STATE OF CALIFORNIA

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DATE: September 3, 2009

TO: Low Income Housing Tax Credit Stakeholders

FROM: William J. Pavão, Executive Director

SUBJECT: Proposed Regulation Changes

Attached for public review and comment are a small set of proposed regulation changes associated with the California Tax Credit Allocation Committee's (TCAC's) administering American Recovery and Reinvestment Act of 2009 (ARRA) funds. The changes are generally either accommodating federal decisions since adoption of the current regulations, or accounting for circumstances that have arisen as TCAC has begun to award and administer ARRA resources.

This summary memorandum highlights the proposed changes that would go to the Committee for their adoption later this month. TCAC staff will conduct a public hearing to discuss and solicit comments on these and earlier released changes as follows:

Tuesday	Room 587
September 17, 2009	915 Capitol Mall, Sacramento,
	9:00 a.m. to 12:00 noon

Please see the public hearing notice on TCAC's website at http://www.treasurer.ca.gov/ctcac/.

The following is a list of the proposed changes, with page references to the draft regulation changes <u>without</u> an accompanying statement of reasons:

1. Permit TCAC to award Section 1602 funds to Tax Exempt Bond credit applications for projects receiving reservations after federal fiscal year 2009. **Section 10323(b)(2), page 1.**
2. Permit TCAC to award small amounts of nine percent (9%) credits rather than leave a small amount of four percent (4%) credits in a project originally cast as a Tax Exempt Bond Project. **Section 10323(c)(1), page 2.**
3. Broaden TCAC's authority to help offset prevailing wage costs where ARRA funds are the sole invoking source, and relocate language describing TCAC's ability to award either TCAP or Section 1602 funds to an applicant. **Section 10323(c)(3), page 3.**
4. Relocate interchangeability language to paragraph (c)(3) where it is more broadly applicable. **Section 10323(d)(1), page 3.**

5. Add 100 percent project-based rental assistance to the scoring category receiving 25 points within the competitive ARRA system. **Section 10323(d)(2)(C)(iv), page 6.**
6. Permit TCAC to award ARRA funds as cash in lieu of credits for a portion of retained 4% tax credits. **Section 10323(d)(3)(C), page 6.**
7. Delete references to advanced asset management fees, and NEPA and Davis Bacon oversight fees. **Section 10323(f), page 8.**

Also attached are the proposed changes in ~~strikeout~~ and <u>underline</u> format, with reasons accompanying each proposed change.

Attachments

California Tax Credit Allocation Committee
Proposed Regulation Changes with Reasons
September 3, 2009

Section 10323(b)(2)

Proposed Change:

(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 ~~ARRA~~ TCAP funds. Projects receiving Credit Ceiling or Tax Exempt Bond credit reservations in calendar year 2009 are eligible for Section 1602 Funds, if exchange authority remains, under the conditions described in paragraph (d) below.

Reason: The proposed changes would permit TCAC to award Section 1602 funds to projects receiving credit reservations after federal fiscal year (FFY) 2009. Federal rules only limit TCAP funds to FFY 2009 credit recipients, while Section 1602 funds have no such restriction. Enlarging the potential applicant pool may permit TCAC to award ARRA funds to more recent projects competing successfully for available Section 1602 funds.

Section 10323(c)(1)

Proposed Change:

(c) Award Amounts.

(1) Cash in lieu of credits: 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.

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 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.

Where TCAP funds are awarded as cash in lieu of credits, the project shall retain at least $100 of annual federal Low Income Housing Tax Credits. For Tax Exempt Bond

Projects CTCAC may elect, upon request by the project sponsor, to award Credit Ceiling credits for such minimal amounts rather than the originally-reserved credits. In addition, such projects shall also demonstrate a good faith effort has been made to sell as many of the originally awarded credits as circumstances and market conditions allow. However, if a developer cannot use and sell all of the tax credits, a written agreement that requires compliance with Low Income Housing Tax Credit and TCAP requirements for the period required by Section 42 of the Internal Revenue Code must be entered into by the project owner, along with an extended use agreement.

Reason: TCAC staff is aware of several four percent (4%) projects where construction lending sources other than tax exempt bonds would be most beneficial to the project. In such cases, leaving a small amount of 4% credits would require the project sponsor to use tax exempt bond proceeds for construction financing. Tax exempt bonds' marginally lower interest rates may be more than offset by additional transaction costs. In addition, administrative challenges such as the "fifty percent test" could actually interfere with the timely delivery of ARRA funds in conformance with federally mandated timelines.

For these reasons, TCAC proposes reserving small amounts of nine percent (9%) credit for such projects instead of 4% credits. This would meet the federal TCAP requirement, and accommodate construction financing sources other than tax exempt bond proceeds. TCAC staff will assure that any transaction cost savings are reinvested in the project, or used to reduce other project financing costs.

To date, TCAC has made nine (9) cash-in-lieu-of-credits awards to 4% reservation holders. If all nine projects requested 9% credits instead of 4% credits, TCAC would award a total of $900 in annual federal credit. Assuming the requesting project number doubles before year-end, TCAC would expend $1,800 out of over $83 million available in 2009 for this purpose.

TCAC staff believes the administrative and transaction cost savings available through this di minimis use of Credit Ceiling resources is beneficial.

Section 10323(c)(3)

Proposed Change:

(3) If ~~a TCAP~~ an ARRA award would add costs associated with 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. In such cases, the project sponsor must retain, or have on staff, subject matter experts to assist in complying with prevailing wage and other federal requirements. CTCAC may award TCAP or Section 1602 Funds to projects at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already subject to related requirements, such as paying prevailing wages, or where federal funds are a funding source in the project.

Reason: The proposed change broadens TCAC's authority to provide additional resources to defray unanticipated prevailing wage costs. As these regulation changes are being authored, TCAC is awaiting the U.S Department of Treasury's (Treasury's) final decision regarding permissible loan terms. If Treasury requires 15-year forgivable loans that invoke California state prevailing wage requirements, the proposed language would permit TCAC to augment the ARRA loan accordingly.

New text added to the paragraph would relocate language from Section 10323(d)(1) to this more generally applicable paragraph.

Section 10323(d)(1)

Proposed Change:

(d) Application and Award Processes.

(1) 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 ARRA Funds by a date publicly announced by CTCAC, and for an amount specified in (c)(1) above.

All other 2007 and 2008 applicants may propose retaining all of their credits and seeking gap financing. 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.

~~CTCAC may award TCAP rather than Section 1602 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 ARRA Funds upon the following:

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 to CTCAC.

The ARRA 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, at his or her sole discretion, may exchange a 2008 Credit Ceiling reservation for 2009 Credit Ceiling credits. The Executive Director must find that circumstances beyond the project sponsor's control have delayed the project and warrant the extension of the placed in service date. Finally, the Executive Director may extend placed in service deadlines by up to six (6) months for projects receiving cash in lieu of credit awards.

Reason: The stricken provision would be relocated to Section 10323(c)(3). This would clearly describe TCAC's ability to award TCAP or Section 1602 funds to any Credit Ceiling or Tax Exempt Bond project as appropriate. The current location of the stricken text appears to apply only to pre-2009 nine percent projects.

Section 10323(d)(2)(C)

Proposed Change:

(C) Competitors 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 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 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 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 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 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.

~~(D)~~ (iv) For Tax Exempt Bond Projects only, 25 points shall be awarded for projects with tax credit reservations in 2008 who lost their DDA status in 2009, and for projects wherein 100 percent (100%) of the project's units would be assisted with committed project-based rental assistance.

Reason: The proposed change would award 25 additional points for four percent (4%) projects competing for ARRA funds with committed rental assistance for 100 percent of the restricted units. A twenty-five point bonus to such projects would recognize the benefits of project based rental assistance to extremely low-income households. The combination of ARRA funding with locally-administered rental assistance results in affordable rents to those most in need throughout California. In addition, rental assistance mitigates concerns regarding project feasibility when TCAC encourages deeper income targeting. Such a combination of public policy benefits warrants a scoring advantage.

Section 10323(d)(3)(C)

Proposed Change:

(C) CTCAC may, at its sole discretion, award ARRA funds as cash in lieu of credits to Tax Exempt Bond Projects for a portion of the credits ultimately allocated to the project. CTCAC may agree to such an award where an equity partner would utilize a portion of the retained credits, while the general partner would agree not to utilize the balance of the allocated credits.

Reason: An equity partner may be willing to invest in a project for Low Income Housing Tax Credits, except for the associated proportionate losses against taxable income. In such cases, TCAC could accommodate a structure wherein the equity partner's proportionate ownership interest permits reasonable losses while inducing in maximum private equity.

Section 10323(f)

Proposed Change:

(f) Fees.

~~(1) CTCAC may charge ARRA fund recipients a advanced asset management fee of up to $10,000. Where the California Housing Finance Agency (CalHFA) performs NEPA advanced asset management services under the terms of an Interagency Agreement with CTCAC, CalHFA may charge a fee based upon a percentage of the ARRA loan amount. CalHFA shall publish its percentage fee structure on their website. For gap financing loans, CalHFA shall charge no more than $10,000. For cash in lieu of credit loans, CalHFA shall charge no more than $25,000.~~

~~(2)~~ CTCAC may charge an ARRA funds recipient an asset management fee for such services. This fee may be in the form of an annual charge during the project's regulatory term, or may be charged at or about project completion. In the event CTCAC contracts out for asset management services, the contracted entity may charge the sponsor an asset management fee directly.

~~(3) CTCAC may charge a TCAP funds recipient a fee of up to $3,000 to oversee compliance with federal requirements, and $3,000 to oversee compliance with federal Davis Bacon prevailing wage requirements.~~

Reason: The proposed changes adhere to definitive federal guidance that all such fees are impermissible. TCAC now intends to defray these costs with existing resources, including fees already collected from these projects as tax credit reservation holders.

Proposed Regulation Changes
September 3, 2009

Authority: Section 50199.17, Health & Safety Code.
Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code

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 (Section 1602 Funds) to projects awarded Low Income Housing Tax Credits. The provisions of this section shall refer to the two federal funding sources collectively as ARRA Funds. 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 it 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, ARRA Funds, must have a current reservation of federal Low Income Housing Tax Credits for a project awarded credits in federal fiscal year 2007, 2008, or 2009, except as provided in paragraph (b)(2) below. To be eligible for ARRA funds, projects must be expected to be completed by February 16, 2012. In addition, all ARRA fund recipients must be prepared to close all construction period financing and begin construction within 120 days of award. In addition, the project sponsor shall assure adherence to this requirement by entering into a contractual obligation to CTCAC to perform according to a draw schedule, and by providing CTCAC monthly updates as to the project's progress. Eligible projects are as follows:

(1) 2007 and 2008 awardees: Projects with current 2007 or 2008 Credit Ceiling allocations are eligible for ARRA Funds. Tax-Exempt Bond Projects with current 2007 or 2008 credit reservations are also eligible for ARRA Funds under the conditions described in paragraph (d)(3)(A) below.

(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 ~~ARRA~~ TCAP funds. Projects receiving Credit Ceiling or Tax Exempt Bond credit reservations in calendar year 2009 are eligible for Section 1602 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 shall be provided in a manner and at the minimum amount required to generate adequate construction period financing. Any funds provided may be conditioned upon repayment by the State Department of Housing and Community Development (HCD) at the earliest opportunity that general obligation proceeds or AB 55 loans become available. These funds shall remedy gaps in construction-period financing, and may be in addition to funds mitigating equity gaps as described below.

CTCAC shall set aside no more than $100 million in ARRA Funds for MHP, SHP, and Homeless Youth projects with signed HCD financing commitments that have yet to commence construction. Funds shall be committed from this set-aside to generate adequate construction financing, in concert with cash in lieu or gap financing awards. Within the Tax Exempt Bond Project competition described in paragraph (d)(3)(A), applicants may request zero ARRA funds where no equity gap exists, and apply for funds to assist with construction period financing only. Such applications would receive 100 points under the scoring factor listed at (d)(2)(C)(ii). Similarly, Credit Ceiling projects lacking an equity gap may also apply for ARRA funds solely to assist with gaps in construction period financing due to HCD funding. Credit Ceiling projects shall be of higher priority than Tax Exempt Bond projects in the event ARRA funds are oversubscribed for filling HCD construction financing gaps

(c) Award Amounts.

(1) Cash in lieu of credits: 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.

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 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.

Where TCAP funds are awarded as cash in lieu of credits, the project shall retain at least $100 of annual federal Low Income Housing Tax Credits. <u>For Tax Exempt Bond</u>

Projects CTCAC may elect, upon request by the project sponsor, to award Credit Ceiling credits for such minimal amounts rather than the originally-reserved credits. In addition, such projects shall also demonstrate a good faith effort has been made to sell as many of the originally awarded credits as circumstances and market conditions allow. However, if a developer cannot use and sell all of the tax credits, a written agreement that requires compliance with Low Income Housing Tax Credit and TCAP requirements for the period required by Section 42 of the Internal Revenue Code must be entered into by the project owner, along with an extended use agreement.

(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.

2009 projects may receive up to 12 cents ($0.12) per currently reserved federal tax credit dollar. 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 per federal tax credit dollar. CTCAC shall assure the combination of gap financing and equity does not over-subsidize the project.

(3) If ~~a TCAP~~ an ARRA award would add costs associated with 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. In such cases, the project sponsor must retain, or have on staff, subject matter experts to assist in complying with prevailing wage and other federal requirements. CTCAC may award TCAP or Section 1602 Funds to projects at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already subject to related requirements, such as paying prevailing wages, or where federal funds are a funding source in the project.

(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, Homeless Assistance, or SRO projects may receive up to $25 million.

(d) Application and Award Processes.

(1) 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 ARRA Funds by a date publicly announced by CTCAC, and for an amount specified in (c)(1) above.

All other 2007 and 2008 applicants may propose retaining all of their credits and seeking gap financing. 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.

~~CTCAC may award TCAP rather than Section 1602 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 ARRA Funds upon the following:

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 to CTCAC.

The ARRA 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, at his or her sole discretion, may exchange a 2008 Credit Ceiling reservation for 2009 Credit Ceiling credits. The Executive Director must find that circumstances beyond the project sponsor's control have delayed the project and warrant the extension of the placed in service date. Finally, the Executive Director may extend placed in service deadlines by up to six (6) months for projects receiving cash in lieu of credit awards.

(2) 2009 Credit Ceiling reservation recipients.

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. In addition, notwithstanding Section 10328(d), 2009 Credit Ceiling recipients must submit an application for a carryover allocation by November 20, 2009.

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, after 60 days and a good faith effort as described in paragraph (c)(1) above, successful 2009 Credit Ceiling reservation recipients have failed to identify an equity partner, the project sponsor may apply for a cash in lieu of credits award from CTCAC. 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. However, to qualify for a noncompetitive exchange of ARRA funds for credits, the project sponsor must have at least five (5) years' experience providing such housing for Special Needs, Homeless Assistance, and/or SRO populations. All other cash in lieu of credits applicants 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.

(C) Competitors 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 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 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 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 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 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.

~~(D)~~ (iv) For Tax Exempt Bond Projects only, 25 points shall be awarded for projects with tax credit reservations in 2008 who lost their DDA status in 2009, and for projects wherein 100 percent (100%) of the project's units would be assisted with committed project-based rental assistance.

(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, previously awarded tax-exempt bond allocations that have been returned to CDLAC 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 Tax-Exempt Bond Projects with committed equity partners that still have a funding gap may also compete for ARRA 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 HCD or MHSA funding. Successful applicants shall receive either ARRA 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 shall be held in an additional round during calendar year 2009, and shall also follow the process described in subsections (d)(2)(B) and (C) 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), except that Special Needs projects need not meet the 75 percent requirement contained in Section 10325(g)(4).

(C) CTCAC may, at its sole discretion, award ARRA funds as cash in lieu of credits to Tax Exempt Bond Projects for a portion of the credits ultimately allocated to the project. CTCAC may agree to such an award where an equity partner would utilize a portion of the retained credits, while the general partner would agree not to utilize the balance of the allocated credits.

(4) Executive Director's discretion to award remaining funds.

If, following the award processes described in paragraphs (d)(1) though (d)(3) above, CTCAC has a surplus of either ARRA funds or Credit Ceiling credits, the Executive

Director may take extraordinary measures to assure that all funds and credits are awarded and allocated by year-end. Such extraordinary measures include:

(A) If Credit Ceiling credits remain with insufficient time for a waiting list award pursuant to Section 10325(c)(h), the Executive Director may declare a project possessing a Credit Ceiling reservation a Difficult to Develop Area (DDA) project and deliver additional federal Credit Ceiling credits in lieu of the reserved California State Credits. The Executive Director must attempt to minimize project disruption by first conferring with the project sponsor, and must also report such an action to the Committee at its next convened meeting.

(B) If ARRA funds are recaptured or remain uncommitted at year-end, the Executive Director may offer such funds, first, to the next unfunded applicant competing under Section (d)(2)(B) above. If the requested cash in lieu of credit amount significantly exceeds the requested ARRA funds, the Executive Director may move down the ranked list of unfunded projects to the next ranked project seeking less than or approximately the amount available.

(C) If no remaining projects on the unfunded ranked list described in preceding paragraph (B) requested less than or approximately the amount of ARRA funds remaining, the Executive Director may award remaining ARRA funds to the next ranked project competing under Section (d)(3)(A) above.

(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.

(3) Loans shall be originated for a term of 55 years, except for HCD backfill loans described under paragraph (b)(3) where the loan will be due upon HCD's earliest opportunity to repay. 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. TCAC may agree to extending the loan term, and may agree to an assumption by a proposed new property owner.

(4) Under the terms of the Promissory Note and Deed of Trust, the loan shall be deferred for the full term. 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.

(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.

(6) The interest rate for any loans authorized under this section shall be zero.

(7) In the event the United States Department of Treasury specifies other loan terms for Section 1602 funds, those terms would supersede any provisions contained herein where those funds are the source of ARRA financing.

(8) CTCAC shall disburse loans provided as gap funding during construction as needed upon receiving evidence that costs have been incurred. CTCAC shall disburse loans provided in lieu of tax credit equity on the following schedule: 40 percent (40%) at and following construction loan closing as justified by costs; at least 35 percent (35%) at project completion as evidenced by a Certificate of Occupancy for the entire project; and 25 percent (25%) minus a hold-back at 90 percent (90%) occupancy by eligible households as certified by an independent third party. CTCAC shall hold back up to $300,000 to be payable upon CTCAC approval of final cost certification and other placed-in-service materials. CTCAC may accelerate or depart from this described disbursement schedule at the sole discretion of the Executive Director and as expressed under the terms of a tri-party agreement with other lenders and the project sponsor.

Finally, at the sole discretion of the Executive Director, CTCAC may accelerate payment in order to conform with federal expenditure deadlines.

(9) 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, consistent with guidance provided by the U.S. Department of Treasury for Section 1602 financed projects. If, following an ARRA application and award, a sponsor syndicates and sells a portion of their ownership interest to a partner seeking tax losses associated with the project, and such syndication was not set forth in the original ARRA application, nine-tenths of the gross proceeds of that sale shall be remitted to CTCAC as recaptured ARRA funds.

(f) Fees.

~~(1) CTCAC may charge ARRA fund recipients a advanced asset management fee of up to $10,000. Where the California Housing Finance Agency (CalHFA) performs NEPA advanced asset management services under the terms of an Interagency Agreement with CTCAC, CalHFA may charge a fee based upon a percentage of the ARRA loan amount. CalHFA shall publish its percentage fee structure on their website. For gap financing loans, CalHFA shall charge no more than $10,000. For cash in lieu of credit loans, CalHFA shall charge no more than $25,000.~~

~~(2)~~ CTCAC may charge an ARRA funds recipient an asset management fee for such services. This fee may be in the form of an annual charge during the project's regulatory term, or may be charged at or about project completion. In the event CTCAC contracts out for asset management services, the contracted entity may charge the sponsor an asset management fee directly.

~~(3) CTCAC may charge a TCAP funds recipient a fee of up to $3,000 to oversee compliance with federal requirements, and $3,000 to oversee compliance with federal Davis Bacon prevailing wage requirements.~~