



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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**EXECUTIVE DIRECTOR**  
William J. Pavão

DATE: April 24, 2013  
TO: Low Income Housing Tax Credit Stakeholders  
FROM: William J. Pavão, Executive Director  
SUBJECT: Final Proposed Regulation Changes: Responses to Comments Received

On March 14, 2013 the California Tax Credit Allocation Committee (TCAC or the Committee) released proposed regulation changes for the current program year, 2013. TCAC staff subsequently held a public hearing on April 11, 2013 and took written public comment through Friday, April 12, 2013. Two individuals formally commented on the initial proposed regulation changes. TCAC staff has carefully considered those comments received, and has finalized recommendations to the Committee for consideration and adoption on Wednesday, May 15, 2013. The attached final statement of reasons summarizes comments received, TCAC staff's responses to those comments, and any revised proposed changes. Any additional changes or revisions would be signified by double-underlined additions (additions), and double-strikeout deletions (~~deletions~~) to the original proposed changes, which are signified by the original underlining (underlining) and original strikeouts (~~strikeouts~~).

In summary, staff will recommend that the Committee adopt the regulation changes as originally proposed. The two received sets of comments both supported the proposed changes, while recommending additional future actions and consideration by TCAC in the future.

Attached are the final proposed regulation changes, and a summary of comments received.

Attachment

**2013 Proposed Regulation Change with Initial Statement of Reasons  
March 14, 2013 (Updated April 24, 2013)**

**Section 10322(i)(2)(B)**

**Initial Proposed Change:**

- (B) an audited certification, prepared by an independent Certified Public Accountant under generally accepted auditing standards, with all disclosures and notes. Effective July 1, 2013, the Certified Public Accountant (CPA) or accounting firm shall not have acted in an advisory or consulting capacity a manner that would impair independence as established by the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct Section 101 and the Securities and Exchange Commission (SEC) regulations 17 CFR Parts 210 and 240. Examples of such impairing services, when performed for the final cost certification client, include bookkeeping or other services relating to the accounting records, financial information systems design and implementation, appraisal or evaluation services, actuarial services, internal audit outsourcing services, management functions or human resources, investment advisor, banking services, legal services, or expert services unrelated to the audit. Both the referenced SEC and AICPA rules shall apply to all public and private CPA firms providing the final audited cost certification, as a project participant under Section 10322(h)(5). In order to perform audits of final cost certifications, the auditor must have a peer review of its accounting and auditing practice once every three years consistent with the AICPA Peer Review Program as required by the California Board of Accountancy for California licensed public accounting firms (including proprietors); and make the peer review report publicly available and submit a copy to CTCAC along with the final cost certification. If a peer review reflects systems deficiencies, CTCAC may require another CPA provide the final cost certification. This certification shall:
- (1) reflect all costs, in conformance with 26 CFR §1.42-17, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan. Projects developed with general contractors who are Related Parties to the developer must be audited to the subcontractor level; and
  - (2) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.
  - (3) certify that the CPA has not performed any services, as defined by AICPA and SEC rules, that would impair independence.

**Comments Received:**

The proposed changes would improve the existing regulation language by referencing existing accounting industry standards and rules regarding auditing independence. Specifically, cross-referencing AICPA independence rules, along with requiring the CPA to certify to their compliance with independence rules is effective. When coupled with the current peer review submittals, TCAC's public purpose regarding independence should be met. Also, the listed examples of behaviors that impair independence are clarifying and helpful.

TCAC should rescind or clarify the status of prior written guidance issued under the current, recently-adopted provisions.

**Final Proposed Change:** Proceed with changes as initially proposed.

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**Section 10325(f)(1)(B)**

**Proposed Change:**

- (B) a market study as described in Section 10322(h)(10) of these regulations, which provides evidence that:
- (i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below rents for the same unit types in comparable market rate rental properties;
  - (ii) The proposed unit value ratio stated as dollars per square foot (\$/s.f.) will be no more than the value ratios for comparable market rate units;
  - (iii) In rural areas without sufficient three- and four-bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at least 20% below the rents for single family homes and the \$/s.f. ratio will not exceed that of the single family homes; and
  - (iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy – 90% occupancy for SRO and Special Needs projects and 95% for all other projects – within six months of being placed in service for projects of 150 units or less, and within 12 months for projects of more than 150 units and senior projects.

The CTCAC Executive Director may waive the value ratio requirement in items (ii) and (iii) above for acquisition/rehabilitation projects with any of the following: 1) existing federal or state rental assistance or operating subsidies and/or 2) an existing TCAC Regulatory Agreement. ~~so long as the following conditions are met:~~ In such cases, the proposed rents and income targeting levels ~~do~~ shall not increase by more than five percent (5%) and the project ~~has~~ shall have a vacancy rate of no more than five percent (5%) at the time of the tax credit application. Such waiver requests must be approved prior to the application submission and must include evidence from the project market analyst, including relevant market study pages, as to why the project is unable to meet the requirement.

Scattered-site projects that have received a waiver of the market study requirement from the California Debt Limit Allocation Committee (CDLAC) per Article 10. Section 5250.3 of the CDLAC Regulations are exempt from the market study requirements of Sections 10322(h)(10), 10325(f)(1)(B), and 10326(g)(1)(B). For such projects, a comprehensive market study as outlined in IRS Section 42(m)(iii) shall mean a written statement by a third party market analyst certifying that the project meets the requirements of Article 10. Section 5250.3 of the California Debt Limit Allocation Committee Regulations.

Market studies will be assessed thoroughly. Meeting the requirements of subsection (B) above is essential, but because other elements of the market study will also be considered, meeting those requirements in subsection (B) will not in itself show

adequate need and demand for a proposed project or ensure approval of a given project.

**Comments Received:**

The proposed change permitting the waiver of the market study value ratio for existing subsidized projects is a program improvement. The proposed change would be especially helpful in providing efficiencies to projects previously funded and still regulated by the federal Rural Housing Service.

TCAC should consider additional changes in the future establishing alternative means for existing projects seeking rehabilitation assistance to establish their marketability. A method meeting federal requirements, but short of a full market study would be more efficient and equally effective in establishing the project's status in the local market.

**Final Proposed Change:** Proceed with changes as initially proposed.

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**Section 10326(g)(1)**

**Proposed Change:**

- (g) Basic thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements. All basic thresholds shall be met at the time the application is filed through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. Further, in order to be eligible to be considered for Tax Credits under these regulations, the general partner(s) and management companies must not have any significant outstanding noncompliance matters relating to the tenant files or physical conditions at any Tax Credit properties in California, and any application submitted by an applicant with significant outstanding compliance matters will not be considered until the Committee has received evidence satisfactory to it that those matters have been resolved.
  
- (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. Evidence shall be conclusive, and include the most recent documentation available (prepared within one year of the application date). Evidence of housing need and demand shall include;
  - (A) evidence of public housing waiting lists by bedroom size and tenant type, if available, from the local housing authority; and,
  - (B) a market study as described in Section 10322(h)(10) of these regulations, which provides evidence that: the items set forth in Section 10325(f)(1)(B) have been met for the proposed tax-exempt bond project.
    - ~~(i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below rents for the same unit types in comparable market rate rental properties;~~

- ~~(ii) The proposed unit value ratio stated as dollars per square foot (\$/s.f.) will be no more than the value ratios for comparable market rate units;~~
- ~~(iii) In rural areas without sufficient three- and four- bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at least 20% below the rents for single family homes and the \$/s.f. ratio will not exceed that of the single family homes; and~~
- ~~(iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy — 90% occupancy for SRO and Special Needs projects and 95% for all other projects — within six months of being placed in service for projects of 150 units or less, and within twelve months for projects of more than 150 units and senior projects~~

Market studies will be assessed thoroughly. Meeting the requirements of ~~subsection Section 10325(f)(1)(B) above~~ is essential, but because other elements of the market study will also be considered, meeting those requirements in ~~subsection Section 10325(f)(1)(B)~~ will not in itself show adequate need and demand for a proposed project or ensure approval of a given project.

**Comments Received:**

TCAC should consider additional changes in the future establishing alternative means for existing projects seeking rehabilitation assistance to establish their marketability. A method meeting federal requirements, but short of a full market study would be more efficient and equally effective in establishing the project's status in the local market.

**Final Proposed Change:** Proceed with changes as initially proposed.

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**List of Commenters:**

1. Jeanne Peterson, Cohn Reznick
2. Patrick Sabelhaus, Law Offices of Patrick R. Sabelhaus