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DATE: August 2, 2010
TO: Tax Credit Project Sponsors
FROM: William J. Pavão, Executive Director
SUBJECT: Timely Submittal of Placed-In-Service Applications

The California Tax Credit Allocation Committee (TCAC) regulations Section 10328 establish conditions on credit reservations. Paragraph (e) of that Section reads:

- (e) Placed-in-service. Within one year following the project's completion of construction, the applicant shall submit documentation required by Section 103232(i)(2).

Section 10322(i)(2) states that:

- (2) Placed-in-service application. Within one year of completing construction of the proposed project, the applicant shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335.

Subsection (i)(2) goes on to state that, if the required submittals are complete and accurate, TCAC will issue tax forms (IRS Forms 8609) for the project.

Section 10325(c)(3) establishes a negative points scoring category for Credit Ceiling (9%) applications. Included within the list of violations that may warrant negative points is item (C):

- (C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed.

All of the regulation provisions listed above apply to both 9% and 4% credit reservations. That is, all credit recipient projects must adhere to the one-year requirement to submit placed-in-service packages to TCAC and request Form 8609s. Failure to do so may result in the project sponsor and the whole development team receiving negative points within the competitive 9% scoring system.

Recently the California Tax Credit Allocation Committee has experienced more frequent violations of the one-year rule related to placed-in-service applications. Among other administrative consequences, such delays exacerbate TCAC's difficulty conducting a timely initial site visit. Federal regulations require that TCAC "must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service" (CFR §1.42-5(c)(2)(ii)(A)).

In addition, TCAC has recently received placed-in-service applications many years after the last building's placed-in-service date. TCAC intends to contact the IRS regarding these projects to obtain guidance regarding their tax credit status. These projects have been operating for years without a regulatory agreement or any compliance oversight by TCAC whatsoever. Internal Revenue Code Section 42(h)(6)(A) states that:

(A) In General. No credit shall be allowed by reason of this section with respect to any building for the taxable year unless and extended low-income housing commitment is in effect as of the end of such taxable year.

IRC Section 42(h)(6)(B)(vi) clarifies that an extended low income housing commitment must be "recorded pursuant to State law as a restrictive covenant." In light of this, TCAC will not process placed-in-service applications received well after the placed-in-service date without guidance from the IRS.

With this memorandum, TCAC is reminding all tax credit recipients of the one-year placed-in-service requirement. In addition, any project sponsor submitting late placed-in-service applications after December 31, 2010 can expect to receive negative points under Section 10325(c)(3)(C). Overdue placed-in-service applications should be promptly prepared and submitted to TCAC prior to December 31, 2010. Any late submittals after this grace period can expect negative points.

If you have any questions regarding this matter, please contact your regional analyst as listed at <http://www.treasurer.ca.gov/ctcac/assignments.pdf>.