity: The proposed revisions to Section 5250 (a)(4)(A) clarify that “rents” means the tenant-paid portion, and includes income targeting as part of the provisions. The changes made are consistent with the changes made in subsection 5191(b) and 5200(a).

Chapter 2, Article 11, Section 5255. Application Requirements

Necessity: The proposed addition of subsection (d) would require all projects requesting an assignment and assumption of an existing HAP Agreement to have submitted their application to HUD by the CDLAC application date. It would further require projects to secure a HUD asset management letter four (4) calendar days prior to the first allocation post. A number of recent projects have encountered an unfortunate timing situation where assignment and assumption of an existing HAP agreement was not approved within the established CDLAC issuance timeframe. Without the approval, these projects were unable to complete their financing and ultimately were unable to issue bonds without an extension of time. To ensure that applicants are actively engaged in the process of obtaining HUD approval at the time of the CDLAC application submittal, CDLAC proposes the requirement that HUD issue a HUD Asset Management Letter confirming such activity. This regulation is to facilitate timely approval by HUD by requiring an earlier, rather than later, request to HUD.

Chapter 2, Article 12, Section 5258. Eligibility Retention

Necessity: The proposed revisions add “Qualified Census Tract (QCT) to Difficult Development Areas to be inclusive of QCT parameters.