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DATE: April 27, 2009
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Proposed Regulation Changes: Responses to Additional Comments

On April 16, 2009 California Tax Credit Allocation Committee (TCAC) staff released proposed regulations for adoption at the upcoming April 30, 2009 Committee meeting. Since the release of that version, TCAC staff has received thoughtful suggestions for improving the draft before consideration by the Committee. Staff has considered and incorporated some of those comments as reflected in the attached draft. In summary, the changes are as follows:

1. Clarify language describing eligible projects and reference a later description of post September 30, 2009 projects being eligible for exchange dollars. **Section 10323(b), (b)(1), and (b)(2); page 1.**
2. Clarify possible AB 55 related lending to allow bridge loans and to require repayment of any such TCAC loan by the State Department of Housing and Community Development. **Section 10323(b)(3), page 2.**
3. Reorganize and clarify different per-credit loan amounts for pre-2009 versus 2009 credit recipient projects. Calibrate pre-2009 assistance to 85 cents on the tax credit dollar, while leaving 2009 project assistance calibrated at 80 cents. Similarly calibrate cash for State credits at 60 cents on the State tax credit dollar, for pre-2009 projects, while leaving 2009 project assistance at 55 cents. Also clarify that gap financing for 2009 Credit Ceiling applicants is not constrained by a maximum credit-plus-cash amount per credits reserved. **Section 10323(c)(1) and (c)(2), page 2.**
4. Eliminate uncertainty by explicitly including Homeless Assistance projects with Special Needs and SRO projects throughout the regulation. **Section 10323(c)(4), et. seq., page 3.**
5. Make conforming changes reflecting that 2007 and 2008 cash in lieu of credit recipients would receive up to 85 cents in cash for each federal Credit Ceiling dollar, and no residual exchange cash would be available for a gap financing competition. Instead, returned Credit Ceiling credits plus some TCAP funding would be available for gap financing for such pre-2009 projects. **Section 10323(d)(1), page 3.**

6. Clarify that TCAC may consider the affects of TCAP funding beyond just prevailing wage impacts. **Section 10323(d)(1), page 4.**
7. Clarify that 2009 credit recipients requesting cash in lieu of credits must demonstrate project feasibility by submitting materials as requested by TCAC. Also clarify that State credit must be returned when requesting cash in lieu of credits. **Section 10323(d)(2)(B), page 5.**
8. Clarify that pre-2009 Tax Exempt Bond Projects may apply for the first competitive round with a pending tax credit application if they also possess an HCD program or MHSA funding award. **Section 10323(d)(3)(A), page 8.**
9. Establish that recaptures for uncorrected noncompliance would be proportionate to the scale and duration of the noncompliance. A scale will be established and incorporated into executed documents, and calibrated to a 15-year compliance standard. **Section 10323(e)(8), page 9.**

TCAC staff thanks those who provided helpful recommendations, and believe the changes reflected herein contribute to a better, more clearly described program. Staff is also aware of trepidation among some stakeholders at the pace and timing of these regulation changes. Staff and the Committee are keenly aware of the critical timelines associated with the underlying federal programs, and of the time critical nature of the economic stimulus affects these dollars could have in California during these difficult times. Staff will continue to view these regulations as iterative and will continue to invite feedback while we implement these programs.

Thank you for your interest in, and support of TCAC's efforts in this matter.

Attachment

American Recovery and Reinvestment Act of 2009
Proposed Regulation Changes
April 27, 2009

Section 10323

Proposed Change: Add the following new Section 10323

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 financing only.

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

- (b) Eligible Projects

Applicants for cash awards, 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, except as provided in paragraph (b)(2) below, 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 with current 2007 or 2008 credit reservations 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 receiving a 2009 credit reservation 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~~ the State Department of Housing and Community Development, 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.

(c) Award Amounts.

- (1) Cash in lieu of credits: ~~Projects Special Needs and SRO projects 2007 and 2008 credit recipients~~ 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.

~~All other~~ 2009 credit recipient 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 award amount if a final cost certification would have resulted in a reduced 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 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: 2007 and 2008 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 per federal tax credit dollar. 2007 and 2008 applicants may also apply for up to 10 cents (\$0.10) for every California State Credit dollar, up to the credit equity stated in the original application, not to exceed \$0.65 per California State Credit dollar.

~~Projects~~ 2009 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 received 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 received a maximum of \$20 million, and Special Needs, Homeless Assistance, or SRO projects may receive up to \$25 million.

(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 a portion or all currently reserved credits for TCAP or Exchange Funds by a date publicly announced by CTCAC, and for an amount specified in (c)(1) above. 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. A portion of TCAP funding, 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 subject to federal requirements, such as 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:

~~(C)~~

~~The project owner~~ Project owners seeking cash in lieu of 100% of their credit awards must return their entire current tax credit reservation, including any reserved State Credit reservation to CTCAC.

~~(D)~~

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.

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

(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.~~

- ~~(C) 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 All projects applying for cash in lieu of credits shall submit materials requested by CTCAC, including evidence that the project would be financially feasible with the requested amount of cash in lieu of credits. Special Needs, Homeless Assistance, or SRO projects applying for cash in~~

lieu of credits must return their federal and any State credit reservation, and CTCAC shall exchange all such returned federal 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, Homeless Assistance, 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~~, Homeless Assistance, 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, except for At-Risk 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 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 CTCAC-approved locally-funded operating subsidy programs shall be assumed to serve households at 40 percent (40%) of AMI, unless regulated to a lower level.
- (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 and deemed complete by CTCAC by the cash application due date referenced above, but only if they have an award of State ~~MHP~~ HCD 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 among themselves for cash in lieu of credits or gap financing under a separate competition. This competition ~~may 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.~~

(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 the 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 65 percent (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 certification and other placed-in-service materials.~~
- (8) All executed loan agreements and regulatory agreements shall reflect recapture provisions for defaults on the regulatory agreement. The terms of recapture shall be proportionate to the scale and duration of the uncorrected noncompliance relative to a 15-year initial compliance period.