

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

915 CAPITOL MALL, ROOM 485

SACRAMENTO, CA 95814

TELEPHONE: (916) 654-6340

FAX: (916) 654-6033



William J. Pavão
Executive Director

MEMBERS:
Bill Lockyer, Chair
State Treasurer

Michael C. Genest, Director
Department of Finance

John Chiang
State Controller

DATE: April 16, 2009
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Proposed Regulation Changes: Responses to Comments Received

On March 17, 2009 the California Tax Credit Allocation Committee (TCAC) released proposed regulation changes related to the American Recovery and Reinvestment Act of 2009 and the tax credit program's final tiebreaker. TCAC staff subsequently held three public hearings on the following dates:

- Los Angeles, Tuesday, March 24, 2009
- Sacramento, Wednesday, March 25, 2009
- Oakland, Thursday, March 26, 2009

In addition, TCAC took written public comment through April 7, 2009. Ninety-six (96) individuals and organizations formally commented on the initial proposed changes. TCAC staff has carefully considered all comments received, and has finalized the recommendations to Committee for consideration and adoption on Thursday, April 30, 2009.

The following is a list of those initially proposed changes that have been revised:

Substantive Regulation Changes Recommended with Revisions:

1. Clarify that updated market information or a sponsor's assets, liabilities, or pending litigation may be cause for denying a loan application. **Section 10323(a), page 1.**
2. Establish special needs and SRO projects as eligible for cash in lieu of credit awards of up to 85 cents per tax credit dollar, while all other cash in lieu awards would not exceed 80 cents. TCAC would also provide up to 55 cents per State tax credit dollar for cash in lieu of credit awards. Changes also now permit applications for a partial exchange of credits for cash. New text clarifies a standard for good faith efforts to obtain an equity investment. **Section 10323(c)(1), page 4.**
3. Establish a gap financing maximum of 12 cents per federal tax credit dollar up to 80 cents per tax credit dollar, and 9 cents per State tax credit dollar. **Section 10323(c)(2), page 4.**
4. Eliminate proposed assistance to offset falling credit rates. **Section 10323(c)(3), page 4.**

5. Establish a methodology for accounting for additional federal prevailing wage costs. **Section 10323(c)(3), page 5.**
6. Adjust per award maximum upward to \$20 million for 2009 credit recipients, and \$25 million for special needs projects. **Section 10323(c)(4), page 5.**
7. Establish a competitive scheme for 9 percent projects to receive either gap financing or cash in lieu of credit awards. Special needs or SRO projects seeking cash in lieu of credits could forgo the competition and receive awards. **Section 10323(d)(1), page 8.**
8. Permit the Executive Director to extend placed in service deadlines for cash in lieu of credit recipients. **Section 10323(d)(1), page 8.**
9. Provide timing forbearance for 2009 9 percent tax credit applicants related to public funding commitments and other readiness criteria. **Section 10323(d)(2), page 10.**
10. Establish a flat 12 cent per tax credit dollar gap financing assumption within 2009 9 percent applications. Also permit a 9 cent per State credit dollar assumption within such applications. These gap amounts would be in addition to the equity pricing assumptions within the application. **Section 10323(d)(2), page 11.**
11. Except special needs and SRO projects from the cash in lieu of credits competition among 2009 9 percent applicants. **Section 10323(d)(2), page 11.**
12. Expand the scoring of rental assistance beyond Section 8. **Section 10323(d)(2), page 12.**
13. Broaden eligible 2009 4 percent early applicants to MHP- and MHSA-funded projects with pending tax credit applications. **Section 10323(d)(3), page 17.**
14. Add a paragraph raising the debt service coverage ratio requirement for cash awards. **Section 10323(e)(2), page 20.**
15. State the order of recordation policy for TCAC Deeds of Trust. **Section 10323(e)(4), page 20.**
16. Adjust the pay-in schedule for cash in lieu of credit awards, and modify final payment terms. **Section 10323(e)(6), page 20.**
17. Add to the final tiebreaker a provision counting public land leases as public funding. **Section 10325(c)(10), page 23.**

Attachment

American Recovery and Reinvestment Act of 2009
Responses to Comments
April 16, 2009

Section 10323(a)

Original Proposed Text:

Section 10323. American Recovery and Reinvestment Act of 2009

- (a) General. Under the authority granted by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the California Tax Credit Allocation Committee (CTCAC) may subaward Tax Credit Assistance Program (TCAP) funds and federal grants in lieu of housing credit allocations (Exchange Funds) to projects awarded Low Income Housing Tax Credits. While CTCAC may access and subaward these funds in accordance with the provisions of this Section, nothing in this Section shall be construed to imply an obligation by the Committee to award funds to specific projects. Circumstances related to a specific project, or the sponsor's financial strength may cause the Committee to deny a subaward, in spite of that project having previously received a reservation or allocation of credits. The Committee shall state in writing reasons for denying a subaward where the standards described below would otherwise have resulted in a subaward. The overriding public interest in sound investments through cash subawards shall be paramount as the Committee makes its funding decisions.

All terms and conditions established by federal rule shall hereby be incorporated by reference.

Comments Received: Commenters urged TCAC to fund projects so as to retain syndicators to help with underwriting and risk-management generally. Also, a commenter suggested that TCAC defer to the equity partner's underwriting where TCAC is simply providing gap financing. Finally, commenters sought more clarity regarding potential causes for denial.

Response to Comments: Each of the comments has merit. TCAC's greatest risk and concern would be when providing large, cash in lieu of credit awards. TCAC will re-underwrite projects, but will also rely upon equity partner's due diligence. TCAC staff does not envision a loan denial in the case of a gap financing loan, in light of the other lenders and equity partners' participation. While all potential reasons for denial cannot be fully anticipated, indicative examples would be illustrative.

Revised Proposed Text:

Section 10323. American Recovery and Reinvestment Act of 2009

- (a) General. Under the authority granted by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the California Tax Credit Allocation Committee (CTCAC) may subaward Tax Credit Assistance Program (TCAP) funds and federal grants in lieu of housing credit allocations (Exchange Funds) to projects awarded Low Income Housing Tax Credits. While CTCAC may access and subaward these funds in accordance with the provisions of this Section, nothing in this Section shall be construed to imply an obligation by the Committee to award funds to specific projects. Circumstances related to a

specific project, such as updated market information, or the sponsor's financial strength, including inadequate net assets or pending litigation or other liabilities, may cause the Committee to deny a subaward, in spite of that project having previously received a reservation or allocation of credits. The Committee shall state in writing reasons for denying a subaward where the standards described below would otherwise have resulted in a subaward. The overriding public interest in sound investments through cash subawards shall be paramount as the Committee makes its funding decisions. Projects shall be evaluated in accordance with the underwriting criteria listed at Section 10327(g), as modified by this Section. CTCAC may defer to underwriting standards and conclusions reached by equity partners in those projects where CTCAC is providing gap financing only.

All terms and conditions established by federal rule shall hereby be incorporated by reference.

Section 10323(b)

Original Proposed Text:

(b) Eligible Projects

Applicants for cash awards, either TCAP or Exchange Funds, must have a current reservation of federal Low Income Housing Tax Credits for a proposed project awarded credits in federal fiscal year 2007, 2008, or 2009 as follows:

- (1) 2007 and 2008 awardees: Projects with current 2007 or 2008 Credit Ceiling reservations and allocations are eligible for TCAP or Exchange Funds. Tax-Exempt Bond Projects are also eligible for TCAP or Exchange Funds under the conditions described in paragraph (d)(3) below. Tax-Exempt Bond Projects must have a current bond allocation or pending application for a bond allocation to apply for a cash award under these regulations.
- (2) 2009 awardees: Tax Exempt Bond Projects and projects receiving 2009 Credit Ceiling reservations by September 30, 2009 are eligible for TCAP funds. Projects receiving Credit Ceiling reservations in calendar year 2009 are eligible for Exchange Funds, if exchange authority remains, under the conditions described in paragraph (d) below.
- (3) CTCAC may, as a priority, provide cash awards subject to (b)(1) and (b)(2) above under this Section to projects that also have funding commitments from programs receiving AB 55 loans through the State's Pooled Money Investment Account (PMIA). Assistance would be provided in a manner and at the minimum amount required to generate adequate construction period financing. Any funds provided as construction financing would be conditioned upon repayment by AB 55 funds following project completion, or earlier. These funds would remedy

gaps in construction-period financing, and could be in addition to funds mitigating equity gaps as described below.

Comments Received: A commenter was concerned that the introductory paragraph's reference to "proposed projects" would exclude projects that had commenced construction. Other commenters urged that federal funds not be used on projects that have completed construction. Commenters urged that TCAC not provide cash awards to prior year projects that have already closed with an equity partner. Commenters also urged TCAC to allow applicants who declined or returned earlier-year reservations to be eligible for federal cash awards.

Several commenters urged TCAC to conduct just one 2009 credit competition in order to make all current-year awards by the federal September 30 deadline. Some commenters recommended that TCAC extend public funding and entitlement deadlines if conducting a single competitive round in 2009. One commenter suggested waiving the calendar year limitation on projects within a rural market area.

Many commenters endorsed using federal funds to help projects lacking AB 55 financing, while a smaller set of commenters objected. Some commenters urged emphasizing projects under construction, while another commenter argued that funds must be taken out by HCD financing at the earliest opportunity. One commenter noted that restricting assistance to 2007 or later projects could inhibit TCAC's ability to help some worthy AB 55 deals. That same commenter recommended using exchange funds, rather than TCAP funds to help AB 55 deals.

Response to Comments: TCAC did not intend the word "proposed" to omit projects that had commenced construction. Generally, TCAC staff agrees that the available federal funds should be used on projects that cannot be started or completed, and anticipated an exception only for AB 55 loans. Furthermore, TCAC staff agrees that projects that have executed partnership agreements should not seek cash in lieu of credits unless they still lack an upper tier investor.

TCAC staff does not agree that prior-year projects that had either declined or returned a credit reservation ought to have the same status as projects with current credit allocations. Those sponsors either failed to perform under the timelines in effect at the time of their reservation, or declined to invest earnest money and take risks associated with accepting a reservation altogether. These sponsors also appear to lack eligibility status under the TCAP provisions of federal statute, but may gain such status by successfully competing for and accepting a reservation of credits in 2009.

Events since the initial proposed regulations lead TCAC to believe that federal funds will not be needed to resolve the AB 55 loan problem. TCAC would only originate bridge loans for such projects if the PMIA account cannot help affected projects in the near term.

Revised Proposed Text:

(b) Eligible Projects

Applicants for cash awards, either TCAP or Exchange Funds, must have a current reservation of federal Low Income Housing Tax Credits for a ~~proposed~~ project awarded credits in federal fiscal year 2007, 2008, or 2009 .as follows:

- (1) 2007 and 2008 awardees: Projects with current 2007 or 2008 Credit Ceiling ~~reservations and~~ allocations are eligible for TCAP or Exchange Funds. Tax-Exempt Bond Projects are also eligible for TCAP or Exchange Funds under the conditions described in paragraph (d)(3)(A) below. ~~Tax-Exempt Bond Projects must have a current bond allocation or pending application for a bond allocation to apply for a cash award under these regulations.~~
 - (2) 2009 awardees: Tax Exempt Bond Projects and projects receiving 2009 Credit Ceiling reservations by September 30, 2009 are eligible for TCAP funds. Projects receiving Credit Ceiling reservations in calendar year 2009 are eligible for Exchange Funds, if exchange authority remains, under the conditions described in paragraph (d) below.
 - (3) CTCAC may, as a priority, provide cash awards subject to (b)(1) and (b)(2) above under this Section to projects that also have funding commitments from programs receiving AB 55 loans through the State's Pooled Money Investment Account (PMIA). Assistance ~~would~~ shall be provided in a manner and at the minimum amount required to generate adequate construction period financing. Any funds provided as construction financing ~~would~~ shall be conditioned upon repayment by AB 55 funds ~~following~~ upon project completion, or earlier. These funds ~~would~~ shall remedy gaps in construction-period financing, and ~~could~~ may be in addition to funds mitigating equity gaps as described below.
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Section 10323(c)

Original Proposed Text:

- (c) Award Amounts.
 - (1) Cash in lieu of credits: Projects may receive an award equal to the stated equity in the original tax credit application up to 85 cents (\$0.85) for every currently reserved federal tax credit dollar and up to 60 cents (\$0.60) for every California State Credit currently reserved by CTCAC for the project. CTCAC could reduce this award amount if a final cost certification would have resulted in a reduced credit award.
 - (2) Gap financing: Projects may receive the difference between the credit equity stated in the original tax credit application, up to \$0.85 for every currently reserved federal tax credit dollar, and the committed equity up to 15 cents (\$0.15) per currently reserved federal tax credit dollar, and ten cents (\$0.10) for every California State Credit dollar.
 - (3) In addition to award amounts described above, TCAC may also award cash to Tax Exempt Bond Projects with current 2007 and 2008 credit reservations that have experienced a drop in their credit rate. TCAC may award cash equaling the shortfall resulting from the placed-in-service credit rate, and 3.42 percent (3.42%).

- (4) If a TCAP award would add costs associated with federal requirements, CTCAC may adjust the project award to account for the higher costs.
- (5) No cash award amount shall exceed \$17 million.

Comments Received: One commenter urged TCAC to prohibit supplanting of local funding with these federal resources. Another commenter urged TCAC to allow bridge loans to 2007 and 2008 reservation holders of up to 25 percent (25%) of equity. One commenter suggested that TCAC permit an increase in a cash award at placed-in-service if warranted.

Related to gap financing, some commenters recommended that, rather than establishing a maximum combined amount of equity and federal dollars per credit (\$0.85 for gap financing), TCAC should use a fixed price supplement (\$0.10 - \$0.15) as gap financing. One commenter suggested raising the gap financing maximum to 22 cents (\$0.22), while another commenter expressed concern that 85 cents (\$0.85) could result in undue enrichment.

Regarding filling a credit rate gap, one commenter suggested only helping those who have locked in their credit rate, while another suggested not helping with this shortfall with these federal funds. One commenter urged simply helping with 10 cents on the dollar up to \$500,000.

Several commenters urged TCAC to exceed a \$17 million per project maximum per-project loan amount. One commenter suggested a larger amount for 100 percent special needs projects, while another recommended \$21.25 million for 2009 projects. This alternative maximum would account for recipients of \$2.5 million awards of annual federal credits in 2009.

Response to Comments: While TCAC does not envision widespread reductions in local public funding sources, TCAC staff understands that some local funding sources have made exceptional conditional commitments to projects under the very difficult circumstances facing the affordable housing development industry. Awarded federal funds would replace missing equity, although some local funding sources may have conditionally committed to fill such gaps. Circumstances do not seem to warrant prohibiting the reduction of such conditional commitments, which would free local funds for additional local housing developments.

TCAC staff also concurs with commenters who argued that the current credit pricing environment almost invariably produces credit pricing well below 85 cents on the tax credit dollar. Subsidizing projects back to an 85 cent pricing is off market and unwarranted. Several commenters urged exceptional treatment for projects housing special needs populations, including the homeless. In response to these comments, staff proposes retaining an 85 cent maximum for special needs projects, but limiting all other cash in lieu of credit awards to a maximum of 80 cents on the tax credit dollar.

Regarding gap financing, TCAC staff concurs with commenters who argue that a lower, fixed maximum per-credit award, coupled with removing the combined cash-and-equity per credit maximum, is sound policy. Such a system would encourage sponsors to find equity partners at higher pricing, knowing they could retain the cash award and the larger

equity amount induced in by the credits. Of course, TCAC will assure that the awarded cash does not over-subsidize the project during underwriting and at placed-in-service.

Permitting partial exchanges of credit for cash to arrive at a “blended rate” of equity and cash per credit is a meritorious idea, as is the idea of using a fixed price to fill equity gaps. These ideas would encourage projects to retain equity partners, and would mitigate the problem of pushing down credit pricing.

Since proposing the idea, TCAC staff has been very challenged to develop a method for filling any equity gap resulting from dropping 4% credit rates. Since most projects do not establish a credit rate until placed in service, TCAC is unable to effectively size the amount of federal dollars to award for such purposes. In light of the other demands for the federal resources, TCAC staff is abandoning the feature that would have accounted for this equity loss.

TCAC staff has also been asked for more descriptive detail regarding how additional costs would be defrayed by federal cash awards. New proposed text now focuses on the potential costs associated with federal prevailing wage requirements. A sampling of recent tax credit applications showed that additional prevailing wages costs were almost invariably less than 15 percent of a project’s site work and structures line items. Rather than a time-consuming and potentially contentious project-by-project decision making process, TCAC staff proposes a flat 15 percent augmentation to defray the additional costs of federal prevailing wages. This percentage would eliminate uncertainty associated with the potential size of cash assistance for these costs.

While the logic behind the \$17 million per-project maximum loan amount was based upon a prior-year credit award maximum, it also established a reasonable award amount for (a) limiting TCAC’s per-project risk, and (b) spreading limited federal resources among as many projects as possible. By reducing award amounts to 80 cents per tax credit dollar, the \$17 million limit would accommodate a \$2.125 million annual credit award. The current limit further motivates larger projects to find equity partners and use gap financing rather than cash in lieu of credits. However, in light of the higher 2009 maximum award amount of \$2.5 million in annual federal credit, staff agrees that the maximum for those projects ought to be \$20 million.

Revised Proposed Text:

(c) Award Amounts.

- (1) Cash in lieu of credits: Projects Special Needs and SRO projects may receive an award equal to the stated equity in the original tax credit application up to 85 cents (\$0.85) for every currently reserved federal tax credit dollar and up to 60 cents (\$0.60) for every California State Credit dollar currently reserved by CTCAC for the project. All other projects may receive the original tax credit application-estimated equity up to 80 cents (\$0.80) for every currently reserved federal tax credit dollar, and up to 55 cents (\$0.55) for every California State Credit dollar currently reserved for the project. Applicants may request a cash in lieu award for a portion of their reserved credits, retaining the balance of credits for an

equity partner. CTCAC ~~could~~ shall reduce this an award amount if a final cost certification would have resulted in a reduced original credit award.

To be eligible for cash in lieu of credits, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. An applicant who has closed with a direct investor or with a syndicator who has secured an upper-tier investor is not eligible for a cash in lieu of credit award. An applicant shall provide a narrative describing steps they have taken to secure an equity investment, and describing issues inhibiting investor interest in the project. The narrative must identify potential investors proffering unacceptable offers, and why specific terms and conditions were detrimental to the project's feasibility. CTCAC reserves the right to corroborate presented facts, and may request additional information from the applicant and/or the potential investor or syndicator. CTCAC shall determine whether an applicant has met the federal good faith effort test. Any misrepresentations by an applicant shall draw maximum penalties under program regulations.

- (2) Gap financing: Projects may receive the difference between the credit equity stated in the original tax credit application, up to ~~\$0.85~~ \$0.80 for every currently reserved federal tax credit dollar, and the committed equity up to ~~15 cents (\$0.15)~~ 12 cents (\$0.12) per currently reserved federal tax credit dollar, ~~and ten cents (\$0.10)~~ Applicants may also apply for up to nine cents (\$0.09) for every California State Credit dollar. For 2009 Credit Ceiling applicants, projects may receive the above amounts in addition to the equity induced by the credits even where the final equity pricing exceeds the application estimate or \$0.80 per federal tax credit dollar. CTCAC shall assure the combination of gap financing and equity does not over-subsidize the project.
- ~~(3)~~ In addition to award amounts described above, TCAC may also award cash to Tax Exempt Bond Projects with current 2007 and 2008 credit reservations that have experienced a drop in their credit rate. TCAC may award cash equaling the shortfall resulting from the placed-in-service credit rate, and 3.42 percent (3.42%).
- ~~(4)~~(3) If a TCAP award would add costs associated with federal requirements the application of federal prevailing wage requirements, CTCAC may adjust the project award by up to 15 percent (15%) of the original application development budget's site work and structures line items to account for the higher costs.
- ~~(5)~~(4) No cash award amount shall exceed \$17 million, except to 2009 Credit Ceiling applicants who may receive a maximum of \$20 million, and Special Needs projects may receive up to \$25 million.

Section 10323(d)(1)

Original Proposed Text:

(d) Application and Award Processes.

(1) Cash in Lieu of Tax Credits for 2007 and 2008 Credit Ceiling Recipients.

2007 and 2008 Credit Ceiling Reservation awardees may apply to CTCAC for an exchange of currently reserved credits for TCAP or Exchange Funds by a date publicly announced by CTCAC. CTCAC shall exchange all returned Credit Ceiling credits into the Secretary of the Treasury as part of its grant election amount. To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed.

CTCAC may award TCAP rather than Exchange Funds to such projects, at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already paying prevailing wages, or where federal funds are a funding source in the project. CTCAC shall condition all awards of TCAP or Exchange Funds upon the following:

The project owner must return their entire current tax credit reservation, including any State Credit reservation to CTCAC.

(A) The TCAP or Exchange Funds recipient must adhere to the original tax credit required placed-in-service and project completion timelines for the project. The CTCAC Executive Director may adjust interim deadlines, including readiness deadlines, to accommodate loan closing schedules associated with these funds.

(B) The project owner must agree to the loan terms described in paragraph (e) below.

Comments Received: A commenter sought a clearer description of "good faith effort" and another suggested allowing partial exchanges of credits for cash. One commenter urged TCAC to fund all cash in lieu of credit requests, while others endorsed the exclusive cash in lieu model for earlier years as maximizing the State's affordable housing resources. Conversely, several commenters urged TCAC to accommodate both partial exchanges and gap financing proposals for 2007 and 2008 9% reservation holders.

Commenter urged TCAC to allow longer placed-in-service deadlines for older 9% projects, while one commenter suggested that TCAC exchange older credits for current-year credits to afford sponsors more time. One additional commenter recommended allowing changes to the originally proposed project.

Response to Comments: TCAC staff proposes text drawn from the State of Washington establishing a good faith effort standard within earlier Section 10323(c)(1). TCAC staff

intends to publicize a sponsor's assertions that they cannot find an equity partner at feasible pricing, and will contact the equity partners documented by the sponsor.

In response to comments, TCAC staff is proposing a new scheme for awarding cash to 2007 and 2008 9% reservation holders. Staff continues to support the policy of expending only cash from prior-year returned credits on prior-year projects. However, staff also acknowledges the public policy merit behind gap financing for projects with an equity partner in the deal. Therefore, new text proposes retrieving credits from projects seeking full cash in lieu of credit awards. This pool of returned credits would then be monetized and awarded to the cash in lieu applicants at \$0.80 for every federal credit originally reserved. The five cent (\$0.05) balance from each exchanged credit, along with any other returned 2007 or 2008 monetized credits, would then constitute the pool of federal cash for which 2007 and 2008 gap financing applicants would compete. An exception to this process would be special needs or SRO projects that may receive \$0.85 per tax credit dollar on a direct exchange basis.

New language explicitly permits applying for a partial award of cash for exchanged credits. In addition, new language permits applicants to seek gap financing to augment equity to be provided by and equity partner.

TCAC staff acknowledges that some federal cash resources beyond the exchange proceeds would be needed for earlier 9% projects that are unable to find an equity partner for reserved state credits. However, outside of this exception, TCAC would continue the policy of only expending monetized returned credits on prior-year 9% projects.

Finally, new regulatory language would allow the Executive Director to extend placed-in-service deadlines where the sponsor has returned all tax credits and TCAC has awarded cash in lieu of credits. In these instances, TCAC believes it is no longer bound by the federal placed in service deadline, but is awaiting clarification from the U.S. Treasury.

Revised Proposed Text:

(d) Application and Award Processes.

(1) Cash in Lieu of Tax Credits for 2007 and 2008 Credit Ceiling Recipients.

2007 and 2008 Credit Ceiling Reservation awardees may apply to CTCAC for an exchange of currently reserved credits for TCAP or Exchange Funds by a date publicly announced by CTCAC. Special Needs or SRO projects applying for cash in lieu of credits must return their credit reservation, and CTCAC shall exchange all such returned credit to the Secretary of the Treasury as part of its grant election amount. CTCAC shall award this federal exchange cash to the applicant Special Needs and SRO projects subject to CTCAC confirming the project's feasibility.

All other 2007 and 2008 applicants may propose exchanging in all or a portion of their reserved credits, or they may propose retaining all of their credits and seeking gap financing. CTCAC shall exchange all returned Credit Ceiling credits into the Secretary of the Treasury as part of its grant election amount. CTCAC shall award \$0.80 per returned credit to cash in lieu of credit applicants. The residual cash CTCAC receives in exchange for credits, \$0.05 per exchanged credit, along with any other non-

exchanged 2007 or 2008 credits returned or recaptured on or before April 30, 2009, shall then be available to applicants to compete for gap financing. CTCAC shall use the competitive scoring under paragraph (2)(C) below.

~~To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed.~~

CTCAC may award TCAP rather than Exchange Funds to such projects, at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already paying prevailing wages, or where federal funds are a funding source in the project. CTCAC shall condition all awards of TCAP or Exchange Funds upon the following:

~~The project owner~~ Project owners seeking cash in lieu of credit awards must return their entire current tax credit reservation, including any reserved State Credit reservation they wish to exchange for cash to CTCAC.

~~(A)~~

The TCAP or Exchange Funds recipient must adhere to the original tax credit required placed-in-service and project completion timelines for the project. The CTCAC Executive Director may adjust interim deadlines, including readiness deadlines, to accommodate loan closing schedules associated with these funds. In addition, the Executive Director may extend placed in service deadlines by up to six (6) months for projects receiving cash in lieu of credit awards.

~~(B) The project owner must agree to the loan terms described in paragraph (e) below.~~

Section 10323(d)(2)

Original Proposed Text:

- (2) 2009 Credit Ceiling reservation recipients.

Within the initial application for Credit Ceiling credits as described in Section 10325, applicants must indicate if they may wish to be considered for a TCAP or exchange fund award. All 2009 Credit Ceiling applicants indicating they may wish to be considered shall be underwritten by CTCAC on an assumption of equity pricing of between 70 cents (\$0.70) and 85 cents (\$0.85) for every dollar of federal credit requested, and between \$0.50 and \$0.60 for every California State Credit requested. Applicants indicating that they do not wish to be considered for a TCAP or exchange fund award may use estimated credit pricing outside of these ranges within their application.

- (A) Successful competitors for 2009 Credit Ceiling awards shall have 45 days, consistent with Section 10325(c)(8), to produce a letter of intent (LOI) from an equity partner. At the end of the 45 days, project sponsors who have executed an LOI with an equity partner for less than estimated in the original application may apply for gap financing on a form provided by CTCAC. CTCAC shall condition all gap financing awards of TCAP or Exchange Funds upon the following:
- (i) CTCAC shall award no more than 15 cents (\$0.15) per federal tax credit dollar and 10 cents (\$0.10) for California State Credits to help fill development funding gaps.
 - (ii) The project owner must agree to the loan terms described in paragraph (e) below.
- (B) If, at the end of the 45 days described in paragraph (A), successful 2009 Credit Ceiling reservation recipients have failed to execute an LOI with an equity partner, the project sponsor may apply for an exchange of credits for a cash award from CTCAC. Exchange applicants would be placed in a competition and scored as described in subsection (C) below for an award of cash in lieu of credits. Current Credit Ceiling reservation recipients must return their reservation before competing for a cash award in lieu of credits. To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. In addition, if successful, competitors shall agree to the following as a condition of receiving a cash commitment:
- (i) CTCAC shall award no more than 85 cents (\$0.85) per federal tax credit dollar and 60 cents (\$0.60) per California State Credit dollar originally reserved.
 - (ii) The project owner must agree to the loan terms described in paragraph (e) below.
- (C) Competitors would be scored and ranked competitively based upon the following criteria alone. All scoring information shall be drawn from the originally scored tax credit application.
- (i) Project type (50 points). Projects would earn points as follows:
 - Special needs projects meeting the requirements of Section 10325(g)(4) 50 points
 - Rural projects meeting the requirements of Section 10315(c) 30 points

- At-risk projects meeting the requirements of Section 10325(g)(5) 30 points
 - Family projects meeting the requirements of Section 10325(g)(1) and senior projects meeting the requirements of Section 10325(g)(2) 10 points
 - All others 0 points
- (ii) Cash award requested (100 points). Projects would earn points based upon the cash requested in inverse relation to total project costs. Lesser cash requests relative to total project costs will garner higher scores. Where “N” equals the percentage the cash request represents relative to total project costs, points = 100-N. (Example: Where the cash request N equals 60% of the project cost, the applicant’s score would be 40.)
- (iii) Average Affordability (100 points). Projects would earn 5 points for every one percent (1%) that the project’s average affordability would be below 60 percent (60%) of Area Median Income (AMI). While CTCAC’s Regulatory Agreement would regulate specific numbers of units at income levels specified in the application, this scoring factor would be based upon a calculation determining the project’s average overall affordability. (Example: A project with an average affordability of 50% of AMI would garner the percentage below 60% (10) times 5 points, or 50 points). An average affordability of 40% of AMI would garner the full 100 points. Units with project-based rental assistance or substantial operating subsidy shall receive points based upon those units serving households at the regulated limit for those subsidies, except that Section 8 units shall be assumed to serve households at 40 percent of AMI.

Comments Received: Several commenters stated that 45 days is not enough time to secure a meaningful Letter of Intent from an equity partner. Commenters suggested allowing from 60 to 90 days, although some commenters urged TCAC to waive a good faith effort period altogether for special needs projects.

Several commenters characterized the gap financing system as being unlikely to induce in equity investments above 70 cents on the tax credit dollar. Commenters suggested an alternative flat gap financing method that would, in essence, “boost” or augment the value of equity brought into a project, regardless of the equity pricing. Specifically, commenters suggested a 10 to 15 cent gap financing assumption be incorporated into the original 2009 Credit Ceiling application process.

Commenters again noted that an exchange at 85 cents on the tax credit dollar is excessive, and ought to be reduced. Other commenters suggested simultaneously scoring

original tax credit applications on both the tax credit scoring and the cash request scoring scheme. This would inform applicants early as to their prospects for a cash award.

TCAC received many suggestions regarding cash competition scoring, including placing a greater emphasis on rental subsidies; refraining from rewarding deeper income targeting; providing a location advantage to non-CRA, Central Valley, Inland Empire, and other regions; emphasizing deeper income targeting more than proposed; adding readiness scoring; weighting project type at 150-points and specifically emphasizing other funding sources such as MHP and MHSA funding; removing family and senior housing as housing type point-earners; eliminating a scoring advantage for special needs and rural projects; rewarding only top set-aside competition winners; deemphasizing lower cash requests; and forgoing a cash award scoring system altogether. Some commenters urged allowing cash in lieu of credit applicants to simply exchange their credits for cash without a competition at all.

Commenters recommended an accelerated process for special needs projects, especially homeless assistance projects. Other commenters urged TCAC forgo requiring cash in lieu of credit applicants from having to turn in their credits to compete. Commenters recommended that TCAC state in regulation how much federal cash resources would be available for the various competitions.

Commenters suggested a scoring advantage for 2009 credit applicants if they indicate that they would not seek a cash award at all. Commenters also suggested a greater emphasis on readiness within the tax credit application process. Specifically, commenters recommended competitive points for projects able to pull a building permit within 30 days of a credit reservation. One commenter specifically commented in opposition to that proposal.

One commenter urged TCAC to clarify that a project fitting more than one project type would only score points associated with one of the types, rather than cumulatively.

One commenter suggested that TCAC require that an originally-deferred developer fee remain deferred and not be paid for out of a federal cash award.

One commenter suggested that only rehabilitation projects proposing significant construction work (\$40,000 or greater per unit) should be eligible for these economic stimulus funds.

Finally, several commenters endorsed the proposed language for project-based Section 8 Housing Assistance Payments, but urged that similar rental assistance programs receive similar treatment. One commenter expressed concern that units would be regulated to the lower rent levels associated with the Section 8 assistance.

Response to Comments: TCAC staff is persuaded that building in a gap financing assumption within a 2009 Credit Ceiling application is better public policy than the originally proposed gap financing scheme. Such a built-in assumption would act as a “boost,” and permit 2009 tax credit applicants to plan on a federal subsidy up front. Staff also agrees that an 85 cent pricing premise in today’s credit equity market is unrealistic, and need not serve as the target subsidy amount outside of special needs and SRO projects.

Staff now proposes a flat gap financing assumption for 2009 applicants, who would then have 90 days to obtain a Letter of Intent under the general tax credit regulations (Section 10325(c)(8)). Only those seeking cash in lieu of credits would adhere to the 45-day schedule for demonstrating that they are unable to attract an equity partner at all.

After considering the numerous and varied comments on the proposed scoring factors, TCAC staff concludes that the proposed system has merit. The vast majority of commenters endorsed a given proposed scoring feature, while expressing concern about another. In summary, staff continues to propose a scoring mix that acknowledges project types most typically unable to locate investors at all; attempts to reward smaller cash requests, including gap funding seekers; and delivers cash subsidies to projects with deeper income targeting. Pursuant to comments received, special needs project would have a separate path to cash in lieu of credits, and SROs are now added to that category of applicants, consistent with the general tax credit regulations' treatment of that housing type.

Staff believes employing a scoring advantage for projects able to obtain a building permit within 30 days could harm otherwise meritorious projects for a minimal additional public benefit. Project sponsors are highly motivated to proceed expeditiously, and over the years TCAC has received numerous recommendations to relax the timeliness scoring factors currently in regulation. For 2009, TCAC did shorten performance timelines, much to the consternation of the development community generally. Tiebreaker and readiness changes as suggested would warrant a broader public discussion and vetting.

TCAC staff is persuaded by the commenter who expressed concern that projects with very little job-creating rehabilitation work could fare well in the second scoring category which compares cash awards requested relative to project costs. Acquisition projects with minimal amounts of proposed rehabilitation could have a systemic advantage over more labor-intensive substantial rehabilitation or new construction projects. A \$40,000 per unit rehabilitation standard is consistent with TCAC's cost efficiency scoring regulation, and would eliminate such an advantage for projects with little economic stimulus effect.

Finally, additional rental assistance sources are now included in the affordability scoring provisions.

Revised Proposed Text:

- (2) 2009 Credit Ceiling reservation recipients.

~~Within the initial application for Credit Ceiling credits as described in Section 10325, applicants must indicate if they may wish to be considered for a TCAP or exchange fund award. All 2009 Credit Ceiling applicants indicating they may wish to be considered shall be underwritten by CTCAC on an assumption of equity pricing of between 70 cents (\$0.70) and 85 cents (\$0.85) for every dollar of federal credit requested, and between \$0.50 and \$0.60 for every California State Credit requested. Applicants indicating that they do not wish to be considered for a TCAP or exchange fund award may use estimated credit pricing outside of these ranges within their application.~~

- (A) ~~Successful competitors for 2009 Credit Ceiling awards shall have 45 days, consistent with Section 10325(c)(8), to produce a letter of intent (LOI) from an equity partner. At the end of the 45 days, project sponsors who have executed an LOI with an equity partner for less than estimated in the original application may apply for gap financing on a form provided by CTCAC. CTCAC shall condition all gap financing awards of TCAP or Exchange Funds upon the following:~~
- (i) ~~CTCAC shall award no more than 15 cents (\$0.15) per federal tax credit dollar and 10 cents (\$0.10) for California State Credits to help fill development funding gaps.~~
 - (ii) ~~The project owner must agree to the loan terms described in paragraph (e) below.~~

For 2009 only, CTCAC shall conduct a single competition for Credit Ceiling tax credit awards. Notwithstanding Section 10325(c)(8), 2009 applicants may apply for readiness points without documenting committed public funding sources, and without documenting items (B) through (D) within the original submitted application. However, applicants must document all such approvals, and the expiration of associated appeal periods, no later than August 17, 2009 to receive the associated readiness points. Similarly, notwithstanding Sections 10325(c)(1)(C), 10325(c)(10), and 10325(f)(8), 2009 applicants may submit a public financing commitment no later than August 17, 2009 and comply with those scoring and basic threshold requirements.

Within the initial application for Credit Ceiling credits as described in Section 10325, applicants may elect to assume a CTCAC cash award of 12 cents (\$0.12) for every federal tax credit dollar requested, and 9 cents (\$0.09) for every California State Credit dollar requested. Equity pricing assumptions within the original Credit Ceiling application shall be no less than 70 cents (\$0.70) for every tax credit dollar, and no less than 50 cents (\$0.50) for every California State Credit dollar requested.

- (A) Successful competitors for 2009 Credit Ceiling awards shall have 90 days, consistent with Section 10325(c)(8), to produce a letter of intent (LOI) from an equity partner.
- (B) If, at the end of the 45 days described in paragraph (A), If, after 45 days and a good faith effort as described in paragraph (c)(1) above, successful 2009 Credit Ceiling reservation recipients have failed to execute an LOI with identify an equity partner, the project sponsor may apply for an exchange a cash in lieu of credits for a cash award from CTCAC. Exchange Special Needs or SRO projects applying for cash in lieu of credits must return their credit reservation, and CTCAC shall exchange all such returned credit to the Secretary of the Treasury as part of its grant election amount. CTCAC shall award this federal exchange cash to the applicant

Special Needs and SRO projects subject to CTCAC confirming the project's feasibility. All other cash in lieu of credits applicants would shall be placed in a competition and scored as described in subsection (2)(C) below for an award of cash in lieu of credits. Current Credit Ceiling reservation recipients must return their reservation before competing for a cash award in lieu of credits. Beyond these funds, CTCAC shall also award additional funds as gap financing or cash in lieu of equity associated with California State Credits up to the applicable loan maximum stated in paragraph (c)(4) above. To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. In addition, if successful competitors shall agree to the following as a condition of receiving a cash commitment:

- (i) ~~CTCAC shall award no more than 85 cents (\$0.85) per federal tax credit dollar and 60 cents (\$0.60) per California State Credit dollar originally reserved.~~
- (ii) ~~The project owner must agree to the loan terms described in paragraph (e) below.~~

(C) Competitors ~~would~~ shall be scored and ranked competitively based upon the following criteria alone. All scoring information shall be drawn from the originally scored tax credit application with supplemental information as requested by CTCAC.

- (i) Project type (50 points). Projects ~~would~~ shall earn points as no more than one project type as follows:
 - Special needs and SRO projects meeting the requirements of Section 10325(g)(4) 50 points
 - Rural projects meeting the requirements of Section 10315(c) 30 points
 - At-risk projects meeting the requirements of Section 10325(g)(5) 30 points
 - Family projects meeting the requirements of Section 10325(g)(1) and senior projects meeting the requirements of Section 10325(g)(2) 10 points
 - All others 0 points
- (ii) Cash award requested (100 points). Projects ~~would~~ shall earn points based upon the cash requested in inverse relation to total project costs. Lesser cash requests relative to total project costs will garner higher scores. Where "N" equals the percentage the cash request represents relative to total project costs, points = 100-N. (Example: Where the cash request N

equals 60% of the project cost, the applicant's score would be 40.) Rehabilitation projects may access these points only if the per-unit rehabilitation hard costs equal \$40,000 or greater.

- (iii) Average Affordability (100 points). Projects ~~would~~ shall earn 5 points for every one percent (1%) that the project's average affordability would be below 60 percent (60%) of Area Median Income (AMI). While CTCAC's Regulatory Agreement ~~would~~ shall regulate specific numbers of units at income levels specified in the application, this scoring factor ~~would~~ shall be based upon a calculation determining the project's average overall affordability. (Example: A project with an average affordability of 50% of AMI would garner the percentage below 60% (10) times 5 points, or 50 points). An average affordability of 40% of AMI would garner the full 100 points. ~~Units with project-based rental assistance or substantial operating subsidy shall receive points based upon those units serving households at the regulated limit for those subsidies, except that Section 8 units shall be assumed to serve households at 40 percent of AMI. Units with project-based rental or operating subsidy such as Section 8, HUD Project Rental Assistance Contracts (PRAC), Mental Health Services Act (MHSA), McKinney Act subsidies, or locally-funded operating subsidy programs shall be assumed to serve households at 40 percent (40%) of AMI, unless regulated at a lower level.~~

Section 10323(d)(3)

Original Proposed Text:

- (3) Recipients of credits for Tax-Exempt Bond Projects.
- (A) Eligible 2007, 2008, and 2009 Tax-Exempt Bond Projects with, as of the application due date, bond allocations or tax-exempt bond applications pending (a) with a current credit reservation and (b) lacking an equity partner, may apply and compete for cash in lieu of tax credits under the process described in subsections (d)(2)(B) and (C) above. To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. Eligible 2007 and 2008 Tax-Exempt Bond Projects with committed equity partners that still have a funding gap may also compete for TCAP or Exchange Funds as gap financing within the same competition as those seeking cash in lieu of credits. Those projects must also have a current bond

allocation or an application pending, a current tax credit reservation, and an executed LOI with an equity partner for less than estimated in the original tax credit application. Successful applicants shall receive either TCAP or Exchange Funds as determined by CTCAC.

- (B) Eligible 2009 Tax Exempt Bond Projects meeting the conditions of preceding paragraph (A) after the application due date required under (A) above, shall similarly compete among themselves for cash in lieu of credits or gap financing under a separate competition. This competition may be held in two rounds during calendar year 2009, and shall also follow the process described in subsections (d)(2)(B) and (C) above.
- (C) CTCAC shall designate an amount of funds available for competitions held only among projects described in (A) and (B) above. Projects shall compete based on the information provided in the original awarded tax credit application and any supplemental information related to TCAC employing the competitive system described in paragraph (d)(2)(C).
- (D) The project owner shall agree to the loan terms described in paragraph (e) below.

Comments Received: Many of the same scoring comments were given for this section as well as in (d)(2). In addition, one commenter urged providing an expressed scoring preference for MHP-funded projects. One commenter urged TCAC to allow projects with a pending 4 percent tax credit application to compete in the earlier Tax Exempt Bond competition. Other commenters suggested that later-2009 4% projects simply compete against 9% cash in lieu of credit applicants for exchange cash.

Other commenters were concerned that projects seeking gap financing would be at an insurmountable advantage against those seeking cash in lieu of credits. One commenter was especially concerned about high-priority 9% projects, such as homeless assistance deals, would be defeated by lower priority 4% projects seeking gap financing.

One commenter did not believe 4% credit reservation holders should qualify for cash in lieu of credit awards at all. Other commenters urge strong competitive advantages for projects with equity partners that are only seeking gap financing.

Response to Comments: Staff concurs with the commenter who argued that 4% competitor would have a systemic advantage over 9% exchange competitors if the two applicant types were combined in a single competition. Therefore, TCAC staff continues to propose a separate, later competition among later-2009 4% credit recipients. In addition to these funds, TCAC shall make available additional federal dollars to offset missing state credit equity.

In addition, TCAC staff agrees with the argument that the competitive round for 2007, 2008, and early-2009 4% projects ought to include pending applications. However, staff's experience anticipates low-quality applications being submitted just to access the cash competition. Therefore, staff recommends allowing projects with other State

funding commitments, such as MHP or MHSA, to compete in the initial competition so long as they have a pending 4% credit application in with TCAC by the cash application deadline.

Revised Proposed Text:

- (3) Recipients of credits for Tax-Exempt Bond Projects.
 - (A) Eligible 2007, 2008, and 2009 Tax-Exempt Bond Projects with, as of the application due date to be publicly announced by CTCAC, bond allocations or tax-exempt bond applications pending (a) with a current credit reservation and (b) lacking an equity partner, may apply and compete for cash in lieu of tax credits under the process described in subsections (d)(2)(B) and (C) above. To be eligible for cash in lieu of credits, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits as described in paragraph (c)(1) above, and that the project remains the same as originally proposed. Eligible 2007, 2008, and 2009 ~~and 2008~~ Tax-Exempt Bond Projects with committed equity partners that still have a funding gap may also compete for TCAP or Exchange Funds as gap financing within the same competition as those seeking cash in lieu of credits. Those projects must also have a current bond allocation or an application pending, a current tax credit reservation, and an executed LOI with an equity partner for less than estimated in the original tax credit application. Projects may apply for either cash in lieu of credits or gap financing if they have a pending tax credit application accepted by CTCAC by the cash application due date referenced above, but only if they have an award of State MHP or MHSA funding. Successful applicants shall receive either TCAP or Exchange Funds as determined by CTCAC.
 - (B) Eligible 2009 Tax Exempt Bond Projects meeting the conditions of preceding paragraph (A) after the application due date required under (A) above, shall similarly compete for cash in lieu of credits or gap financing under a separate competition. This competition ~~may shall~~ shall be held in ~~two~~ an additional rounds during calendar year 2009, and shall also follow the process described in subsections (d)(2)(B) and (C) above.
 - ~~(C) CTCAC shall designate an amount of funds available for competitions held only among projects described in (A) and (B) above. Projects shall compete based on the information provided in the original awarded tax credit application and any supplemental information related to CTCAC employing the competitive system described in paragraph (d)(2)(C).~~
 - ~~(D) The project owner shall agree to the loan terms described in paragraph (e) below.~~

Section 10323(e)**Original Proposed Text:**

- (e) Loan Terms.
- (1) All funds must be expended by February 17, 2012.
 - (2) Loans shall be originated for a term of 55 years. The project owner must execute a Promissory Note secured by a recorded Deed of Trust as required by CTCAC. In addition, the project owner must execute a recorded Regulatory Agreement provided by CTCAC.
 - (3) Under the terms of the Promissory Note and Deed of Trust, loan payments shall be due annually as residual receipts payments. Payments shall be due in the amount of 50 percent (50%) of any residual receipts after non-cumulative preferred residential cash flow to the owner of \$500 per unit, increasing by the Consumer Price Index for All Urban Consumers, West Region, All Items, as published annually by the Bureau of Labor Statistics, United States Department of Labor, and after payment of a non-interest bearing deferred developer fee included in basis, consistent with the conditions of Section 10327(c)(2)(A). Payment of required principal and interest to other public funding sources under the terms of executed loan documents shall be payable prior to loan payments described in this paragraph.
 - (4) Recipients of cash loans in lieu of tax credits shall enter into a binding agreement establishing CTCAC's right of first refusal to purchase the project for its fair market value at the time the owner chooses to sell the project, except for a sale under IRC §42(i)(7). This right is assignable by CTCAC to a third party of its choice, and shall be in effect for the duration of the Regulatory Agreement. This requirement shall not apply to projects receiving gap financing only, as described in paragraph (c)(2) above.
 - (5) The interest rate for any loans authorized under this section shall be zero.
 - (6) CTCAC shall disperse loans provided as gap funding during construction as needed upon receiving evidence that costs have been incurred. CTCAC shall disperse loans provided in lieu of tax credit equity on the following schedule: 30 percent (30%) at construction loan closing as justified by costs; 60 percent (60%) at permanent loan conversion; and (10%) upon stabilized occupancy.

Comments Received:

One commenter urged flexibility regarding complete expenditure since exchange dollars may be subawarded to projects until January 1, 2011.

Commenters requested greater clarity regarding TCAC's planned recordation order, and not to supersede local public funders. One commenter recommended making loans

forgivable, and one suggested that TCAC make grants to nonprofit general partners, who would lend the funds to the partnership.

One commenter asked that the \$500 per unit per annum (PUPA) be clearly stated as the 2009 base to be adjusted annually by the CPI. One commenter argued that \$500 PUPA is too low.

One commenter argued that TCAC's right of first refusal ought to be applied to larger (\$500,000+) gap financing awards as well as cash in lieu of credit awards. Another commenter urged TCAC to defer to a local public lender that approves a buyer. Commenters suggested that the regulations state the sales price as the greater of fair market value or debt recorded against the property. Another commenter asked for greater clarity on the purchase right.

Commenters also recommended strengthening the underwriting minimums for TCAC loans to require a 1.15 to 1 debt service coverage ratio.

Commenters suggested alternative disbursement schedules, including 30% at construction loan closing, 40% at completion, and 30% at stabilized occupancy. Another commenter recommended a more aggressive 50%, 40% 10% pay-in schedule. Others recommended disbursing funds earlier in the construction process generally, especially for RHS Section 538 projects. Finally, commenters recommended holding out less for the final payment, not to exceed the developer fee or \$500,000, whichever is less.

Response to Comments:

TCAC staff concurs that greater specificity regarding cash draws is appropriate, and is adding language regarding the final draw. Staff intended TCAC's federal loans to be subordinate to other public lenders, unless the TCAC loan greatly exceeds the local public loan. Staff is establishing, as a standard, a loan amount exceeding the local funding amount by a factor of two as requiring a senior position for TCAC's Deed of Trust and Regulatory Agreement. Otherwise, TCAC's documents would record junior to the local public lender.

TCAC is not inclined to make loans forgivable and views the proposed terms as very generous and helpful to the project, while maintaining an effective recapture tool if necessary. TCAC staff is taking the advice of commenters urging a 1.15 to 1 debt service coverage ratio.

TCAC believes the originally proposed residual receipts methodology is very generous to project sponsors and other public lenders for a given project.

Finally, TCAC staff continues to recommend the proposed pay-in schedule for large cash in lieu of credit awards, in spite of alternative schedule ideas. The proposed schedule delivers funds in a timely manner, while retaining the involvement of a construction lender and holding back most funds until completion. Staff is proposing limits on how much TCAC would hold back as a final payment.

Revised Proposed Text:

(e) Loan Terms.

The project owner receiving any cash award from CTCAC shall agree to the loan terms described below as applicable.

- (1) All funds must be expended by February 17, 2012.
- ~~(2)~~ All loans shall be underwritten in advance using the applicable financial feasibility standards listed within Section 10327, except that projects must demonstrate a first year debt service coverage ratio of at least 1.15 to 1.
- ~~(2)~~(3) Loans shall be originated for a term of 55 years. The project owner must execute a Promissory Note secured by a recorded Deed of Trust as required by CTCAC. In addition, the project owner must execute a recorded Regulatory Agreement provided by CTCAC.
- ~~(3)~~(4) Under the terms of the Promissory Note and Deed of Trust, loan payments shall be due annually as residual receipts payments. The CTCAC Deed of Trust shall be recorded in a subordinate position relative to principal private lender's Deed of Trust, as well as those of public lenders, unless the CTCAC loan amount is more than twice the amount lent by the public lender. Payments shall be due in the amount of 50 percent (50%) of any residual receipts after non-cumulative preferred residential cash flow to the owner of \$500 per unit, increasing by the Consumer Price Index for All Urban Consumers, West Region, All Items, as published annually by the Bureau of Labor Statistics, United States Department of Labor, and after payment of a non-interest bearing deferred developer fee included in basis, consistent with the conditions of Section 10327(c)(2)(A). Payment of required principal and interest to other public funding sources under the terms of executed loan documents shall be payable prior to loan payments described in this paragraph.
- ~~(4)~~(5) Recipients of cash loans in lieu of tax credits shall enter into a binding agreement establishing CTCAC's right of first refusal to purchase the project for its fair market value at the time the owner chooses to sell the project, except for a sale under IRC §42(i)(7). This right is assignable by CTCAC to a third party of its choice, and shall be in effect for the duration of the Regulatory Agreement. This requirement shall not apply to projects receiving gap financing only, as described in paragraph (c)(2) above.
- ~~(5)~~(6) The interest rate for any loans authorized under this section shall be zero.
- ~~(6)~~(7) CTCAC shall ~~disperse~~ disburse loans provided as gap funding during construction as needed upon receiving evidence that costs have been incurred. CTCAC shall ~~disperse~~ disburse loans provided in lieu of tax credit equity on the following schedule: 30 percent (30%) at construction loan closing as justified by costs; at least 60 65 percent (60 65%) at permanent loan conversion project completion as evidenced by a Certificate of Occupancy for the entire project and 90 percent (90%) occupancy by eligible households as certified by an independent third party.; and (10%) upon stabilized occupancy. CTCAC shall hold back up

to five percent (5%), not to exceed \$500,000 to be payable upon CTCAC approval of final cost certifications and other placed-in-service materials.

**Additional 2009 Proposed
Regulation Changes with Reasons
March 17, 2009**

Section 10317(i)

Original Proposed Change:

- (i) Allocations. The following parameters apply:
- (1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects;
 - (2) The project will be competitively scored under the system delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the ~~third~~ final tie-breaker enumerated at Section 10325(c)~~(12)~~(10) of these regulations;
 - (3) The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credits, without regard to any set-asides or geographic areas, provided they meet the threshold requirements of Section 10326;
 - (4) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;
 - (5) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for tax-exempt bond financed projects if State Credits remain available after funding of competitive projects in the second funding round.

Comments and Recommendation: None received, proceed with proposed changes.

Section 10325(c)(10)

Original Proposed Change:

- (10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed: first, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and second, the highest ratio of committed permanent funds defraying residential costs to total residential project development costs. Permanent funds shall be demonstrated through documentation including but not limited to public funding award letters, committed land donations, or documented local fee waivers; or through commitments from unrelated private financial institutions or consortia of private financial institutions. Such financial institutions could include foundations, but shall not include seller-carry-back financing. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits. For purposes of

~~this tiebreaker, total development costs will not include land costs, unless land donated by a public entity is also being claimed as a permanent funding source.~~ Total development costs for purposes of this tiebreaker shall also exclude budgeted developer fee. TCAC may establish underwriting parameters within its application for private funding sources to assure the reasonableness of the proposed loan amounts. This ratio must not have decreased when the project is placed-in-service or negative points may be awarded.

Comments Received: A commenter urged that land be included in the final tiebreaker denominator, while another commenter advocated accuracy in establishing the value of donated land in the numerator. One commenter asked TCAC to expressly acknowledge the value of leased land with a nominal annual lease payment.

Two commenters stated that investor commitments ought to count as committed permanent funding in the numerator, while two commenters also urged TCAC to take solar installation costs out of the denominator. One commenter suggested, as an alternative, comparing application's Regional Housing Needs Allocation (RHNA) for tiebreaking purposes.

Commenters suggested creating a new, second, tiebreaker rewarding applicants who commit to obtaining a local building permit within 30 days following a preliminary reservation. Commenters also suggested a competitive preference for credit applicants who commit to going forward without any cash assistance from TCAC.

Finally, one commenter urged TCAC to use the same terminology as used in the previous third tiebreaker, "total land costs" when describing what is excluded from the denominator.

Response to Comments: Several comments, on their face, have merit and are worthy of further consideration in the future. The intent behind the originally proposed changes was to clarify the final tiebreaker's terms, except for the treatment of land in the calculation. Therefore, TCAC staff is not proposing including any of the substantive change proposals at this time, but instead will give them more thorough consideration in the future. This would also allow a more thorough public discussion and vetting.

As a previously established policy, TCAC has elected to not count land in the denominator since it would systematically work to the disadvantage of urban infill projects. Clarifying that "total land cost" will be excluded is a meritorious suggestion, as is the clarification that a long-term lease with a de minimis annual payment is the equivalent of donated land.

Including equity envisioned from the tax credits does not further TCAC's interest in encouraging project sponsors to aggressively seek other private and public funding sources beyond those induced in by the credits.

Staff believes employing a scoring advantage for projects able to obtain a building permit within 30 days, especially as a tiebreaker, could harm otherwise meritorious projects for a minimal additional public benefit. Project sponsors are highly motivated to proceed expeditiously, and over the years TCAC has received numerous recommendations to relax the timeliness scoring factors currently in regulation. For 2009, TCAC did shorten performance timelines, much to the consternation of the development community

generally. Tiebreaker and readiness changes as suggested would warrant a broader public discussion and vetting.

Revised Proposed Changes:

(10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed: first, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and second, the highest ratio of committed permanent funds defraying residential costs to total residential project development costs. Permanent funds shall be demonstrated through documentation including but not limited to public funding award letters, committed land donations, or documented project-specific local fee waivers; or through commitments from unrelated private financial institutions or consortia of private financial institutions. Such financial institutions may include foundations, but shall not include seller-carry-back financing. Local land donations include land leased from a public entity for a de minimis annual lease payment. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits. For purposes of this tiebreaker, total development costs will not include total land costs, unless land donated by a public entity is also being claimed as a permanent funding source. Total development costs for purposes of this tiebreaker shall also exclude budgeted developer fee. CTCAC may establish underwriting parameters within its application for private funding sources to assure the reasonableness of the purposed loan amounts. This ratio must not have decreased when the project is placed-in-service or negative points may be awarded.

List of Commenters:

1. Stacy Altman, USA Properties
2. Kyle B. Arndt, Bocarsly Emden Cowan Esmail & Arndt LLP
3. Lance Bocarsly, Bocarsly Emden Cowan Esmail & Arndt LLP
4. Dan Beaton, City of San Jose Housing Department
5. Evan Becker, San Diego Housing Federation
6. Doug Bigley, President, Urban Housing Communities
7. Barney Deasy, Merit Capital
8. Elissa Dennis, Community Economics
9. Jacquelyn Dupont-Walker, President, Ward Economic Development Corporation
10. Terry Coyne, Director Development, Community Preservation Partners
11. Scott Ehrlich, Inside Development
12. Perla Eston, Inclusive Homes
13. Don Falk, Executive Director, Tenderloin Neighborhood Development
14. Janet Faulk, Vice President Real Estate Development, Mercy Housing California
15. Karoleen Feng, East Bay Asian Local Development Corporation
16. Karen Flock, Real Estate Development Director, Cabrillo Economic Development Corporation
17. Tim Fluetsch, Dawson Holdings, Inc.
18. Matthew O. Franklin, President, Mid-Peninsula Housing Coalition
19. Danny Fred, Fred Consulting Associates
20. Carol Galante, President and CEO, BRIDGE Housing Corporation
21. Channa Grace, W.O.R.K.S.
22. Elva Grant, Executive Director, Housing Alternatives, Inc.
23. Matt Heurta, South County Housing Corporation
24. Rachel Iskow, Executive Director, Sacramento Mutual Housing Association
25. Mary Kaiser, President, California Community Reinvestment Corporation
26. Salim Karimi, ADI, Inc.
27. Christopher Kaufman, Highland Property Development
28. Jonathan Klein, Vice President, Union Bank
29. Kevin Knudtson, , Community Economics
30. Leslye Krutko, Director of Housing, City of San Jose Department of Housing
31. June LaDuke
32. Jon Lalanne, CFO, Preservation Partners Development
33. William Leach, Palm Desert Development Company
34. Lynette Lee, Executive Director, East Bay Asian Development Corporation
35. Ben Lingo, Links Realty
36. Felicity M. Lyons, Housing & Community Development Specialist, California Coalition for Rural Housing
37. Richard Mandel, Director of Financial Consulting, California Housing Partnership Corporation

38. Neil McGuffin, Corporation on Support of Housing
39. Lee Milman, Director of Housing, A Community of Friends
40. Ajit Mithaiwala
41. William M. Moore, General Partner, Moore Development Inc.
42. Arjun Nagarkatti, AMCAL Multi-Housing, Inc.
43. Jacques Palham, BRIDGE Housing Corporation
44. Kevin Payne, Payne Development
45. Ray Pearl, Executive Director, California Housing Consortium
46. Stephen M. Pelz, Executive Director, Housing Authority of the County of Kern
47. Jeanne Peterson, Principal
48. Holly Phillips, Vice President of Housing Development, Abode Communities
49. Caleb Roope, President and CEO, Pacific West Communities/The Pacific Companies
50. Joel Rubenthal, Community Economics
51. Stephen C. Ryan, Cox, Castle & Nicholson, LLP
52. Susan M. Reynolds, President and CEO, Community Housing Works
53. Patrick Sabelhaus, Board Secretary, California Council for Affordable Housing
54. Daniel Sawislak, Executive Director, Resource for Community Development
55. Tom Scott, Executive Director, San Diego Housing Federation
56. John Seymour, National Community Renaissance
57. Richard Shea, PNC
58. Wendy Silver-Egnater, Corporation for Better Housing
59. James Silverwood, President, Affirmed Housing Group
60. Dianne J. Spaulding, Executive Director, The Non-Profit Housing Association of Northern California
61. Keith Stanley, Horizon Development Consulting
62. Eve Stewart, Affordable Housing Associates
63. Nate Stewart, Burbank Housing
64. Elisa Stipkovich, Executive Director, City of Anaheim Community Development
65. William E. Szymczak, Managing Partner, Preservation Partners Development
66. Alice Talcott, Community Economics
67. Ronne L. Thielen, Managing Director, Centerline Capital Group
68. Jennifer Thomas, Housing Authority of the City of Los Angeles
69. Suzanne Vice, Director, National Affordable Housing Trust
70. Richard Washington, Vice President of Business Development, Retirement Housing Foundation
71. Rob Weiner, Executive Director, California Coalition for Rural Housing
72. Jeff Weiss, Alliance Capital
73. Anne Wilson, Vice President for Housing and Real Estate Development, Community Housing Works
74. Kyle Winning, Steadfast Residential

75. William Witte, President, Related California
76. Dan Wu, Interim Executive Director, Charities Housing
77. Holly Wunderstyle, Sacramento Mutual Housing
78. David Yarden, Vice President Project Finance, AMCAL
79. Malcolm Yeung, China Town Community Development
80. Paul Zimmerman, Executive Director, Southern California Association of NonProfit Housing
81. Allied Pacific Development LLC
82. AWI Management Corporation
83. Basis Architecture and Consulting Inc.
84. CBM Group
85. Community Preservation Partners
86. Highland Property Development LLC
87. Hyder & Company
88. Law Offices of Patrick R. Sabelhaus
89. Micon Real Estate
90. The Pacific Companies
91. PAM Companies
92. PAM Development, Inc.
93. PATH Ventures
94. Pillsbury Winthrop Shaw Pittman LLP
95. United States of America Department of Agriculture, Rural Development
96. WNC & Associates, Inc.