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# CTCAC ADVANCED COMPLIANCE WORKSHOPS

SHANNON NARDINELLI – COMPLIANCE PROGRAM MANAGER

[SNARDINELLI@TREASURER.CA.GOV](mailto:SNARDINELLI@TREASURER.CA.GOV)

AMMER SINGH – COMPLIANCE PROGRAM MANAGER

[ASINGH@TREASURER.CA.GOV](mailto:ASINGH@TREASURER.CA.GOV)

ELIZABETH GUTIERREZ-RAMOS – COMPLIANCE PROGRAM MANAGER

[EGUTIERREZ@TREASURER.CA.GOV](mailto:EGUTIERREZ@TREASURER.CA.GOV)

## WASHINGTON UPDATE

- **H.R. 1 - Tax Cuts and Jobs Act** reform legislation signed into law
  - Preserves both the Low Income Housing Tax Credit and private activity Housing Bonds
  - Reduces the Corporate Income Tax Rate from current 35% to 21%
  - Ends the practice of taxing American businesses profits earned in other countries
  - Cuts taxes by an estimated \$1.5 trillion.

## WASHINGTON UPDATE

- Both 9% tax credit and 4% bond financed tax credit projects will see lower equity pricing due to reduction in corporate tax rate.
  - Initial estimates project a 14% reduction in value of tax credits based on lower corporate tax rate due to potential alternative investments
- Fannie Mae and Freddie Mac regain access to tax credit equity markets
- The individual income tax reductions will expire on December 31, 2025

## WASHINGTON UPDATE

- The House of Representatives passed an \$81 billion Disaster Bill to help states that have been impacted by hurricanes and wildfires this year.
  - The Senate is still working on a disaster bill.
- NCSHA released New Recommended Best Practices in Housing Credit Administration
  - Updated previous Housing Credit recommended practices
  - Added 13 new practices

## CALIFORNIA UPDATE - VAWA

- VAWA protects victims of domestic violence, sexual assault, dating violence, and stalking (“VAWA Crimes”) from discrimination in accessing and maintaining federally assisted housing because of the violence committed against them
- In 2013, Congress expanded the VAWA’s housing protections by including additional federal housing programs such as the LIHTC program

## CALIFORNIA UPDATE - VAWA

- No official guidance given from the IRS to the State Agencies regarding how to implement VAWA
- CTCAC will follow the provisions of the VAWA legislation in accordance with IRS Regulations
- Starting January 1, 2018 CTCAC will require that owners start following the guidance noted in the VAWA/Manager's Unit Memo that was posted to our Website on December 22, 2017
  - Full implementation should be completed by July 2018

## CALIFORNIA UPDATE - VAWA

- CTCAC will be looking for the HUD VAWA Lease Rider (HUD – 91067) to be in all TCAC Files
- All the existing provisions and protocols that are in place at combined HUD/Tax Credit Projects remain unchanged
- Additional obligations may apply to other programs known collectively as “VAWA covered HUD Programs
  - Check with HUD for a full list

## CALIFORNIA UPDATE - VAWA

### Tenant's Status as a Victim of a VAWA Crime

**Owners and management agents may not deny admission or evict a tenant on the basis of, or as a direct result of, the fact that the tenant is or has been the victim or threatened victim of a VAWA Crime.**



## CALIFORNIA UPDATE - VAWA

### Criminal Activity Related to VAWA Crimes

- Owners and management may not consider criminal activity directly relating to VAWA Crimes, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, as cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the violence.

## CALIFORNIA UPDATE - VAWA

### Criminal Activity Related to VAWA Crimes

- Owners and management agents may evict or terminate the assistance of a victim if they can demonstrate an actual and imminent threat to other tenants or employees at the property
- Owners and management agents cannot subject victims of VAWA Crimes to a more demanding standard than other tenants when determining whether to evict

# CALIFORNIA UPDATE - VAWA

## Notification

- Owners and management agents are required to notify all tenants of their VAWA rights by providing each tenant a Notice of Occupancy Rights Form HUD-5380 and VAWA Self-Certification Form HUD-5382 when the tenant has been admitted to the property and with any notification of eviction or notification of termination of assistance.
- These forms are available in multiple languages on HUD's website:  
[https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5a](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a)
- Housing providers must customize Form HUD-5380 by providing information about the program and contact information

## CALIFORNIA UPDATE - VAWA

### Documentation

- Owners and management agents may request, in writing, that the tenant seeking VAWA protections certify that the individual is a victim of a VAWA Crime.
- To receive protections under VAWA, the tenant has the choice to submit either a VAWA Self-Certification Form HUD-5382, or other documentation as noted on the certification form, completed and submitted within 14 business days, or an agreed upon extension date.

## CALIFORNIA UPDATE - VAWA

### Documentation

- Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction or admission denial.
- If the Owner or management agent receives conflicting certifications, they can require an applicant or tenant to submit third-party documentation permitted under VAWA.

## CALIFORNIA UPDATE - VAWA

### **Confidentiality**

- Owner and management agents are required to keep confidential all information submitted by the tenant related to their VAWA request - including the fact that an individual is a victim of a VAWA crime.
- This confidential information may not be put into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:
  - requested or consented to by the individual seeking VAWA protections in writing,
  - required for use in an eviction proceeding,
  - otherwise required by applicable law, or for compliance with the Section 42 Tax Credit Program.

## CALIFORNIA UPDATE - VAWA

### Court Orders

- Owners and management agents must honor all court orders addressing rights of access or control of property, including protective orders issued to victims, and any orders addressing the distribution or possession of property.

## CALIFORNIA UPDATE - VAWA

### Remedies for VAWA Victims

- Owner and management agents have an obligation to qualified tenants who are victims of VAWA crimes to assist them with an emergency transfer in accordance with a documented emergency transfer plan
- This may include the option of lease bifurcation or other discretionary procedures such as a transfer to another unit
- More information on these remedies can be found in the Notice of Occupancy Rights Form HUD-5380



## CALIFORNIA UPDATE - VAWA

### IRS Section 42 LIHTC and CTCAC Guidance

- Transfers related to VAWA regulation remedies must continue to follow the existing transfer protocols in place
- Projects that are **not** designated as a multi-building project (*noted as a “No” Election on Line 8b on the IRS 8609 Form*), may be subject to a loss of credits if a non-qualifying household is transferred into a unit in a different building.
- Projects that are not 100% tax credit and have market/conventional units as well as tax credit units, must continue to follow the 140% Next Available Unit Rule in addition to the protocol for transferring in a multi-building project.

## CALIFORNIA UPDATE - VAWA

### Failure to Meet Obligations

- Under the MOU between the IRS, HUD, and the Dept of Justice and to promote enhanced compliance with the Fair Housing Act:
  - If a “probable cause” discrimination charge or other violation of either VAWA or the Fair Housing Act is determined by HUD, DOJ, the Dept of Fair Employment and Housing, or any other substantially equivalent fair housing state or local agency, CTCAC will file Form 8823 to the IRS as a result of this MOU.
- Failure to follow the IRS Section 42 transfer protocols may result in the filing of Form 8823 to the IRS.

## CALIFORNIA UPDATE – EXEMPT UNITS

- Following recent discussions with the Internal Revenue Service (“IRS”), TCAC received clarification on the correct use of the manager’s unit at LIHTC properties.
- Per IRS Revenue Ruling 92-61, Manager/Exempt units are considered facilities reasonably required for the operation of the residential rental housing.

## CALIFORNIA UPDATE – EXEMPT UNITS

- If a managers unit is included in eligible basis the person that occupies that unit must be employed at the same property where they reside.
- This includes:
  - On-site Manager
  - Assistant Manager
  - Maintenance Personnel

## CALIFORNIA UPDATE – EXEMPT UNITS

Staff not eligible to occupy the managers unit:

- Key holders
- Service Coordinators
- Regional Managers
- Any staff that float from one project to another

## CALIFORNIA UPDATE – EXEMPT UNITS

TCAC will verify which staff is currently occupying the Exempt unit:

- Letter of Intent to Conduct a Compliance Inspection has changed.
  - Requests for the name and title of the person(s) whom occupy the exempt unit.
- During the inspection, TCAC staff will verify who occupies the unit.
- If the Exempt unit is occupied by an ineligible person or unqualified household, it will be reported to the IRS on Form 8823

## CALIFORNIA UPDATE – GENERAL UPDATES

- Compliance Monitoring list is on webpage:  
[www.treasurer.ca.gov/ctcac/compliance/asp](http://www.treasurer.ca.gov/ctcac/compliance/asp)
- CTCAC to audit over 1000 projects in 2018
  - Several New CTCAC Staff in the field
    - Kim Hong
    - David McDaniels
    - Jahan Tahei
    - Justin Espanol
  - Staff in Training
    - Tara Boynton
    - Edward Chrisen
    - Troy Bailey

## CALIFORNIA UPDATE – GENERAL UPDATES

- No changes to CTCAC LIHTC requirements for paystubs, 3<sup>rd</sup> party verifications – continue following our stated policies
- Annual Reporting Requirements – AOC and POP due on Monday, March 19<sup>th</sup>, 2018
- HUD Tenant Demographic Data Collection for 2017 data due date is still pending.
- AOE and Lender Reports for 2017 due May 21<sup>st</sup>, 2018



## ANNUAL OWNER CERTIFICATION (AOC)

- AOC Package, Part I & Part II
  - Part I (AOC & POP) Due Date: March 19, 2018
    - Contact for questions – Tina Johnson 916-651-0344
  - Part II (AOE & LR) Due Date: May 21, 2018
    - Forms posted on TCAC's website around the week of March 19, 2018
    - Contact for questions – Quang Le 916-651-3882

## ANNUAL OWNER CERTIFICATION (AOC) - FAQ

I have a newer Project and CTCAC number doesn't show up on drop-down, what do I do?

- Was the property occupied at the end of 2017?
- Is the owner claiming credits for 2017?
- If yes, print the blank forms, complete the information by hand.
  - Annual Operating Expense (AOE) form is the only form that we don't want sent in if property was not occupied the entire year.

Re-syndication, do I submit under the old allocation or the new?

- Old CTCAC number until the new one places in service.

## AOC – COMMON ERRORS

### AOC Package Part I – AOC Form

- AOC Form mailed to the attention of Tina Johnson
- Most Frequent Errors:
  - Statement I, federal set-aside not marked
  - Statements I – XX - Not initialing a statement and not providing an attachment with an explanation.
  - Statements XXI – XXIII, only to be initialed if they are applicable
  - Owner printing name instead of signing at the bottom of the AOC form

# California Tax Credit Allocation Committee

## ANNUAL OWNER CERTIFICATION (AOC)

REPORTING YEAR: 2017

Project Name:		TCAC number:	
Project Address:			
Project City:			
Project State:	CA	Project Zip:	

### REPORTING PERIOD: JANUARY 1 THROUGH DECEMBER 31, 2017

The undersigned, having been allocated certain Low-Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the IRC), and Revenue and Taxation Code Sections 12206, 17058, and 23610.5 if applicable, by the California Tax Credit Allocation Committee for the purpose of purchasing, constructing and/or improving low-income housing and pursuant to the monitoring requirements of the Committee and the requirements of IRC Section 42 and the Treasury regulations promulgated

**FOR THE ENTIRE 12 MONTH REPORTING PERIOD SPECIFIED ABOVE INITIAL ALL TRUE STATEMENTS. ATTACH BRIEF, WRITTEN EXPLANATIONS FOR ANY STATEMENTS NOT INITIALED.**

- (i) ☐ The project met the requirements: **(REQUIRED FIELD - check A or B)**  
☐ (A) The 20-50 test under §42(g)(1)(A);  
☐ (B) the 40-60 test under §42(g)(1)(B);
- (ii) ☐ There was no change in the applicable fraction (as defined in §42(c)(1)(B)) of any building in the project;
- (iii) ☐ The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(viii) of §1.42-5 (Compliance Monitoring Requirements);
- (iv) ☐ Each low-income unit in the project was rent-restricted under section 42(g)(2);
- (v) ☐ All units in the project were for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C.
- (vi) ☐ The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes, and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to this certification. In addition, the owner must state
- (vii) ☐ There was no change in the eligible basis (as defined in §42(d)) of any building in the project, (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- (viii) ☐ All tenant facilities included in the eligible basis under §42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (ix) ☐ If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not
- (x) ☐ If the income of tenants of a low-income unit in the project increased above the limit allowed in §42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income;
- (xi) ☐ A regulatory agreement as described in §42(h)(6) was in effect, including the requirement that the owner may not refuse to lease a unit in the project to a prospective tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective tenant as the holder of such
- (xii) ☐ All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv));

- (xiii) The project met all terms and conditions recorded in its Regulatory Agreement, if applicable. (As detailed in the Regulatory Agreement and Exhibit A to the Regulatory Agreement);
- (xiv) The applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation)
- (xv) No change in ownership of the project has occurred during the reporting period;
- (xvi) The Project has **not** been notified by the Internal Revenue Service that it is no longer a "qualified low-income housing project" within the meaning of Section 42 of the IRC;
- (xvii) No additional tax-exempt bond funds or other Federal grants or loans with interest rates below the applicable federal rate have been used in the Project since it was placed in service; (Please list any additional funding and attach to AOC package);
- (xviii) The project contains: [REDACTED] low income units, on December 31, 2017, the number of low income units that were **occupied** by tax credit eligible households were:  
[REDACTED] **(REQUIRED FIELD - please select number from drop down list at left):**
- (xix) The project did not suffer any casualty loss in 2017; fire, flood, earthquake, or structural damage;
- (xx) No tenants in low-income units were evicted or had their tenancies terminated other than for good cause, and no tenants had an increase in gross rent with respect to a low-income unit not
- (xxi) The project has provided all site/ service amenities as identified in the project Regulatory Agreement during the reporting period **(if applicable)**;
- (xxii) The project owner certifies compliance with the Capital Needs Agreement to complete short term work and set aside replacement reserve funding for long term work during the 15-year agreement **INITIAL (xxii) BELOW ONLY IF YOUR PROJECT RECEIVED STATE TAX CRED**
- (xxiii) No more than the allowable 8% cash distribution from Project operations, after funding required reserves, as provided for under Revenue and Taxation Code Sections 17058(d) and 23610.5(d).

**Due: Monday, March 19, 2018**

The undersigned, acting under authority of the ownership entity of this project, has executed this Certification, subject to penalty of perjury, and certifies that the foregoing is true and correct, in all respects.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**[NOTARY SEAL]**

By (owner signature) \_\_\_\_\_

Title \_\_\_\_\_

(Printed or Typed)

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
who presented to me as the owner of said property and whom I know to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct. Witness my hand and official seal.

Signature \_\_\_\_\_

Notary Public

## AOC – COMMON ERRORS

### AOC Package Part I – POP Form

- Project Ownership Profile (POP) form emailed to TCAC at this address: [tcac@treasurer.ca.gov](mailto:tcac@treasurer.ca.gov)
- Most Frequent Errors:
  - Leaving any of the fillable areas under Partnership/Owner and Management Company blank or “same as above.”
  - Tax ID – For the partnership not the general partner.
  - Emailing the form in PDF

**California Tax Credit Allocation Committee**  
**Project Ownership Profile (POP)**  
**2017**

**CURRENT owner and management company contact info.**

1. Use the <TAB> key to Navigate Fields.
2. If the TCAC number or Property Name does not appear in the list below, contact Tina Johnson at (916) 651-0344.
3. Complete all information in Light Yellow fields below.

**PROJECT**

CTCAC Number / Name:		Select property from the Dropdown Box
Address:		
City:	State:	Zip:
County:		
Onsite Phone:	Onsite Fax:	Date Form Completed:

**PARTNERSHIP/OWNER**

Partnership/Owner Name:		
Partnership Tax ID:		
<b>Managing General Partner Name:</b>		
<b>Parent Company Name:</b>		
Address:		
City:	State:	Zip:
Contact Name:	Email:	
Phone:	Fax:	
<b>Administrative General Partner Name:</b>		
<b>Parent Company Name:</b>		
Address:		
City:	State:	Zip:
Contact Name:	Email:	
Phone:	Fax:	

**MANAGEMENT COMPANY**

Management Company:		
Address:		
City:	State:	Zip:
Contact Name:	Email:	
Phone:	Fax:	

## AOC – COMMON ERRORS

### AOC Package Part II – Annual Operating Expense (AOE) Form

- AOE form emailed to TCAC at this address: [tcac@treasurer.ca.gov](mailto:tcac@treasurer.ca.gov)
- Most Frequent Errors:
  - Typos in operating expenses that put a project in the red.
  - Including depreciation into expenses.
  - Not filling out the contact information at the bottom of the AOE.
  - If a project is in the red, not providing an explanation.
  - Emailing the form in PDF.



# REPORTING YEAR: 2017

## ANNUAL OPERATING EXPENSE REPORT (AOE) Rev. 10/25/17

Reporting Period: January 1 through December 31, 2017

Project Number:		Project Name:	
Date Prepared:			
Total Occupied Units:			
<b>Income</b>			
Gross Tenant Income:	\$0	Net Rental Revenue:	\$0
Vacancy Loss:	\$0	Misc. Income:	\$0
		Effective Gross Income:	\$0
<b>General Administrative</b>		<b>Maintenance</b>	
Advertising:	\$0	Painting:	\$0
Insurance:	\$0	Repairs:	\$0
Legal:	\$0	Trash Removal:	\$0
Accounting/Auditing:	\$0	Exterminating:	\$0
Security:	\$0	Grounds:	\$0
Other General:	\$0	Elevator:	\$0
Total Administrative:	\$0	Other Maintenance 1 (Specify):	\$0
		Other Maintenance 2 (Specify):	\$0
<b>Management</b>		Total Maintenance:	\$0
Management Fee:	\$0		
<b>Utilities</b>		<b>Other Expenses</b>	
Fuel:	\$0	Other 1 (Specify):	\$0
Gas:	\$0	Other 2 (Specify):	\$0
Electricity:	\$0	Other 3 (Specify):	\$0
Water/ Sewer:	\$0	Other 4 (Specify):	\$0
Total Utilities:	\$0	Total Other:	\$0
<b>Payroll/Payroll Taxes</b>		<b>Debt Service Payments, Real Estate Taxes, and Reserve Accounts</b>	
On-Site Manager:	\$0	Amortizing Debt Service Payments:	\$0
Health Benefits:	\$0	Total Real Estate Taxes:	\$0
Workers Compensation:	\$0	Current Year Replacement Reserve Deposits:	\$0
Maintenance Personnel:	\$0	Service Amenities:	\$0
Payroll Taxes:	\$0		
Other:	\$0	Current Replacement Reserve Balance:	\$0
Total Payroll:	\$0	Current Operating Expense Reserve Balance:	\$0
		Total Annual Residential Operating Expenses:	\$0
		Net Income/ Loss:	\$0
operating in the negative, please provide a brief explanation:			
Form completed by contact:			
Contact phone number:			
Contact email address:			

## AOC – COMMON ERRORS

### AOC Package Part II – Lender Profile (LP) Form

- AOE form emailed to TCAC at this address:  
[tcac@treasurer.ca.gov](mailto:tcac@treasurer.ca.gov)
- Most Frequent Errors:
  - Contact information for lender is blank.
  - Emailing the form in PDF.

# California Tax Credit Allocation Committee

## Lender Profile Form

2017

"Reporting Period: January 1 through December 31, 2017"

1. Use the <TAB> key to Navigate Fields.

2. If the TCAC number or Property Name does not appear in the list below, contact TCAC at (916) 654-6340.

3. Complete all information in Light Yellow fields below.

### PROJECT

TCAC Number / Name:				← Select property from the Dropdown Box
Address:				
City:		State:		Zip:
County:				
Onsite Phone:		Onsite Fax:		Date Form Completed:

### LENDER

Lender #1:				
Loan amount:				
Contact Name:		Email:		
Contact Address:				
City:		State:		Zip:
Phone:		Fax:		
Lender #2:				
Loan amount:				
Contact Name:		Email:		
Contact Address:				
City:		State:		Zip:
Phone:		Fax:		
Lender #3:				
Loan amount:				
Contact Name:		Email:		
Contact Address:				
City:		State:		Zip:
Phone:		Fax:		
Lender #4:				
Loan amount:				
Contact Name:		Email:		
Contact Address:				
City:		State:		Zip:
Phone:		Fax:		

## ANNUAL REPORTING – TENANT DEMOGRAPHIC DATA

### Tenant Income Certification and Supplemental Information Data

- In the contracting process.
- Information will be sent out by CTCAC in the coming weeks in regards to the status of the contract, due dates, etc.

## TRANSFER EVENTS

In September of 2017, CTCAC released an updated Memo and Questionnaire to correspond with the State Regulation Changes for 2017:

- Questionnaire can be found at:

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

These changes remain in effect in 2018

## TRANSFER EVENTS

Easy to follow questions will determine what needs to be submitted for each type

- Ownership Transfer
- Sale
- Re-finance,
- Other change in partnership
  - either limited partner or general partner

## TRANSFER EVENTS

- In order to start the review process, CTCAC must receive the documents noted as necessary on the questionnaire
- The review can take from 2 ½ to 4 weeks depending on whether the correct documentation was submitted and how many reviews are being conducted.

## TRANSFER EVENTS

- Currently we receive on average 3-4 Transfer Events a week to process
- Please factor review processing time into your submission for review.
- We cannot push projects to the top of the queue because of late submission



## TRANSFER EVENTS - REFINANCE

- For project refinance:
  - TCAC requires a letter from owner of proposed refinance including project name and number
  - If the owner is taking out equity proceeds, then TCAC requires owner submit current Capital Needs Assessment (within 180 days)
  - TCAC requires Sources/ Uses statement showing amount of equity distribution

## TRANSFER EVENTS - REFINANCE

For project refinance:

- TCAC will review Capital Needs Assessment for short term (immediate plus years 1-3) and long term needs (years 1-15)
- TCAC will require owner to enter into Capital Needs Agreement to fund short term and long term amounts.
- Short term work must be completed within 2 years.

## TRANSFER EVENTS

- Please submit completed Word versions of the following forms:
  - Assignment and Assumption Agreement
  - Stand Still Agreement
  - Capital Needs Agreement
- This allows us to edit if necessary and will speed up the review process

## TRANSFER EVENTS

- Transfer Events as part of a Resyndication where a new allocation of credits has already been awarded go to Jewel Chen in Development
- All other transfer events go to Ammer Singh or Shannon Nardinelli

## TRANSFER EVENTS

Common errors found during TCAC review:

- Incomplete Stand Still Agreement or Capital Needs Agreement
- TCAC requires a 15-year long term replacement reserve schedule and use inflated amount for long term replacement reserve deposits.
- Capital Needs Assessment submitted for refinance- long term chart is only for loan term (varies from 10 years to 12-years).

## TRANSFER EVENTS

Common errors found during TCAC review:

- Missing Sources/ Uses worksheet which shows net equity distribution to seller
- Missing confirmation letter from current owner confirming seller will transfer tenant records and demographic data to new owner upon close of escrow

## TRANSFER EVENTS

### Mandatory CTCAC Training

- For new owners who are intending to purchase Tax Credit Properties in California and do not meet the same qualifications as the outgoing ownership entity and/or management company, CTCAC will require that the new owners, their management company, and their maintenance staff attend a one day training class held by CTCAC at our offices in Sacramento.

## TRANSFER EVENTS

- TCAC may also require ownership entities who have never owned Tax Credit properties to partner with a bone-fide management company familiar with the LIHTC in the state of California for a minimum of 2 years before the owner can self-manage.
- Self - Management
  - TCAC has established a checklist of items required to be submitted for our review before approval can be granted



# MANAGEMENT COMPANY CHANGES

## Management Agent Transfers:

- 9% tax credit projects require TCAC consent and equivalent management agent experience as existing entity:
  - Substitution of Property Management Agent
- 4% tax credit projects require TCAC management experience similar to the exiting management company

# MANAGEMENT COMPANY CHANGES

## Management Agent Transfers:

New for 2018: For 4% tax credit projects:

- If a management company is ineligible for at least 2 experience points, then TCAC will require their staff to obtain training in project operations, on-site certification, fair housing law, and manager certification in IRS Section 42 program requirements from TCAC or TCAC approved nationally recognized entity.

## MANAGEMENT COMPANY CHANGES

- All letters and notices of intent to conduct a monitoring inspection go to the Owner and Management Contact CTCAC has on file
- As of April 2017, CTCAC has the authority to issue fines to owners who change management companies without notifying and receiving approval from CTCAC first.

## 8823 – WHY AND HOW

### Why

- When noncompliance is identified in a CTCAC report to the owner, the owner is expected to respond and provide clarification or document that issues of noncompliance have been addressed.
- CTCAC determines one of 3 things:
  - whether the owner was always in compliance,
  - has corrected the noncompliance, or
  - remains out of compliance.

## 8823 – WHY AND HOW

Regardless of whether the owner remedied the noncompliance or remains out of compliance - a Form 8823 must be filed with the IRS

## 8823 – WHY AND HOW

### How

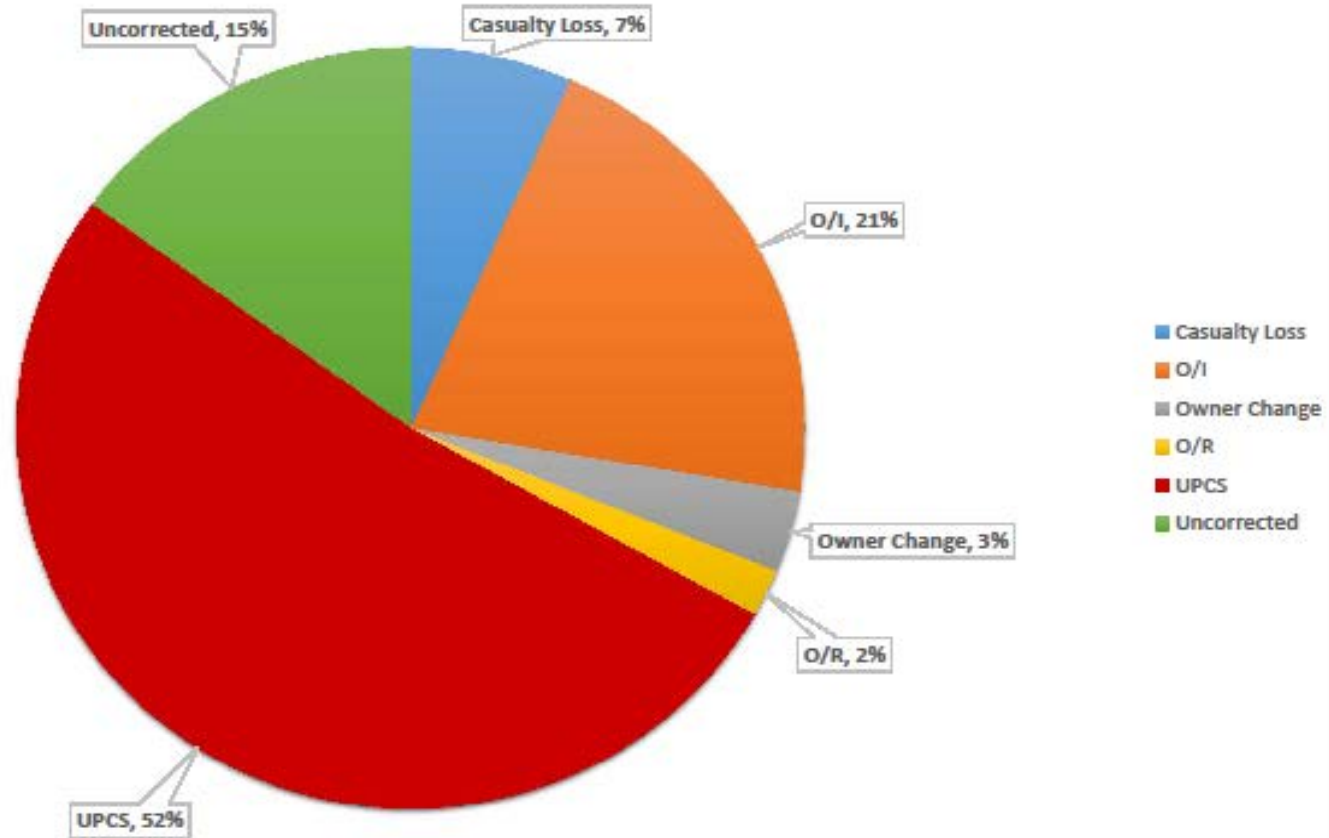
- CTCAC may file Form 8823 that simultaneously reports findings that are both back in compliance and that remain out of compliance.
- Once the noncompliance is resolved within the correction period, CTCAC will file a “back in compliance” Form 8823.
- If the remaining noncompliance is corrected after the correction period but within 3 years, CTCAC is required to file another Form 8823 reporting the corrected noncompliance and document the date the taxpayer was back in compliance.

## 8823 – WHY AND HOW

### How

- The best strategy is to address noncompliance quickly so that the initial Form 8823 will indicate that the noncompliance was corrected.
  - From the IRS' point of view, the owner's responsiveness is indicative of due diligence.
- Form 8823 must be filed with the IRS within 45 days following the end of the correction period, whether or not the noncompliance has been corrected.
- CTCAC files Forms 8823 at the end of each month.

Percentage of 8823s by Category 2017





## 8823 – A CASE STUDY

- CTCAC performed a file and unit on-site inspection at Happy Place Apartments (CA-YYYY-XXX) after notifying the owner of an inspection date.
- Within 30 days following the end of the inspection, CTCAC sent the owner a Non-Compliance Letter (NCL)
- The NCL identified the noncompliance, offered guidance for correction, and gave the owner a correction period of 30 days from the date of the NCL.

## 8823 – A CASE STUDY

The following noncompliance was identified in the NCL:

1. One unit in Building 5 was over the income limit for family household size at initial move-in
2. One unit each in Buildings 1, 2, 4, 5, 7, and 8 had gross rents exceeding the maximum tax credit limit
3. One unit each in Buildings 1, 3, and 8 was not turn-key ready due to various UPCS violations at the time of inspection and were vacant for over 60 days

## 8823 – A CASE STUDY

Guidance for correction:

1. Additional verifiable 3<sup>rd</sup> party income documentation to show household was income qualified at move-in, or W-2 and 1040 tax forms
2. Identify the dates and for how long when the units were overcharged rents
  - Calculate the overcharged amounts
  - Issue rebate checks to the affected households.
  - Ensure rents are now within maximum tax credit limits.

## 8823 – A CASE STUDY

Guidance for correction:

3. An explanation why units were not suitable for occupancy;

- Copy of completed work orders and color photos evidencing units are back in habitable condition;
- Copy of management's completed, signed, and dated inspection report for the vacant units;
- Three sources of marketing/advertising methods for the vacant units.
  - Sources may include but not limited to: internet advertising, flyers, newspaper advertisement, signs in front of property, etc.

## 8823 – A CASE STUDY

Owner's Response and CTCAC determination:

Issue #1:

- The owner concluded that the household was over-income at initial move-in
- The owner served the household a 30-day notice to terminate tenancy

CTCAC Determination:

- The noncompliance remains uncorrected until a qualified household occupies the unit

## 8823 – A CASE STUDY

### Owner's Response and CTCAC determination:

#### Issue #2:

- Owner calculated the correct amount of overcharged rents and issued rebate checks to the tenants, and provided copies of the cancelled checks

#### CTCAC Determination:

- CTCAC determined this noncompliance was corrected
  - Note – The IRS may still determine that the noncompliance should result in the recapture of credits. CTCAC does not have any input or influence in the IRS's decision.

## 8823 – A CASE STUDY

### Issue #3:

- Owner provided work orders, pest control invoices, management signed inspection forms, and photos of 2 market ready units
- For marketing efforts, owner provided screenshots of .com advertising, flyers to the local PHA, and published ads in a local newspaper
- The 3<sup>rd</sup> unit became occupied by eligible tenants, and the owner provided the move-in certification package for that household

### CTCAC Determination:

- CTCAC determined this noncompliance was corrected

## 8823 CASE STUDY – REPORTING TO THE IRS

As required by IRS, CTCAC must file Form 8823 for any noncompliance, whether corrected or not.

- CTCAC filed an uncorrected 8823 for Building 5 for noncompliance of “Household income above income limit upon initial occupancy”
  - The out of compliance date is the date of the household’s initial move-in date
- CTCAC filed a corrected 8823 for Buildings 1, 2, 4, 5, 7, and 8 for noncompliance of “Gross rents exceed tax credit limits”
  - The out of compliance date is the date the units began to be overcharged rents
  - The back in compliance date is the date the rent returns to, or goes below, the maximum current limit.



## 8823 CASE STUDY – REPORTING TO THE IRS

CTCAC filed a corrected 8823 for Buildings 1, 3, and 8 for “Violations of the Vacant Unit Rule”

- The out of compliance date is the date the unit became vacant
- The back in compliance date will be determined by the type of vacant violation
  - UPCS – date of correction noted on work order/invoices to contractors
  - Qualified Household – Date the new Household occupied the unit

## 8823 CASE STUDY – REPORTING TO THE IRS

- Copies of Forms 8823 and an attachment explaining the noncompliance and CTCAC determinations are sent to the owner together with a letter from our Chief of Compliance
- A separate closeout letter was sent to both the owner and its management agent
- This last step concludes the inspection for CTCAC

## 8823 CASE STUDY – FOLLOW-UP

3 months after the inspection was closed, the Owner submitted additional documentation to correct the remaining noncompliance:

### For Building 5 – Over-income household

- The owner was able to terminate the tenancy of the over-income household
- A newly eligible household occupies the unit
- The owner submitted copies of the complete move-in certification package for the new household

## 8823 CASE STUDY – FOLLOW-UP

CTCAC corresponding action:

- Because the owner corrected the noncompliance within 3 years, CTCAC filed another Form 8823 reporting the corrected noncompliance and documenting the date the owner was back in compliance.
- The back in compliance date is the move-in date of the newly eligible household.

## CALIFORNIA UTILITY ALLOWANCE CALCULATOR (CUAC)

- The California Energy Commission developed the California Utility Allowance Calculator (CUAC)
- The CUAC is a tool designed to calculate project-specific utility allowances for low income housing tax credit projects.
- Beginning on January 25, 2009, CTCAC approved the CUAC as the energy consumption model software for California for the 2009 and later tax credit funding cycle.

# CALIFORNIA UTILITY ALLOWANCE CALCULATOR (CUAC)

- Using the output from Energy Commission certified building modeling software, and internal calculations, the CUAC creates a utility allowance estimate that more accurately reflects the building and unit energy efficiency measures incorporated into an affordable housing project.
- LIHTC projects with newly constructed buildings that want a more accurate measure of utility costs
- Developers contract with Energy Consultant firm to perform CUAC analysis.

# CALIFORNIA UTILITY ALLOWANCE CALCULATOR (CUAC)

- An Energy Analyst models the affordable units separate from the common space areas using Energy Commission approved energy efficiency compliance software.
- Currently modeling software includes: Energy Pro, and the CEC(California Energy Commission) PV calculator.
- The CUAC offers developers the best method of capturing the impact of energy efficiency and renewable generation measures on tenant utility costs, translating that into cash flow and lower utility costs for residents.

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# CALIFORNIA UTILITY ALLOWANCE CALCULATOR (CUAC)

- New Construction Projects
- 2018 or later rehabilitation projects for which the rehabilitation improves energy efficiency by at least 20%, or installs solar generation that offsets 50% of tenant loads

# CALIFORNIA UTILITY ALLOWANCE CALCULATOR (CUAC)

- Existing tax credit projects that install new Solar PV system with either MASH funding (CPUC) or solar program administered by a municipal utility or joint powers authority, which offsets tenants' electrical load.
- **What Energy Efficiency standards must these projects meet or exceed?**
  - California Energy Commission Title 24 Part 6 Standards(2016) or as noted in preliminary reservation for tax credits.

## CUAC APPROVALS AND 2017 PROGRAM CHANGES

- Usage by LIHTC Projects at placed-in-service stage has increased over time.
- CTCAC has approved 125 submissions since CUAC tool was approved method (2009) with improved energy efficiency resulting in 20-40% lower utility allowance costs per project.

## CUAC APPROVALS AND 2017 PROGRAM CHANGES

### TCAC 2017 Regulations changes-


- Existing tax credit projects and rehabilitation projects converting to CUAC shall provide tenants at least 90 days advanced notice of current and proposed utility allowances including notice of actual rent increase to households.
- Except for existing tax credit projects with active MASH program reservations dated prior to March 1, 2018, any decrease in tenant's utility allowance that results from conversion to the CUAC shall not exceed \$15 per month over any 12-month period (new rule to limit tenant rent shock for new MASH funded projects)

## PROCESSING CUAC SUBMISSIONS

- CTCAC reviews all CUAC submissions at application stage and placed-in-service against submission requirements.
- Developer or energy analyst should send TCAC Dropbox link with all required attachments noted in our CUAC checklist
- CTCAC has engaged third party contractor Benningfield Group, Inc. to assist with quality control reviews and approvals at placed-in-service stage.

## PROCESSING CUAC SUBMISSIONS

- TCAC has established and charges a QC review fee between \$500-\$2,500 per review.
- CTCAC requires annual CUAC updates and will review/approve each submission.



Q & A