



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: November 25, 2024

TO: Owners of Low-Income Housing Tax Credit ("LIHTC") Projects

FROM: California Tax Credit Allocation Committee ("CTCAC")

RE: Secondary Tenants Policy and HUD-VASH Special Rule

This Memorandum (Memo) explains the CTCAC Secondary Tenants Policy ("Policy"), which implements the statutory change made under Assembly Bill 1386 (Chapter 760, Statutes 2023) ("AB 1386") as amended by Assembly Bill 535 (Chapter 918, Statutes 2024) ("AB 535") applicable to Military and Veterans Code sections 987.003 and 987.005 and applies to all CTCAC projects with supportive housing units restricted to extremely low-income veterans (30% AMI) pursuant to a CTCAC regulatory agreement.

The Policy establishes a process to temporarily redesignate a portion of a project's 30% Area Median Income ("AMI") supportive housing units, as described above, to 50% or 60% AMI. If the project also received funding from the California Department of Housing and Community Development ("HCD"), the owner shall also follow HCD's Secondary Tenant Policy Memo which can be found on the HCD website [here](#).

This policy does not apply to CTCAC projects electing the Average Income Test ("AIT") federal set-aside.

Background

AB 1386 and AB 535, codified as Military and Veterans Code sections 987.003 and 987.005, provided for a process to temporarily redesignate extremely low-income supportive housing units restricted for veterans experiencing homelessness with incomes up to 60% AMI. The bill was enacted to resolve issues with matching unhoused veterans with vacant supportive housing units restricted to incomes at or below 30% (AMI), while retaining the LIHTC program's intent of serving the highest need tenants and in accordance with the requirements of AB 1386 and AB 535, CTCAC has established this Secondary Tenants Policy to house more veterans.

A Qualified Tenant means an extremely low-income veteran who is homeless.

A Qualified Unit means a supportive housing unit restricted to extremely low-income veterans.

A Qualified Entity means an entity that is responsible for making referrals of Qualified Tenants to Qualified Units.

A Secondary Tenant means a veteran who is homeless and has an income of up to 60% AMI.

The Secondary Tenants Policy establishes the process LIHTC owners may use to request CTCAC authorization to place homeless veterans with incomes above 30% AMI in Qualified Units and charge commensurate rent. Rents for any redesignated units are determined by the higher income limits. If a Secondary Tenant cannot be matched to and accept placement in an available unit within 14 days, a Qualified Entity may match a veteran experiencing homelessness with an income at or below 60% AMI, regardless of the source of the income, in an available unit.

The Secondary Tenants Policy allows qualified entities that are not able to place extremely low-income veterans to instead place veterans with incomes up to 60% AMI, as long as 30% of units remain extremely low-income. If a Qualified Entity responsible for making referrals of Qualified Tenants to Qualified Units is unable to locate, match, or otherwise place a Qualified Tenant in a Qualified Unit within 28 days of the Qualified Unit becoming available, the entity shall be eligible to match Secondary Tenants to the Qualified Units. CTCAC shall treat Secondary Tenants as eligible for the Qualified Units.

The Qualified Unit leased to a Secondary Tenant or other veteran experiencing homelessness would be redesignated to an AMI level commensurate with the income level of the tenant and would require the tenant to pay rent commensurate with their household income's percentage of the AMI. The next available comparable unit shall be rented to a Qualified Tenant at 30% AMI 12 months after a Secondary Tenant or other tenant who is a veteran experiencing homelessness has been placed.

Owners shall take specified actions to demonstrate a good faith effort to place Qualified Tenants in Qualified Units before they can place Secondary Tenants in Qualified Units. Good faith efforts include, but not limited to:

- 1) adequate marketing of vacant units spanning at least 90 days prior to the initial lease-up;
- 2) partnering with local homeless and veterans service providers to identify Qualified Tenants;
- 3) coordination with the local Continuum of Care to receive prioritized Qualified Tenant referrals;
- 4) coordination with the U.S. Department of Veterans Affairs to identify Qualified Tenants; and
- 5) documented contacts with Qualified Tenants and their case manager(s), who were matched to Qualified Units and chose not to lease the unit.

Owners shall provide documentation that substantiates the timing and frequency of such good faith efforts (i.e. date that the Qualified Entity was notified of the vacancy) when such documentation exists or a detailed timeline in the absence of documentation to evidence activities such as phone calls and meetings. Documentation of these good faith efforts, along

with information about applicants that were not matched with a unit shall be submitted to CTCAC. Requirements may evolve over time and new/updated documentation may be required to capture additional information and communicate best practices to better serve veterans.

CTCAC may condition an approval on expanded coordination with the owner and community partners serving veterans, or other factors such as improved coordination with Continuum of Care or other sources of referrals. Following expiration of the Secondary Tenant approval, the owner is required to redesignate the next vacant unit as a supportive housing unit available to veterans with incomes at or below 30% AMI with the goal of bringing the project back into compliance with the unit restrictions required in the project's regulatory agreement.

Approval Process to House Secondary Tenants

Project sponsors shall submit a complete package documenting all good faith efforts for review and approval. The required information, documentation, and submission specifications are detailed in Exhibit A to this Memo. CTCAC staff will notify the sponsor if the submission is complete and has been accepted within seven (7) calendar days.

Requests may be submitted to CTCAC/CDLAC after one or more Qualified Units has been vacant for 28 days or longer. For new construction, the vacancy period starts from the Placed-in-Service ("PIS") date and for rehabilitation projects the vacancy period starts from the Notice of Completion date. Vacancy for previously occupied units in existing projects will start from the date the owner takes possession of the unit. CTCAC and CDLAC may include time from abandonment noticing timeframes and unlawful detainers at its discretion.

CTCAC/CDLAC will approve a specific number of Qualified Units that may be occupied by Secondary Tenants within a project. Projects may lease Qualified Units to Secondary Tenants until they hit the maximum number of Secondary Tenants approved by CTCAC/CDLAC or until the redesignation approval expires. **In no instance shall a project have less than 30% of its units leased to 30% AMI households.***

<i>Sample maximum redesignation with 30% of CTCAC units remaining at 30% of Area Median Income (AMI)</i>							
CTCAC Unit Mix							
CTCAC Unit Mix	Unit Type (CTCAC Mix as shown in Regulatory Agreement)						
	Original			Redesignated			
AMI	SRO/Studio	1-Bedroom	Total	SRO/Studio	1-Bedroom	Total	
30%	13	57	70	8	28	36	
50%	0	50	50	5	79	84	
60%	0	0	0	0	0	0	
Total	13	107	120	13	107	120	

*Minimum of 30% of the total number of CTCAC units must remain at 30% AMI.
30% times 120 Total CTCAC units equals 36: 120 * 30% = 36
At least 36 CTCAC units at this project must remain at 30% AMI under this policy.*

**HUD-VASH program participants who are eligible to occupy 30% AMI units after excluding VA service-connected disability benefits are recognized as Qualified Tenants. They are not treated as Secondary Tenants.*

Approval Requirements and Term:

The term of CTCAC's approval for each project will be 12 months. All Secondary Tenants must take legal possession of the unit while CTCAC's approval is in effect. Secondary Tenants shall be recognized as eligible tenants by CTCAC and fully compliant with the regulatory requirements for the duration of their tenancy. Secondary Tenants shall not be involuntarily displaced for the sole reason of returning the unit mix into compliance.

Once an approval expires, no new Secondary Tenants may move into the project and owners are required to make the next available units available to Qualified Tenants until the unit mix at the project matches the regulatory agreement. After the Secondary Tenant approval has expired, owners may submit a subsequent Secondary Tenants petition if physical vacancy of Qualified Units is greater than or equal to 10% at the project at any point during an operating year or due to special circumstances detailed in a letter to HCD.

Initial rent charges for Secondary Tenants shall be commensurate with the new Secondary Tenant's household income, rounded up to the nearest 10% AMI level from the occupant's adjusted gross income. The Secondary Tenants household's initial gross maximum rent at move-in shall be the equivalent MTSP Rent Limit for their rounded-up AMI. The initial "move-in" gross rent for the Secondary Tenant must be set at gross maximum rent unless an alternate amount is approved. This move-in rent shall be used as the "rent floor" for the duration of the household's tenancy at the project. Secondary Tenants' rents are not required to be adjusted downward in the event Secondary Tenants' income decreases. Rents for Secondary Tenants may increase up to the 60% AMI rent limit with CTCAC approval through annual rent increases. A project must identify Secondary Tenants in its annual reporting to CTCAC. CTCAC may add reporting requirements for Secondary Tenants to evaluate the results of this policy.

CTCAC will review requests for completeness and advise the owner if the submission is incomplete or if clarifying information is needed.

HUD-VASH Special Rule

On August 13, 2024, HUD published the "Section 8 Housing Choice Vouchers: Revised Implementation of the HUD Veterans Affairs Supporting Housing Program (VASH)" ("special rule") that provides a new requirement to exclude veterans' service-connected disability benefits from household income calculations for the purpose of determining income eligibility. On September 24, 2024, Treasury followed suit and issued Revenue Procedure 2024-38, which takes effect on or after October 24, 2024. The rule for VASH applicants is for both project-based and tenant-based vouchers. Income determinations for VASH applicants must exclude veterans' service-connected disability income and therefore are excluded from the Secondary Tenant alternative requirements and process. HUD-VASH program participants household income excludes all service-connected disability benefits in accordance with Treasury's revenue proclamation. Eligible HUD-VASH program participants are not considered

Secondary Tenants and are not counted against the cap on the number of Qualified Units that can be leased to Secondary Tenants under this policy.

Reference: Section 8 Housing Choice Vouchers: Revised Implementation of the HUD Veterans Affairs Supporting Housing Program Development, 89 Fed. Reg. 65769 (Aug. 13, 2024) (amending 24 CFR Parts 982 and 983) and Examination of returns and claims for refund, credit or abatement; determination of correct tax liability, Revenue Procedure 2024-38 (amending 26 CFR 601.105).

If you have any questions, please contact Compliance Section Chiefs, Elizabeth Gutierrez at egutierrez@treasurer.ca.gov or Mayra Lozano at mlozano@treasurer.ca.gov.

EXHIBIT A

Owners shall submit a complete package documenting all good faith efforts via secure link (i.e. Dropbox). Please submit good faith effort package via email to Compliance Section Chiefs at Elizabeth Gutierrez egutierrez@treasurer.ca.gov, and Mayra Lozano, mlozano@treasurer.ca.gov.

Checklist of Good Faith Efforts for Secondary Tenants:

- Efforts to advertise to the community at least 90 days prior to the lease-up of the building
 - Examples: Flyers, internet advertising, banners at buildings
- Efforts to work in partnership with local homeless services providers, including those that serve veterans experiencing homelessness.
 - Examples: Regular communication, outreach documentation, identifying needs and housing placement
- Efforts to coordinate with the local continuum of care to identify veterans experiencing homelessness with extremely low incomes.
 - Examples: Regular communication, outreach documentation, identifying needs and housing placement
- Efforts to coordinate with the United States Department of Veterans Affairs to identify veterans experiencing homelessness with extremely low incomes.
 - Examples: Regular communication, outreach documentation, identifying support, services and housing placement
- Documentation of contact with qualified veterans experiencing homelessness with extremely low incomes and their case managers who were matched to the available unit and chose not to lease the unit.
 - Examples: Case manager outreach, income verification or statements