



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: October 16, 2019

TO: Low Income Housing Tax Credit Project Owners

FROM: California Tax Credit Allocation Committee – Development Section

RE: Guidance relating to limited partnership agreement reserve account language

Since 1997, California Tax Credit Allocation Committee (TCAC) regulations have generally required that “all unexpended funds in project reserve accounts shall remain with the project to be used for the benefit of the property and/or its residents.” The one exception is that the operating reserve may be released following achievement of a minimum annual debt service ratio of 1.15 for three consecutive years following stabilized occupancy only to pay deferred developer fees. It has come to TCAC’s attention that many limited partnership agreements (LPAs) do not reflect this requirement but rather allow distribution of reserves as cash flow or use of the reserves for other purposes such as funding exit taxes. Whereas regulations have the force of law, TCAC reminds owners of all projects that received reservations of tax credits in or after 1997 that they are subject to the requirement for reserves to remain with the project regardless of any LPA language to the contrary. It is the responsibility of the project owner to ensure lender and other agreements that exercise control over reserve accounts are in compliance with TCAC regulations. TCAC may issue program sanctions for violations of this requirement.

TCAC regulations reference all reserve accounts, which includes not only the replacement reserve and operating reserve, but any additional reserve accounts such as rent reserve, Section 8 transition reserve, service reserve, etc. All of these reserve accounts are held to the requirement that reserve accounts shall remain with the project to be used for the benefit of the property and/or its residents. TCAC staff plans to propose a regulation change clarifying reserve requirements in the next set of regulation change proposals.

TCAC requires an amendment of any LPA language that does not conform to the regulatory requirement and will not issue tax forms 8609 until the amendment is executed and provided to TCAC. To facilitate this, staff suggests a single amendment that addresses all sections of the LPA.

“Notwithstanding any language to the contrary in the Agreement, for the full term of the Extended Use Agreement, all funds in all project reserve accounts shall remain with the Project to be used for the benefit of the Property and/or its residents. The only exception to the foregoing is the release of Operating Reserve to pay deferred developer fees following the achievement of a minimum annual debt service ratio of 1.15 for three (3) consecutive years following stabilized occupancy.”

In order to expedite reviews and the issuance of tax forms, TCAC strongly encourages owners to ensure the LPA's conformance with this requirement prior to submitting the placed in service application. Staff will also be reviewing the LPA language as part of the Readiness to Proceed (180/194-day) submission, and will require amendment of any LPA language that does not conform to this requirement.