CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: April 17, 2015

TO: Tax Credit Stakeholders

FROM: Mark Stivers, Executive Director

SUBJECT: Proposed Regulation Changes with Initial Statement of Reasons

Attached for public review and comment are three regulation changes proposed by the California Tax Credit Allocation Committee (TCAC) staff. This summary memorandum highlights what TCAC staff proposes to present to the Committee for their adoption on June 10, 2015. TCAC staff will conduct a public hearing to solicit comments at the following time and location:

Tuesday April 28th	**Sacramento** State Treasurer's Office 915 Capitol Mall, Room 587 9:00 a.m.

TCAC staff is proposing a substantive change affecting financing commitments for specified public funds (cited in three regulation sections), as well as a corresponding clarifying change. The proposed regulation changes are as follows:

Proposed Change:

For 2015, permit staff award recommendations for the Veterans Housing and Homeless Prevention and Affordable Housing and Sustainable Communities programs to be accepted as funding commitments, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award. **Sections 10325(c)(1)(C), page 2, 10325(f)(3), page 4 and 10325(f)(8)(E), page 5.**

Proposed Clarifying Change:

Clarify that negative points do not apply to applicants who applied based on a Veterans Housing and Homeless Prevention or Affordable Housing and Sustainable Communities staff recommendation but ultimately did not receive a final award. **Section 10325(c)(3)(A), page 6.**

Please see the public notice for additional information regarding public comments on this proposed regulation change. Interested persons wishing to express their views on the proposed regulation change may do so either at the public hearing or may submit written comments to TCAC by 5:00 pm on Friday, May 15, 2015.

Section 10325(c)(1)(C)

Proposed Change:

(C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior existing public debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction. Outstanding principal balances shall not include any accrued interest on assumed loans even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP)**,** waivers resulting in quantifiable cost savings that are not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be scored as public funds under this scoring factor. Current land and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreements negotiated between public entities and private developers, must be supported by an independent, third party appraisal, conducted within one year of the tax credit application, and otherwise consistent with the guidelines in Section 10322(h)(9). Building values shall be considered only if those existing buildings are to be retained for the project, and the appraised value is not to include off-site improvements. All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded. For Tribal pilot apportionment applications, land purchased with public funds shall not be eligible for public funds points. However, unsuccessful Tribal pilot program applicants subsequently competing within the rural set-aside competition could have such tribal land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

To receive points under this subsection for loans, those loans must be "soft" loans, having terms (or remaining terms) of at least 15 years, and below market interest rates and interest accruals, and are either fully deferred or require only residual receipts payments for at least the first fifteen years of their terms. Qualified soft loans may have annual fees that reasonably defray compliance monitoring and asset management costs associated with the project. The maximum below-market interest rate allowed for scoring purposes shall be four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt for scoring purposes in spite of a debt service requirement. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. <u>For 2015 competitive tax credit applications with Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) included as funding sources, a project's recommendation by state program staff may be substituted for evidence that the funding has been firmly committed, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award.</u>

Public contributions of off-site costs shall not be counted competitively, unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees or (2) the off-sites must be developed by the sponsor as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property.

Private "tranche B" loans underwritten based upon rent differentials attributable to rent subsidies shall also be considered public funding for purposes of the final tiebreaker. The amount of private loan counted for scoring purposes would be the lesser of the private lender commitment amount, or an amount based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

Reason:

The proposed change would create a temporary exception to TCAC's requirement that public funds must be firmly committed and require no further approvals to be considered eligible for public funds point and final tie breaker scoring. The proposed exception is provided for two state programs, Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC). The Department of Housing and Community Development (HCD) has been working to develop program guidelines for both VHHP and AHSC as a result of the creation of these program funds through two separate state legislation bills. The first funding awards for VHHP and AHSC programs will be made midyear 2015. Currently it is unclear whether the final award decisions will be prior to TCAC's second competitive application deadline of July 1, 2015. As a result, TCAC staff is proposing to accept preliminary HCD staff recommendations in lieu of the award letters typically provided by HCD for funding commitments.

Permitting these funds to qualify as funding sources in TCAC's 2015 second competitive round would enable projects awarded VHHP and AHSC funds with low income housing tax credits to begin construction sooner than if their developers were required to wait 8 additional months for the 2016 TCAC competitive rounds. This results in more affordable housing available sooner to Californians in need, including California veterans and their families. To enable projects with VHHP and AHSC preliminary recommendations to compete in TCAC's second competitive round for 2015, TCAC staff is proposing to implement this regulation change immediately following the June 10 Committee meeting.

Section 10325(f)(3)

Proposed Change:

(3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:

(A) be in writing stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;

(B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;

(C) have a term of at least fifteen (15) years if it is permanent financing;

(D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,

(E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and

(F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application.

For projects using FHA-insured debt, the submission of a letter from a Multifamily Accelerated Processing (MAP) lender stating that they have underwritten the project and that it meets the requirements for submittal of a multifamily accelerated processing firm commitment application to HUD. For 2015 competitive tax credit applications with Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) included as funding sources, a project's recommendation by state program staff may be substituted for evidence that the funding has been firmly committed, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award.

Reason:

The proposed change would create a temporary exception to TCAC's requirement that public funds must be firmly committed and require no further approvals to meet enforceable financing commitment and deferred –payment financing requirements. The proposed change mirrors the change in section 10325(c)(1)(C). Please see above, page 3, for the statement of reason.

Section 10325(f)(8)(E)

Proposed Change:

(8) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies shown in the application are "committed" at the time of application, except as permitted in subsection (E) and (F) below.

(A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant's acceptance in the case of privately committed loans.

(B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Tax Credits.

(C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.

(D) Substantiating evidence of the value of local fee waivers, exemptions or land write-downs is required.

(E) Substitution or an increase of such funds may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. AHP funds may be substituted for any construction period funding source if an AHP commitment is obtained after the TCAC application due date. Funds from a previously committed source may be increased only in an amount necessary to achieve project feasibility. Adding new funding sources to cover additional, unanticipated costs requires TCAC pre-approval. This provision shall include projects that have already received a reservation or allocation of Tax Credits in prior years.

(F) Funds anticipated but not yet awarded under the following programs shall be exempt from the provisions of this subsection: the Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; RHS Section 514, 515 or 538 programs; the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's Mental Health Services Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction;~~, or to~~ projects receiving Housing Tax Credits in 1999 and thereafter and funding under the Department of Housing and Community Development's Multifamily Housing Program; or for 2015 competitive tax credit applications, Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) program financing submitted with a recommendation by state program staff, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award.

Reason:

The proposed change would create a temporary exception to TCAC's requirement that public funds must be firmly committed and require no further approvals to meet enforceable financing commitment and deferred –payment financing requirements. The proposed change mirrors the change in section 10325(c)(1)(C). Please see above, page 3, for the statement of reason.

Section 10325(c)(3)(A)

Proposed Change:

(3) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(h)(5) for items including, but not limited to:

(A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control. An exception to this subsection is made for 2015 competitive tax credit applications with Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) financing based on a recommendation by state program staff and accepted with the tax credit application, but ultimately not receiving a VHHP or AHSC award;

Reason:

The proposed change corresponds to the change in section 10325(c)(1)(C). Please see above, page 3, for the statement of reason.
