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DATE: June 20, 2013

TO: Low Income Housing Tax Credit Stakeholders

FROM: William J. Pavão, Executive Director

SUBJECT: 2013 Second Round Guidance

With this memorandum, the California Tax Credit Allocation Committee (TCAC or the Committee) is providing additional clarifying guidance for prospective second round applicants.

Advisory Guidance to Second Round Applicants

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.

Collected Rent for Manager's Unit / Charging Fees for Parking Garages/Lots or Storage Space

Pursuant to Chapter 8, Category 11e of the TCAC Compliance Manual and IRS Revenue Rule 92-61, if a resident manager's unit is actually collecting rent from the manager, and is not part of the manager's compensation, the manager's unit must be included in the denominator of the applicable fraction. This is similar to a market rate unit unit's treatment. If the rented manager's unit is occupied by a qualified low-income tenant and charged tax credit rents, the manager's unit must be included in the numerator as well.

Costs associated with parking garages/lots and storage units, for which the tenants are being charged a fee, must be identified in the Sources and Uses Development Budget as a "commercial cost" and excluded from eligible basis. Furthermore, Tab 19 of the application requires that a tax professional certify to costs being included in eligible basis as allowed by IRC Section 42. Costs excluded for eligible basis must be certified as "not includable" by the tax professional with a brief description as to why these costs are not includable consistent with IRC Section 42.

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Purchase Price in Excess of Appraised Value

Prior to the First Round of 2013, TCAC provided a clarifying memorandum dated January 29, 2013 (<http://www.treasurer.ca.gov/ctcac/2013/guidance.pdf>) clarifying information as it relates to land and existing improvements and how they would be considered in underwriting and competitive scoring. For underwriting purposes, TCAC stated, “Such applications with acquisition costs exceeding the appraised value must explain the higher cost. Applications with non-arm’s length transactions must demonstrate that the seller is not unduly benefiting from the higher purchase price.” Related party sellers may receive no tax credit equity from the sale unless a qualified appraisal demonstrates residual value beyond the assumed debt on the property.

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Mental Health Service Act (MHSA) funds for competitive scoring

Applications proposing a financing commitment of MHSA housing program funds from the California Housing Finance Agency (CalHFA) will receive competitive scoring as public funds only for committed capital funds defraying development costs. Capital Operating Subsidized Reserve (COSR), Supplemental Capital Operating Subsidized Reserve (SCOSR), and MHSA Operating Expense Subsidy Reserve (MOESR) funds shall not be included in the public funds numerator for competitive purposes. However, the public funds numerator may be increased by 25% of the percentage of the proposed tax credit units assisted by the MHSA subsidy. For example, a project with 100 low-income units, where 25 of them are being assisted by either MHSA COSR, SCOSR or MOESR subsidy, would receive a 6.25% increase (25% of 25/100) to the public funds numerator. Please refer to TCAC Regulation Section 10325(c)(10)(A) for additional information.

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Lowest Income Point Category

In addition to the maximum fifty (50) points that may be requested in the Lowest Income point category based on the table noted in TCAC Regulations Section 10325(c)(7)(A), two (2) points may be requested for a project targeting at least ten percent (10%) of its low income units at or below thirty percent (30%) of area median income (AMI) as explained in TCAC Regulation Section 10325(c)(7)(8). The 2 points may be requested provided that the project meets the targeting above and that the units targeted at or below 30% AMI are spread across the various bedroom-count units, starting with the largest bedroom-count units (e.g. four bedroom units), and working down to the smaller bedroom-counts units, assuring that at least 10% of the larger units are proposed at 30% of area median income. In some instances, the smaller bedroom-count units (e.g. studio units) may not require any units targeted at or below 30% AMI because the amount of units required for the entire project has already been met. Please see the following example.

EXAMPLE:

76 low-income units (requires at least 8 units at or below 30% AMI)

- 43 three-bedroom units 5 units (11.6%) at or below 30% AMI
 - 21 two-bedroom units 3 units (14.3%) at or below 30% AMI
 - 12 one-bedroom units 0 units (0.0%) at or below 30% AMI
- 8 Units total at or below 30% AMI

If the example described above is still unclear, please contact your regional TCAC analyst immediately.

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Environmental clearance for readiness scoring

In addition to the clarifying guidance previously provided in the memorandum dated May 26, 2011 (<http://www.treasurer.ca.gov/ctcac/2011/firstround/update.pdf>), please see the additional clarifying information.

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.” This includes projects with federal rental subsidies and any rehabilitation projects requiring NEPA review as a condition of the federal subsidy award or renewal. 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, 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 has 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 environmental clearances for each program have been received. For federally-funded rehabilitation projects, the application should include documentation supporting that NEPA has been completed. This includes documentation showing that the project converted to exempt status (if applicable). For categorically excluded projects, include the Statutory Worksheet in Tab 26.

The Environmental review clearance for projects with Federal Housing Administration (FHA) insured mortgages through HUD (e.g. Sections 202, 223(f), 221(d)(3), 221(d)(4), 811)) will be evidenced by the Firm Commitment from HUD at the 180-day readiness deadline.

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

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If you have any questions regarding the above guidance items, please contact your regional analyst (<http://www.treasurer.ca.gov/ctcac/assignments.pdf>).