

**2010 Proposed
Regulation Changes with Reasons
June 4, 2010**

Proposed Change:

Section 10323(a):

Section 10323. ~~American Recovery and Reinvestment Act of 2009~~ The American Jobs and Closing Tax Loopholes Act of 2010

- (a) General. Under the authority granted by The American Jobs and Closing Tax Loopholes Act of 2010 ~~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 in calendar year 2010. ~~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 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.~~

Under the authority granted by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or ARRA, the California Tax Credit Allocation Committee (CTCAC) may subaward Tax Credit Assistance Program (TCAP) funds and Section 1602 funds as described in paragraph (d)(2) below.

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

Reason: Proposed changes would re-title the regulation section governing the California Tax Credit Allocation Committee's (TCAC's) administration of the federal exchange program. Additional changes would refer to 2010 tax credit recipients as intended sub-awardees.

Changes would also delete references to TCAP and Section 1602, program features authorized under ARRA. By deleting the last sentence in the first paragraph, TCAC staff proposes eliminating the ability to defer to equity partners' underwriting standards. TCAC has yet to exercise the existing authority, and finds it unnecessary generally since other parties to the project financing are using standards at least as rigorous as TCAC's.

Finally new text would leave TCAC with the administrative ability to subaward any earlier ARRA funds returned or recaptured in the future.

Proposed Change:

Section 10323(b):

(b) Eligible Projects

Applicants for federal cash awards, ~~ARRA Funds~~, must have a current reservation of federal Low Income Housing Tax Credits for a project awarded Credit Ceiling credits in calendar year 2010. ~~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~~ December 31, 2012. In addition, all ~~ARRA fund recipients~~ sub-awardees 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:~~

Projects receiving Credit Ceiling or Tax Exempt Bond credit reservations in calendar year 2009 are eligible for earlier ARRA Funds, if federal authority remains, under the conditions described in paragraph (d)(2) below.

- ~~(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 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.~~

Reason: Proposed edits update outdated ARRA references to federal cash references. In addition, proposed changes would limit new federal exchange funds to 2010 credit ceiling (9%) recipients only. The United States Congress is considering a tax exempt bond exchange program as these regulations are being drafted. In the absence of TCAP funds, TCAC staff does not recommend exchanging in 9% credits to facilitate tax exempt bond projects. Nine percent credit projects are very high public value and 9% credits ought to be retained for such projects, or exchanged for cash to help such projects.

Staff is not proposing assisting pre-2010 9% projects with exchanged 2010 credits. Those earlier projects had opportunities to seek gap-filler assistance or credit exchanges last year, and have knowingly chosen to proceed as tax credit projects. It is not necessary to revisit the equity assumptions of those projects at this time.

Finally, proposed language establishes within program regulation the proposed federal expenditure deadline of December 31, 2012. This date is also the federal placed in service deadline for projects receiving 9% credits in 2010.

Proposed Change:

Section 10323(c):

(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.~~

- (1) Cash in lieu of credits: 2010 credit recipients may receive an award equal to the stated equity in the original tax credit application up to 73 cents (\$0.73) for every currently reserved federal tax credit dollar and up to 50 cents (\$0.50) for every California State Credit currently reserved by CTCAC for the project. Current Credit Ceiling reservation recipients must return their reservation before applying for a cash award in lieu of credits.

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.~~

- ~~(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)(2) If an ARRA award would add costs associated with the application of 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 as described in paragraph (d)(2) 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)(3) No cash award amount shall exceed \$17 \$18.25 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.~~

Reason: Proposed edits delete references to 2007, 2008, and 2009 projects and to Tax Credit Assistance Program (TCAP) funding. TCAC staff is not proposing to help pre-2010 projects with 2010 federal exchange funds. These earlier projects had access to 2009 Section 1602 and TCAP funding, and TCAC staff intends to use current-year credits to assist 2010 projects either as credits or in the form of cash.

Similarly, proposed edits delete references to gap financing that was available in 2009 in part due to the availability of federal TCAP funds.

New proposed language also establishes the rates at which TCAC would subaward federal cash grants for credit. Specifically, staff proposes awarding up to 73 cents per federal tax credit dollar, and 50 cents per State credit dollar. These proposed rates (a) provide much-needed capital to sponsors who are unable to find interested equity partners at all, while (b) not out-pricing the current equity market in California. Proposed language would award cash at the rate proposed within the original tax credit application, up to 73 cents per returned tax credit dollar.

Staff intends the full cash-in-lieu of credit option to be available only to those sponsors who are truly desperate in the absence of an equity partner. Seventy-three cents would not equal equity offers in many California markets. Therefore, most California sponsors would partner with an investor. Only where 73 cents is not available, such as in rural markets, the Central Valley, and for set-aside projects generally would the full cash-in-lieu option be preferable.

A 73 cent floor will prevent California pricing drift below 73 cents, where some pricing occurred in 2009. At such low pricing, California can realize a better return on the federal investment by exchanging credits for cash.

A new reference would also permit TCAC to award earlier Section 1602 and TCAP funds in the event these funds are returned or disencumbered.

Proposed Change:

Section 10323(d)(1) and (2):

(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 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.~~

- (1) 2010 Credit Ceiling reservation recipients.
- (A) Successful first round competitors for ~~2009~~ 2010 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~~ approximately 45 days or by a date to be announced by CTCAC, and a good faith effort as described in paragraph (c)(1) above, successful ~~2009~~ 2010 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 as much~~ returned federal credit to the Secretary of the Treasury as necessary to obtain the award amounts described in Section (c)(1) as part of its CTCAC's grant election amount. CTCAC shall award this federal exchange cash to the non-competing applicant Special Needs, Homeless Assistance, and SRO projects subject to CTCAC confirming the project's feasibility. However, to qualify for a non-competitive exchange of ~~ARRA federal~~ 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)(1)(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.~~ No more than 20% of the 2010 federal credit ceiling shall be available for exchange in the first round. Any remaining balance of returned credits shall be made available to second round Credit Ceiling applicants.
- (B) Successful second-round 2010 Credit Ceiling reservation recipients shall also have 90 days to produce an LOI consistent with Section 10325(c)(8). If, after approximately 45 days, or by a date to be announced by CTCAC, and a good faith effort as described in paragraph (c)(1) above, successful 2010 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 as much returned federal credit to the

Secretary of the Treasury as necessary to obtain the award amounts described in Section (c)(1) as part of CTCAC's grant election amount. CTCAC shall award this federal exchange cash to the non-competing applicant Special Needs, Homeless Assistance, and SRO projects subject to CTCAC confirming the project's feasibility. However, to qualify for a non-competitive 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 (1)(C) below for an award of cash in lieu of credits. No more than the balance of 40 percent of 2010 federal credit ceiling remaining un-exchanged after the first round shall be available for exchange in the second round. Any remaining balance of returned credits following the second round shall be made available to waiting list Credit Ceiling applicants. 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~~ 20 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 20 points
 - At-risk projects meeting the requirements of Section 10325(g)(5) 30 20 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.

~~(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 project-based rental assistance committed for a period of at least 15 years (to the extent permitted by the relevant program funding source). Projects with less than 100% project-based vouchers would receive a one point discount off the 25 point bonus for every two percent (2%) below 100% represented by project-based voucher units, with zero bonus points for 50 percent (50%) or fewer project-based rental assistance units.~~

Reason: TCAC staff proposes deleting paragraphs (d)(1) and (2) since 2007, 2008, and 2009 credit ceiling recipients are not proposed for assistance. Those earlier year allocation holders were afforded opportunities to access ARRA funds in 2009, and those who bypassed those opportunities should proceed as tax credit deals. New subsection (1) paragraphs (A) and (B) are proposed to be modified to accommodate 2010's two credit ceiling award rounds.

The late-in-the-year enactment of federal exchange authority this year causes TCAC staff to propose shortening to 45 days the period during which sponsors must seek equity partners in good faith. First round awardees on June 9th would have until approximately July 26th to identify an equity partner. Second round September 22nd recipients would have until approximately November 8th.

References to returning credits prior to applying for an exchange are deleted as redundant since this condition is established at Section 10323(c)(1).

Proposed Change:

Section 10323(d)(3) and (4):

~~(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).~~

~~(4)(2) Executive Director's discretion to award remaining funds.~~

~~If, following the award processes described in paragraphs (d)(1) through (d)(3) above, CTCAC has a surplus of either ARRA federal 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 earlier-awarded Section 1602 funds are recaptured or returned remain uncommitted at year-end, the Executive Director may substitute those returned Section 1602 funds for another project's awarded TCAP funds. Alternatively, CTCAC may award any returned Section 1602 funds to eligible 2010 projects seeking an exchange and able to meet the earlier required federal timelines. The Committee may award available TCAP funds to any eligible 2007, 2008, or 2009 project with an MHP, SHP, Homeless Youth, or TOD take-out financing commitment from HCD that (1) has yet to commence construction or has already received partial TCAP funding, and (2) in TCAC's judgment can meet federal TCAP timelines. Alternatively, CTCAC may award available TCAP funds to projects previously awarded both TCAP and Section 1602 funds by reducing the Section 1602 portion of the award by an equal amount. 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) Recaptured or returned TCAP funds shall be re-lent as 55-year loans, with an executed Promissory Note and secured by a Deed of Trust. Otherwise, the terms described in sub-section (e) apply.~~
- ~~(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.~~

Reason: Proposed changes eliminate access to exchange dollars by tax exempt bond projects. Staff does not recommend using scarce 9% credits to assist anything but high-value 9% projects at this time.

Regulation changes would also permit the TCAC Executive Director to exchange returned Section 1602 funding into projects with TCAP funding in order to extract TCAP funding from those projects. TCAC could then use the recovered TCAP funds to provide HCD backfill assistance to projects needing such assistance. Alternatively, TCAC could award returned Section 1602 funds to 2010 exchange applicants so long as those applicant projects could meet the earlier federal deadlines. TCAC staff is cognizant of the impending federal deadlines, and understands that any Section 1602 commitments returned after December 31, 2010 would be returned to the Treasury. As a practical matter, the provisions of subsection (d)(2) lack effect after that date.

Any 2009 ARRA funds returned between now and December 31 must be re-committed promptly, forgoing any involved application or scoring process. TCAP funds, in particular, must be reallocated promptly in light of the 75 percent expenditure

requirement by February 16, 2011. Proposed language would permit TCAC to either load returned TCAP funds into projects with both TCAP and Section 1602 funding already committed to them, or provide additional backfill assistance for HCD take-out financing.

Proposed Change:

Section 10323(e):

(e) Loan Grant Terms.

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

- (1) All funds must be expended by ~~February 17, 2012~~ December 31, 2012.
- (2) All ~~loans~~ grants 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~~ 55-year regulatory agreement 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 grant amount is more than twice the amount lent by the public lender.~~
- (5) Recipients of cash ~~loans~~ grants 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.~~

(6) CTCAC shall disburse loans grants provided in lieu of tax credit equity on the following schedule with up to two draws per tranche: Up to 40 percent (40%) at and following construction loan closing as justified by costs; at least up to 35 percent (35%) at project completion as evidenced by a temporary Certificate of Occupancy for the entire project; and up to 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)(7)~~ All executed ~~loan~~ grant 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 cash in lieu awards, 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. Exceptions to this requirement may be granted by the CTCAC Executive Director where a sponsor demonstrates that such syndication proceeds would either (i) capitalize a services reserve for special needs projects, or (ii) pay deferred developer fee costs.

Reason: The proposed changes remove references to loans and associated documents, and update federal date references. The deleted reference in paragraph 2 is no longer necessary since Section 10327 now contains the debt service coverage ratio called out in the exceptional language. Paragraph 5 is amended to eliminate the reference to gap filler loans, which TCAC staff no longer proposes making available. Former paragraphs 6, 7, and 8 are all no longer relevant or appropriate.

A final substantive change to new paragraph 7 would permit sponsors to retain syndication proceeds where those funds would (a) capitalize a service reserve for a special needs project, or (b) pay deferred developer fee. Paying these project costs in a timely fashion using syndication proceeds is in the long term interest of special needs projects and the affordable housing community generally.

(f) Fees.

(1) No additional processing fees or performance deposits shall be collected from ARRA funding recipients beyond tax credit fees collected pursuant to Section 10335. Such tax credit fees must be paid by all ARRA fund

recipients, including an allocation fee, even where an allocation of credits is not ultimately made. 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.

- (2) Asset management fees shall be \$5,000 annually for projects of 30 units or fewer, and \$10,000 annually for projects of 31 to 75 units. Projects containing more than 75 units, will pay a \$10,000 asset management fee annually, as well \$40 per unit of every unit over 75 units. Project owners may pay a one-time asset management fee equal to the total fee over the 15-year period, or a partial one-time upfront fee. If making a partial payment, the remaining annual payments shall be discounted accordingly to assure an equal total payment to a pure annual payment schedule. If CTCAC arranges for sharing asset management responsibilities with another State or federal funding source in a given project, CTCAC may discount the required asset management fee.

Reason: Proposed changes list the federally-permitted asset management fees TCAC will charge for performing federally-required asset management functions. The proposed fees structures are tiered by project size, with most projects paying \$10,000 annually, but with smaller projects paying less and larger projects paying incrementally more. These fees reflect the associated workload for the portfolio as a whole, and the various classes of projects. TCAC also is exploring accessing other federal and state funding agencies' asset management reports, in lieu of generating such reports directly. In the event an agreement can be reached with these other sources to share their asset management information and analyses, TCAC may be able to discount the fees down from the standard rates.
