



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

915 Capitol Mall, Suite 485
Sacramento, CA 95814
p (916) 654-6340
f (916) 654-6033
www.treasurer.ca.gov/ctcac

MEMBERS

FIONA MA, CPA, CHAIR
State Treasurer

BETTY YEE
State Controller

KEELY MARTIN BOSLER
Director of Finance

DOUG McCAULEY
Acting Director of HCD

TIA BOATMAN PATTERSON
Executive Director of CalHFA

EXECUTIVE DIRECTOR
Judith Blackwell

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE (TCAC) 2020 LOW-INCOME HOUSING TAX CREDIT (LIHTC) APPLICATION GUIDANCE AND FREQUENTLY ASKED QUESTIONS (Q AND A)

If you have questions or need clarification on any of the guidance below, [contact TCAC Development Staff](#).

SINGLE BUILDING, MULTIPLE PROJECT OWNERS AND LIHTC ALLOCATIONS

TCAC staff has noted an increase in applications that legally separate a single building, resulting in multiple owners and multiple tax credit allocations. The LIHTC program issues tax credits on a per building basis. In Notice 88-91, the Internal Revenue Service (IRS) defines the term "qualified low-income building" as either an apartment building, a single family dwelling, a townhouse, a rowhouse, a duplex, or a condominium. The IRS has indicated that legally condominiumizing a high-rise building into two buildings would meet the IRS definition of two buildings. However, since air rights parceling or other similar legal separation types are not referenced in the IRS definition of a building, it is less clear that these legal separations meet the IRS definition of a building. As a result, TCAC is now requiring owners proposing legal separation of a building that is not condominiumized to provide a legal opinion (in the placed in service application) of how the legal separation meets the IRS definition of a building. The opinion must include a summary of the common area and access ownership structure and any shared use agreements.

In addition, for common area ownership, if the project owners are proposing any kind of proportionate cost where there is a single common area owner, a tax attorney or CPA must provide an opinion (in the placed in service application) of how proportioning a cost and corresponding eligible basis to an entity that does not own the space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were proportioned.

MULTI-PHASE HOUSING DEVELOPMENTS

For adjacent multiphase projects, applicants may propose that multiple phases utilize the same community spaces. The size of the community space must be sufficient to serve all phases. TCAC staff utilizes the common area parameters of TCAC housing types as a standard to measure sufficient size. A joint use agreement must be provided in the placed in service application.

In addition, for common area ownership, if the project owners are proposing any kind of proportionate cost where there is a single common area owner, a tax attorney or CPA must provide an opinion of how apportioning a cost and corresponding eligible basis to an entity that does not own the space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were apportioned.

MULTI-PHASE COMMON AREAS

Currently TCAC allows contiguous multiphase projects with separate ownership to share use of common areas such as property management offices and community buildings. The common areas must meet the minimum square footages for the combined projects and there must be a joint use agreement in place prior to submitting the TCAC placed in service package. Any mixed housing types (senior housing in combination with non-senior housing) must also provide a third party legal opinion stating that the common area use complies with fair housing law. The joint use agreement and the legal opinion are subject to review and approval by TCAC.

ADAPTIVE REUSE

- Q:** Can I treat my adaptive reuse project as a new construction application, without appraisal and capital needs assessment requirements?
- A:** Consult TCAC staff. The types of adaptive reuse vary, and not all may be able to forgo all TCAC requirements for existing buildings.

MANAGER UNITS

1. TCAC requires two onsite manager units for projects of 161 units or more. For some resyndication applications of this size, the original project was approved with one manager unit and has successfully operated with a single manager unit. Because converting a second manager unit would require a reduction in low-income restricted units, TCAC can provide a waiver of the second manager unit requirement, provided the project continues to operate successfully. Please [contact TCAC development staff](#) if you would like more information.
2. When project owners are employing desk or security staff in lieu of an onsite manager unit as permitted by TCAC regulations, these individuals are third-party employees hired by the project owner. Tenants cannot be used to fulfill this requirement.

TENANT-BASED VOUCHERS AND TCAC UNDERWRITING REQUIREMENTS

Tenant-based vouchers (TBVs) and tenant protection vouchers (TPVs) do not meet TCAC's subsidy commitment requirement and cannot be considered as revenue in TCAC underwriting criteria. If a tenant household with a TBV or TPV chooses to leave a project, the HUD contract with the project owner ends and the TBV/TPV remains with the household, resulting in a decrease to project income. The project does not have a secure commitment for this subsidy income as required by Section 10322(h)(22), and TCAC staff do not include this revenue in the 15-year pro forma analysis of Section 10327(f).

PROJECT-BASED RENTAL SUBSIDY (EXISTING CONTRACTS)

Q: For projects with pending rental subsidy amount increases such as a Section 8 Mark-up-to-Market application submitted to HUD, can prospective rental subsidy amounts (increased monthly rates) be used in the Public Subsidy Contract Rent column of the final tie breaker (FTB)?

A: No. Committed contract rent amounts must be approved by the subsidy provider in writing. A rent comp study does not equate to committed contract rent. Post-rehabilitation rates cannot be used in the FTB Public Subsidy Contract Rent column. If you have questions about written confirmation from HUD pursuant to a pending application to HUD (a "comfort letter"), contact TCAC staff.

APPRAISED VALUE INCOME APPROACH AND RENTAL SUBSIDY

Q: For projects with pending rental subsidy amount increases such as a Section 8 Mark-up-to-Market application submitted to HUD, can prospective rental subsidy amounts (increased monthly rates) or post-rehabilitation contract rents be considered project revenue in the income approach of an as-is appraisal?

A: No. The as-is appraised value cannot be based on prospective or post-rehabilitation contract rents. If you have questions, contact TCAC staff.

LOCAL COMMITMENTS OF FEDERAL OR STATE FUNDING

Section 10325(f)(8) requires that public funds be within the control of the entity providing the commitment at the time of the application. For a commitment of federal or state funding (or similarly allocated/awarded funding) that is awarded to a project or developer from a local public entity (housing authority, city county, etc.), the public entity must have received authorization from the federal or state funding source to award the funds. For example, public entities cannot commit future years' federal HOME or NSP funding to a project. As another example, counties or other local entities cannot commit state funding that has not been fully allocated or awarded to the county or local entity by the state agency pursuant to the state program guidelines.

PROPERTY MANAGEMENT CONTRACT REQUIREMENT

Q: How does the October 28 regulation change that eliminates the management company contract affect the point category requirement for a property management contract?

A: The management company point category requirement for a property management contract remains. Only non-competitive applications not requesting points may forgo the requirement for a property management contract.

READINESS POINTS: CEQA/NEPA

Q: What is the October 28 regulation change in the readiness to proceed point category related to CEQA and NEPA?

A: TCAC eliminated the requirement that TCAC staff independently verify environmental clearances. For CEQA, any CEQA requirements that are part of the local land use requirements must be completed consistent with the timing described in Attachment 26 (the CEQA line item was eliminated from Attachment 26 to minimize confusion about the regulation change). For NEPA, TCAC will not require or review documentation of the NEPA process. Applicants are advised to complete the NEPA process in advance of construction closing. An inability to meet TCAC's 180/194 day readiness to proceed point requirement will subject the developer to negative points or rescission of the tax credit reservation; this includes an inability to close construction financing due to a NEPA-related issue.

SITE AMENITIES: GROCERY STORE

A letter or documentation of the square footage of a grocery store may be dated 3 years prior to the application deadline. For documentation older than 3 years, please consult TCAC staff.

CALIFORNIA BUILDING CODE (CBC) 2016 AND 2019 STANDARDS

Q: When do the 2016 CBC Standards apply to a 2020 TCAC application?

A: If the local building department has determined that building permit applications submitted on or before December 31, 2019 are complete, then the 2016 Standards apply.

FINAL TIE BREAKER (FTB) AND CAPITALIZED VALUE OF RENT DIFFERENTIAL

Ensure the Rent Limit and Public Subsidy Contract Rent are BOTH gross or net utility allowance, and this is clearly explained in the application. Do not use a gross Rent Limit with a net Public Subsidy Contract Rent.

FINAL TIE BREAKER (FTB) AND OFFSITES

Off-site costs are not counted in the FTB calculation unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees or (2) the off-sites must be developed as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property. TCAC will discount the soft financing numerator by any other off-site costs, which are considered "ineligible."

A detailed breakdown of eligible and ineligible off-sites is required as part of Attachment 12. Changes to off-site costs are reviewed by TCAC staff as part of the 180/194 day submission and the placed in service package for consistency and FTB scoring.

CERTIFICATED STATE CREDIT

If an applicant is requesting certificated state credit, the applicant entity must be a nonprofit organization, or an entity whose sole member(s) are nonprofit organizations. In addition, the state credit tax credit factor must be no less than \$0.80 (not \$0.7999).

HYBRID 4% CREDIT APPLICATION TIMELINE

The 4% credit component must apply for a bond allocation within 10 days of the 9% credit component award date, and must receive a bond allocation within 90 days of receiving a reservation (TCAC Regulation Section 10326(j)(1)). If there is no CDLAC application deadline for a bond allocation date within 90 days, the bond allocation must be made at the next scheduled CDLAC meeting.

CUAC UTILITY ALLOWANCE AND HUD RENTAL SUBSIDY

Without HUD approval, a CUAC utility allowance cannot be used. If written approval is not received as of the TCAC application deadline, the applicant must use the public housing authority utility allowance in the application.