



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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JUDITH BLACKWELL

DATE: September 30, 2020

TO: Low Income Housing Tax Credit Stakeholders

FROM: Genevieve Jopanda, Chief Deputy Treasurer

RE: Proposed Emergency Regulation Changes with Initial Statement of Reasons

Attached for public review and comment are the regulation changes proposed by the California Tax Credit Allocation Committee (TCAC) staff. Attached to this memorandum is the complete set of proposed changes with reasoning. TCAC anticipates the regulation change adoption to take place at a TCAC meeting scheduled for November 2020. TCAC staff will conduct a public hearing to explain, answer questions, and solicit comments regarding the proposals. The date, time, and location of the public hearing will be released in a subsequent notice.

Please see the public notice for additional information regarding public comments on these proposed regulation changes. Interested persons wishing to express their views on the proposed regulation changes may submit written comments by email to genevieve.jopanda@treasurer.ca.gov and azeto@treasurer.ca.gov, or deliver to the TCAC office **no later Wednesday, October 21, 2020**. For email comments, it is preferable that they be in a Microsoft Word document or an electronic format that allows for copying. While TCAC welcomes public comments, staff encourages commenters to be sparing and brief given the short timeframe for staff to turn around responses. If you agree with some changes and disagree with others, please remember to make both sets of comments so that TCAC has a record of both favorable and unfavorable reactions. In the interest of consistency, TCAC prefers that commenters either provide comment at the public hearing or submit written comments, as opposed to both. If you feel it is necessary to provide both, please provide consistent comments in both forums. Thank you.

Proposed Regulation Changes with Reasons
September 30, 2020

Section 10310(b)(1)

- (b) Credit Ceiling available. The approximate amount of Tax Credits available in each reservation cycle shall be established by the Committee at a public meeting designated for that purpose, in accordance with the following provisions:
 - (1) Amount of Federal Tax Credits. The amount of Federal Tax Credits available for reservation in a reservation cycle shall be equal to the sum of:
 - (A) the per capita amount authorized by law for the year, plus or minus the unused, Federal Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
 - (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;
 - (C) the amount of Federal Credit Ceiling returned, and available, as of the date that is thirty days following the application deadline for said cycle; and,
 - (D) additional amounts of Federal Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations.

For calendar years 2020, and 2021 if applicable, the amount of the Federal Credit Ceiling established by the Further Consolidated Appropriations Act, 2020 shall be allocated pursuant to Section 10325(d)(1).

Reason: In recognition of the recent disasters occurring in California, the Further Consolidated Appropriations Act, 2020 (FCAA) provided TCAC with additional 9% credits totaling the amounts of the 2017 and 2018 9% federal tax credits allocated to projects in those areas. The disaster areas defined in the FCAA are located in 13 of California's 58 counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba. These disasters have intensified the widespread housing crisis in California and created housing insecurity for thousands of Californians.

The FCAA Federal Credit was anticipated to be available to projects located in the 13 counties applying in 2020 and 2021 through multiple rounds until the credits were fully allocated. Due to the overwhelming response and number of applications received for the FCAA Federal Credit requested in the July 1, 2020 round, totaling approximately \$241 million, TCAC proposes to make the small amount of remaining FCAA Federal Credits available in 2020 to waiting list projects in order to maintain eligibility for National Pool credits. The proposed regulation change still provides TCAC the ability to make any credits remaining or returned available in 2020 and 2021.

Section 10325(d)(1)

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315, with the exception of the Federal Credit amount established by the Further Consolidated Appropriations Act, 2020 (“FCAA”). If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.
 - (A) For an application to receive a reservation within a set-aside, or within a rural set-aside apportionment, there shall be at least one dollar of Credit not yet reserved in the set-aside or apportionment.
 - (B) Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary State credits shall be reserved from the subsequent year’s aggregate annual State credit allotment.
 - (C) Except for projects competing in the rural set-aside, which shall not be eligible to compete in geographic area, unless the projects are located within a Geographic Region and no other projects have been funded within the Project’s region during the year in question, after a set-aside is reserved all remaining applications competing within the set-aside shall compete in the Geographic Region.

Federal Credit established by the FCAA application selection. Applications for projects located in the counties designated as qualified 2017 and 2018 California disaster areas by the FCAA, FCAA Federal Credit shall only be reserved for (1) new construction projects also including projects that involve the demolition or rehabilitation of existing residential units that increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater, and adaptive re-use of non-residential structures, or (2) reconstruction or rehabilitation of an existing project located ~~in~~ within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the [CTCAC website](#), and directly damaged by the fire, and that apply for the FCAA Federal Credit. Applications shall meet all program

eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba.

Applications for projects applying for FCAA Federal Credit shall be competitively scored within the county apportionment under the system delineated in Sections 10325(c)(1) through (3), (4)(B), and (6). In the cases where applications receive the same score, the following tiebreakers shall be employed: First, a formal letter of support for the specific project from the Local Reviewing Agency (LRA) outlining how the project will contribute to the community's recovery efforts submitted in the application or received by TCAC no later than 14 days following the application filing deadline; Second, the application with the greatest number of proposed Tax Credit Units per annual Federal Tax Credit amount requested; and Third, the application with the greatest number of proposed bedrooms within the proposed Tax Credit Units.

For projects located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the [CTCAC website](#), applying for FCAA Federal Credit in the 2020 funding round ~~and in the 2021 first funding round~~, local approvals and zoning requirements of Section 10325(f)(4) must be evidenced to CTCAC no later than June 1, 2021. Failure to do so shall result in rescission of the Tax Credit Reservation on June 2, 2021. ~~For the 2021 second funding round, local approvals and zoning requirements shall be evidenced in the application as stated in Section 10325(f)(4). The deadline in this paragraph may be extended if the Executive Director finds, in his or her sole discretion, a project merits additional time due to delays directly caused by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the length of the delay and the circumstances relating to the delay.~~

The deferred-payment financing commitment requirements of Section 10325(f)(8) are modified for FCAA Federal Credit applications with 2017 and 2018 HCD Community Development Block Grant – Disaster Recovery (CDBG-DR) Multifamily financing as follows: a letter from an HCD identified jurisdiction stating the intent to commit a portion of that jurisdiction's HCD allocation. The letter must provide the dollar amount and the estimated date which the jurisdiction will provide TCAC a written commitment in compliance with the requirements of Section 10325(f)(8). Projects must receive these CDBG-DR funds prior to the TCAC placed-in service application deadline.

FCAA Federal Credit shall be made available starting in the 2020 second funding round in the amounts shown below:

ANNUAL FEDERAL TAX CREDIT BASE + LOST UNIT ALLOCATION	COUNTY
\$40,087,453	Butte
\$16,365,940	Sonoma
\$5,630,499	Los Angeles

\$5,421,263	Shasta
\$4,975,965	Ventura
\$4,109,511	Napa
\$3,342,311	Mendocino
\$3,259,153	Lake
\$2,886,283	Yuba
\$2,816,537	San Diego
\$2,583,158	Santa Barbara
\$2,580,476	Nevada
\$2,561,698	Orange
\$2,000,000	Supplemental
\$98,620,247	TOTAL

The funding order shall be followed by funding the highest scoring application, if any, in each of the 13 counties. After each county has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each county, if any, and continue cycling through the counties, filling each county's apportionment.

For an application to receive a FCAA Federal Credit reservation, there shall be at least one dollar of Credit not yet reserved in the county allocation so long as the county's last award does not cause the county's aggregate award amount to exceed 105 percent (105%) of the amount originally available for that county. FCAA Federal Credit allocated in excess of the county's allocation by the application of the 105% rule described above will be deducted from the Supplemental allocation. If the last application requires credits in excess of 105% of the county's allocation, that application will not be funded. ~~Any FCAA Federal Credit remaining in a county apportionment at the end a funding round will be available in the subsequent round. For the final funding round of 2021 for FCAA Federal Credits, if the aggregate amount of Federal Credit requested does not exceed the amount available, the 105% county limit above shall not apply.~~ If all FCAA Federal Credit in a funding round has been awarded, all remaining FCAA applications shall compete in the applicable set-aside or geographic region, provided the application meets the requirements of the set-aside or geographic region, and the requirements of Section 10325.

At the conclusion of the ~~2021 second funding~~ round, ~~if less than 10% of the total FCAA Federal Credit remains~~, all unallocated FCAA Federal Credit within the county allocations will be combined and available to remaining projects requesting FCAA Federal Credits and which meet the threshold and underwriting requirements ~~through a waiting list~~. The award selection will be made ~~from the waiting list~~ to the counties in the order listed above. Within each county, the award selection will start with ~~the~~ highest ranking project ~~located within a FCAA disaster area fire perimeter, as designated~~

by CAL FIRE and available on the CTCAC website first and continue within that county in rank order until no eligible applications remain. Subsequent to the above selection ranking, any unused FCAA Federal Credit shall be designated for projects where at least fifty percent (50%) of the Low-Income Units within the project are designated for homeless households as described in Sections 10315(b)(1) through (4) starting with the highest ranking project pursuant to Section 10325(c) without regard to the set aside or geographic region for which the application applied.

All projects awarded FCAA Federal Credit in 2020 shall be able to begin construction no later than September 1, 2021. Failure to be able to begin construction by September 1, 2021 shall result in rescission of the Tax Credit Reservation. No later than September 1, 2021, the applicant must submit to CTCAC building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and notice to proceed delivered to the contractor. Any returned credits following September 1, 2021 will be made available to projects from the FCAA Federal Credit waiting list as previously stated. Any new application received for a project on the waiting list shall result in that project's removal from the waiting list. Any projects awarded FCAA Federal Credit in 2021 shall be able to begin construction within 180 days of Credit Reservation and as documented above. Failure to be able to begin construction within 180 days shall result in rescission of the Tax Credit Reservation. The deadlines in this paragraph may be extended if the Executive Director finds, in his or her sole discretion, a project merits additional time due to delays directly caused by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the length of the delay and the circumstances relating to the delay.

The FCAA Federal Credit amount shall not be counted towards the set asides of Section 10315, the housing type goals of Section 10315(h), or the geographic apportionments of Section 10315(i). Applications for FCAA Federal Credit shall not be counted towards the four (4) awards limit of Section 10325(c). Notwithstanding Section 10325(f)(9)(C), the maximum annual Federal Tax Credits available for award to any one project in any funding round applying for FCAA Federal Credit shall not exceed Five Million Dollars (\$5,000,000). Applications for FCAA Federal Credit are not eligible for State Tax Credits.

Reason: Consistent with the proposed change in Section 10310(b)(1) above, TCAC proposes to remove references to rounds in 2021 since the FCAA Federal Credits are expected to be fully allocated by the end of 2020. The proposed regulation change provides the Executive Director discretion to extend the June 1, 2020 deadline to meet local approvals and zoning requirements of Section 10325(f)(4) under specific circumstances.

As stated previously, the overwhelming demand in FCAA Federal Credit with requests totaling approximately \$241 million has resulted in TCAC proposing to award the small remaining FCAA Federal Credit available in 2020 to maintain eligibility for National Pool credits. The proposed regulation change allows TCAC to employ the aggregation of any remaining FCAA Federal Credit

in accordance with the current regulations in place when less than 10% of the FCAA Federal Credit remains at the conclusion of a round. The remaining FCAA Federal Credit would be made available through a waiting list in the order described in the current regulations. Consistent with Congressman Mike Thompson's intent that the FCAA Federal Credit be allocated to those areas directly impacted from the wildfires in 2017 and 2018 in an effort to rebuild those communities and aid in the recovery, the proposed change will prioritize within each county projects located within a FCAA disaster area fire perimeter, as designated by CAL FIRE. The county order remains unchanged from the current regulations.

TCAC staff also proposes to establish September 1, 2021 as a deadline for which a project awarded FCAA Federal Credit in 2020 is required to either document that the project is able to begin construction or return the FCAA Federal Credit allocation to TCAC for re-allocation to the next project on the waiting list. By establishing a deadline of September 1, 2021, it provides projects awarded FCAA Federal Credit in 2020 sufficient time to begin construction and allows TCAC sufficient time to re-allocate any returned FCAA Federal Credit to projects from the waiting list. The proposed change clarifies that if a new application is received for a project on the waiting list that project will be removed from the waiting list. For projects awarded FCAA Federal Credit in 2021, the proposed regulation change is also establishing a deadline of 180 days to be able to begin construction. The proposed regulation change provides the Executive Director discretion to extend the deadline to be able to begin construction under specific circumstances.
