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DATE: May 26, 2011
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: First Round Update and Second Round Guidance

With this memorandum, the California Tax Credit Allocation Committee (TCAC or the Committee) announces a new scheduled Committee meeting date to announce awards, and provides additional clarifying guidance for prospective second round applicants.

Rescheduled June Committee Meeting Date

Due to an unexpectedly large volume of applications to be recommended for tax credit awards in the first round, the Committee is rescheduling the June 8, 2011 meeting date to:

Wednesday, June 22, 2011, 10:30 a.m.
CalPERS Auditorium
400 P Street
Sacramento, California

Advisory Guidance to Second Round Applicants

Revised second round application due date

Second round applications shall be due **Wednesday, July 13, 2011** rather than the previously indicated July 6th. TCAC staff will release a more detailed advisory regarding second round submittals in the near future

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During first round reviews of nine percent (9%) and four percent (4%)-plus-State credit applications, TCAC staff has identified areas to clarify for second round applicants. The following notes clarify TCAC’s expectations for application content and award decision-making.

Environmental clearance for readiness scoring

Section 10325(c)(8)(B) awards points for:

- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA and NEPA) necessary to begin construction are either finally approved or unnecessary.

A project with federal funding invoking the National Environmental Protection Act (NEPA) must demonstrate that “clearances necessary to begin construction are either finally approved or unnecessary.” Instructions within TCAC application Attachment 26 require that “the expiration dates of all required appeal periods for each item are listed and have expired, or will expire no

later than 30 days beyond the application deadline date” (emphasis contained in original application text).

In order to avoid confusion on this point in the second round, the TCAC application must contain direct documentary evidence that federally funded projects have cleared NEPA.

Readiness points will be awarded to federally-funded applications that have either (a) received a HUD Authorization to Use Grant Funds (Form 7015.16) from HUD or HCD; (b) received a final approval and NEPA clearance document from USDA’s Rural Housing Service or HUD where funding comes directly from the federal agency to the project, or (c) received a participating jurisdiction documentation of exemption.

Consistent with Section 10325(c)(8), TCAC will accept evidence within the application that the final stage of federal or state review and public comment started by the application deadline, so long as the final public comment period concludes without delay within 30 days of the application deadline as published by TCAC. This means that, if necessary, a Request for Release of Funds (RROF) must be submitted to the appropriate federal or state agency by the application deadline to begin the final public comment period.

Projects receiving assistance from multiple federal funding sources must document that all clearances for each program have been received.

If any applicants have circumstances regarding NEPA clearance not addressed in the above guidance, please contact your regional TCAC analyst immediately.

Budget adequacy for proposed resident services

Section 10325(c)(5)(B) awards points for various proposed service amenities for project residents. Applications should include a service plan description specific to the project, not a statement generally listing the service provider’s programs and classes. Applications will receive points for services only if the proposed services budget adequately accounts for the level of service. The budgeted amount must be reasonably expected to cover the costs of the proposed level of service. For example, a proposed full time professional services coordinator accompanied by budget amount paying below a professional service provider’s salary would not garner services points. The application must also document the value of any volunteered services.

Waivers must be requested prior to the application deadline

Several regulation provisions permit the TCAC Executive Director to waive specific requirements. Waivers for required project features shall only be granted if requested well in advance of the application due date. Applications without prior-approved waivers will be considered under the generally applicable rules, and reviewed and scored accordingly. TCAC may disqualify projects containing features that do not comport with un-waived program thresholds.

Maximum credit requests for rural projects competing in the At-risk Set-Aside

Program regulation Section 10315(e) states that: “No more than 20 percent (20%) of the at-risk set-aside shall be available to rural projects. The 2011 at-risk set-aside was \$4,010,252 in annual federal credit. Twenty percent of the 2011 at-risk set aside is \$802,050. No rural projects received an at-risk set-aside award in the first round. So a rural applicant opting into the at-risk set-aside competition may apply for up to \$802,050. By regulation, TCAC may award no more than this amount to a rural project.

Four award per round maximum within the 9% competition

Section 10325(c) limits to four (4) the number of awards a party may receive in a single competitive 9% round. The regulation states that: “This limitation is applicable to a project

applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members.” The regulations go on to include related parties under this limitation as well.

Where a project proposes two or more co-general partners (GPs), an award would count toward each partner’s tally. For example, a party who is proposed as a GP in two projects, and a co-GP in two other successful applications, would have reached their four-project maximum. Thereafter, otherwise successful applications wherein that party has a regulation-listed role would be skipped over for other, lower-scoring competitors.

The fact that one co-GP is forgoing a developer fee has no bearing on the rule. TCAC assumes that each co-GP would perform a critical role in the project’s development and operation. TCAC has an interest in assuring that each party is not over-stretched by multiple projects, and in limiting a single party’s portion of the larger TCAC portfolio.

At-risk application’s eligibility opinion letter from legal counsel

Section 10325(g)(5)(B)(1) requires that applicants within the at-risk set-aside “must meet the At-risk eligibility requirements under the terms of applicable federal and state law as verified by a third party legal opinion.” A legal opinion is required in every instance where a project applies within the at-risk set-aside. This requirement applies even where a qualified nonprofit organization has acquired the project within the past five years with interim financing.

Schools as site amenities for housing types other than large family

Section 10315(h) establishes the various programmatic housing types, including “Large Family.” Section 10325(g)(1) contains a list of additional threshold requirements associated with projects attempting to qualify as a Large Family housing type.

Section 10325(c)(5)(A)(5) makes points available “For a Large Family development” that is close to a neighborhood public school. The clearest reading of the existing regulation is that school proximity points are only available for Large Family housing type projects. However, some projects house predominantly families with children, and the regulation intends to acknowledge the benefit of a nearby school on such a project’s school aged population.

For example, an at-risk housing type project could also be housing large families. Or, a special needs housing type project could be housing large families escaping a violent environment. In such cases, proximity to a nearby school would be beneficial to such a project’s school-aged population.

TCAC staff will likely propose regulations for 2012 clarifying that projects housing large populations of children, but presenting as another housing type warrant access to the school amenity points. In the meantime, applicants proposing housing types other than Large Family should contact their regional TCAC analyst immediately if intending to request school amenity points

At a minimum, at least 30 percent (30%) of the project’s units would need to contain three bedrooms. This is consistent with the service amenity scoring for licensed child care on-site (Section 10325(c)(5)(B)(5)) and after-school programs for school-aged children (Section 10325(c)(5)(B)(6)).

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If you have any questions regarding the above guidance items, please contact your regional representative.