

PUBLIC COMMENTS RECEIVED DURING COMMENT PERIOD
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
 Revised on February 27, 2017

Written public comments were received during the 43-day Public Comment Period, December 20, 2016 through January 31, 2017. The written comments received during the Public Comment Period are set forth below with TCAC’s responses.

Name	Public Comments	Staff Comments/Recommendations
<p>Lisa Richards, MBS Property Management</p>	<p>1. MBS believes that TCAC can sufficiently enforce compliance with the current basic program regulations as well as the deeper state commitments throughout the compliance period without imposing fines. TCAC can report projects to the IRS during the first 15 years and can also impose negative points, require repayment of overcharged rents, and enter litigation to enforce compliance. HUD and USDA have successfully enforced compliance without fines for longer that TCAC has been in existence. TCAC already has tools beyond negative points. The new TCAC requirement that all transfers of ownership, changes in management, and refinancing have to be approved by TCAC ensures that all owners have an interest in protecting their good standing with TCAC, regardless of whether they plan to submit a new application. Fines only promote negativity and undermine the positive partnership we have all developed over the years.</p> <p>2. The statutory term “first time property owner violator” needs to be clearly defined. It appears that a majority of owners would not qualify.</p> <p>3. The seven day appeal deadline is not sufficient to read, investigate, and provide a thorough response to a finding, which leads to the probability that the</p>	<p>1. Staff continues to believe that fines for non-compliance are appropriate, potentially preferable to negative points and, in cases where an owner does not plan immediately to sell the project or submit an application for a new project, necessary. Owners may go years or even decades before seeking TCAC approval for a management change or engaging in a transfer event. Staff is unwilling to wait that long to achieve compliance. Moreover, a management or ownership change may facilitate compliance, so withholding approval until the old owner or manager achieves compliance may be counterproductive.</p> <p>2. Staff interprets this term to refer to first-time violators, not to first-time owners. The intent was to allow TCAC, in instances of repeated non-serious offenses, to impose fines without a correction period. For those violations for which a correction period is allowed, however, the proposed fine schedule allows all owners, even those with repeat offenses, to benefit from the correction period.</p> <p>3. The TCAC regulations stipulate a seven day appeal period for point and tiebreaker reductions, disqualifications, negative points, and fines. This deadline has proven sufficient for the former three over the years. Staff does not believe that non-</p>

	<p>Executive Director will deny the appeal and almost guarantees an appeal to the committee with a non-refundable \$500 fee.</p> <p>4. Before implementing a fine schedule, TCAC should define a “serious” violation and allow for an extended comment period.</p> <p>5. All findings on non-compliance should allow for a correction period.</p> <p>6. Fines should not be assessed for failing to comply with a TCAC requirement that is not part of the federal statute or regulation or the regulatory agreement. Fines should not be assessed for “de minimus” rent errors.</p> <p>7. The fine for “incorrect eligibility determination or unable to determine eligibility” could continue until resyndication because of missing or inaccurate information that cannot be corrected.</p>	<p>compliance issues are more complicated or deserve a longer appeal period. Moreover, altering the timeline for fine appeals would require an amendment to the regulation, which is outside the scope of the fine schedule.</p> <p>4. Staff has defined serious in the fine schedule in a violation-specific manner. Each violation subject to an immediate fine is one that staff defines as serious.</p> <p>5. Staff respectfully disagrees. For serious violations, staff believes that an immediate fine is appropriate in order to create a deterrent. If a party only has to correct serious violations upon discovery by TCAC, there is no incentive to pro-actively comply. The Legislature recognized and endorsed this view in adopting the language of AB 1920.</p> <p>6. It is not clear which specific violations the commenter thinks should be exempt from fines. Nonetheless, staff believes that each of the violations listed in the schedule, regardless of the origin of the requirement, is worthy of enforcement and the appropriate subject of a fine for violation. As for de minimus rent errors of \$15 or less, the schedule allows for fines only if the error continues beyond the 30 day correction period. In other words, the fine is not for the violation itself but for the failure to correct.</p> <p>7. In cases where a tenant file does not verify the tenant’s original eligibility to occupy the unit, the owner has three ways to correct the situation in the extended use period at issue here: 1) retrieve old documentation and recreate the file; 2) certify the tenant’s eligibility at the current income; or 3) terminate the tenancy and rent the unit to an income-</p>
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		<p>qualified tenant. If the owner does any of those three things, the fines for continued violation will end. It would violate the spirit and letter of the program to allow an ineligible tenant (or one whose eligibility cannot be substantiated) to remain in an affordable unit.</p>
<p>Ricardo Pacheco, John Stewart Company</p>	<p>While we recognize the importance of these fines to preserve LIHTC communities under the extended use agreement, we have some concerns and feel that the schedule lacks specificity and leaves too much to interpretation.</p> <ol style="list-style-type: none"> 1. The subjectivity in potential sanctions and the severity of fines may have a disparate impact on small or financially distressed assets. 2. We are unclear as to when TCAC may issue an 8823, a fine, or negative points. This seems fully at your discretion with no published thresholds. 3. It is unclear whether fines will be imposed against the owner, agent, or both? 4. Regarding specific fines, we suggest there be a clear delineation between minor and serious violations to avoid subjective determination. 5. We ask why there are no cure periods for the serious violations. We suggest cure periods for all violations as there may be circumstances where there was no willful disregard but a lack of information or resources. With HUD, we have 24 hours to correct life and safety findings. 6. The fine schedule fails to distinguish between per property, per unit, and per missing form fines. 	<ol style="list-style-type: none"> 1. It is TCAC's desire to see full compliance and to never levy fines. A project that has no serious violations and corrects lesser violations within the correction period will not be subject to any fines. In addition, most of the fine amounts are relatively small in the context of project income. As for the impact on smaller or financially distressed projects, the Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances. Lastly, the regulations permit the Executive Director to approve a payment plan. It is not in TCAC's interest to cause projects severe financial distress. 2. IRS rules dictate when TCAC must issue an 8823 form. When TCAC issues an 8823, it will not impose fines. For violations not subject to an 8823, staff believes it is beneficial for TCAC to have discretion over whether to issue negative points or fines. In cases where the owner is not an active developer, fines will be more appropriate. For active developers, TCAC's decision will likely depend on the severity of the violations. In many cases, negative points can be disproportionate to the violation and fines may be a more reasonable approach. 3. The owner is ultimately responsible for compliance with program requirements. As a result, TCAC will issue fines against the owner.

	<p>7. We suggest that \$20,000 is excessive for failure to provide service amenities and that mitigating circumstances should be considered.</p> <p>8. We feel that the vacant/off-line unit fine should not be levied until mitigating circumstances are considered such as casualty due to fire or some other loss.</p> <p>9. We believe the \$500 fee for appeal negative determinations to the committee should be refunded if the appeal is successful.</p>	<p>4. Staff has delineated serious and lesser violations in the fine schedule in a violation-specific manner. Each violation subject to an immediate fine is one that staff defines as serious.</p> <p>5. For serious violations, staff believes that an immediate fine is appropriate in order to create a deterrent. If a party only has to correct serious violations upon discovery by TCAC, there is no incentive to pro-actively comply. The Legislature recognized and endorsed this view in adopting the language of AB 1920. Furthermore, staff has no way to know or verify why a violation occurred. The Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances.</p> <p>6. The Compliance Violation column clearly states that fines are on a per unit basis unless noted as a per project fine. Missing forms are handled on a per project basis.</p> <p>7. The fine related to the failure to provide services will be based on the project-specific costs provided by the applicant in their initial application. Only in cases where no such information exists will TCAC use \$20,000 as the default. Based on TCAC's experience, \$20,000 is a reasonable default. As stated above, the Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances.</p> <p>8. While the Executive Director and the Committee already maintain discretion to weigh mitigating or unusual circumstances, staff concurs that the fine schedule should explicitly state for this violation that</p>
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<p>Patrick Sabelhaus, California Council for Affordable Housing</p>	<p>1. A cure period should be available for every violation that is curable. Every lender and investor document includes provisions relative to curing violations. A cure period is both reasonable and equitable and does not preclude, for instance, requiring an owner to rebate overcharged rents.</p> <p>2. The \$500 fee to appeal to the Committee should be refundable in the event the appellant prevails on appeal.</p>	<p>1. Staff respectfully disagrees. For serious violations, staff believes that an immediate fine is appropriate in order to create a deterrent. If a party only has to correct serious violations upon discovery by TCAC, there is no incentive to pro-actively comply. The Legislature recognized and endorsed this view in adopting the language of AB 1920.</p> <p>2. The TCAC regulations stipulate a \$500 non-refundable fee for Committee- level appeals for point and tiebreaker reductions, disqualifications, negative points, and fines. Appeals to the Executive Director related to fines are free. Altering the non-refundable nature of the Committee-level appeal fee would require an amendment to the regulation, which is outside the scope of the fine schedule. While staff is open to revisiting this provision of the regulations, staff believes all Committee-level appeals should be treated equally.</p>

<p>Marie Fournier, Pacific Housing, Inc.</p>	<p>1. As a major service provider, we know firsthand how challenging it can be to find skilled service providers who are willing to work part-time at these properties. Once a potential provider is identified, we then run a LiveScan to determine whether they have any violations that would affect their suitability for working with the elderly, disabled or youth. We take very seriously our duty to assure that all service providers that come in contact with our residents, many of whom are vulnerable, are thoroughly vetted and trained. As a result, there are occasional lapses in services while we are recruiting new candidates. These lapses do not necessarily result in a financial gain for the partnership, as it can be costly to engage in these recruitment searches. And it isn't always as simple as dispatching a current employee to a different site to cover during the cessation of services, because many of the sites are remote and there aren't other employees within the area available. As such, we would request that prior to a fine being assessed for an initial "Failure to Provide Service Amenities", there be a minimum "30 days to correct" period provided to allow time to recruit qualified service providers when a community loses a provider.</p> <p>2. In addition, we would like clarification on when such a fine would be assessed "post Y15".</p>	<p>1. Staff is sympathetic to isolated, short-term lapses of services due to job vacancies, but staff does not support a general 30-day cure period as that would also potentially exempt owners who have not provided services for months or years or who have recurring lapses from any sanction. Staff proposes an amendment such that no immediate fine shall be imposed for a lapse of 30 days or less within a calendar year.</p> <p>2. At this time, service requirements apply only for 10 or 15 years. As a result, staff concurs that there are no post-year 15 service violations and proposes an amendment to limit service-related fines to projects in the initial credit period.</p>
<p>Dara Schur, Disability Rights California</p>	<p>We believe the schedule of compliance violation fees presents an opportunity to enforce TCAC's accessibility regulations and continue your leadership in this area. We support TCAC's efforts to ensure the integrity of the tax credit program through the issuance of fines and recommend adding fines related to accessibility.</p>	<p>1. TCAC currently enforces the accessibility requirements of the minimum construction standards at placed in service. TCAC will not issue the 8609 tax forms without an architect certification that the project complies with the requirement. Staff believes that withholding the 8609 forms is a much more impactful and more appropriate penalty than fines and therefore recommends against this proposal.</p>

	<p>1. We recommend a fine for non-compliance with TCAC's requirement that new construction and rehabilitation projects to include 10% mobility accessible and 4% communications accessible units and accessible routes and features. Projects should also be fined for failure to distribute accessible units throughout the project. We suggest a correction period of 30 days and a fine of \$250 thereafter plus \$100 per month the violation remains uncorrected. These fines will encourage developers to meet accessibility requirements.</p> <p>2. It is critical that the schedule include fines related to the proper administration of existing accessible units. Federal regulations require owners to maximize use of accessible units by persons with disabilities who require the units' accessibility features. The schedule should include a fine for projects that fail to rent accessible units to individuals who need the accessible features unless they can provide evidence that no existing tenants with disabilities required the unit and there were no new qualified applicants with disabilities after marketing. We recommend that the fines be similar to those for vacant affordable units (\$250 fine if vacant for 60+ days, not being advertised, not ready to rent; \$250 fine/month after 30 days).</p> <p>3. Federal regulations also require owners and managers to market accessible units to individuals who need them and to maintain waitlists that prioritize applicants with disabilities for accessible apartments. The schedule should include a fine for projects that fail to fulfill marketing obligations and a fine for failure to maintain appropriate waitlists. For each of these violations, we recommend penalty fees</p>	<p>2 and 3. While HUD regulations do not necessarily apply to all TCAC projects, TCAC regulations are similar to the federal regulations and require that owners maximize the utilization of accessible units and give priority for accessible units to persons already residing in the complex or on the waiting list who need the accessibility features. Staff supports creating a fine for violation of this regulation and concurs that a 30-day correction period with a fine of \$250 thereafter plus \$100 per month the violation remains uncorrected is appropriate. Staff proposes amendments to the schedule accordingly. The provisions mentioned in comments 2 and 3 are in the same TCAC regulation section, and staff believes that fine category is sufficient to cover both provisions.</p>
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	<p>be comparable to the fine for “Incorrect eligibility documentation or unable to determine eligibility (projects have 30 days to correct, with a \$250 fine after the corrective period and \$100/month until corrected).</p>	
<p>Stephen M. Pelz, Housing Authority of the County of Kern</p>	<ol style="list-style-type: none"> 1. The \$500 non-refundable fee for a Committee-level appeal could discourage an owner from progressing a valid appeal and can be viewed as a penalty for owners who want to utilize the grievance procedure. We recommend no fee. 2. The TCAC compliance manual states that basic trainings will be provided once annually and advanced trainings on an as-needed basis. In order to assist owners and managers in complying with the program requirements and ensure they have adequate supports, we recommend trainings be increased before fines are imposed. TCAC should add web-based trainings for new owners and managers or those who cannot attend live trainings and conference calls or webinars around policy changes. 3. We request clarification on how TCAC will use its discretion to decide between 8823 submittal, negative points, and fines. 4. After an inspection, the TCAC compliance manual states that the owner will be notified of findings within 30 days and have an opportunity to respond. We request clarification if the fines will be imposed as a result of an inspection, and if the same notification process will be in place. 5. The schedule does not specify timeframes for TCAC to respond to owner response to the notices of 	<ol style="list-style-type: none"> 1. The TCAC regulations stipulate a \$500 non-refundable fee for Committee-level appeals for point and tiebreaker reductions, disqualifications, negative points, and fines. Appeals to the Executive Director related to fines are free. Altering the non-refundable nature of the Committee-level appeal fee would require an amendment to the regulation, which is outside the scope of the fine schedule. While staff is open to revisiting this provision of the regulations, staff believes all Committee-level appeals should be treated equally. 2. In addition to the 98-page compliance manual that TCAC updates and maintains on its website, TCAC this year will conduct nine basic compliance trainings, five advanced compliance trainings, and one combined training throughout the state. This does not include the regulation change hearings and multiple policy updates that TCAC holds and participates in or the numerous calls and ad hoc trainings that TCAC staff participates in throughout the year. Staff believes that it exceeds all expectations for trainings that that the fine schedule should not be delayed. Staff is always open to considering additional means of communicating with and providing training to stakeholders. 3. IRS rules dictate when TCAC must issue an 8823 form, and only the IRS can impose recapture or disallowance of the credit. When TCAC issues an 8823, it will not impose fines. For violations not

	<p>violation. We recommend that TCAC include response timeframes so that owners and managers can understand the timeframe for fines to be cleared or enforced.</p> <p>6. The compliance manual provides for extensions beyond the normal 30-day correction period. The fine schedule does not identify if this process will be available for compliance fines. We believe that an owner should be allowed to request extensions to identified timelines, as long as they are showing progress towards the corrective action needed and can supply adequate documentation.</p>	<p>subject to an 8823, staff believes it is beneficial for TCAC to have discretion over whether to issue negative points or fines. In cases where the owner is not an active developer, fines will be more appropriate. For active developers, TCAC's decision will likely depend on the severity of the violations. In many cases, negative points can be disproportionate to the violation and fines may be a more reasonable approach.</p> <p>4. Most of the violations on the fine schedule are ones that will generally come to light during an inspection. In these cases, TCAC will follow the normal inspection protocol and provide the owner with the inspection findings within 30 days and an opportunity to respond before considering fines. In the event that fines are imposed, the notice triggering the seven day appeal period will come after TCAC has received the owner's response or after the owner's failure to respond.</p> <p>Some of the violations on the fine schedule do not relate to inspections. These are 1) failure to submit AOC reports; 2) failure to submit AOE or tenant demographic data; 3) lack of cooperation to monitor; 4) change of ownership or management without TCAC approval; and 5) transfer event without TCAC approval. In addition, there may be rare circumstances in which one of the other violations comes to light outside of an inspection. Identical to how TCAC handles negative points, in these cases TCAC will send a notice imposing the fine and triggering the seven day appeal period without using the inspection procedure.</p> <p>5. Section 10330(b) of the TCAC regulations requires</p>
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		<p>that staff respond to an appeal within seven days after receipt. A Committee-level appeal will be decided at the next Committee hearing.</p> <p>6. TCAC will continue to consider extensions to the 30-day correction period before imposing fines. In addition, the Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances.</p>
<p>Jan Peters and Leanne Morford, Eden Housing</p>	<p>We are concerned about how the proposed schedule of violations will be implemented and managed. The schedule does not go into enough detail. We are also concerned about the level of fine versus the actual number of serious non-compliance events that occur.</p> <ol style="list-style-type: none"> 1. The \$500 non-refundable appeal fee is a concern. It does not clarify at what point the free 7-day appeal period begins. Does it begin on the date of inspection, on the date of the findings letter, or on the date of receipt of the letter? If an appeal is overturned, we do not feel that the full \$500 fee should be non-refundable. 2. In both instances of incorrect rents a 30-day correction period seems appropriate to us. Is a one-unit error treated the same as a 20-unit error? 3. We question when the 30-day correction clock starts for failure to submit AOCs, AOE, or tenant demographic data? 4. For failure to provide service amenities, what timeframe is the immediate fine based on? 5. For vacant units, we ask for clarification of how 	<ol style="list-style-type: none"> 1. Most of the violations on the fine schedule are ones that will generally come to light during an inspection. In these cases, TCAC will follow the normal inspection protocol and provide the owner with the inspection findings within 30 days and an opportunity to respond before considering fines. In the event that fines are imposed, the notice triggering the seven day appeal period will come after TCAC has received the owner's response or after the owner's failure to respond. <p>Some of the violations on the fine schedule do not relate to inspections. These are 1) failure to submit AOC reports; 2) failure to submit AOE or tenant demographic data; 3) lack of cooperation to monitor; 4) change of ownership or management without TCAC approval; and 5) transfer event without TCAC approval. In addition, there may be rare circumstances in which one of the other violations comes to light outside of an inspection. Identical to how TCAC handles negative points, in these cases TCAC will send a notice imposing the fine and triggering the seven day appeal period without using the inspection procedure.</p> <p>According to Section 10330(b) of the TCAC regulations, the seven-day appeal period commences</p>

	<p>finances will be assessed when the failure is due to a referral agency? Being penalized for referral delays is troubling.</p> <p>6. With respect to TCAC required forms, is just one missing form subject to an immediate \$250 fine or must the form be missing in most or all tenant files? Is there a fine if an organization uses their own forms instead of TCAC's?</p>	<p>with the transmittal date of the fine notice. TCAC emails and snail mails these notices so that the owner receives the electronic version of the letter the same day it is transmitted.</p> <p>The TCAC regulations stipulate a \$500 non-refundable fee for Committee-level appeals for point and tiebreaker reductions, disqualifications, negative points, and fines. Appeals to the Executive Director related to fines are free. Altering the non-refundable nature of the Committee-level appeal fee would require an amendment to the regulation, which is outside the scope of the fine schedule. While staff is open to revisiting this provision of the regulations, staff believes all Committee-level appeals should be treated equally.</p> <p>2. One of the primary rules of the tax credit program is to charge affordable rents. Staff believes a correction period is appropriate for minor overcharges, but staff believes that more serious overcharges merit an immediate fine in order to create a deterrent. If a party only has to correct serious rent overcharges upon discovery by TCAC, there is no incentive to pro-actively comply. The logical conclusion to the comment is that an owner who willfully violates the regulatory agreement and charges market rates should be able to correct the rents upon discovery with no consequence.</p> <p>Under the proposed fine schedule, rent overcharges are subject to fines on a per unit basis, so a one-unit error is not treated the same as a 20-unit error, though the per-unit fines do not increase based on volume.</p>
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		<p>3. Similar to the non-inspection related violations referenced in the response to comment 1, once a deadline has passed for an owner to submit an AOC, AOE, or tenant demographic data, TCAC will send a fine notice starting the 30-day correction period. Whether the forms were never sent or lost in transit, TCAC will not assess a fine of the documents are submitted within the 30-day correction period.</p> <p>4. As discussed in the response to comment 1, if the failure to provide services is discovered at inspection, TCAC will follow the normal inspection protocol and provide the owner with the inspection findings within 30 days and an opportunity to respond before considering fines. If the failure to provide services is discovered outside of an inspection, TCAC will send a notice imposing the fine and triggering the seven day appeal period without using the inspection procedure. As a matter of practice, TCAC will often communicate with the owner and manager before issuing a fine outside of an inspection.</p> <p>5. The Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances. While TCAC understands referral delays, TCAC's 60-day window already exceeds the IRS recommendation of a 14-day vacancy turn. If a referral agency cannot fill a unit within 60-days, TCAC believes that the owner should look for other eligible tenants. Nonetheless, as noted in response to comment 8 from the John Stewart Company, staff proposes an amendment to the fine schedule explicitly stating for this violation that the 60-day period may be extended for situations beyond the owner's control or involving particularly lengthy rehabilitation, provided that the owner is diligently</p>
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		<p>working to correct the situation.</p> <p>6. The fine for not using TCAC forms does not relate to an individual file. If one file is missing an asset form, for example, the violation is failure to determine tenant eligibility. The fine for not using TCAC forms relates to a project systematically. As stated in the schedule, the fine is a per project fine, not a per unit fine. Whereas these are required TCAC forms, an organization may only use its own forms with TCAC approval.</p>
<p>Lori Horn, Affordable Housing Management Association – Pacific Southwest</p>	<p>1. Please clarify when an 8823 is issued versus a fine.</p> <p>2. Please better define “smaller violation” and “more serious violation.”</p> <p>3. Will fines be assessed against the property owner or manager? How will it be determined who will be responsible for the fine? If the owner, in what circumstances will the owner be allowed to pass the fines on to their management agents?</p> <p>4. Regarding “failure to provide service amenities,” is this really a management agent’s responsibility? Shouldn’t the fine be assessed against the owner? What if a property cannot afford the promised services?</p> <p>5. In some cases the agent determined eligibility based upon erroneous information provided by the resident. When fraud is committed, is it fair to assess penalties to the agent?</p> <p>6. We would like to see the section about using TCAC required forms clarified to state if the property</p>	<p>1. IRS rules dictate when TCAC must issue an 8823 form. When TCAC issues an 8823, it will not impose fines.</p> <p>2. Staff has defined serious in the fine schedule in a violation-specific manner. Each violation subject to an immediate fine is one that staff defines as serious.</p> <p>3. The owner is ultimately responsible for compliance with program requirements. As a result, TCAC will issue fines against the owner. How an owner interacts with the management company in relation to a fine is beyond TCAC’s purview. TCAC will leave such matters to the parties themselves.</p> <p>4. As stated in response to comment 3, TCAC will assess all fines against the owner. As for projects that cannot afford services, they should contact TCAC early to discuss the situation and seek some forbearance rather than stop providing services without permission. Nonetheless, the Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances when assessing fines. Lastly, the regulations permit the Executive Director to approve a payment plan. It is</p>

	<p>is generally using required forms and missed a form in a file or two it would not be an immediate fine but subject to a 30-day correction period.</p>	<p>not in TCAC's interest to cause projects severe financial distress.</p> <p>5. The Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances when assessing fines. TCAC would not issue a fine if the owner and property manager performed all due diligence in certifying the household as income eligible at initial move-in and had no knowledge of the fraud.</p> <p>6. The fine for not using TCAC forms does not relate to an individual file. It relates to a project systematically. As stated in the schedule, the fine is a per project fine, not a per unit fine.</p>
<p>Greg Bonnet, Public Counsel, and James Grow, National Housing Law Project</p>	<p>We support CTCAC's implementation of Assembly Bill 1920 and believe that the following recommendations will improve the deterrence value and effectiveness of the fines for serious violations, particularly those that protect the ongoing health and safety of tax credit residents:</p> <p>1. Because inspections are likely to be infrequent, the proposed fine schedule may not create a meaningful incentive to maintain habitable conditions. Operators who only take action after an inspection occurs and correct the conditions within the time period permitted will not pay any fines. Revising the proposed fine schedule to include immediate fines for serious habitability violations will create an incentive for operators to address problems before the building is inspected in order to avoid fines. Specifically, to better and more effectively deter violations, particularly violations that pose a substantial risk to tenants, CTCAC should:</p>	<p>1. Staff continues to believe that it is appropriate to allow owners an opportunity to correct habitability violations prior to receiving a fine, including in situations where the violation is a life threatening violation. Nonetheless, staff concurs that the on-going fine for failure to remediate a life threatening violation should be greater than the on-going fine for failing to correct non-life threatening violations. Accordingly, staff proposes to amend the fine schedule to increase the fine for on-going life threatening violations from \$50 per month to \$100 per month.</p> <p>2. To the extent that staff can gain access to a property within 90 days, it does not feel that a fine is necessary.</p> <p>3. Staff continues to believe that the fine amounts for incorrect eligibility documentation, failure to submit annual owner certification reports, and failure to submit annual operating expense reports are</p>

	<ul style="list-style-type: none"> • Have the ability to impose immediate fines for life-threatening violations and “level 3” UPCS violations; and, • Increase the base fine from \$50 per month for ongoing violations to a more substantial figure permissible under AB 1920. <p>2. Operator cooperation is necessary for inspections to be effective. The penalty for “lack of cooperation to monitor” should apply immediately, rather than allowing operators a 90-day window to comply.</p> <p>3. Timely and accurate reporting is essential for CTCAC oversight. The fine schedule should increase the initial and per month fines for incorrect eligibility documentation, failure to submit annual owner certification reports, and failure to submit annual operating expense reports.</p> <p>4. The proposed fine for “Vacant/off-line unit” should not be applied to units that are vacant solely because the property owner is awaiting inspection of the unit by a local housing authority.</p> <p>5. While we support the imposition of the maximum fine for unauthorized transfer, TCAC should also clarify that the transaction must be unwound to the status quo before transfer, and approval sought per the established procedure.</p> <p>6. To avoid unjust outcomes in any of the above situations, the appeals process should be outlined, including the Executive Director and the Committee’s discretion to reduce fines on a case-by-case basis in response to mitigating circumstances (and, within the</p>	<p>adequate.</p> <p>4. As noted in response to comment 8 from the John Stewart Company, staff proposes an amendment to the fine schedule explicitly stating that the 60-day period may be extended for situations beyond the owner’s control or involving particularly lengthy rehabilitation, provided that the owner is diligently working to correct the situation. TCAC maintains discretion to weigh mitigating or unusual circumstances when deciding to impose fines or to grant an extension for delays related to housing authority inspections.</p> <p>5. Staff continues to believe that immediate fines for unapproved changes of ownership or management or transfer events are warranted. In the event that an owner subsequently receives TCAC approval, it seems unnecessary to unwind the action as an additional measure. To the extent TCAC does not grant approval because the owner has not fulfilled TCAC requirements, the owner will be subject to on-going fines until the action is reversed or otherwise corrected. TCAC cannot unwind the action by itself. It can only levy fines for failure to comply with TCAC regulations.</p> <p>6. Absent revisions to the fine schedule, TCAC cannot increase fines above those listed in the schedule. The Executive Director and the Committee maintain discretion to weigh mitigating or unusual circumstances when deciding to impose fines or to lower a fine amount.</p> <p>7. The statute and regulations clearly authorize TCAC to revise the fine schedule as needed. TCAC</p>
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	<p>limits of the statute, to increase fines in response to exacerbating circumstances).</p> <p>7. Because some of the fine levels will probably have to be adjusted after experience, if they prove inadequate to ensure compliance or quick remediation, TCAC should reserve the authority to revise the schedule as provided by statute.</p> <p>8. Although placing a lien on the property for any unpaid fines will be helpful, ultimately TCAC may have to take legal action against any serious offenders, where modestly accruing fines don't bring the desired result. In general, TCAC's final schedule and policy should clarify that TCAC's pursuit of possible fines to correct noncompliance does not preclude the agency's pursuit of any other remedies available under the agreement or other laws.</p>	<p>will monitor the effectiveness of fines in achieving compliance and suggest future revisions as needed.</p> <p>8. TCAC clearly retains authority to bring legal action against a property for non-compliance. To the extent that clarification is needed, this not a matter for the fine schedule but for the regulations.</p>
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