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DATE: March 23, 2020

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: 2020 Final Proposed Regulation Changes and Responses to Comments

EXECUTIVE DIRECTOR
JUDITH BLACKWELL

On January 22, 2020, the California Tax Credit Allocation Committee (“TCAC” or “Committee”) released proposed regulation changes. TCAC staff subsequently held four (4) public hearings in Sacramento, Oakland, San Diego and Los Angeles between January 27, 2020 and January 31, 2020.

TCAC accepted written comments on these initial proposed regulation changes through Wednesday, February 12, 2020. Numerous individuals, organizations, and groups formally commented on the proposed regulation changes. TCAC staff carefully considered all comments received, and due to the volume and nature of the public comments, TCAC has decided to bifurcate the proposed regulation changes into two sets, which would allow those changes receiving a small volume of public comments be adopted by the Committee on April 3, 2020 and effective thereafter. The first set of final proposed regulation changes include the initial proposed regulation changes with exception of those related to the Further Consolidated Appropriations Act, 2020 (“FCAA” or “Disaster”) credits and the draft 2020 Opportunity Maps.

This memo includes the final proposed regulation changes, staff’s responses to comments including an explanation of the proposed revisions, in which revisions to the initially proposed changes are highlighted in **yellow**. TCAC will publish a matrix summarizing the public comments in a subsequent document. In addition, the final proposed regulation change document also includes an initial statement of reasons for one (1) additional conforming emergency proposed regulation change also highlighted in **yellow**.

The second set of proposed regulations changes related to the Disaster credits and draft 2020 Opportunity Maps will be published subsequently with an opportunity for public comment. These changes will include a public comment period before being finalized and recommended to the Committee at a future meeting for approval.

**Proposed Regulation Changes with Reasons
March 23, 2020**

Section 10315(h)

Initial Proposed Change:

- (h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below, exclusive of the Acquisition and/or Rehabilitation and Large Family New Construction located in a Highest or High Resource Area housing types which are listed here solely for purposes of the tiebreaker, and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(9) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

Housing Type	Goal
Large Family	65%
Large Family New Construction receiving the tiebreaker increase for being located in census tracts, <u>or census block groups as applicable</u> , designated on the TCAC/HCD Opportunity Area Map as Highest or High Resource <u>Areas</u> (effective for 2019 and later reservations)	30%
Special Needs	30%
<u>Single Room Occupancy (SRO)</u>	<u>15%</u>
At-Risk	15%
Seniors	15%
Acquisition and/or Rehabilitation within the rural set-aside only	30% of the credits available in the rural set-aside

For purposes of the Acquisition and/or Rehabilitation Housing Type Goal, a project will be considered an acquisition and/or rehabilitation project if at least 50% of the units were previously residential dwelling units.

A large family new construction project that receives a tiebreaker increase for being located in a Highest or High Resource census tract shall count against both that housing type and the general Large Family housing type.

Comments Received: Due to the bifurcation of the proposed regulation changes, TCAC will address the portion of the changes related to the draft 2020 Opportunity Maps in the subsequent proposed regulation change package. With regard to the re-introduction of the SRO housing type, two commenters supported the re-introduction of the SRO housing type. Four commenters opposed the re-introduction of the SRO housing type. Of the four commenters, two commenters believe the current proposal reduces the likelihood that a SRO project will serve homeless households. In lieu of restoring the SRO housing type, these two commenters recommend that the Special Needs housing type be amended to allow SRO projects to serve persons “at risk of homelessness” as defined in the old MHP regulations. One commenter stated that there is a tremendous need for

housing for people experiencing homelessness, and recommends that SRO housing type specifically requires targeting to homeless/special needs households with a stricter average affordability requirement than 40%. At a minimum, the commenter supports adding a services plan requirement for the SRO housing type if re-introduced.

Response to Comments: The comment that SRO housing will reduce the likelihood that a SRO project will serve homeless households may or may not be true. Given there are populations who are not homeless but experience housing insecurity, and current avenues exist to house the homeless populations (Nonprofit set aside for homeless assistance projects and Special Needs set aside), the suggestion to add a homelessness requirement would not capture those populations experiencing housing security.

Given there would be no homeless requirement attached to the SRO housing type and that the service amenity point category essentially ensures a service component appropriate to the tenant population at the project, the suggestion to provide or services plan requirement for SRO projects is not necessary.

As previously stated, there are approximately 15,000 units in SRO housing funded with LIHTCs providing project owners the ability to rehabilitate these units using nine percent (9%) credits, often the only viable financing available for such projects.

Final Proposed Change: Proceed with changes as initially proposed, excluding the changes associated with the draft 2020 Opportunity Maps as previously stated.

- (h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below, exclusive of the Acquisition and/or Rehabilitation and Large Family New Construction located in a Highest or High Resource Area housing types which are listed here solely for purposes of the tiebreaker, and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(9) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

Housing Type	Goal
Large Family	65%
Large Family New Construction receiving the tiebreaker increase for being located in census tracts, or census block groups as applicable, designated on the TCAC/HCD Opportunity Area Map as Highest or High Resource Areas (effective for 2019 and later reservations)	30%
Special Needs	30%
<u>Single Room Occupancy (SRO)</u>	<u>15%</u>
At-Risk	15%
Seniors	15%
Acquisition and/or Rehabilitation within the rural set-aside only	30% of the credits available in the rural set-aside

For purposes of the Acquisition and/or Rehabilitation Housing Type Goal, a project will be considered an acquisition and/or rehabilitation project if at least 50% of the units were previously residential dwelling units.

A large family new construction project that receives a tiebreaker increase for being located in a Highest or High Resource census tract shall count against both that housing type and the general Large Family housing type.

Section 10322(h)(27) and (28)

Initial Proposed Change:

- (27) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide all existing income, rent and family size information for the current tenant population.
- (28) Tenant relocation plan. In addition to any other applicable relocation requirements, Applicants-applicants proposing rehabilitation or demolition of occupied housing shall comply with the requirements of either the California Relocation Assistance Law, California Government Code Section 7260 et seq, or the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Applicants shall provide an explanation of the relocation requirements that they are complying with, and a detailed relocation plan consistent with one of the above-listed relocation standards. The relocation plan must address the potential displacement of current tenants who do not meet the CTCAC income eligibility requirements or who will receive a rent increase exceeding five percent (5%). and a detailed relocation plan The relocation plan must also include: an estimate of the number of current tenants who do not meet CTCAC income eligibility requirements and how this estimate was determined, and a detailed description of how current tenants will be provided notice and information about the required relocation assistance, including copies of such noticing document(s). including a budget with an identified funding source. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.

Comments Received: Comments from 11 commenters were received for the proposed regulation change. Of the 11 commenters, 10 commenters support the proposed regulation change, but some comments with additional revisions.

Of the 10 commenters who support the proposed change, six commenters suggest clarifying that the state relocation requirements is the default standard to use, and that federal relocation requirements only apply if the project is already subject to federal relocation requirements. In addition, three commenters recommend maintaining the relocation budget to support compliance. Two commenters wanted to ensure that the relocation plans were real and enforceable.

One commenter suggests that these protections do not explicitly apply to projects that involve the acquisition of already occupied housing and state that there is no difference to the tenants whether they are displaced by one form of project activity or another.

Other comments received included a recommendation to clarify the proposed language to be more specific with regard to the tenant being entitled to compensation pursuant to relocation laws, while another recommended clarification that relocation law applies to the tax credit units within a project as other funding sources may have their own relocation requirements.

Two commenters supports applying relocation law to tenants who will experience rent increases of over 5% at syndication, but only if that rent increase would cause them to pay over 30% of their income toward rent.

One commenter states that acquisition projects should not be limited to providing “existing information” in the rent and income analysis in Section 10322(h)(27). The commenter adds that while the information may be more difficult to come by, this information must be obtained to comply with the California Relocation Assistance Act (“CRAA”). The commenter suggests adding language to Section 10322(h)(27) requiring applicants comply with the survey requirements of the California Relocation Assistance Act (“CRAA”), including the requirements of 25 CCR §6048 in order to determine what relocation assistance must be offered. One commenter stated that it is difficult to get reliable information when acquiring a project in order to determine relocation benefits. Rather than available information, they would need reliable information, which could lead to privacy issues and could be a discouragement to make more affordable housing.

One commenter suggests adding a reach back period to prevent applicants from circumventing the law by displacing tenants, or causing existing owners to displace tenants, prior to applying for credits. They suggest requiring a declaration that the applicant has not displaced, nor caused the displacement of any tenants from the project, prior to completion of the relocation plan as required by 25 CCR 6040 No later than 60 days following initiation of negotiations, the applicant shall provide notices to tenants of the availability of relocation assistance of as required by the CRAA.

One commenter suggests including language to clarify that in the event that an existing tenant is subject to a rent increase of 5% or more, the tenant may refuse the assistance and elect to remain in the property at the higher rent.

One commenter states that a public entity is the actor undertaking the project that causes displacement-such as the developer of a LIHTC project. (See Cal. Govt. Code §7260). The public entity must prepare a relocation plan that provides assurances, including budget amounts, to mitigate the effects of the proposed displacement. As such, the commenter suggests adding clarifying language stating that the applicant assume the role of the "public entity" for purposes of the CRAA or the Uniform Relocation Act.

One commenter stated that while they appreciate the proposed change, they recommend TCAC take additional time to finesse the proposal to ensure that the appropriate relocation standard is being utilized. The commenter also believe there are circumstances where it is reasonable to increase rents beyond 5%, in particular for over-income tenants and only to the extent necessary for fiscal integrity.

Responses to Comments: The intent of the proposed regulation changes was to put into place a requirement for applicants to provide fair and consistent relocation assistance to tenants for all rehabilitation and acquisition projects or demolition of occupied housing.

TCAC staff agree with the comments clarifying that the state relocation requirements is the default standard to use, and that federal relocation requirements only apply if the project is already subject to federal relocation requirements. TCAC staff agrees that the comments regarding the relocation budget and the tenant being entitled to compensation pursuant to relocation laws has merit. TCAC staff provides clarification to require relocation cost estimates as well as a detailed description for temporary relocation and corresponding payments for tenants for those tenants who meet the TCAC income eligibility requirements.

The comments regarding the relocation plans being real and enforceable is something that TCAC staff is mindful of. The proposed regulation change requires that applicant comply with the relocation requirements. As with other TCAC requirements, failure to do so may result in sanctions.

The comment with regard to the relocation requirements applying the acquisition of occupied housing, the relocation requirements would apply since applications for tax credits for existing projects have minimum rehabilitation requirements.

The comment regarding relocation law applying to the tax credit units within a project, it was TCAC's intent to apply the relocation requirements to all of the units at the project.

The two comments received supporting application of relocation law to tenants who will experience rent increases of over 5% at syndication, but only if that rent increase would cause them to pay over 30% of their income toward rent would require additional discussion. TCAC staff believes an increase of over 5% warrants relocation benefits.

The comments received relating to Section 10322(h)(27) regarding a requirement that applicants comply with the survey requirements of the California Relocation Assistance Act ("CRAA"), including the requirements of 25 CCR §6048 as well as the comment regarding reliable information when acquiring a project, TCAC will continue to discuss. The comments warrant additional research and further discussion future regulation change considerations.

The comment regarding adding a reach back period to prevent applicants from circumventing the law by displacing tenants, or causing existing owners to displace tenants, prior to applying for credits focusing on significantly expanding TCAC's role to cover time frames prior to the TCAC application also warrants further research and a lengthier discussion for future regulation change considerations.

With regard to a tenant refusing the assistance and electing to remain in the property at a higher rent, TCAC staff is open to further discussion possibly for a future regulation change.

The comment recommending TCAC take additional time to finesse the proposal to ensure that the appropriate relocation standard is being utilized. TCAC staff believes adhering to state or federal relocation laws is appropriate and provides fair and consistent relocation assistance to tenants for all rehabilitation and acquisition projects or demolition of occupied housing as previously stated. As

with other proposed changes, TCAC staff is open to future discussion on ways to improve the requirement.

Final Proposed Change: Proceed with change as initially proposed, with slight amendments to Section 10322(h)(28) highlighted in yellow.

- (27) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide all existing income, rent and family size information for the current tenant population.

- (28) Tenant relocation plan. In addition to any other applicable relocation requirements, Applicants ~~applicants~~ proposing rehabilitation or demolition of occupied housing shall comply with the requirements of either the California Relocation Assistance Law, California Government Code Section 7260 et seq, or, if the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 already applies to the project, pursuant to this federal law. Applicants shall provide an explanation of the relocation requirements that they are complying with, and a detailed relocation plan consistent with one of the above-listed relocation standards including an itemized relocation cost estimate that calculates the tenant relocation expenses required pursuant to the applicable California or federal relocation law. ~~The relocation plan must also address the potential displacement of current tenants who do not meet the CTCAC income eligibility requirements or who will receive a rent increase exceeding five percent (5%), and a detailed relocation plan.~~ The relocation plan must also include: a detailed description of proposed temporary onsite or offsite relocation and any corresponding relocation payments for tenants who meet CTCAC income eligibility requirements; an estimate of the number of current tenants who do not meet CTCAC income eligibility requirements or will receive a rent increase exceeding five percent (5%), and how this estimate was determined, and the estimated relocation cost; and a detailed description of how current tenants will be provided notice and information about the required relocation assistance, including copies of such noticing document(s), including a budget with an identified funding source. ~~Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.~~

Section 10325(g)(3) – Changed to Section 10325(g)(5)

Initial Proposed Change:

- (3) SRO projects. To be considered Single Room Occupancy (SRO) housing, the application shall meet the following additional threshold requirements:
 - (A) Average targeted income is no more than forty percent (40%) of the area median income;
 - (B) At least 90% of all units shall be SRO units. SRO units are efficiency or studio units that may include a complete private bath and kitchen but generally do not have a separate bedroom, unless the configuration of

an already existing building being proposed to be used for an SRO dictates otherwise. The minimum size for SRO units shall be 200 square feet, and the size shall not exceed 500 square feet. These bedroom and size requirements may be waived for rehabilitation projects, at the discretion of the Executive Director;

- (C) At least one bath shall be provided for every eight units;
- (D) If the project does not have a rental subsidy committed, the applicant shall demonstrate that the target population can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that those receiving General Assistance are willing to pay rent at the level proposed;
- (E) The project configuration, including community space and kitchen facilities, shall meet the needs of the population, and comply with Section 10325(F)(7)(E);
- (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost;
- (G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;
- (H) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land);
- (I) A ten percent (10%) vacancy rate shall be used unless otherwise approved by the Executive Director. Justification of a lower rate shall be included;
- ~~(A)~~(J) New construction projects for seniors shall not qualify as SRO housing.

Comments Received: Two commenters supported the re-introduction of the SRO housing type. Four commenters oppose the re-introduction of the SRO housing type. Of the four commenters, two commenters believe the current proposal reduces the likelihood that a SRO project will serve homeless households. In lieu of restoring the SRO housing type, these two commenters recommend that the Special Needs housing type be amended to allow SRO projects to serve persons “at risk of homelessness” as defined in the old MHP regulations. One commenter stated that there is a tremendous need for housing for people experiencing homelessness, and recommends that SRO housing type specifically requires targeting to homeless/special needs households with a stricter average affordability requirement than 40%. At a minimum, the commenter supports adding a services plan requirement for the SRO housing type if re-introduced.

Response to Comments: The comment that SRO housing will reduce the likelihood that a SRO project will serve homeless households may or may not be true. Given there are populations who are not homeless but experience housing insecurity, and current avenues exist to house the homeless populations (Nonprofit set aside for homeless assistance projects and Special Needs set aside), the

suggestion to add a homelessness requirement would not capture those populations experiencing housing insecurity.

Given there would be no homeless requirement attached to the SRO housing type and that the service amenity point category essentially ensures a service component appropriate to the tenant population at the project, the suggestion to provide or services plan requirement for SRO projects is not necessary.

As previously stated, there are approximately 15,000 units in SRO housing funded with LIHTCs providing project owners the ability to rehabilitate these units using nine percent (9%) credits, often the only viable financing available for such projects.

Final Proposed Change: Proceed with changes as initially proposed with a minor change from subsection (3) to (5) for SRO projects to avoid re-numbering of the Special Needs and At-Risk housing types.

~~(3)~~(5) SRO projects. To be considered Single Room Occupancy (SRO) housing, the application shall meet the following additional threshold requirements:

- (A) Average targeted income is no more than forty percent (40%) of the area median income;
- (B) At least 90% of all units shall be SRO units. SRO units are efficiency or studio units that may include a complete private bath and kitchen but generally do not have a separate bedroom, unless the configuration of an already existing building being proposed to be used for an SRO dictates otherwise. The minimum size for SRO units shall be 200 square feet, and the size shall not exceed 500 square feet. These bedroom and size requirements may be waived for rehabilitation projects, at the discretion of the Executive Director;
- (C) At least one bath shall be provided for every eight units;
- (D) If the project does not have a rental subsidy committed, the applicant shall demonstrate that the target population can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that those receiving General Assistance are willing to pay rent at the level proposed;
- (E) The project configuration, including community space and kitchen facilities, shall meet the needs of the population, and comply with Section 10325(F)(7)(E);
- (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost;
- (G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;

(H) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land);

(I) A ten percent (10%) vacancy rate shall be used unless otherwise approved by the Executive Director. Justification of a lower rate shall be included;

(A)(J) New construction projects for seniors shall not qualify as SRO housing.

Section 10335(e)

Initial Proposed Change:

- (a) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State, Tax Credits shall submit a performance deposit equal to four percent (4%) of the first year's Federal Credit amount reserved. Notwithstanding the other provisions of this subsection, an applicant requesting Federal Tax Credits not subject to the Federal housing Credit Ceiling and requesting State Tax Credits, shall be required to submit a performance deposit in an amount equal to ~~four~~ two percent (42%) of the first year's State Credit amount reserved for the project, including applicants with a January 15, 2020 reservation of State Credit. Notwithstanding the other provisions of this Section, an applicant requesting only Federal Tax Credits not subject to the Federal Credit Ceiling, shall not be required to submit a performance deposit.

Comments Received: Two commenters support the revision to the formula for calculating performance deposits and further recommend adding a \$100,000 limit. One commenter believes some performance deposits could exceed this amount, which they believe is excessive.

Response to Comments: TCAC staff finds the suggestion to add a \$100,000 limit to the performance deposit amount compelling and comparable to what the performance deposit for a nine percent (9%) project awarded the maximum annual federal credit amount (\$2,500,000).

Final Proposed Change: Proceed with changes as initially proposed, with the addition of a \$100,000 limit on the performance deposit.

- (a) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State, Tax Credits shall submit a performance deposit equal to four percent (4%) of the first year's Federal Credit amount reserved. Notwithstanding the other provisions of this subsection, an applicant requesting Federal Tax Credits not subject to the Federal housing Credit Ceiling and requesting State Tax Credits, shall be required to submit a performance deposit in an amount equal to ~~four~~ two percent (42%) of the first year's State Credit amount reserved for the project, but not to exceed \$100,000, including applicants with a January 15, 2020 reservation of State Credit. Notwithstanding the other provisions of this Section, an applicant requesting only Federal Tax Credits not subject to the Federal Credit Ceiling, shall not be required to submit a performance deposit.
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New Emergency Proposed Regulation Change Proposal

Section 10325(c)(3)

Proposed Change:

(3) Housing Needs. (Points will be awarded only in one category listed below except that acquisition and/or rehabilitation Scattered Site Projects may, at the applicant's election, be scored either in the aggregate or proportionately based upon (i) each site's score, and (ii) the percentage of units represented by each site.) The category selected hereunder (which shall be the category represented by the highest percentage of Low-Income Units in a proportionally scored project) shall also be the project category for purposes of the tiebreaker described in subsection 10325(c)(9) below.

Large Family Projects	10 points
Special Needs Projects	10 points
Seniors Projects	10 points
At-Risk Projects	10 points
SRO Projects	10 points

Reason: This change conforms to the re-introduction of the SRO housing type proposed in Section 10325(g)(5) by adding SRO Projects to the Housing Needs point category.
