

**Proposed Regulation Changes with Reasons  
June 2, 2009**

**Proposed Change  
Section 10323(a)**

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 (~~Exchange 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 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.

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

**Reason:**

Proposed clarifying changes now use the federal term of art for the exchange fund: Section 1602. In addition, the proposed clarifying change introduces the term "ARRA Funds" to generally refer to the two types of federal assistance available to a given project: Section 1602 funds, and TCAP funds.

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**Proposed Change  
Section 10323(b)**

- (b) Eligible Projects

Applicants for cash awards, ~~TCAP or Exchange~~ 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, as follows:

- (1) 2007 and 2008 awardees: Projects with current 2007 or 2008 Credit Ceiling allocations are eligible for ~~TCAP or Exchange~~ ARRA Funds. Tax-Exempt Bond Projects with current 2007 or 2008 credit reservations are also eligible for ~~TCAP or Exchange~~ 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 reservations in calendar year 2009 are eligible for ~~Exchange 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 shall ~~may~~ be conditioned upon repayment by the State Department of Housing and Community Development (HCD). 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 projects with HCD funding 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).

**Reason:**

Several of the proposed changes continue the clarifying use of the term ARRA funds instead of the cumbersome ongoing reference to the two federal funding sources. In paragraph (3) TCAC proposes a change that continues the expectation of HCD repayment, but acknowledges that circumstances may prevent repayment by HCD, or that such repayment may result in a less desirable public policy outcome.

Finally, TCAC proposes an additional provision to paragraph (3) setting aside up to \$100 million in ARRA funds to assist projects with financing gaps resulting from HCD funding, and are therefore unable to get underway with development. TCAC envisions awarding out of this set-aside prior-year 9% projects with both equity and financing gaps. The equity assistance would be funded from a separate set-aside of ARRA funds, while the HCD financing gap would be funded out of the \$100 million “bucket.”

In order to help tax credit projects lacking an equity gap, the proposed text would permit applicants for financing assistance to submit a zero equity gap request within the 4% competition. This competitive advantage in the second scoring factor would (a) do no harm to equity-gap competitors not seeking HCD financing help from TCAC, and (b) advantage tax credit projects with adequate equity over projects also experiencing equity difficulties. In this way, TCAC could assist more projects than otherwise.

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**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.

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 a nominal amount of credits and adhere to Section 42 requirements. "Nominal" shall mean at least \$100 of annual federal Low Income Housing Tax Credits.

- (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 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 subject matter experts to assist in complying with prevailing wage and other federal requirements.
- (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.

**Reason:**

Proposed language under paragraph (1) adds the federally conforming requirement that a "nominal" amount of credits remain in any project receiving TCAP funds. In addition, the provision establishes as nominal \$100 in annual federal credits. These credits are likely to be taken by for-profit sponsors as credits against their organization's federal tax liability. Where the project owner is a non-syndicated nonprofit sponsor, the \$100 (\$1,000 over a ten-year period) will likely never be claimed.

Finally, paragraph three is amended to require sponsors who were not addressing federal prevailing wage and other requirements to retain subject-matter experts to help them comply. This requirement is meant to help ensure that the relevant federal requirements are fully met. A retained expert would also help TCAC as the federally responsible entity in reviewing submittals prepared by sponsors who may be otherwise unfamiliar with these federal requirements.

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**Proposed Change**

**Section 10323(d)(1)**

- (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 ~~TCAP or Exchange~~ 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 ~~Exchange~~ 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 ~~TCAP or Exchange~~ 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 ~~TCAP or Exchange~~ 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:**

Several changes update and clarify federal references using "Section 1602" and "ARRA Funds" as introduced earlier. The final paragraph in this section contains new proposed language permitting the Executive Director to swap 2008 for 2009 credits in projects receiving ARRA funds. This authority may be necessary in light of the relatively late date at which 2008 projects will get underway with ARRA funding commitments. Projects may be unable to close with other lenders in light of the uncertainty regarding meeting the December 31, 2010 placed in service deadline associated with 2008 credits.

The retrieved 2008 credits would be swapped into the 2009 nine percent credit competition, and would assume the identity of 2009 credits for purposes of federal placed in service deadlines. That is, 2009 recipients of those credits would have the same performance requirements as any other 2009 credit recipient.

Finally, TCAC staff is not recommending a similar placed in service deadline re-set for 2007 ARRA fund recipients. Those project sponsors submitted Final Reservation applications by February 1, 2009 with updated development timetables committing to the December 31, 2009 placed in service deadline. 2007 ARRA fund recipients should be either well underway, or able to meet the recently committed-to placed in service deadline.

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#### **Proposed Change**

##### **Section 10323(d)(2)**

- (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 ~~45~~ 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 non-competitive exchange of ARRA funds for credits, the project sponsor must have at least five (5) years' experience providing such housing for the target population. 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) To be eligible to compete under this scoring system, projects must be expected to be completed by February 16, 2012. 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.

**Reason:**

The initial paragraph of Section 10323(d)(2) extends the current year carryover allocation deadline from October 31 to November 20, 2009. This extension is necessary due to the proposed change in the following paragraph (B). That is, extending the decision-date for choosing to compete for exchanged ARRA funds out to 60 days would permit project sponsors until approximately November 9<sup>th</sup> to decide whether to proceed as a tax credit project or as a cash in lieu of credit project. This decision point occurs after the current October 31 deadline for submitting a carryover allocation application. In order to correct this sequence of events, TCAC is proposing a one-time extension of the carryover deadline to November 20, 2009.

As noted in the preceding explanatory paragraph, paragraph (B) proposes to extend the decision point for electing to return one's credit reservation and compete for ARRA Funds from the current 45 days following award to 60 days. TCAC staff has received considerable comment that 45 days is inadequate to ascertain a project's prospects for attracting an equity partner. Commenters have generally viewed 60 days as an improvement. Extending the timeline out any further would jeopardize TCAC's ability to conduct a timely competition for ARRA funds, and get any surplus, non-exchangeable credits allocated to a waiting list project.

Paragraph (B) also contains proposed language to establish a more rigorous standard for sponsors of projects housing special needs or homeless populations, or residents of SROs. To receive non-competitive access to a full exchange of credits, sponsors must have at least five years of experience housing such populations. This would result in TCAC making large loans on a non-competitive basis only to the most experienced owners and operators of such housing. Less experienced owners and operators could still access ARRA funds, but only by competing for them and only after the more experienced sponsored accessed their portion of the exchanged funds.

Paragraph (C) comports with a federal requirement to prioritize within TCAC's ARRA funding award process a priority for projects expecting to be completed by February 16, 2012. TCAC is proposing to make this selection criterion, in essence, a threshold requirement.

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**Proposed Change**  
**Section 10323(d)(3)**

- (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 ~~TCAP or Exchange~~ 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 ~~TCAP or Exchange~~ 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).

**Reason:**

Consistent with earlier proposed clarifying changes, the proposed changes substitute the term “ARRA Funds” for “TCAP or Exchange Funds.”

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**Proposed Change**  
**Section 10323(d)(4)**

- (4) 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 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 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.

**Reason:**

Section 10323(d)(4) would be new, and would permit the Executive Director to administratively assure that all ARRA funds and Credit Ceiling credits are awarded and allocated this calendar year. While TCAC staff envisions awarding all funds and credits in time to meet federal requirements, administrative latitude may be necessary in the event a late-year return of funding or credits jeopardizes TCAC's access to national pool credits or the retention of all federal ARRA funds. The proposed changes would allow the Executive Director to designate State credit-holding projects as DDA projects, and deliver additional federal credits to them (paragraph (A)). The Executive Director could also offer remaining ARRA funds to the next ranked unfunded 2009 nine percent exchange applicant (paragraph (B)). If no appropriately sized requests remain from the exchange competition, then the Executive Director could offer remaining ARRA funds to the unfunded earlier four percent ARRA competitors.

The intent of these changes is to provide administrative latitude to assure that all federal resources are accessed and used.

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**Proposed Change**

**Section 10323(e)(4)**

(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. 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. The loan term may be extended in 15-year increments, and shall be assignable upon the agreement of CTCAC.
- (4) Under the terms of the Promissory Note and Deed of Trust, ~~loan payments shall be due annually as residual receipts payments~~ 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. ~~Payments shall be due in the amount of 50 percent (50%) of any residual receipts after non-cumulative preferred residential cash flow to the owner of \$500 per unit, increasing by the Consumer Price~~

~~Index for All Urban Consumers, West Region, All Items, as published annually by the Bureau of Labor Statistics, United States Department of Labor, and after payment of a non-interest bearing deferred developer fee included in basis, consistent with the conditions of Section 10327(c)(2)(A). Payment of required principal and interest to other public funding sources under the terms of executed loan documents shall be payable prior to loan payments described in this paragraph.~~

- (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.

**Reason:**

The proposed changes comport with federal guidance regarding the Tax Credit Assistance Program (TCAP) parameters. That is, the federal Department of Housing and Urban Development (HUD) has stated that loans with interest and anticipated periodic payments are impermissible. Therefore, the proposed changes would explicitly permit TCAC to extend the loan beyond the original 55-year term, and would allow loan assumptions (paragraph (e)(3)). In addition, edits delete residual receipts payments and establish ARRA loans as fully-deferred for the entire loan term.

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**Proposed Change**

**Section 10323(e)(7)**

- (7) 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: ~~30 percent (30%)~~ 40 percent (40%) at and following construction loan closing as justified by costs; at least ~~65 percent (65%)~~ 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 ~~five percent (5%), not to exceed \$500,000~~ \$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.

**Reason:**

Proposed changes describe TCAC as routinely delivering loan proceeds earlier in the construction process. Specifically, up to 40 percent of the ARRA funds would be disbursed at or immediately following construction loan closing and a second large installment would be disbursed at project completion. The final large installment would be disbursed at 90 percent occupancy by income qualified households. This holds back fewer funds until the 90 percent occupancy stage. In addition, the final hold-back would be reduced from \$500,000 to \$300,000. Finally, proposed language would permit the TCAC Executive Director to negotiate disbursement schedules on a case by case basis as needed, and to accelerate disbursements as needed to conform with federal deadlines.

These proposed changes accommodate expressed construction lender concerns, and helps assure the full disbursement of all available ARRA funds.

## Proposed Change

### Section 10323(e)(8)

- (8) 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. 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.

#### Reason:

New proposed language would stipulate a recapture of ARRA funds if the project sponsor syndicates and sells tax losses to an equity partner. Ninety percent of the resulting gross equity partner payment would be remitted to TCAC as an ARRA loan recapture. This condition would help TCAC mitigate the prohibition on over-subsidization under Section 42(m)(2)(A).

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## Proposed Change

### Section 10323(f)

#### (f) Fees.

- (1) CTCAC may charge ARRA fund recipients a loan origination fee of up to \$10,000. Where the California Housing Finance Agency (CalHFA) performs loan-origination 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.
- (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 \$1,000 to oversee compliance with federal NEPA requirements, and \$1,000 to oversee compliance with federal Davis Bacon prevailing wage requirements.

**Reason:** Proposed new language discloses TCAC fee authority for loan origination, asset management, and federal grant requirements. Paragraph (1) states that TCAC may charge up to \$10,000 where HCD provides loan origination services. TCAC would then remit these fees to HCD for services performed. New language also references CalHFA fee structures where they will provide such services. Paragraph (2) states that TCAC may also charge on-going or one-time asset management fees. Until TCAC receives more information from federal control agencies, the exact asset management responsibilities are unknown at this time, as are the fees necessary to cover such services. Paragraph (3) permits TCAC to charge sponsors a small fee for acting as the responsible entity in approving compliance with federal NEPA and Davis Bacon requirements. TCAC will incur administrative costs associated with these responsibilities, and a \$1,000 fee would help defray those per project costs.

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