



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

901 P Street, Suite 213A
Sacramento, CA 95814
p (916) 654-6340
f (916) 654-6033
www.treasurer.ca.gov/ctcac

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California Tax Credit Allocation Committee

5-DAY PUBLIC NOTICE OF EMERGENCY RULEMAKING AND FINDING OF EMERGENCY

NOTICE IS HEREBY GIVEN that on August 5, 2025, the California Tax Credit Allocation Committee (CTCAC or the "Committee"), pursuant to its authority in Health and Safety Code (HSC) section 50199.17, executed Resolution No. 25/26-01 and adopted emergency amendments to California Code of Regulations (CCR), title 4, section (Regulation or Reg.) 10326, Application Selection Criteria—Tax-Exempt Bond Applications, 10327, Financial Feasibility and Determination of Credit Amounts, and 10336, Laws, Rules, Guidelines, and Regulations for Tenants of Low-Income Units. CTCAC is issuing this 5-day public notice as part of the emergency rulemaking process with the Office of Administrative Law (OAL).

FINDING OF EMERGENCY

Pursuant to HSC section 50199.17, any emergency rules or regulations adopted by the Committee pursuant to Chapter 3.6 of the HSC shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of section 11346.1 of the Government Code (GC).

GC section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action OAL, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in GC section 11349.6.

All CTCAC questions regarding this emergency action should be directed to Anthony Zeto at anthony.zeto@treasurer.ca.gov. CTCAC intends to submit this emergency action to OAL on August 29, 2025. The submitted action will appear on the list "Emergency Regulations Under Review" on OAL's Internet website at https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/.

CTCAC did not rely on any technical, theoretical, or empirical studies, reports, or similar documents in developing and adopting these emergency amendments.

Authority: HSC sections 50199.17 and 50199.25; Revenue and Taxation Code (RTC) sections 12206, 17058 and 23610.5

Reference: RTC sections 12206, 17058 and 23610.5; and HSC sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22.

INFORMATIVE DIGEST

Policy Statement Overview

On July 4, 2025, the One Big Beautiful Bill Act (Pub. L. 119-21, 139 Stats. 234) became law and altered fundamental requirements of the low-income housing tax credit program administered by CTCAC and the tax-exempt private activity bond program administered by the California Debt Limit Allocation Committee (CDLAC). Specifically, federal law changed and reduced the amount of tax-exempt private activity bonds required for an affordable housing project to receive federal four percent low-income housing tax credits (LIHTC) from 50 percent to 25 percent of the aggregated depreciable basis plus land basis (25% test) provided at least five percent of the aggregate basis is financed by tax-exempt bonds issued after December 31, 2025 and the project is placed in service after December 31, 2025. This change gives CTCAC the opportunity to significantly increase the potential investment in California from the allocation of federal four percent low-income housing tax credits. Resultingly, one objective of this rulemaking is to implement the 25% test with respect to CTCAC applications to be immediately effective for the third allocation round of 2025.

On January 7, 2025, Governor Newsom proclaimed a State of Emergency to exist in Los Angeles and Ventura Counties due to fire and windstorm conditions that caused multiple fires. On March 7, 2025, Governor Newsom issued Executive Order N23-25 and, in part, suspended certain tenant selection procedures authorized by state law for the purpose of giving waitlist priority to displaced households who are experiencing homelessness in Los Angeles County due to the proclaimed emergency. A second object of this rulemaking is to clarify program rules regarding tenant waitlist priorities for prospective tenants displaced due to declared disasters.

Existing Laws and Regulations

26 USC section 42 – Low-Income Housing Credit

With the passage of the Tax Reform Act of 1986, Congress created the federal LIHTC program in the Internal Revenue Code (IRC). This program helps private developers create and preserve affordable housing and raises project equity by providing tax benefits to investors who hold an ownership interest in the property. Congress made the LIHTC Program permanent with the passage of the Omnibus Budget Reconciliation Act of 1993.

Through the federal LIHTC program, California is annually allocated a finite number of nine-percent (70% subsidy) tax credits for new construction and substantial rehabilitation, and access to an unlimited number of four percent (30% subsidy) tax credits for the acquisition of existing buildings for rehabilitation and new construction when the project is also financed by tax-exempt private activity bonds per IRC sections 103 and 146. CDLAC administers the federal tax-exempt bond program in California. The four percent tax credit is available only in combination with an award of tax-exempt private activity bonds.

The One Big Beautiful Bill (OBBB) Act (Pub. L. 119-21, 139 Stats. 234)

Unit July 4, 2024, IRC section 42, subdivision (h)(4)(B), provided that for an affordable housing developer to receive federal four percent LIHTCs they must finance at least 50% or more of the aggregate basis of the building and land upon which the building is located with tax-exempt private activity bonds (interest exempt from tax under IRC section 103). On July 4, 2024, the OBBB Act amended IRC section 42, subdivision (h)(4)(B), to reduce from 50% to 25% the amount of tax-exempt private activity bonds required for an applicant to qualify for federal four percent LIHTCs, provided at least 5% of the aggregate basis of any project be financed by tax-exempt bonds issued after December 31, 2025, and the project be placed-in-service after December 31, 2025.

Chapter 3.6 of the HSC. Low-Income Housing Credit

Pursuant to provisions in Chapter 3.6 of the HSC, CTCAC is the entity designated by the legislature to allocate the federal 9% and 4% LIHTCs on a regular basis consisting of two or more periods in a calendar year. (HSC, §§ 50199.7, 50199.8, 50199.9.) To administer the LIHTCs, CTCAC is required to adopt a qualified allocation plan consistent with IRC section 42 to allocate the LIHTCs in accordance with the allocation plan and associated regulations. (HSC, § 50199.14.) CTCAC is required to allocate tax credits to projects if the recipient enters into a regulatory agreement with CTCAC whereby the recipient agrees to be bound by requirements of IRC section 42 and program regulations. (HSC, §§ 50199.10, 50199.14.) Pursuant to HSC section 50199.10, CTCAC conditions allocations of tax credits on the execution of a regulatory agreement between CTCAC, which requires the recipient to comply with the terms of

IRC section 42, any applicable state laws, and any additional requirements CTCAC deems necessary or appropriate to serve the purposes of the program.

HSC section 50199.17 grants CTCAC the authority to adopt and amend regulations relating to the allocation of low-income housing tax credits pursuant to the federal and state low-income housing tax credit programs.

Revenue & Taxation Code sections 12206, 17058 and 23610.5

RTC sections 12206, 17058 and 23610.5 establish the state LIHTC program applicable to insurance tax, personal income tax, and corporation tax, respectively. Under these provisions, there are two state tax credits: (1) subdivision (g)(1)(A), \$70,000,000 Consumer Price Index linked credit and (2) subdivision (g)(1)(B), \$500,000,000 annual credit dependent on the annual Budget Act or other bill providing the appropriation. To the extent possible, the legislature requires CTCAC to administer the state LIHTC program using the same criteria and requirements used in allocating the federal tax credit. (HSC, § 50199.5, subd. (c).)

Pursuant to subdivision (p) of RTC sections 12206, 17058 and 23610.5, chapter 3.5 of part 1 of division 3 of title 2 of the GC shall not apply to any rule, guideline, or procedure prescribed by CTCAC pursuant to RTC sections 12206, 17058 and 23610.5 and CTCAC may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of RTC sections 12206, 17058 and 23610.5, including guidelines regarding the allocation of the state tax credit. However, given the integrated nature of the federal and state low-income housing tax credit programs, CTCAC is outlining the proposed amendments to the state LIHTC program herein.

California Code Regulations (CCR), Title 4, Division 17. California Tax Credit Allocation Committee Regulations Implementing the Federal and State Low-Income Housing Tax Credit Laws

CTCAC administers the qualified allocation plan and related program components for the federal and state LIHTCs through regulations located in division 17 of title 4 of the CCR. Relevant to this rulemaking, Regulation 10326 outlines the application selection criteria for projects requesting four percent LIHTCs with separate tax-exempt bond funding from CDLAC. Regulation 10327 implements evaluation criteria used by CTCAC to determine whether a proposed project is financially viable. Regulation 10336 implements criteria used by CTCAC to evaluate applications and monitor projects for matters impacting tenants of low-income housing tax credit developments.

Specific Purpose of, and Rational for, each Proposed Amendment

Amendments to Regulation 10326

Prior to enactment of Public Law 119-21, Regulation 10326, subdivision (a), limited eligibility for four percent LIHTCs to those CTCAC applicants meeting the “50% test.”

CTCAC determined there is an issue (or problem within the meaning of GC, § 11346.2, subd. (b)) because Regulation 10326 is not consistent with the amendments Public Law 119-21 made to IRC section 42, subdivision (f)(4)(B) reducing the eligible threshold to 25%. CTCAC determined the Regulation 10326, subdivision (a), only requires a direct cross-reference to IRC, section 42, subdivision (f)(4)(B) to capture the test applicants need to meet to qualify for four percent LIHTCs and removed the reference to the “50% test” in favor of a specific IRC reference.

Regulation 10326, subdivision, (a), requires tax-exempt bond applicants requesting state LIHTCs under RTC sections 12206, 17058 and 23610.5 to comply with the application requirements in Regulation 10317. CTCAC determined there is an issue with this requirement because it inadvertently omits a necessary reference to subdivision (g)(1)(B) of RTC sections 12206, 17058, and 23610.5 and fails to clearly implement the application requirements for the \$500,000,000 state tax credit. The regulation is therefore being amended to add reference to subdivision (g)(1)(B) of RTC sections 12206, 17058, and 23610.5 relating to enhanced state tax credits to clarify the eligibility requirements for the credit.

Regulation 10326, subdivision (b), establishes the system by which state tax credits are awarded to applicants also receiving an allocation of tax-exempt private activity bonds from CDLAC. CDLAC makes awards of tax-exempt bonds to projects and CTCAC makes awards of federal and state tax credits to the same projects. If there are insufficient state tax credits available to all applications recommended for tax-exempt bonds, Regulation 10326, subdivision (b)(1), establishes a ranking in the following order (based on CDLAC award pools/set asides):

- A. Black, Indigenous, or Other People of Color (BIPOC) Project Pool;
- B. Rural Project Pool;
- C. New Construction Pool, Homeless Projects Set Aside;
- D. New Construction Pool, ELI/VLI Project Set Aside;
- E. New Construction Pool, Mixed-Income Project Set Aside;
- F. and All remaining New Construction Pool Projects

The amendments to IRC section 42, subdivision (h)(4)(B), reduce the amount of bonds a project needs to qualify for federal tax credits from 50% to 25%. As such, CDLAC is concurrently amending its program to limit awards to 30% of the aggregate basis plus land. These changes will result in additional bond funding being available to fund a greater number of projects. As a result, CTCAC is concerned that the current structure of Regulation 10326, subdivision (b)(1), may result in an inequitable distribution of state tax credits with the higher ranked pools and set-asides using up all state tax credits when the intent is for the state tax credits to be available to pools and set-asides further down the rank order. As such, CTCAC is amending Regulation 10326, subdivision (b)(1), to place upper limits on the following new construction pools and set asides: BIPOC project pool, rural project pool, new construction pool – homeless projects set aside, and new construction pool – ELI/VLI project set aside. This amendments is limited in its application to round 3 awards for 2025 with the intention for CTCAC and

CDLAC to consider future revisions to ensure equitable access to state tax credits in future allocation years.

Amendments to Regulation 10327

Regulation 10327, in part, establishes rules related to credit calculation. Broadly speaking, the amount of credit a taxpayer can claim each year is determined by the following formula:

$$\text{Eligible Basis} \times \text{Applicable Fraction} = \text{Qualified Basis}$$

$$\text{Qualified Basis} \times \text{Applicable Percentage} = \text{Credit}$$

(See IRC section 42, subdivisions (c), (d).) In making reasonable cost determinations, applicants are required to factor the developer fee into the eligible basis determination. The developer fee represents payment for the developer's services. Regulation 10327, subdivision (c)(2)(B) establishes the CTCAC limits on the total developer fee permitted for four percent LIHTC applicants depending on whether the project is new construction or an acquisition/rehabilitation project.

On August 5, 2025, as part of CDLAC's implementation of the OBBB Act, CDLAC adopted a Resolution 25-007, establishing a voluntary program whereby projects awarded tax-exempt bonds in CDLAC rounds 1 or 2 of 2025 may voluntarily return bonds to meet the reduced 25% test and in return receive either a tiebreaker benefit or developer fee benefit. The developer fee rules are contained in the CTCAC regulations. Accordingly, CTCAC is amending Regulation 10327 to implement Public Law 119-21 in coordination with CDLAC to allow projects that voluntarily reduce their bond allocation to receive additional developer fee exceeding the current cap to offset increased costs from borrowing more taxable debt.

Amendments to Regulation 10336

As part of the qualified allocation plan and program regulations developed by CTCAC, the Committee imposes certain requirements on project owners and property developers to follow tenant selection procedures for prospective resident applicants of LIHTC developments. Such requirements are incorporated by reference into the regulatory agreement executed between CTCAC and the tax credit recipient. The standards developed by CTCAC as part of the qualified allocation plan are housed in Regulation 10336.

Regarding statewide tenant selection policies, Executive Order N23-25, in part, suspended certain tenant selection procedures authorized by state law for the purpose of giving waitlist priority to displaced households who are experiencing homelessness in Los Angeles County due to the proclaimed emergency. Considering the state of emergency, CTCAC determined it is necessary to amend Regulation 10336 to clarify that owners and property managers are required to comply with any federal, state, or

local requirements to provide a waitlist priority to households displaced due to declared state or federal disasters.

CTCAC has performed an evaluation of whether the proposed amendments to Regulations 10326, 10327, and 10336 are inconsistent or incompatible with existing state regulations and determine ed that the proposed amendments are not inconsistent or incompatible with existing state regulations because the amendments are part of CTCAC's regulatory framework implementing, interpreting, and making specific the federal and state low-income housing tax credit programs and CTCACs regulations are the only state regulations that implement, interpret, or make specific the federal and state low-income housing tax credit program. Also, CTCAC has determined that there is no existing federal regulation or statute that is comparable to the proposed amendments to Regulations 10326, 10327, and 10336.

LOCAL MANDATE

CTCAC determined the adoption of the proposed amendments to Regulations 10326, 10327, and 10336 do not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC

FISCAL IMPACT/COST ESTIMATE

CTCAC determined the adoption of the proposed amendments to Regulations 10326, 10327, and 10336 will not result in any direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non-discretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

PROPOSED REGULATORY TEXT

A copy of the 5-Day Public Notice of Emergency Rulemaking and Finding of Emergency, CTCAC Resolution 25/26-01, and the express terms of the proposed regulations (also known as the proposed regulatory text) are posted to CTCAC's Internet website at: <https://www.treasurer.ca.gov/ctcac/programreg/regulations.asp>.