



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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915 Capitol Mall, Suite 485  
Sacramento, CA 95814  
p (916) 654-6340  
f (916) 654-6033  
ctcac@treasurer.ca.gov  
www.treasurer.ca.gov/ctcac

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State Treasurer

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State Controller

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Mark Stivers

April 28, 2016

**TO:** TCAC and CDLAC Stakeholders

**FROM:** Mark Stivers, Executive Director  
Jeree Glasser-Hedrick, CDLAC Executive Director

**RE:** Policy regarding over-income tenants in more deeply targeted units during a resyndication or a first syndication of a project subject to an existing regulatory agreement

When an existing Low-Income Housing Tax Credit project seeks a new reservation of tax credits (resyndicates), for purposes of the federal election (40% of units at 60% AMI or 20% of units at 50% AMI), federal law “grandfathers” in as qualified tenants those households who are currently over the 60% or 50% AMI income limits but met the income qualifications at move-in, even if move-in occurred under the old regulatory agreement prior to resyndication.

For purposes of more deeply targeted units, TCAC has long required that owners meet the income targeting requirements on a continuing basis based on tenants’ last recertifications. However, because tax credit and bond leases generally do not allow owners to evict tenants for being over-income, if tenant income increases make it impossible for an owner to meet the project’s income targeting at any point in time, TCAC has allowed the owner to rent the next available unit at the underrepresented income targeting level and subsequently raise the rent on the unit where household income has increased. In all cases and at all times, the rents must comply with the rent limits for the applicable targeting of each unit.

With the recent increase in resyndication applications, the issue of over-income tenants in more deeply targeted units has become more acute. At a minimum, the TCAC regulations generally require resyndicating projects to maintain the rent and income targeting from the original regulatory agreement. Sometimes, the resyndication will result in a decrease in the income targeting on some of the units (e.g., a 50% unit becomes a 40% or 30% unit). With respect to projects resyndicating with 9% tax credits and obtaining points for serving households at 30% AMI, TCAC regulations also stipulate how those 30% units shall be distributed across unit sizes. Likewise, CDLAC regulation require that 50% units be distributed generally among bedroom sizes.

TCAC and CDLAC have received a number of inquiries as to how they will evaluate resyndication applications for which the existing households do not meet the deeper targeting for which the applicant is applying. TCAC and CDLAC want to facilitate rehabilitation projects and appreciate the deeper targeting

of units, but when an over-income tenant occupies these more deeply targeted units the public is not for some time getting the benefit to which the developer is committing. In addition, the developer ultimately is not delivering the targeting for which s/he received TCAC or CDLAC points. Additionally, over-income tenants in any resyndication project receive a reduction in rent corresponding to the lower income and rent targeting, giving such tenants an incentive to remain in place.

After considering this matter at some length and receiving public comment on an initial proposal, TCAC and CDLAC, for all 4% tax credit projects subject to an existing public regulatory agreement and for 9% tax credit projects proposing rent and income targets that are “substantially similar” to an existing regulatory agreement, will continue the current practice of reviewing and underwriting projects pursuant to the targets proposed without consideration to the incomes of the current residents but require applicants to begin moving towards the targeted income levels immediately. Specifically, CDLAC and TCAC will apply the following policy for applications received on or after May 15, 2016.

- For purposes of the tax-exempt bond and 4% tax credit program (including 4% plus state credit applications), TCAC and CDLAC will allow a resyndication project to receive a reservation even when it is known that the project cannot meet the more deeply targeted incomes for which it is applying with its current households. (The project must of course meet the federal 40% at 60% or 20% at 50% requirement with its existing tenants or as a result of the grandfathering rule.) At the time the placed in service package is submitted to TCAC, if the project still cannot meet the deeper income targeting independent of unit sizes (see below), then the owner shall designate as the deeply targeted units those units that are occupied by the households not receiving rental assistance who have the lowest incomes as a percentage of AMI. As units become vacant, the owner shall offer each vacant unit at the more deeply targeted levels committed to under the new CDLAC and TCAC reservation until all deeply targeted units are occupied by tenants whose incomes meet the deeper targeting income restrictions. As vacant units are occupied by tenants meeting the deeper targeting income qualifications, the owner may then raise the targeting and rent on a unit occupied by the higher income household.

Likewise TCAC, when reviewing the placed in service application for compliance with CDLAC requirements, will allow the applicant to allocate the required 50% units to 50% income-eligible tenants without regard to unit size as needed to meet the requirement stated above. If a mismatch of bedroom sizes remains at placed in service (e.g., 50% AMI units are one-bedroom units rather than two- or three-bedroom units as otherwise required), as a unit with an underrepresented bedroom size becomes vacant the owner shall lease this unit as a 50% unit. The owner may then raise the targeting and rent on a unit in the overrepresented bedroom size.

For purposes of CDLAC point scoring and TCAC threshold basis limits, the calculations will be based on the income targeting for the which the applicant applies.

CDLAC and TCAC will also allow projects subject to an existing regulatory agreement with a federal, state, or local public entity that are applying for tax credits for the first time (i.e., a rehabilitation project that is not a resyndication) to utilize the provisions described above with respect to more deeply targeted units. With respect to the federal 40% at 60% or 20% at 50% requirement, however, the IRS grandfathering rule does not apply and TCAC cannot grant tax credits for units whose tenants have incomes in excess of the 60% or 50% AMI level, respectively. TCAC will continue to reduce the project’s applicable fraction to account for the over-income units.

For projects applying for tax credits for the first time that are not subject to an existing regulatory agreement with a federal, state, or local public entity, the income targeting for which the applicant applied must be met by submission of the placed in service package.

- For purposes of the competitive 9% tax credit program, TCAC will allow a resyndication project or a project that is subject to an existing regulatory agreement with a federal, state, or local public entity to follow the policy described above for 4% projects if the targeted rents and incomes will match or be substantially similar to the existing regulatory agreement. For purposes of this policy, TCAC will deem the new target rents and incomes to be “substantially similar” if the average target AMI of the project as a whole is within 3% of the existing average target AMI, not including unit changes allowed by the Executive Director pursuant to Section 10325(f)(11). For projects that have rent limits below their income limits, such as older HCD CHRP-R projects, TCAC will consider the regulated rent levels to be the applicable rent and income targets. An applicant seeking to utilize these provisions that will have substantially similar rent and income targeting shall obtain the approval of the Executive Director prior to the application deadline. An applicant seeking to utilize these provisions that will have rent and income targeting that exactly matches the existing regulatory agreement does not need prior approval.

With respect to the requirement that 30% AMI units be distributed across unit sizes, TCAC will also allow an applicant with target rents and incomes matching or substantially similar to an existing regulatory agreement temporarily to allocate the 30% units to 30% AMI households or, if there are an insufficient number of 30% AMI households, to the lowest-income tenants without regard to unit size. If a mismatch of bedroom sizes remains at placed in service (e.g., in a large family project the occupied 30% AMI units are one-bedroom units rather than three-bedroom units as required by this point category), as a unit with an underrepresented bedroom size becomes vacant the owner shall lease this unit as a 30% unit. The owner may then raise the targeting and rent on a unit in the overrepresented bedroom size.

Applicants proposing a rent and income mix that is not matching or substantially similar to an existing regulatory agreement (e.g., a 4% tax credit project resyndicating as a 9% tax credit project) must propose, and will be scored for, a target rent and income mix that is consistent with the incomes of the tenants in place at application.

Applicants seeking to utilize these provisions must have conducted an income certification for each household within one year of application and must thereafter conduct annual income certifications at least until such time as all households meet the income targets contained in the regulatory agreement.

## **Compliance**

Owners seeking to utilize these provisions shall do all of the following:

- 1) Indicate in the initial application that the project has over-income tenants for the more deeply targeted units. Tab 9 already requires submission of a rent roll with tenant income, family size, and rents.

- 2) Provide a certification in the initial application that the owner will bring the project into compliance with all income targeting and bedroom size requirements as soon as possible pursuant to the requirements described above.
- 3) Include in the placed in service application a document clearly identifying the over-income/overrepresented bedroom size units and any “in-lieu” units replacing them and a plan for complying with the requirements of this policy.
- 4) Track compliance with these requirements and provide TCAC monitoring staff with a compliance report prior to each monitoring visit. The report must show that the owner designated the correct in-lieu unit(s) and document whether or not turnover has occurred in the over-income/overrepresented bedroom size unit(s).