CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: January 26, 2021

TO: Four Percent (4%) Tax Credit Reservation Recipients

FROM: Judith Blackwell, Executive Director

RE: Minimum 4% Credit Rate

The Consolidated Appropriations Act, 2021 ("H.R. 133" or "Act") was signed into law on December 27, 2020 and established a minimum credit rate of 4% for Low Income Housing Tax Credit ("LIHTC") projects. This is applicable to projects financed with tax exempt bonds ("4% projects") and to 4% acquisition credits for 9% acquisition and rehabilitation projects ("9% projects"). Since the passage of H.R. 133, there has been discussion surrounding the impact of this change to those projects that have issued their bonds prior to January 1, 2021 and those projects that have not.

H.R. 133 permits a minimum 4% credit rate for qualifying housing projects which meet certain criteria outlined in the Act. Until formal guidance is received from the Internal Revenue Service ("IRS") or US Treasury, the California Tax Credit Allocation Committee ("TCAC") is providing the following rules:

- For 4% projects awarded prior to January 1, 2021, if no bonds have been issued and no election to fix the credit rate has been executed prior to January 1, 2021, these projects are eligible for the 4% credit rate.
- For 4% projects that issued any bonds prior to January 1, 2021, unless further guidance is received from the IRS or US Treasury, these projects are not eligible for the 4% credit rate.
- For 4% rehabilitation projects reserved acquisition credits that acquired the site prior to January 1, 2021 but did not issue bonds prior to January 1, 2021, unless further guidance is received from the IRS or US Treasury, the acquisition credits are not eligible for the 4% credit rate. If no bonds have been issued and no election to fix the credit rate has been executed prior to January 1, 2021, only rehabilitation (construction-related) credits may be calculated using the 4% credit rate.
- For 9% projects, the allocation date is the date TCAC signs the carryover allocation agreement; 9% projects awarded prior to January 1, 2021 are not eligible for the 4% credit rate for acquisition credits.

For 4% projects that have already received tax credit reservation letters from TCAC under IRC Section 42(m) but have not yet closed their financing and have not yet issued bonds, TCAC understands the concerns raised by syndicators and investors without an updated tax credit reservation letter. TCAC has not historically and does not plan to reissue tax credit reservation letters for tax exempt bond projects seeking to utilize the 4% credit rate. TCAC does not revise tax credit reservation letters after issuance absent a clear error. Furthermore, TCAC does not have staff resources to process revisions and issue new letters for all affected projects in a timely fashion prior to project closings. This memorandum serves as TCAC confirmation that all projects that meet the eligibility criteria for the fixed credit rate established in H.R. 133 will, consistent with Section 42(m)(2)(C)(i)(III), be evaluated using the 4% credit rate upon submission of the placed in service (PIS) application regardless of the credit rate used to determine credits in the original tax credit reservation letter. This memorandum may be attached to the tax credit reservation letter for those eligible projects. Please note that while the final credit allocations will be determined using the 4% credit rate for eligible projects at PIS review, projects will continue to be evaluated based on the requirement that credit allocated does not exceed the amount TCAC determines is necessary for financial feasibility (credit need analysis) consistent with Section 10322(j) of the TCAC regulations.