



CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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DATE: June 28, 2024

TO: California Debt Limit Allocation Committee Stakeholders

FROM: Marina Wiant, Executive Director

RE: Proposed Regulation Changes with Initial Statement of Reasons

Attached for public review and comment are the regulation changes proposed by the California Debt Limit Allocation Committee (CDLAC). Attached to this memorandum is the complete set of proposed changes with initial statement of reasons. CDLAC anticipates the adoption of the regulation changes to take place at a CDLAC meeting scheduled on August 6, 2024. CDLAC staff will conduct a public hearing on July 18, 2024, to explain the proposed changes, answer questions, and solicit comments specific to the changes being proposed.

Interested persons wishing to express their views on the proposed regulation changes may submit written comments by email to cdlac@treasurer.ca.gov no later than 5:00 p.m. on Friday, July 19, 2024. For comments submitted electronically, it is preferable the comments are in a Microsoft Word document or an electronic format that allows for copying. While CDLAC welcomes public comments, staff encourages commenters to be sparing and brief given the short timeframe for staff to turn around responses. If you agree with some changes and disagree with others, please remember to make both sets of comments so both favorable and unfavorable reactions are recorded. Please limit written comments to only the changes being proposed. CDLAC intends to propose a broader change to the regulations later this year.

List of Proposed Regulation Changes with Initial Statement of Reasons

June 28, 2024

1. Section 5000. Definitions.

[...]

“Certificate of Completion for Non-Qualified Residential Rental Projects” (~~Revised 06-01-2017~~), ~~hereby incorporated by reference~~, submitted by the Project Sponsor of a Non-Qualified Residential Rental Project, certifies that all work on the Project was substantially completed, along with the aggregate amount disbursed on the loan for qualified project costs. In addition, the officer's signature indicates that no more than 2% of the proceeds of the bonds issued were spent on the cost of the bond issuance.

“Certificate of Completion for Qualified Residential Rental Projects” (~~Revised 06-01-2017~~), ~~hereby incorporated by reference~~, submitted by the Project Sponsor of a Qualified Residential Rental Project, and certifies that all work on the Project was substantially completed, along with the aggregate amount disbursed on the loan for qualified project costs. In addition, the officer's signature indicates that no more than 2% of the proceeds of the bonds issued were spent on the cost of the bond issuance.

“Certification of Compliance I” (~~Revised 11-16-16~~), ~~hereby incorporated by reference~~, means the document provided in the Committee Resolution to be completed by the Project Sponsor in which the Project Sponsor certifies that the Project is in compliance with all of the terms and conditions set forth in the Committee Resolution.

“Certification of Compliance II for Non-Qualified Residential Rental Projects” (~~Revised 9/20/17~~), ~~hereby incorporated by reference~~, is a form for Applicant/Issuers awarded allocation in 2017 forward. Applicant/Issuers retain the Certification form for a period of three years in place of the Certification of Compliance I (11-16-16) to ensure that the Project Sponsor is reporting all relevant compliance and possible changes to the Project or program to the Applicant.

“Certification of Compliance II for Qualified Residential Rental Projects” (~~Revised 06-01-2017~~), ~~hereby incorporated by reference~~, is a form for Applicant/Issuers awarded allocation in 2017 forward. Applicant/Issuers retain the Certification form for a period of three years in place of the Certification of Compliance I (11-16-16) to ensure that the Project Sponsor is reporting all relevant compliance and possible changes to the Project or program to the Applicant.

[...]

“Report of Action Taken” means a report provided by and due to the Committee not more than fifteen ~~three~~ (153) business days following the use of Allocation to issue Bonds or Mortgage Credit Certificates.

Report of Action Taken for Bonds” means the specific Report of Action Taken due to the Committee following the use of Allocation for Qualified Private Activity Bonds (excluding RZBs) titled “Report of Action Taken Regarding the Issuance of Private Activity Bonds.” (~~revised 11-16-16~~), ~~which is hereby incorporated by reference~~.

“Report of Action Taken for MCCs” means the specific Report of Action Taken due to the Committee following the use of Allocation to issue Mortgage Credit Certificates Bonds titled “Report of Action Taken Regarding Mortgage Credit Certificate Program.” (~~revised 1-11-14~~), ~~which is hereby incorporated by reference~~.

“Report of Action Taken for MCCs (Carryforward)” means the specific Report of Action Taken due to the Committee following the use and/or Carryforward of Allocation to issue Mortgage Credit Certificates titled “Report of Action Taken Regarding a Carryforward Election and a Mortgage Credit Certificate Program.” ~~(revised 11-11-11), which is hereby incorporated by reference.~~

“Report of Action Taken for RZBs” means the specific Report of Action Taken due to the Committee following the use of Allocation for RZBs titled “Report of Action Taken Regarding the Issuance of Recovery Zone Bonds.” ~~(revised 11-30-18), which is hereby incorporated by reference.~~

[...]

“RZEDB Application” means the Application titled “Application for an Award of American Recovery and Reinvestment Act of 2009 Recovery Zone Economic Development Bonds.” ~~(revised 5-5-11), which is hereby incorporated by reference.~~

“RZFB Application” means the Application titled “Application for an Award of American Recovery and Reinvestment Act of 2009 Recovery Zone Facility Development Bonds.” ~~(revised 5-5-11), which is hereby incorporated by reference.~~

[...]

The proposed changes remove references to outdated documents.

2. Section 5020. Determination of State Ceiling Pools.

As soon as practicable after the beginning of each calendar year, and before any Applications are considered, the Committee shall:

(a) [...]

(1) [...]

(B) Subsequent to the determination made pursuant to paragraph (1) of this subdivision, determine and announce whether a portion of the New Construction Pool, expressed as a dollar amount and as a percentage of the Qualified Residential Rental Project Pool shall be reserved in an Extremely Low/Very Low Income Set Aside to be available for allocation to New Construction Projects that have ~~for Allocation Rounds in 2021~~, an average AMI of 50% or below ~~or and~~ have received either of the following, and determine what amount, if any, shall be available in each Allocation Round:

(i) [...]

(ii) [...]

(aa) If the project receives points as a Large Family project pursuant to Section 5230(g) and is located in a High Segregation and Poverty Area as specified on CTCAC/HCD Opportunity Area Map, the project shall have income restrictions with a range of at least 30% AMI between the highest and lowest 10% of income-restricted units ~~that meet the requirements of Section 5230(j)(1)(C).~~

The proposed changes fix technical errors by removing references to being applicable to 2021 projects only, replacing “or” with “and”, as was originally intended, and removing the reference to a section which was previously removed from CDLAC regulations.

3. Section 5054. Filing Fees.

Each Applicant shall submit a filing fee in an amount equal to the product of the amount of Allocation actually used to issue Bonds, or Mortgage Credit Certificates multiplied by .00035. The payment of the fee shall be in two installments as follows:

[...]

(c) Initial filing fee for Difficult Development Area/Qualified Census Tract (DDA/QCT) designation retention in the amount of \$1,200 shall accompany the filing of an Application to cover the Committee's reasonable costs associated with reviewing Applications. This portion of the filing fee shall not be refundable under any circumstances and is separate from the initial filing fee required when requesting an allocation.

The proposed change clarifies the fee due when applying for allocation is separate from the DDA application fee.

4. Section 5062. Private Placement Sales.

(a) Subject to subsection (b) below, applications for Bonds to be issued and sold through a private placement will be deemed to have provided satisfactory evidence of a Bond sale plan required in section 5060 if documentation from the Bond purchaser(s) includes the following:

(1) Project Sponsor (borrower).

(2) Project name and location.

(3) Bond purchase amount.

(4) Salient terms and conditions, including but not limited to the fee structure, term, rate, security, collateral, guarantee, expiration date of the commitment, and recourse of the commitment including the interest rate of the agreement.

(5) Evidence that the lender is committed to move forward with the transaction if the terms and conditions in the commitment letter are met.

(6) The commitment is fully executed by the bond purchaser and project sponsor.

The proposed changes adds further information to clarify the requirements of Private Placement Sale documentation.

5. Section 5100. Program Expiration Dates.

(b) Notwithstanding extensions as provided in sections 5101 ~~or 5103~~; the limitations prescribed by section 5104; or Allocations awarded on a carry-forward basis as provided in section 5131; the expiration dates for issuing Bonds or converting Bonds to Mortgage Credit Certificate authority shall be:

[...]

(3) For Qualified Residential Rental Project Bonds, the following expiration dates shall be assigned by the Executive Director within five (5) business days following each Allocation Round:

(i) Projects receiving an allocation shall be assigned an expiration date of one-hundred eighty (180) days, or ~~one-hundred ninety-four~~ two-hundred one (201194) days, or two-hundred twenty-two (222) days. If the Committee allocates more than 50% of the year's QRRP Allocation in any one round, there shall be a third expiration date of two-hundred eight (208) days, and the Executive Director shall assign approximately one-third of the projects in that round to each expiration date whenever possible. In the case of hybrid projects, the expiration date shall be the later of the deadline assigned by CDLAC or CTCAC.

The proposed changes remove the reference to Section 5103 as this section is being proposed to be repealed with these updates and makes a third expiration date standard for all allocation rounds. Additionally, the proposed changes set three weeks between deadlines and align deadlines for hybrid projects to simplify the process.

6. Section 5101. Extensions to Expiration Dates.

~~For allocations during an Open Application Process, T~~he Executive Director may grant an extensions of up to ninety (90) days for all allocations. Any additional extensions must be granted by the Committee. Extension requests must demonstrate that the circumstances were entirely outside the control of the owner.

The proposed changes update the existing extension request process during open applications to all application rounds to address an increase in requested extensions beyond the existing five-day hardship. Staff believes this will allow for quicker response to extension requests on a flow basis rather than waiting for Committee meetings for approval.

7. Section 5103. Five Day Hardship Extensions. [Repealed]

~~The Committee may grant an extension to the expiration dates provided in sections 5100 and 5101 up to five (5) additional business days for extreme hardship cases. The Committee may delegate this authority to the Executive Director.~~

The proposed change to Section 5101 makes Section 5013 unnecessary and is thus being proposed to be repealed.

8. Section 5144. Annual Applicant Public Benefits and On-Going Compliance Self-Certification.

(d) For all QRRP projects receiving allocation after December 31, 2016, compliance with the income and rental requirements of the Federally Bond-Restricted Units identified in the Committee Resolution and the Bond Regulatory Agreement must be demonstrated by the Applicants initial review of 20% of all management files associated with the Federally Bond-Restricted units and subsequent review every three years of 20% of all management files associated with the Federally Bond-Restricted units. Federally Bond-Restricted units will include a distribution of unit locations, sizes and income levels (if applicable) and must be identified in the PSR. For this 20% of files, Applicants must review each initial or subsequent occupant/s and their

associated TIC in conjunction with the supporting income verification documentation of each occupant's initial occupancy and make a determination if the project is complying with the income and affordability standards. Additionally, Applicants must ensure a lease is in place and executed. This review may be performed on-site or may be performed through an electronic file audit. Completion of this task in addition to a valid Certification of Compliance II or equivalent form will provide Issuers with the ability to report annually to CDLAC regarding compliance with the Federally Bond-Restricted unit restrictions. Information pertaining to the income verification process will be kept on file for 10 years. Applicants must retain documentation memorializing review and determination of income eligibility for 10 years. Source income documentation must be retained for 1 year. These guidelines rely on the compliance monitoring process and procedures in place for CTCAC. To the extent CTCAC is to alter their compliance policies and procedures, these guidelines shall be reviewed by CDLAC for consistency and changes made where appropriate.

(e) For all QRRP projects receiving allocation after December 31, 2016, Sponsors requesting an allocation of bonds absent the receipt of a CTCAC reservation will be identified at the time of application and will have the following compliance options which will be represented in the Committee Resolution:

(1) [...]

(2) [...]

(3) A Sponsor can enter into contract with CDLAC or a designee to monitor the Federally Bond-Restricted units for consistency with the bond regulatory agreement and the Committee Resolution. The charge for this service will be equivalent to the compliance fee charged by CTCAC at the time the project submits their application to CDLAC.

The proposed change updates TCAC references to CTCAC.

9. Section 5170. Definitions.

In addition to the definitions set forth in Government Code section 8869.82 and unless otherwise required by the context, the following terms as used in this chapter are defined as follows:

[...]

"BIPOC Entity" means an entity that is at least 51% owned, managed, and controlled by one or more Black, Indigenous, or Other People of Color or by a non-profit organization with a Black, Indigenous, or Other Person of Color executive director/Chief Executive Officer (CEO) and board membership that is comprised of at least 51% Black, Indigenous, and Other People of Color. For purposes of this paragraph, Black, Indigenous, or Other People of Color means "a person who checked the Black or African American, American Indian and Alaska Native, Asian, or Native Hawaiian and Other Pacific Islanders race category or who answered yes to the Hispanic Origin question on the 2020 United States Census.

"BIPOC Project" means a Qualified Residential Rental Project for which the sponsor is a BIPOC Entity. A BIPOC Project may be a New Construction Project, Rural Project, Preservation Project, or Other Rehabilitation Project. The partnership agreement of a BIPOC Project must allocate at least 51% of the developer fee, cash flow, and net sale proceeds to the BIPOC Entity and provide the BIPOC Entity an option to purchase the development. A BIPOC Project does not include a project for which any principal, partner, affiliate, or member of the sponsor entity is eligible to receive maximum General Partner Experience points pursuant to Section 10325(c)(1)(A) of the

CTCAC regulations unless those points are awarded to a principal of the BIPOC Entity who no longer is employed by the developer of, or has an ownership interest in, the project(s) which form the basis of the experience points.

[...]

“CTCAC/HCD Opportunity Area Map” shall have the same meaning as in Section 10302(~~zzccc~~) of the CTCAC regulations. An applicant may choose to utilize the census tract or census block group resource designation, as applicable, from the CTCAC/HCD Opportunity Maps in effect when the initial site control was obtained up to seven calendar years prior to the application. Projects located in map areas designated as “Missing/Insufficient Data” or similar designation shall be considered to be in the resource area that most frequently surrounds the perimeter of the Project’s map area.

[...]

“Other Rehabilitation Project” means a QRRP Project applying for an allocation of tax-exempt private activity bonds from the General Pool that is not eligible for treatment as a New Construction Project or a Preservation Project. In a Competitive Application Process, an Other Rehabilitation Project shall meet all of the following criteria:

1. Shall complete at least \$60,000 in hard construction costs per tax credit unit, as defined in CTCAC Regulation Section ~~40320~~10302(x); and
2. At least 60% of hard construction costs shall be expended only on immediate health and safety improvements, seismic and accessibility improvements, and/or the replacement of major systems with a remaining useful life of less than ten years, as evidenced by a CTCAC Capital Needs Assessment.

[...]

~~“Supplemental Allocation Request Letter” means the written request from the Applicant for Supplemental Allocation for Projects having been awarded Allocation within the last thirty six (36) months that may be submitted in lieu of a complete Application. The letter must be signed by the Applicant and include information about the Project including the date and amount of prior Allocation, the current status of the Project, revised sources and uses of funds, justification for the request for additional Allocation, and any additional information the Committee or Executive Director deems necessary.~~

The proposed changes clarify the definition of BIPOC Entity and Project and require all BIPOC projects to allocate at least 51% of developer fee, cash flow, and sale proceeds to the BIPOC Entity and gives the BIPOC Entity an option to purchase the property, in order to allow more emerging BIPOC Entities to have access to the pool.

Additionally, the proposed changes update references to CTCAC regulations and strike the definition of “Supplemental Allocation Request Letter” as this was superseded by the Supplemental Allocation process in Section 5240.

10. Section 5190. Readiness.

In its Application, the Project Sponsor shall demonstrate its readiness to use the Allocation as set forth in this section.

(a) [...]

(1) [...]

(D) A valid, current, and enforceable contingent purchase and sale agreement or option agreement between the Project Sponsor and the owner of the subject property, ~~including evidence that all extensions necessary to keep the agreement current through the date of the award of Allocation have been executed.~~ Evidence must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.

[...]

The proposed change requires site control through the application deadline rather than allocation, to be consistent with CTCAC requirements.

11. Section 5193. Debt Service Coverage Ratio.

(a) For Qualified Residential Rental Projects, ~~a the minimum debt service coverage ratio (the ratio of the net operating income from the Project divided by the required debt service on the debt associated with the Project) shall be no less than 1.15 in at least one of the project's first three years~~ meet the requirements outlined in Section 10327(g)(6) of CTCAC Regulations, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency.

The proposed change aligns debt coverage ratio requirements with CTCAC requirements.

12. Section 5205. Minimum Requirements.

(a) Applicants shall provide a certification that the minimum specifications pursuant to Section 10325(f)(7)(A) thru ~~(J)(K)~~ of the CTCAC Regulations will be incorporated into the project design for all new construction and rehabilitation projects.

The proposed change updates a previous drafting error that omitted one construction standard from CTCAC regulations.

13. Section 5230. Evaluation Criteria.

(f) General Partner and Management Company Experience (10 Points Maximum)

(1) A project shall receive general partner experience points in one of the following manners:

(A) [...]

(B) 7 points if the project is a joint venture between an entity that receives maximum general experience points pursuant to Section 10325(c)(1)(A) of the CTCAC regulations and a BIPOC Entity, provided that the partnership agreement ~~(i) allocates a share of the at least 51% of the developer fee, cash flow, and net sale proceeds to the BIPOC Entity that is equal to or greater than the share to the entity with maximum general experience points and (ii) provides the BIPOC Entity an option to purchase the development.~~

(C) 7 points if the sole sponsor is a BIPOC Entity that

(i) is a general partner in at least one California Low-Income Housing Tax Credit development that has received a certificate of occupancy, or if a rehabilitation project, completed rehabilitation, within ~~five~~ ten years of the date of application,

The proposed changes modify the eligibility criteria for receiving 7 experience points by (1), for joint venture projects that include a BIPOC Entity, increasing the allocation of developer fee, cash flow, and sale proceeds from 50 to 51% and requiring the BIPOC Entity be given an option to purchase the property and (2), for BIPOC Entities that are the sole sponsor, changing the eligibility for BIPOC Entity experience from one project within five years to one project in California in the past 10 years. These changes will allow more emerging California BIPOC Entities to have greater access to the pool.

14. Section 5231. Ranking.

After all Applications for Qualified Residential Rental Projects are evaluated pursuant to Section 5230, the Applications shall be ranked and may be awarded an Allocation as follows, except that a project shall not receive a bond allocation if it had requested and is not scheduled to receive an award of State Tax Credits:

[...]

(d) Applications for BIPOC Projects will be ranked amongst themselves, and separately from Applications for all other Qualified Residential Rental Projects. Applications for BIPOC Projects awarded the greatest number of points after factoring in the tie breaker pursuant to Section 5231(g), as applicable, shall be awarded an Allocation from the BIPOC Pool. Applications for BIPOC Projects not receiving an Allocation pursuant to this subdivision shall be eligible for consideration for an Allocation under subdivisions (a), (b), (c), and (e) of this section. The number of awards received by individuals, entities, affiliates, and related entities is limited to no more than one (1) per competitive round and two (2) per year unless the pool is undersubscribed. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members.

(e) Applications for Qualified Residential Rental Projects that are New Construction Projects, exclusive of Rural Projects, will then be ranked together. Applications receiving the greatest number of points after factoring in the tie breaker pursuant to Section 5231(g), as applicable, shall be awarded an Allocation from the New Construction Pool in the following manner.

(1)(A) Set Aside application selection. Beginning with the top ranked application from the Homeless Set Aside, subject to the conditions in Section 5231(e)(1)(B), followed by the Extremely Low/Very Low Income Set Aside, and the Mixed Income Set Aside, the highest scoring applications in each Set Aside shall be awarded an Allocation pursuant to the procedures in Section 5231(f). A project that meets the criteria of both the Homeless Set Aside and the Extremely Low/Very Low Income Set Aside shall be eligible for an allocation from either Set Aside. If the Homeless Set Aside is undersubscribed in a competitive round the remaining funds will transfer to the Extremely/Very Low Income Set Aside. All New Construction Projects, exclusive of Rural Projects, that do not receive an allocation from a Set Aside shall be eligible for an allocation from their respective geographic region pursuant to subdivision (e)(2).

(B) [...]

(2) [...]

(3) In the final allocation round of the year, any bonds remaining in any QRRP pool, Set Aside, or geographic region shall be allocated to the highest-ranking ~~New Construction~~ Project or Projects. Those amounts shall not be added to the respective QRRP pool, Set Aside, or geographic region in the following year, and any allocations pursuant to this paragraph shall not be subtracted from the geographic allocations in the following year.

~~(4) At the last allocation meeting of the year, the Committee shall establish a waiting list of new Construction Projects that have not received an allocation in the final allocation round, ordered from highest to lowest ranking.~~

[...]

(g) [...]

(2) The cost-adjusted Bond and State Credit Allocation shall be calculated by reducing the unadjusted Bond and State Credit Allocation request by the following, as applicable:

(A) 15% for projects that are paid for in whole or in part out of public funds and are subject to a legal requirement for the payment of state or federal prevailing wages on the entire project.

The proposed changes limit the number of awards in the BIPOC Pool to one per round and two per year unless the pool is undersubscribed, in order to allow more Emerging BIPOC Entities to have access to the Pool.

The proposed changes also update the Homeless Set Aside to transfer funds to the Extremely/Very Low Income Set Aside when the Homeless Set Aside is undersubscribed, since many Homeless Projects also qualify for Extremely/Very Low Income, updates the use of surplus bond allocation to be available to all projects rather than new construction only, eliminating the need for (4), and makes the tie breaker boost for prevailing wages applicable only to projects where prevailing wages are paid on the entire project.

15. Section 5233. Allocation Limits.

(a) Limit CDLAC bond allocation on all units on a per-unit basis ~~(adjusted by the number of bedrooms)~~ in the QRRP Pools as follows:

Studio and SRO:	\$522,000
One-bedroom:	\$544,000
Two-bedroom:	\$580,000
Three-bedroom:	\$638,000
Four- or more bedroom:	\$671,000

The proposed change clarifies that the allocation limit applies to all units in the development and removes the reference of being adjusted for the number of bedrooms, since the table showing the limits does this.

16. Section 5241. Realignment of Expiration Dates.

Projects awarded a Supplemental Allocation for which no Bonds were issued from the original award, or any prior Supplemental Allocation, shall have the expiration date of the most recent ~~original~~ allocation.

The proposed change would reset the bond issuance deadline on all unissued allocations to the most recent allocation, in order to provide more clarity for projects receiving multiple Supplemental Allocations.