



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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EXECUTIVE DIRECTOR
Mark Stivers

DATE: December 19, 2016

TO: Tax Credit Stakeholders

FROM: Mark Stivers, Executive Director

SUBJECT: Public Comment on Proposed Schedule of Compliance Violation Fines

AB 1920 of 2016 authorizes the California Tax Credit Allocation Committee (TCAC) to levy fines for non-compliance violations. While TCAC reports non-compliance with basic federal program requirements to the Internal Revenue Service (IRS) with a Form 8823 during the 15-year compliance period, the IRS does not enforce deeper affordability or other requirements or commitments applicable to a project during the first 15 years or any requirements after year 15. Imposing fines through an administrative process for such violations is a cheaper, faster, and fairer alternative to litigation and ensures the integrity of the Low-Income Housing Tax Credit Program for the duration of the 55-year regulatory agreements.

TCAC will not issue fines for violations reported to the IRS on a Form 8823. In addition, TCAC retains the authority to issue negative points for program violations but will not levy fines in cases where it imposes negative points. In other words, a project or party will not be subject to multiple sanctions for the same violation. When choosing between fines or negative points, TCAC will use its discretion to determine the most appropriate sanction.

For smaller violations, the schedule provides a correction period, generally 30 days. For these violations, TCAC will not impose any fine if the non-compliance is corrected during the correction period. For more serious violations, staff believes that an immediate fine is appropriate in order to create a deterrent. If a party only has to correct serious violations upon discovery by TCAC, there is no incentive to pro-actively comply. In all cases, the schedule proposes additional fines if violations remain uncorrected.

Like with negative points, all fines are subject to appeal. First, a party may appeal the fine to the Executive Director at no cost within seven days. Second, a party may appeal to the Committee within seven days of the Executive Director's decision. The appeal to the Committee is subject to a non-refundable \$500 fee.

The regulations allow the Executive Director to approve a payment plan for any fines. Fine payments are due within 30 days of assessment or completion of the appeal. In the event that fines assessed against a property owner are not paid within six months of initial assessment, TCAC will provide reasonable notice to the owner and file a lien against the property.

Attached for public review and comment is the proposed schedule of fines. Interested persons wishing to express their views on the proposed schedule may submit written comments to TCAC by 5:00 pm on Tuesday, January 31, 2017. The Committee may adopt a schedule of fines via resolution. The target date for presentation of the schedule and resolution to the Committee is March 15, 2017.

Compliance Violation Fines

All payments due within 30 days of assessment or completion of appeal

Compliance Violation (per unit unless otherwise noted)	Corrective Time Period	Fines after Corrective Period
Life and Safety Violations Life-threatening (post Y15)	24hr – 1 week to correct	\$250 fine and \$50 per month until corrected
Life and Safety Violations Non-Life threatening and UPCS Violations – Level 2 and 3 (post Y15)	30 days to correct. Refer to NCL letter for specific violation	\$250 fine and \$50 per month until corrected
Incorrect eligibility documentation or unable to determine eligibility (post Y15)	30 days to correct	\$250 fine and \$100 per month until corrected.
Incorrect rent of \$15 or less (post Y15 for all units; Initial credit period for all deeper targeted units)	30 days to correct and reimburse tenants the overage amount	The greater of \$100 or twice the monthly financial gain per month until corrected
Incorrect Rent of more than \$15 (post Y15 for all units; Initial credit period for all deeper targeted units)	Immediate \$250 fine or twice the financial gain, whichever is greater, and owner must correct the rents and reimburse tenants the overage amount	After 30 days, an additional fine equal to the greater of \$100 or twice the monthly financial gain per month until corrected
Failure to submit reports – AOC (post Y15) (per project)	30 days to correct	\$250 fine and \$50 per month until corrected
Failure to submit Reports –AOE, Tenant Demographic Data (Initial credit period and post Y15) (Per project)	30 days to correct	\$250 fine and \$50 per month until corrected

Vacant/off-line unit (post Y15)	Immediate \$250 fine if unit is vacant more than 60 days, not being advertised, and not ready to rent	After 30 days, an additional \$250 fine per month
Failure to Provide Service Amenities (Initial credit period and post Y15) (Per project)	Immediate fine of twice the financial gain, based on the service costs presented in the application or, if none, an assumed cost of \$20,000 per year	After 30 days, an additional fine of twice the monthly financial gain.
Lack of cooperation to monitor (post Y15) (Per project)	90 days to correct from date of initial letter notifying of inspection	\$500 per month
RUBS (Ratio Utility Billing Service) and Mandatory Fees (examples but not inclusive – Renter’s Insurance, W/D hook-ups, cable, storage, parking) (Initial credit period and post Y15)	Immediate fine of \$100 or twice the financial gain, whichever is greater. If over maximum TCAC rent, owner must also reimburse tenants for overage.	After 30 days, an additional fine of \$100 per month or twice the monthly financial gain, whichever is greater, until corrected
Student Rule (post Y15)	Immediate \$250 fine	After 30 days, an additional fine of \$100 per month until corrected
Change of Ownership or Management without TCAC Approval (Initial credit period and post Y15) (Per project)	Immediate \$500 fine	After 30 days, an additional fine of \$500 per month until corrected
Transfer event without TCAC approval (Per project) (Initial credit period and post Y15)	Immediate \$500 fine or twice the financial gain, whichever is greater	After 30 days, an additional \$500 fine or twice the monthly financial gain, whichever is greater

<p>Change in Unit Mix without TCAC Approval</p> <p>(Initial credit period and post Y15)</p>	<p>Immediate \$500 fine</p>	<p>After 30 days, an additional \$500 fine per month until corrected unless TCAC approves the change</p>
<p>Not using TCAC required forms</p> <ul style="list-style-type: none"> - TIC - TICQ - THIF (if applicable) - Under \$5k Asset - Child/Spousal Support Verification - Zero Income Certification (if applicable) <p>(Initial credit period and post Y15)</p> <p>(Per project)</p>	<p>Immediate \$250 fine</p>	<p>After 30 days, an additional fine of \$100 per month until forms are in use</p>