# CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: March 26, 2018

TO: Tax Credit Stakeholders

FROM: Mark Stivers, Executive Director

SUBJECT: Proposed Emergency Regulation Changes

On March 23, 2018, President Trump signed the omnibus appropriations bill which included a change to Section 42 of the Internal Revenue Code allowing "income averaging," under which a project may include units targeted up to 80% of area median income (AMI) as long as the proejct's average targeting does not exceed 60% AMI. Staff proposes two regulation changes to implement this provision in a manner that maintains TCAC's current targeting requirements that go beyond the minimum federal standard.

Attached for public review and comment are the regulation changes proposed by TCAC staff along with a statement of reasons. Changes to the current regulations are indicated with red type. Staff intends to agendize the proposed changes for the May 16, 2018 meeting. Interested persons wishing to express their views on the proposed regulation changes may submit written comments to TCAC by 5:00 pm on Friday, April 20, 2018. Comments should be emailed to mark.stivers@treasurer.ca.gov, preferably in a Word document or in an electronic format that allows for copying rather than scanned pdf. format. Persons who have questions may contact me directly at the same email in lieu of submitting formal comments.

**1. Section 10325(f)(13)**

**Proposed Change**

10325(f)(13) A project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI.

A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may revise its targeting prior to the recordation of the regulatory agreeement to include Low-Income Units targeted at greater than 60% AMI only if the project initially had an applicable fraction of less than 100% and the units targeted at greater than 60% AMI were not initially Low-Income Units, provided that the average targeting does not exceed 50% AMI. All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application.

**Reason:** The current point scoring system effectively ensures that all competitive projects achieve an average targeting of 50% AMI, based on the assumption that no unit will exceed 60% AMI. Now that federal law allows targeting up to 80% AMI, a project conceivably could have an average targeting higher than 50% AMI and still score maximum points by targeting all the non-point scoring units above 60% AMI. While staff is supportive of allowing future projects to utilize the income averaging provision of federal law, staff strongly believes that this should not lessen the average affordability of projects. The proposed change explicitly requires any competitive project that includes low-income units targeted at greater than 60% AMI to achieve an average targeting that does not exceed 50% AMI.

Staff does not support allowing projects that have already received a reservation or that have a pending application to change their targeting to incorporate income averaging with one exception, namely rehabilitation projects that reduced their applicable fraction to account for units occupied by over-income tenants. The proposed changes provide that a project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI if the project initially had an applicable fraction of less than 100% and the units targeted at greater than 60% AMI were not initially Low-Income Units provided that the average targeting does not exceed 50% AMI. The proposed changes further make clear that TCAC will not accept targeting alterations to submitted or reserved projects.

**2. Section 10326(g)(9)**

**Proposed Change**

10326(g)(9) For all applications received on or after March 26, 2018, a non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 59% AMI. For all applications received on or after March 26, 2018, a competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI. A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may revise its targeting prior to the recordation of the regulatory agreeement to include Low-Income Units targeted at greater than 60% AMI only if the project initially had an applicable fraction of less than 100% and the units targeted at greater than 60% AMI were not initially Low-Income Units, provided that the average targeting does not exceed 59% AMI for non-competitive projects or 50% AMI for competitive projects.

**Reason:** Section 10326(j)(3) of the TCAC regulations requires that all 4% tax credit projects target at least 10% of the total low-income units at or below 50% AMI. This effectively ensures that all non-competitive projects achieve an average targeting of 59% AMI, based on the assumption that no unit will exceed 60% AMI. Now that federal law allows targeting up to 80%

AMI, a project conceivably could meet the 10% at or below 50% AMI requirement and nonetheless have an average targeting of 60% AMI. While staff is supportive of allowing future projects to utilize the income averaging provision of federal law, staff strongly believes that this should not lessen the average affordability of projects. The proposed change explicitly requires any non-competitive project that includes low-income units targeted at greater than 60% AMI to achieve an average targeting that does not exceed 50% AMI. The proposed change further makes explicit that a competitive project (i.e., a 4% tax credit application seeking state credits) must achieve an average targeting of 50% AMI consistent with the reasons stated above in Section 10325(f)(13). The language further clarifies that TCAC will apply these requirements to all applications received between today and the date the Committee adopts or rejects the proposed changes.

Section 10322(j) of the TCAC regulations require the approval of the TCAC Executive Director for any change in unit mix or income targeting to a 4% tax credit project after reservation. Staff does not intend to allow projects that have already received a reservation or that have a pending application to change their targeting to incorporate income averaging with one exception, namely rehabilitation projects that reduced their applicable fraction to account for units occupied by over-income tenants. The proposed changes provide that a project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may revise its targeting prior to the recordation of the regulatory agreeement to include Low-Income Units targeted at greater than 60% AMI if the project initially had an applicable fraction of less than 100% and the units targeted at greater than 60% AMI were not initially Low-Income Units, provided that the average targeting does not exceed 59% AMI for non-competitive projects or 50% AMI for competitive projects.