

## **FINDING OF EMERGENCY**

### **CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

#### **Finding of Emergency**

Pursuant to Section 8869.94 of the California Government Code (the “Code”), the regulations being adopted herewith by the California Debt Limit Allocation Committee (the “Committee”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety and general welfare.

The California Debt Limit Allocation Committee has complied with the requirements to provide notice of proposed rulemaking action pursuant to Government code section 11346.1(a)(2).

#### **Necessity**

These Emergency Regulations are necessary to implement, interpret and make specific 8869.80 to 8869.94.

#### **Authority and Reference**

Authority: Section 8869.94, California Government Code. Section 8869.94 of the Code authorizes the Committee to adopt regulations relating to an allocation system to administer the state unified volume ceiling as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.”

Reference: Sections 8869.80 to 8869.94, California Government Code. These Emergency Regulations implement, interpret and make specific Sections, 8869.80 to 8869.94 of the Code.

#### **Informative Digest**

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

- Annual Applicant Public Benefits and Ongoing Compliance Self-Certification (11-16-16)
- Application for American Recovery and Reinvestment Act (ARRA) Qualified Energy Conservation Bonds (QECCB) (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Beginning Farmer Bond Program (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Home Improvement and Rehabilitation Mortgage Credit Certificate Program (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Home Improvement and Rehabilitation Mortgage Revenue Bond Program (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Student Loan Program (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for an Extra Teacher Credit Home Purchase Program (11-16-16)
- Certificate of Completion for Qualified Residential Rental Projects (11-16-16)

- Certificate of Completion for Non-Qualified Residential Rental Projects (11-16-16)
- Certification of Compliance I (11-16-16)
- Certification of Compliance II for Qualified Residential Rental Projects (11-16-16)
- Certification of Compliance II all Non-QRRP Projects (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for an Exempt Facility Project (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Small-Issue Industrial Development Bond Project (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Mortgage Credit Certificate Program (11-16-16)
- Report of Action Taken Regarding the Making of a Carryforward Election and the Issuance of Private Activity Bonds (07-22-14)
- Report of Action Taken Regarding the Issuance of Private Activity Bonds (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Single-Family Housing Bond Program (11-16-16)
- Competitive Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Project (QRRP) (11-16-16)
- Non-Competitive Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Project (QRRP) (11-16-16)
- Competitive Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Program (QRRP) Universal Application Addendum (11-16-16)
- Non-Competitive Application Universal Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Program (QRRP) Universal Application Addendum (11-16-16)
- Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Veterans Home Loan Program (11-16-16)

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 Emergency 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 and local agencies, and promote the following: housing for lower income families and individuals; and preserving and rehabilitating existing governmental assisted housing for lower income families and individuals.

CDLAC's proposed regulation changes have four areas of focus including: Issuer accountability, high cost projects, cash flow bond financing and HUD coordination. Through the proposed changes, CDLAC endeavors to provide clear guidance to ensure standardized post-issuance compliance monitoring standards, to establish a regulatory framework to address emerging trends, and to facilitate better coordination between CDLAC's partners.

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)).

## Forms to be Incorporated by Reference

### “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 “11-16-16” to ensure that only the most recent edition of the form is used for compliance verification.

### “Application for American Recovery and Reinvestment Act (ARRA) Qualified Energy Conservation Bonds (QECCB)”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200.

### “Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Beginning Farmer Bond Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200.

### “Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Home Improvement and Rehabilitation Mortgage Credit Certificate Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200.

### “Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Home Improvement and Rehabilitation Mortgage Revenue Bond Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200.

### “Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Student Loan Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200.

### “Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for an Extra Teacher Credit Home Purchase Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200.

### “Certificate of Completion for Qualified Residential Rental Projects”

Necessity: This form is being newly introduced by CDLAC. The purpose of the form to capture data regarding the completion of multifamily projects that receive allocation. Upon completion of a residential project, sponsors use the form to certify that all work on the project was substantially completed and the aggregate amount disbursed on the loan for qualified project costs. In addition, the officer’s signature indicates that the cost of the bond issuance was equal to or less than 2% of the bond proceeds issued, as required for funding. This form will also capture the commencement of the Qualified Project Period, the date from which CDLAC’s rent and income restrictions will

commence. 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.

“Certificate of Completion for Non-Qualified Residential Rental Projects”

Necessity: This form is being newly introduced by CDLAC. The purpose of the form to capture data regarding the completion of multifamily projects that receive allocation. Upon completion of a non-residential project, sponsors use the form to certify that all work on the project was substantially completed and the aggregate amount disbursed on the loan for qualified project costs. In addition, the officer’s signature indicates that the cost of the bond issuance was equal to or less than 2% of the bond proceeds issued, as required for funding. 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.

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

Necessity: The proposed revision changes the form name from Certification of Compliance to Certification of Compliance I to accommodate the creation of the newly proposed form, Certification of Compliance II. The revised date of the Certification form will be updated to “11-16-16” to ensure that only the most recent edition of the form is used for compliance verification.

“Certification of Compliance II for Qualified Residential Rental Projects” Form (incorporated by reference)

Necessity: The proposed form requires an Applicant/Issuer awarded allocation from 2017 forward to retain the completed Certification of Compliance II form on file for a period of three years in place of the Certification of Compliance (12-15-15). A more in-depth list of questions has been incorporated in the Certification of Compliance II to ensure that the Project Sponsor is reporting relevant changes in 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 by the projects sponsors to project Issuers concerning Project/Program changes. 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. Therefore, 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.

“Certification of Compliance II all Non-QRRP Projects” Form (incorporated by reference)

Necessity: The proposed form requires an Applicant/Issuer that is awarded allocation from 2017 forward to retain the Certification of Compliance II form for a period of three years in place of the Certification of Compliance (12-15-15). Note: A more in-depth list of questions have been incorporated in the Certification of Compliance II to ensure that the Project Sponsor is reporting relevant changes in 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 changes. For those that do not have an existing reporting 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. Therefore, 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 or equivalent forms to ensure that this requirement is adhered to.

“Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for an Exempt Facility Project”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200. Updated wording to not exclude electronic submittals.

“Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Small-Issue Industrial Development Bond Project”

Necessity: Administrative changes have been proposed to this form to bring it in compliance with existing regulations. Historically, CIDFAC disbursed CDLAC allocation for all Industrial Development Bond projects. In the future, state Issuers will apply to CDLAC for allocation, per STO counsel while all other issuers will apply directly to CIDFAC. The application needs to meet the needs of both CIDFAC and CDLAC resulting in technical changes to the application.

“Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Mortgage Credit Certificate Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200. Updated wording to not exclude electronic submittals.

“Report of Action Taken Regarding the Making of a Carryforward Election and the Issuance of Private Activity Bonds”

(incorporated by reference)

Necessity: Changes made to correspond with existing or proposed regulations. This form deleted as obsolete and no longer needed.

“Report of Action for Bonds Issued”

(incorporated by reference)

Necessity: Changes made to correspond with existing or proposed regulations. Form has been updated to remove references to carryforward so that form is for use by Issuers not using carryforward.

“Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Single-Family Housing Bond Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200. Updated wording to not exclude electronic submittals.

“Competitive Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Project (QRRP)”

Necessity: Administrative changes have been proposed to this document to bring it in compliance with existing and proposed regulations. Changes include updated references to

applicable sections of the regulations, as well as addition or deletion of language to clarify questions concerning compliance, additional private placement purchasers, bond issue information, construction costs, the federal bond election of Area Median Income and any proposed rental subsidy. In the Documents Checklist, changes include a change to the filing fee from the current \$600 to \$1,200, TEFRA noticing, and HAP contract-related information, if applicable. In Attachment V-2: Sustainable Methods Certification, Energy Efficiency Certification, we propose removal of “New Construction/Adaptive Reuse” as this portion applies to rehabilitation as well as new construction. See TCAC regulations Section 10325(c)(6)(C). Inserted the Performance Deposit Certification Form immediately following the Application Documents Checklist for the convenience of applicants.

“Non-Competitive Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Project (QRRP)”

Necessity: Administrative changes have been proposed to this form to bring it in compliance with existing and proposed regulations. Changes include updated references to applicable sections of the regulations, as well as addition or deletion of language to clarify questions concerning compliance, additional private placement purchasers, bond issue information, construction costs, the federal bond election of Area Median Income and any proposed rental subsidy. In the Documents Checklist, changes include a change to the filing fee from the current \$600 to \$1,200, TEFRA noticing, and HAP contract-related information, if applicable. In Attachment V-2: Sustainable Methods Certification, Energy Efficiency Certification, we propose removal of “New Construction/Adaptive Reuse” as this portion applies to rehabilitation as well as new construction. See TCAC regulations Section 10325(c)(6)(C). Inserted the Performance Deposit Certification Form immediately following the Application Documents Checklist for the convenience of applicants.

“Competitive Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Program (QRRP) Universal Application Addendum”

Necessity: Administrative changes have been proposed to this form to bring it in compliance with existing and proposed regulations. Changes include updated references to applicable sections of the regulations, as well as the addition or deletion of language to clarify questions concerning compliance, additional private placement purchasers and bond issuance information. In Attachment 27: Sustainable Methods Certification, Energy Efficiency Certification, CDLAC propose removal of “New Construction/Adaptive Reuse” as this portion applies to rehabilitation as well as new construction. See TCAC regulations Section 10325(c)(6)(C).

“Non-Competitive Application Universal Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Qualified Residential Rental Program (QRRP) Universal Application Addendum”

Necessity: Administrative changes have been proposed to this form to bring it in compliance with existing and proposed regulations. Changes include updated references to applicable sections of the regulations, as well as the addition or deletion of language to clarify questions concerning compliance, additional private placement purchasers and bond issuance information. In Attachment 27: Sustainable Methods Certification, Energy Efficiency Certification, CDLAC propose removal of “New Construction/Adaptive Reuse” as this portion applies to Rehabilitation as well as new construction. See TCAC regulations Section 10325(c)(6)(C).

“Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for a Veterans Home Loan Program”

Necessity: Added a performance deposit certification form for the convenience of applicant, and updated application fee from \$600 to \$1200. Updated wording to not exclude electronic submittals.

## Chapter 1, Article 1, Section 5000. Definitions

### “Bond Issuance and Post Issuance Compliance Policies”

Necessity: “Bond Issuance and Post Issuance 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 items to be included in the 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, whether or not issuance or post-compliance monitoring will be handled in house or through a contractor, any special local requirements that might be included in the program but not required by federal or state law.

### “Cash Flow Permanent Bonds”

Necessity: “Cash Flow Permanent Bonds” means a bond where the identified repayment source is based on cash flow availability in the form of residual receipts payments when such a bond is used to finance more than 5% of the total development costs. The proposed revision differentiates cash flow bonds that are subject to repayment based on available cash flow as opposed to standard permanent 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 finance less than 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). Subsection (B) defines requirements for a project to qualify as a “qualified residential rental project” eligible to apply for an exempt facility bond. A minimum of 20% of units are occupied by individuals with a maximum of 50% of area median gross income, or at least 40% of units are occupied by individuals with a maximum of 60% of area median gross income. To provide assurance that CDLAC is providing allocation for the issuance of bonds for qualifying residential units, and that the units remain qualified for the required period of time, CDLAC is introducing regulations to mitigate against potential for non-compliance. The term “Federally Bond-Restricted Unit” is introduced in two proposed subsections: Section 5144(c) would require Applicants to review management files for compliance with Federally Bond-Restricted Units. In addition, under proposed subsection 5220(e), these units would need to be identified in the Bond Regulatory Agreement if Cash Flow Permanent Bonds finance project costs.

The proposed revision introduces the term “Federally Bond-Restricted Unit” because it is used in other sections of this Regulation that are also being revised (Section 5144(c) and 5220(e)). The term refers to a residential rental property unit that 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.

### “Regulatory Period and/or Compliance Period”

Necessity: While a regulatory or compliance period is enumerated in the resolution, defining it in regulations memorializes it and provides applicants with information on how long such a

period might last. This may facilitate planning for compliance and other maintenance activities with regard to bond funding.

“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 meet the CDLAC debt service coverage requirements and are not subject to a repayment schedule based on cash flow availability or do not exceed 5% of the total development costs.

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

Necessity: Added and spelled out definition of TEFRA to provide a more complete description of the acronym TEFRA. The proposed revision expands the acronym TEFRA for reader reference.

“Undesignated Reserve Pool” (Pool) means a reserve of the State Ceiling established by the Committee for which there is no demand at the time the Pool is established.

Necessity: This definition was added to clarify a term in Article 2, Eligibility Requirements, Section 5271 Allocation Method. Specifically, in case a request exceeds an Applicant’s Fair Share, funding may be provided if allocation is available in the Undesignated Reserve Pool.

Chapter 1, Article 3, Section 5020. Determination of State Ceiling Pools

Necessity: The proposed addition of subdivision (h) would require the Committee to announce amount of allocation available for Beginning Farmer Projects. This is intended to facilitate financial planning for applicants of Beginning Farmer Projects. Specifically, as soon as practicable after the beginning of each calendar year, and before any Applications are considered, the Committee will: (h) Determine and announce what amount expressed, both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Beginning Farmer Projects.

Chapter 1, Article 3, Section 5020. Determination of State Ceiling Pools

Necessity: The proposed addition of subdivision (i) would require the Committee to announce the amount of allocation available for Home Improvement and Rehabilitation Programs. This is intended to facilitate financial planning for applicants considering Home Improvement and Rehabilitation Programs. Specifically, as soon as practicable after the beginning of each calendar year, and before any Applications are considered, the Committee will: (h) Determine and announce what amount, expressed both as a percentage and as a dollar amount, of the State Ceiling that shall be available for allocation during the year and in each Allocation Round to Home Improvement and Rehabilitation Programs.

Chapter 1, Article 3, Section 5020. Determination of State Ceiling Pools

Necessity: The proposed addition of subdivision (j) would specify that the Committee shall sub-allocate resources to any particular pool in a manner that is consistent with maximizing public benefits associated with the use of allocation. Such a provision allows the Committee to judiciously fulfill its mission to ensure its bond allocation is fully and efficiently used to finance projects and programs while providing maximum public benefit and contributing to the economic vitality of California. Depending on a variety of external factors, like the economy, the demand for one pool may wax while another one wanes. Therefore, the Committee may determine an efficient use of resources would be to sub-allocate funds from one pool to another in a given cycle.

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 that 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 post issuance 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 multifamily 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 have approved becoming a member of the Applicant at or prior to 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 5050. Performance Deposit Requirements

Necessity: The proposed revision adds to the list of acceptable evidence of a performance deposit. A letter of credit from a Commercial Bank with an A category of higher credit rating, naming CDLAC as the beneficiary, would be acceptable under the proposed revision. This change in regulation would mitigate risk to CDLAC while allowing applicants another option besides a check or certified funds.

#### 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 5106. Veteran Home Loan Programs

Necessity: Removed section due to duplication with Section 5107.

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. Wording which had been at the end of (a) is proposed to move to the second and third sentences. Numbering has been added to help the reader differentiate between regulations concerning projects receiving allocation prior to, or after December 31, 2016. Finally, language is proposed to describe what terminates the requirement for self-certification.

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

Necessity: The proposed addition of 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. To reduce administrative burden, the verification exercise was reduced from annually to every three years.

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

Necessity: The proposed addition of 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. CDLAC is tasked with reviewing TCAC’s compliance policies and procedures and making necessary changes to CDLAC’s policies to ensure consistency. Given TCAC’s protocol, and that the majority of projects utilize TCAC resources, CDLAC proposes that Applicants perform audits of 20% of the tenant initial occupancy files, including lease, every three years to ensure compliance with the long-term CDLAC obligations of the Federally Bond-Restricted units. Proposed regulations also specify the length for which documentation of review of income eligibility, and source income documentation, must be retained. Under the proposal, units must be identified in TCAC’s Project Status Report (PSR) to prevent “cherry-picking” for review.

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 subject to a TCAC regulatory agreement 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 providing this oversight. 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. The proposed revisions to subsection (a) clarify when and how a Certification of Compliance I shall be utilized and for what period of time.

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

Necessity: The purpose of the proposed new section is to introduce the concept of a QRRP and Non-QRRP Certification of Compliance II and QRRP and Non-QRRP Certification of Completion, and which projects will require them. The new forms specify 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. The proposed section specifies that Project Sponsors shall be held accountable for submitting these forms to Applicants.

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 changes in use and circumstances of Bond Default and Qualifying Bond Default. This requirement will help CDLAC assess related risk.

Chapter 1, Article 11 Section 5146. Disqualification

This has been relocated from Section 5221.

Necessity: The Section outlines reasons for disqualification and clarifies that it pertains to all pools, not only QRRP. Section 5221 falls under Chapter 2, Qualified Residential Rental Projects. This provision historically has been applicable only to QRRP projects, but its relocation is now required as the provision pertains more broadly. In order to ensure applicants to all pools review the relevant reasons for disqualification, the Section was relocated.

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 Development Acknowledgement Letter”

Necessity: Added the descriptive “Development” to separate this definition from another 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: 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 subsidy 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(a). 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 5192(c). Minimum Term of Restrictions

Necessity: The proposed revision to Section 5192 (c) allows the fifty-five (55) year minimum term of restriction to begin upon commencement of the Qualified Project Period.

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 for alternative market studies 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). For consistency with existing TCAC regulations, alternative market studies can only be used if proposed income targeting is within 105% of the existing income targeting.

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

Necessity: Proposed revisions replace the verbiage that was moved to 5145(a). Section 5220(a) describes 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 its allocated 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 likely be terminated. 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, protected from foreclosure in subsection 5200(a). Language added would outline assumptions to be included in the Bond Regulatory Agreement, clarifying the assumptions under which the Other Restricted Units will be restricted in the Bond Regulatory Agreement.

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

Necessity: Some bond regulatory agreements have failed to meet the terms of the CDLAC resolution. By requiring the resolution to be both referenced, and attached to bond regulatory agreements starting in 2017, CDLAC hopes to mitigate any departure of consistency between the CDLAC Resolution and Bond Regulatory Agreements from this point forward. The proposed language will require more specific wording than in the past to protect the income and affordability requirements of the CDLAC Resolution, the responsibility of the Sponsor to report terms in the CDLAC resolution to the Issuer, and designate CDLAC to receive notice in the event of Bond Default or Qualifying Bond Default, and termination of the Bond Regulatory Agreement.

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

Necessity: It is proposed that the section on reasons an application may be disqualified be moved to Chapter 1, General Provisions. As it stands, this section is under Chapter 2, Qualified Residential Rental Projects. However, projects other than residential rentals may be disqualified for the same reasons. Therefore, the section on Disqualification more accurately belongs in the section on General Provisions for 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 per unit allocation limits for the general and rural pools. Limits are by 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 approximately 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 change is to eliminate one process and replace it with another. The process to be eliminated is submission of a HUD Acknowledgement Letter no later than four (4) days before the first public posting of Committee recommendations. This created timing concerns with processing applications, and the option to use a HUD Acknowledgement Letter is now an option for all applicants.

The addition of new wording for subsection (c) 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. 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. 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 (DDA) to be inclusive of QCT parameters.

**Other Matters Prescribed by Statutes Applicable  
to the Specific State Agency or to any  
Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the Committee or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the California Government Code pertaining to the Emergency Regulations or to the Committee.

**Mandate on Local Agencies or School Districts**

The Executive Director of the Committee has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

### **Fiscal Impact**

The Executive Director of the Committee has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the California Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Government Code Section 11346.1(b) or 11346.5(a)(6).

### **Economic Impact Assessment**

The proposed revisions entail the following:

- Create per unit limits on CDLAC allocation based on bedroom size to create a ceiling for total per unit project costs. [Section 5233]
- Require all active Issuers to have issuance and compliance procedures in place by the latter of January of 2018 or in advance of their next issuance. [Section 5031]
- Specify a standard that project sponsors must use to verify income in QRRP projects. [Section 5144(b)]
- Require QRRP Issuers to audit 20% of tenant files associated with the Federally Bond restricted units every three years. [Section 5144(c)]
- Require Issuers of projects that receive no tax credit reservation to conduct on-site inspections and file audits if they can demonstrate capacity and, if not, contract with a third party compliance vendor approved by the Executive Director [Section 5144(d)]
- Clarify the expectations of information a sponsor is submitting to the Issuer on an ongoing basis by creating updated Certification of Compliance forms for all program pools. [Section 5145]
- Clarify the definitions of Standard Permanent Bonds (loan that meets CDLAC's debt service coverage ratio) and Cash Flow Permanent Bonds (repayment based on cash flow availability).[Section 5000]
- Require that Cash Flow Permanent Bonds have minimum denominations of \$100,000 or be represented with a traveling investment representation letter. [Section 5064(b)]
- Clarify for QRRP projects that a regulatory agreement and CDLAC Resolution affordability term shall terminate only in the event of foreclosure and redemption of Standard Permanent Bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement. [Section 5220(a)]
- If the amount of Cash Flow Permanent Bonds bond debt exceeds 5% of the total project cost, all units identified in the CDLAC resolution including both the Federally Bond Restricted units and the Other Restricted units will be incorporated into the Bond Regulatory Agreement. Assumptions will include AMI as outlined in the CDLAC resolution, tenants paying no more than 30% of their income, and assume 1.5 persons occupy each unit. [Section 55220(b)]

- Require that QRRP regulatory agreements be drafted in a manner consistent with the CDLAC resolution and that the CDLAC resolution be made an attachment to the bond regulatory agreement. [Section 5220(c)]
- Require projects that are requesting an assignment and assumption of an existing Housing Assistance Payment (HAP) contract from the Multifamily Department of the U.S. Department of Housing and Urban Development (HUD) to have submitted their application to HUD in advance or concurrent to the submission of their CDLAC application. [Section 5255(d)]
- Clarifying the process to preserve Difficult Development Area (DDA)/Qualified Census Tract (QCT) status. [Section 5258]

Application for and participation in CDLAC's Programs is discretionary and the proposed revisions pertain to program eligibility, compliance and administration issues. Neither the proposed revisions nor the CDLAC Regulations as a whole require any person or entity to take any action, make any monetary expenditure, or refrain from any taking any action or making any expenditure. The proposed revisions will not have an effect on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing business within the State of California, the expansion of businesses currently doing business within the State of California, or on small businesses.

**Benefits of the Regulations:**

The objectives of these proposed regulations are to ensure compliance with state and federal law in a fair, flexible and streamlined manner; implement a streamlined online compliance certification process; clarify existing regulatory provisions; ensure that multi-family residential rental projects provide a public benefit and that the affordability, energy efficiency, etc. promised by sponsors/developers in order to obtain an allocation are provided to tenants; and to ensure the long-term affordability and financial viability of multi-family residential rental projects.