



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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William J. Pavão

DATE: September 23, 2014
TO: Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Proposed Regulation Changes for 2015 with Initial Statement of Reasons

Attached for public review and comment are the California Tax Credit Allocation Committee (TCAC) staff's proposed regulation changes for 2015. This summary memorandum highlights what TCAC staff proposes to present to the Committee for their adoption in December 2014. TCAC staff will conduct public hearings to solicit comments as follows:

Monday
September 29th
San Diego
San Diego Housing Commission
1122 Broadway, 4th Floor Conference Room
San Diego, CA 92101
1:30 p.m.

Tuesday
September 30th
Los Angeles
Pasadena Public Library
Donald R. Wright Auditorium
Pasadena, CA 91101
11:00 a.m.

Wednesday
October 1st
Sacramento
State Treasurer's Office
915 Capitol Mall, Room 587
Sacramento, CA 95814
1:30 p.m.

Thursday
October 2nd
Oakland
Elihu M. Harris State Building
1515 Clay Street, Room 1
Oakland, CA 94612
1:30 p.m.

TCAC staff is proposing both substantive changes affecting policy or procedures, as well as changes that simply clarify existing policy or align existing language with a proposed substantive change elsewhere in the regulations. In summary, the proposed regulation changes are as follows:

Proposed Substantive Changes:

1. Add HCD's Veteran's Housing and Homeless Prevention Program to the homeless assistance priority programs within the competitive Non-profit set-aside. Also clarify that first priority is for capital contributions toward development costs, and add dollar competitive threshold for such sources. **Section 10315(b), page 1 of the attached draft.**
2. Within the rural set-aside, apply the 15 percent (15%) Senior housing type percentage. **Section 10315(c), page 2.**
3. Increase the Special Needs housing type goal from 15 percent (15%) to 25 percent (25%) of the competitive 9% credit round's available credits. **Section 10315(g), page 3.**
4. Create a narrow exception for 4% credit applications acquisition basis being fixed at initial reservation. **Section 10322(h)(9)(A), page 4.**
5. Permit a specific subset of existing tax credit properties to use the California Utility Allowance Calculator if installing photovoltaic panels as specified. **Section 10322(h)(21), page 5.**
6. Score scattered applications by each property's score for site amenities and service amenities. **Section 10325(c), page 6.**
7. Along with the 2008-based Title 24 calibration, add an energy-efficiency scoring alternative for new construction projects that would calibrate against a Zero Net Energy (ZNE) standard. **Section 10325(c)(6)(A) – (C), page 7.**
8. Establish documentation protocols consistent with existing TCAC Sustainable Building Method Workbook features. **Section 10325(c)(6)(E) – (G), page 9.**
9. Delete historic reference and retain existing threshold energy efficiency standard for new construction projects. Also, permit new construction projects to meet the minimum energy efficiency standard by reaching 20 percent (20%) Zero Net Energy (ZNE) through energy generation. For rehabilitation projects, correctly reference existing TCAC protocols and templates. Finally, incorporate CalGreen building code for high-rise residential structures. **Section 10325(f)(7)(A) and (B), page 13.**
10. Incorporate CalGreen building code for high-rise residential structures. **Section 10325(f)(7)(F), page 14.**
11. Add adhesives and caulks to the list of products for which TCAC seeks a low Volatile Organic Compound (VOC) rating as a minimum construction threshold. Also correctly reference the Greenguard standard for fiberglass insulation. **Section 10325(f)(7)(J) and (K), page 14.**
12. Establish a combustion-testing protocol for rehabilitation projects before and after completion of work. Also, add an option for new construction projects to use the California Energy Commission's (CEC's) California Utility Allowance Calculator (CUAC) and Photovoltaic (PV) calculator to document offset resident energy loads. **Section 10325(f)(7)(M) and (N), page 15.**
13. Encourage larger new construction projects by permitting larger developer fee in construction costs and basis, along with deferral of at least half of that fee. **Section 10327(c)(2)(B) and (C), page 16.**

14. Expand the availability of the prevailing wage basis limit boost to projects with either a project labor agreement or a labor-affiliated funding source that requires paying at least prevailing wage rates. **Section 10327(c)(5)(A), page 19.**
15. Set fifteenth-year maximum standard for instances when excessive cash flow is necessary for a fifteenth year positive cash flow. Under such circumstances, require early years' excess cash flow be deposited into a specified and audited project reserve. **Section 10327(g)(6), page 20.**

Proposed Clarifying or Conforming Changes:

1. Clarifying language would correctly reference the appropriate California Association of Building Energy Consultants (CABEC) analyst for energy certification purposes. In addition, new language would more clearly distinguish between new construction and rehabilitation requirements, and reference correct TCAC and other energy protocols and standards. **Section 10325(c)(6)(H)(3) and (4), page 11.**
2. Renumber paragraphs to account for earlier additional paragraph, and incorporate an existing TCAC template by reference. **Section 10325(c)(6)(H)(5) and (6), page 12.**
3. Clarify definitive list of appliances which must be Energy Star rated if provided or replaced, including newly Energy Star-certified clothes dryers. **Section 10325(f)(7)(F), page 14.**
4. Eliminate outdated references to a 2014 accessibility standard, leaving the existing 2015 standard in regulation. **Section 10325(f)(7)(M), page 15.**
5. For the available basis limit boost, clearly reference the 2008 Title 24 standards. **Section 10327(c)(5)(B)(3), page 20.**

**2015 Proposed Regulation Change with Reason
September 23, 2014**

Section 10315(b)

Proposed Change:

Section 10315. Set-asides and Apportionments

CTCAC will accept applications from Qualified Nonprofit Organizations for the Nonprofit set-aside upon the request of the qualified applicant, regardless of the proposed housing type. Thereafter, CTCAC shall review each non-rural pending competitive application applying as an at-risk, special needs, or SRO housing type under subsection (g) below, first, within that housing type's relevant set-aside. In addition, applicants competing within either the At-risk or Special Needs/SRO set-aside shall be considered as that housing type for purposes of paragraph (g).

- (a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).
- (b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:
 - First, projects with McKinney-Vento Homeless Assistance Act, State MHP - Supportive Housing Program, or HCD Veterans Housing and Homeless Prevention Program development capital funding of at least \$2 million committed, or Mental Health Services Act (MHSA) development capital funding of at least \$1 million committed or anticipated.
 - Second, projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
 - Other qualified homeless assistance projects.

To compete as a homeless assistance project, at least fifty percent (50%) of the units within the project must be designated for homeless households as described in category (1) immediately below:

Reason:

The proposed changes would (a) clarify existing references to TCAC's Special Needs additional threshold criteria, and to federal and State homeless assistance programs; and (b) add the new Veterans Housing and Homeless Prevention Program as a competitive priority.

By deleting the specific reference to paragraphs (A) and (D) under subsection (g)(4), the rule would clarify that priority projects would be Special Needs housing type projects. All of the provisions under subsection (g)(4) are relevant and necessary for quality supportive housing for homeless populations.

New language would correctly reference key federal and State funding sources by using more complete, descriptive titles.

Proposed changes would also clarify that first priority would be for “development capital funding” from the listed programs, as opposed to just operating or rental subsidies. The second priority discussion under paragraph (b) establishes rental and operating subsidies for at least 50 percent (50%) of the units as a lesser priority. As a practical matter, Special Needs projects invariably have rental or operating subsidies, so the top priority projects would almost certainly have both capital and operational financial assistance. For first priority purposes, TCAC views HCD’s permanent financing as a development capital funding source.

Proposed changes would also add the new veterans’ assistance program administered by HCD. In part, prioritizing other State funding sources responds to the critique that State programs, including the tax credit program, do not sync effectively. Under the existing and proposed rule, relevant HCD and CalHFA funding sources would be top priority for nine percent credits.

Finally, new language would establish minimum capital investments from the listed funding sources for competitive purposes. Such minimums would prevent an applicant from proposing a de minimis contribution from one of the priority sources. TCAC intends to induce in key public capital sources in order to establish the funder’s stake in the project, and to leverage credits among a larger pool of applications.

Section 10315(c)

Proposed Change:

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. For purposes of implementing Section 50199.21(a), an area is eligible under the Section 515 program on January 1 of the calendar year in question if it either resides on the Section 515 designated places list in effect the prior September 30, or is so designated in writing by the USDA Multifamily Housing Program Director. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year. In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.

Within the rural set-aside competition, the first tiebreaker shall be applied as described in Section 10325(c)(10), except that the Senior housing type goal established by Section 10315(g) shall be calculated relative to the rural set-aside dollars available each round, rather than against the total credits available statewide each round. In this way, other housing types would be advantaged once 15 percent of the rural set-aside had been committed to Senior housing type projects.

Reason:

The proposed change would address the dynamic of large numbers of rural awards being for senior housing type projects. Since rural awards are made so early in the competitive award

process, the first tiebreaker has no practical effect on rural funding outcomes. As a result, a high percentage of rural awards are senior housing type projects at the expense of the geographic regions for whom the first tiebreaker works against senior projects fairly early in the process. Of the 84 projects awarded nine percent (9%) tax credits in 2013, 15 were senior housing type projects (18%). Of those 15 senior housing type projects, six were awarded from the rural set aside (40% of all senior housing type project awards). Those six senior housing type projects also represented 32 percent (32%) of the 19 total projects awarded in the rural set aside. The proposed change would facilitate the equitable result of the 15 percent (15%) senior housing type goal being applied within rural areas as well as within the non-rural balance of the state.

Section 10315(g)

Proposed Change:

- (g) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below 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)(10) 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%
<u>Special Needs</u>	<u>25%</u>
Single Room Occupancy	15%
At-Risk	15%
Special Needs	15%
Seniors	15%

Reason:

The proposed change would increase the Special Needs housing type goal from 15 percent (15%) to 25 percent (25%). This change would accommodate increased demand for credits to develop supportive housing for special needs populations, including homeless populations.

Applications for nine percent (9%) credits for projects housing special needs populations increased in 2014, in part due to the ability of such projects to use the federal 130% basis boost and request State low income housing tax credits. As a result of increased award amounts for each Special Needs project, for the first time in the California program’s history TCAC reached the 15% housing type goal for Special Needs projects. Under the first tiebreaker rules (Section 10325(c)(10)), a Special Needs housing type application lost simply by virtue of its housing type.

That is, the project was skipped in favor of another housing type whose percentage goal had not yet been met.

TCAC views Special Needs projects as a high public policy priority. Increasing the housing type goal percentage would permit more supportive housing projects to compete on their merits before TCAC would begin skipping them in favor of other housing types. TCAC staff proposes raising the percentage at which Special Needs housing type applications would be at a competitive disadvantage to 25%. This would establish the Special Needs housing type as the second-highest percentage goal second only to the Large Family housing type.

Section 10322(h)(9)(A)

Proposed Change:

- (A) Rehabilitation applications. An “as-is” appraisal prepared within 120 days before or after the execution of a purchase contract or the transfer of ownership by all the parties by a California certified general appraiser having no identity of interest with the development’s partner(s) or intended partner or general contractor, acceptable to the Committee, and that includes, at a minimum, the following:
- (i) the highest and best use value of the proposed project as residential rental property;
 - (ii) the Sales Comparison Approach, and Income Approach valuation methodologies except in the case of an adaptive reuse or conversion, where the Cost Approach valuation methodology shall be used;
 - (iii) the appraiser’s reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;
 - (iv) a value for the land of the subject property “as if vacant”;
 - (v) an on site inspection; and
 - (vi) a purchase contract verifying the sales price of the subject property.

The Except as described below, the “as if vacant” land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values will shall be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits. For tax-exempt bond-funded properties receiving credits under Section 10326 only, acquisition basis may increase with CTCAC’s approval where (a) the sales price is no more than the assumed third-party debt on the property, and (b) a third-party appraisal consistent with Section 10322(h)(9) supports the updated purchase price.

Reason:

The proposed change would account for real costs associated with tax-exempt bond projects where the sales price increases after a credit reservation. However, the exception would only be

available where assumed third-party debt, such as a bank loan, constitutes the sales price. The intention of the proposed rule would be to accommodate only cases where the acquisition cost has gone up, but neither the seller nor any other party is pulling equity out of the project. In this way, any additional equity would defray actual rehabilitation and other costs.

Section 10322(h)(21)

Proposed Change:

- (21) Utility allowance estimates. Current utility allowance estimates consistent with 26 CFR Section 1.42-10. The applicant must indicate which components of the utility allowance schedule apply to the project. For buildings that are using an energy consumption model utility allowance estimate, the estimate shall be calculated using the most recent version of the California Utility Allowance Calculator (CUAC) developed by the California Energy Commission. The CUAC estimate shall be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA), Plans Examiner (CEPE) ~~who is also either a California-licensed Mechanical or Electrical Engineer, or a certified Home Energy Rating System (HERS) rater.~~ Measures that are used in the CUAC that require field verification shall be verified by a certified HERS Rater, in accordance with current HERS regulations. Use of the CUAC is limited to new construction projects and rehabilitation projects with Multifamily Affordable Solar Housing (MASH) program awards that offset tenant area electrical load. All CUAC utility allowances require a quality control review and approval. CTCAC will submit modeled CUAC utility allowance estimates to a quality control reviewer for new construction projects. Rehabilitation projects requesting CUAC utility allowances must submit the modeled CUAC utility allowance estimates to a quality control reviewer from a list established by CTCAC, and submit the completed quality control report to CTCAC. For rehabilitation projects requesting CUAC utility allowances, cash flow is limited to 15.0% or less of residential income and a debt service coverage ratio of 1.50 or less, as verified by audited financial statements. ~~The applicant must indicate which components of the utility allowance schedule apply to the project.~~

Reason:

The proposed change would clarify that the utilities covered by the allowance must be clearly identified. Also, new language would correctly refer to the new CABEC certification title, Certified Energy Analyst, which supersedes the old title Certified Energy Plans Examiner.

Proposed changes would also allow a subset of rehabilitation projects to use the CUAC for utility allowance estimates. These projects' owners have added photovoltaic (PV) systems to existing tax credit properties and complied with the requirements of the California Solar Initiative MASH program. Projects must have systems that share energy savings with residents (offsetting tenant area electrical load). Currently, the CUAC is permitted only for new construction projects. Permitting CUAC use for existing projects that have participated in the MASH program would allow TCAC to apply the more accurate allowance to existing projects. Expanding the availability of the CUAC would initially be limited to those that have installed systems designed to improve energy utilization. The proposed cash flow limitation requirements for existing projects would ensure that tenants' rent burden is not being increased where a property already

cash flows robustly. In such cases, lower utility costs should benefit the residents without a commensurate rent increase.

The proposed change also clarifies that the CUAC model's accuracy be verified by a quality control review.

Section 10325(c)

Proposed Change:

- (c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. ~~An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle except where a pre-existing project-based Section 8 contract is in effect, shall be scored proportionately in the site amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site.~~ Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.

An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle except where a pre-existing project-based Section 8 contract is in effect, shall be scored proportionately in the site and service amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site.

Reason:

The proposed change would relocate existing language regarding scattered site projects and how they are scored in the site amenities point category to a separate paragraph. New proposed language regarding scattered site scoring in the service amenity category would more clearly define the scoring of scattered site projects in both the site and service amenity categories. New proposed language regarding points requested in the service amenity category would require that each site be provided services or be within one-half (1/2) mile from another site providing services in order to garner the maximum service amenity points. The change would assure that services are readily available to each project site and eliminate cases where services are being provided at a site more than 1/2 mile from another site.

Section 10325(c)(6)(A) - (C)

Proposed Change:

- (6) Sustainable building methods. Maximum 10 points

Sustainable building methods points shall be awarded to applicant projects committing to the following applicable standards. Except where 90 percent (90%) or more of the proposed units consist of either new construction or rehabilitation, projects consisting of both (i) new construction or adaptive reuse and (ii) rehabilitation of existing units shall be scored on meeting applicable standards for both construction types. In such cases, points shall be awarded based upon the lowest score achieved by each construction type.

- (A) **New Construction and Adaptive Reuse Projects:** The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); Green Communities; or the GreenPoint Rated Program Multifamily Guidelines. 5 points

- (B) For ~~first round 2014~~ projects receiving points under section 10325(c)(6)(A), additional points for energy efficiency shall be awarded according to one of the following:

- (i) Energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the 2008 Title 24, Part 6, of the California Building Code (the 2008 Standards), shall be awarded as follows:

Percentage better than the 2008 Standards	Low-Rise Multifamily (3 or fewer habitable stories)	Multifamily of 4 or more habitable stories
17.5 percent	2 points	3 points
20 percent	3 points	5 points
25 percent	5 points	

~~For second round 2014 projects, the same scoring methodology shall be applied for higher percentage better than the 2008 Title 24 standards as follows:~~

Percentage better than the 2008 Standards	Low-Rise Multifamily (3 or fewer habitable stories)	Multifamily of 4 or more habitable stories
32.5 percent	2 points	3 points
35 percent	3 points	5 points
40 percent	5 points	

(ii) Energy Efficiency with renewable energy that provides the following percentages of project tenants' energy loads:

<u>Offset of Tenants' Load</u>	<u>Low-Rise Multifamily</u>	<u>High-Rise Multifamily</u>
<u>20%</u>	<u>2 points</u>	<u>3 points</u>
<u>30%</u>	<u>3 points</u>	<u>4 points</u>
<u>40%</u>	<u>4 points</u>	<u>5 points</u>
<u>50%</u>	<u>5 points</u>	

The percentage Zero Net Energy (ZNE) solar offset of a project's tenant energy loads is to be calculated using the California Utility Allowance Calculator (CUAC) with kilowatt hours (kWh) consumed to be balanced by kilowatts generated on-site. Gas use is to be converted to kWh for percentage ZNE offset calculations, assuming 1 Therm = 29.3 kWh, and 100,100 British Thermal Units (BTUs) = 29.3 kWh. Residential energy loads modeled by the CUAC shall include all energy used by tenants, both gas and electric, regardless of whether the energy load is billed to the owner or the tenants. This calculation excludes non-residential energy uses associated with the community building, elevators, parking lot lighting, and similar end uses, but includes domestic hot water and Heating, Ventilation, and Air Conditioning (HVAC) loads, regardless of whether they are central or distributed.

(C) For projects receiving points under section 10325(c)(6)(A), applicants may be awarded points for committing to developing their project beyond the minimum requirements of the green building program chosen in section 10325(c)(6)(A):

LEED	Silver	Gold
GreenPoint Rated	<u>Silver 400</u>	<u>Gold 425</u>
	3 points	5 points

Reason:

Clarifying changes to paragraphs (A) and (C) would update the correct terms to “GreenPoint Rated Program” and GreenPoint Rated “Silver” and “Gold.”

Substantive proposed changes to paragraph (B) would eliminate the now-historic reference to earlier program standards regarding improvement over California Building Code Title 24, Chapter 6. The changes would continue to calibrate energy efficiency against the 2008 Code

because systems for measuring against the 2013 Title 24, Part 6 standards continue to be refined at the time this regulation package is being considered.

TCAC also proposes a scoring alternative calibrated against Zero Net Energy (ZNE) Performance. This system could benefit more temperate climate zones with fewer opportunities under Title 24, Part 6 to realize energy efficiencies. Projects in such regions and elsewhere could choose to calibrate against a recognized ZNE standard. The ZNE methodology considers more project features and could recognize the benefits of energy-efficient appliances and lighting, as well as photovoltaic generation. In addition, a ZNE approach could complement using the CUAC to establish a project's utility allowances since their methodologies are quite similar.

Section 10325(c)(6)(E) - (G)

Proposed Change:

(D) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; or 2011 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

(E) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) based on existing conditions. The project must undergo an energy assessment that meets the CTCAC Existing Multifamily Assessment Protocols. The report documenting the results of the Assessment must be submitted using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Report Template. Points are awarded based on the building(s) percentage decrease in estimated Time Dependent Valuation (TDV) energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the appropriate performance module of California Energy Commission (CEC) approved software:

Improvement Over Current

15 percent	3 points
20 percent	5 points
25 percent	7 points
30 percent	10 points

(F) For projects receiving points under section 10325(c)(6)(D), applicants may be awarded points for committing to develop their project beyond

the minimum requirements of the green building program chosen in section 10325(c)(6)(D):

LEED		Silver	Gold
GreenPoint Rated	65	95	120
2011 Enterprise Green Communities		Moderate Rehabilitation	Substantial Rehabilitation
	2 points	3 points	5 points

(G) Additional Rehabilitation Project Measures: For projects receiving points under section 10325(c)(6)(D) or (E) applicants may be awarded points for committing to developing, and/or managing, their project with one or more of the following:

1. Projects shall include either:

- a. Photovoltaic (PV) generation that offsets tenant loads; or
- b. PV that offsets either 50 percent (50%) of common area load (if the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual common area electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area); or
- c. Solar hot water for all tenants who have individual water meters.

3 points

2. Project shall implement sustainable building management practices including:

- ~~1.~~ Develop a project-specific maintenance manual including replacement specifications and operating information of all energy and green building features, and
- ~~2.~~ Certify building management staff in sustainable building operations per BPI Multifamily Building Operator or equivalent training program, and
- ~~3.~~ Undertake formal building systems commissioning, retro-commissioning or re-commissioning as appropriate (continuous commissioning is not required).

3 points

3. Projects shall individually meter or sub-meter currently master-metered gas, electricity, or central hot water systems for all tenants. 3 points

Reason:

New proposed language in paragraph (E) would specify that competitive rehabilitation projects must have pre- and post-rehabilitation energy testing to establish the improvement over existing buildings' energy performance. In addition, new language clearly references protocols and the methodology for conducting this analysis.

Beyond the paragraph (E) changes, proposed renumbering would clarify that the first set of rehabilitation scoring choices are options (those listed under newly-numbered subparagraph 1.) while the next set of scoring options (those listed under newly-numbered subparagraph 2.) are all to be included for the three-point score.

Section 10325(c)(6)(H) 3. and 4.

Proposed Change:

3. For new construction project placed-in-service applications to receive points under section 10325(c)(6)(B)(i), the applicant must submit a completed Sustainable Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. This compliance form must be the output from the building(s) modeled "as built" and reflect all relevant changes that impact the building(s) energy efficiency that were made after the preliminary reservation application. The compliance form must be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA) Plans Examiner (CEPE). Documentation for measures that require verification by California Home Energy Rating System (HERS) Raters must also be submitted.
4. New construction placed-in-service applications for projects that received points under section 10325(c)(6)(B)(ii), the applicant must submit a completed Sustainable Building Method Workbook, a completed CUAC analysis establishing the total tenant energy load, and documentation of the PV output using the CEC's PV Calculator. These compliance forms must reflect all relevant changes that impact building(s) energy efficiency that were made after the preliminary reservation application. The CUAC analysis and other required forms must be signed by a CABEC certified CEA. Documentation for the solar PV installation and other measures that require verification by California HERS Raters must also be submitted.
- 4.5. For rehabilitation project placed-in-service applications to receive points under section 10325(c)(6)(E), the applicant must submit a completed Sustainable Building Method Workbook and the energy consumption and analysis report from the appropriate performance module of CEC approved software, ~~developed using the Home Energy Retrofit Coordinating Committee's multifamily auditing and analysis protocols,~~ completed by a CABEC certified CEA, which shows the pre- and post- rehabilitation estimated TDV energy use demonstrating the required improvement, and is The pre-rehabilitation conditions shall be established using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report Template, signed by a qualified HERS Rater.

This includes combustion safety testing protocols for existing multifamily buildings.

Reason:

The proposed change to paragraph 3 would clarify its applicability to new construction only, and would update TCAC's reference to the current CABEC examiner classification. New paragraph 4 would codify requirements contained in the TCAC Sustainable Building Methods (SBM) Workbook, and would list consistent documentation and certification requirements for point-gaining energy efficiency features.

Current paragraph 4 (proposed to be re-numbered paragraph 5) reflects an update to the required assessment report for projects demonstrating pre-rehabilitation building conditions and post-rehabilitation improvement. The Sustainable Building Method Workbook previously referenced a required audit report template that was designed generally for multifamily buildings ("Audit Specifications Template for Multifamily Existing Buildings"). As energy analysts utilized this template for tax credit projects, TCAC became aware that some broader practices described in the template were not applicable to tax credit projects. In response, TCAC developed a tax credit specific audit report template. The proposed change would correctly refer to the updated document.

Section 10325(c)(6)(H) 5. and 6.

Proposed Change:

- ~~5-6.~~ For rehabilitation projects placed-in-service applications to receive points under section 10325(c)(6)(G) the applicants must submit a completed Sustainable Building Method Workbook and the following documentation:
- (i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project's solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter.
 - (ii) For sustainable building management practices implemented by appropriately trained onsite staff, the applicant must submit a copy of the energy management and maintenance manual using the CTCAC Green Building Maintenance Manual Template, provide evidence onsite staff has been certified in green building operations and maintenance through the Building Performance Institute Multifamily Energy Efficient Building Operator or equivalent training, and submit the building commissioning plan drafted in accordance with the California Commissioning Collaborative's best practice recommendations for existing buildings or the GreenPoint Rated Multifamily Commissioning requirements. Owner certification of ongoing sustainable building management practices will be provided annually in accordance with Section 10337(c)(3)(A).
 - (iii) For sub-metered central hot water systems, the applicant must demonstrate compliance with CPUC regulations for hot water sub-metering and billing by

submitting a copy of the Utility Service Agreement from project's local utility provider.

- ~~6.7.~~ Failure to produce the appropriate documentation for (2) through (5) of this subsection may result in an award of negative points for the development team.

Reason:

Proposed new language would clarify the applicability of re-numbered paragraph (6) to rehabilitation projects only. In addition, subparagraph (ii) would now provide clearer guidance by referring to TCAC's Green Building Maintenance Manual Template which will be incorporated into the SBM Workbook in 2015. TCAC is providing a template which applicants can use, while still allowing applicants to develop equivalent energy management and maintenance manuals of their own design.

Section 10325(f)(7)(A) and (B)

Proposed Change:

- (A) Energy Efficiency. ~~For all competitive first round applications and noncompetitive applications received prior to June 30, 2014, new~~ New construction buildings shall be ~~fifteen percent (15%)~~ thirty percent (30%) better than the 2008 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24) including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy. Alternatively, new construction buildings may meet the 20 percent (20%) Zero Net Energy (ZNE) standard established at Section 10325(c)(6)(B)(ii). ~~All 2014 competitive second round new construction applications and noncompetitive new construction applications received on July 1, 2014 or thereafter shall be thirty percent (30%) better than the 2008 standards.~~ All rehabilitated buildings shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report template. ~~with~~ Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for each building. Furthermore, all applicants ~~Applicants~~ must submit a completed Sustainable Building Method Workbook with their preliminary reservation application unless they are not seeking competitive points under Section 10325(c)(6)(B),(E), or (G), and are developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED) or GreenPoint Rated Program ~~Multifamily Guidelines~~.
- (B) CALGreen Compliance. ~~New construction buildings of four (4) or more habitable stories shall meet the mandatory provisions of the CALGreen Code (Title 24, Part 11 of the California Code of Regulations).~~ All rehabilitation projects, ~~including rehabilitation projects of four (4) or more habitable stories,~~ are required to meet the mandatory provisions of the CALGreen Code for any building product or system being replaced as part of the scope of work.

Reason:

Proposed changes to paragraph (A) would delete references to improvement percentages that pre-dated the 2013 California Building Code Title 24, Part 6 updates. In addition, new language would permit new construction projects to meet minimum energy efficiency standards by offsetting at least 20 percent (20%) of the residents' energy load with renewable energy generation. The 20% standard is the minimum scoring standard in the 9% competition cross-referenced in the proposed new language. Any new construction project receiving either 9% or 4% tax credits could meet the energy efficiency threshold by reaching the minimum offset that reaps competitive benefit in the 9% scoring system. This alternative would parallel the proposed new ZNE option in the 9% scoring, and would similarly provide an alternative path to compliance. As noted under the proposed scoring statement of reasons, this option could benefit projects in temperate climate zones by acknowledging the public benefit of energy offsets from photovoltaic panels.

In addition, new language clarifies documentation requirements currently referenced in TCAC's SBM Workbook. Finally, paragraph (A) would more clearly require applications to include a completed SBM Workbook except as currently noted.

Paragraph (B) would delete CalGreen exclusions for high-rise structures since the State's CalGreen Code now includes standards for such structures.

Section 10325(f)(7)(F)

Proposed Change:

- (F) Appliances. Refrigerators, dishwashers, clothes washers and dryers provided or replaced within Low-Income Units and/or in on-site community facilities shall be ENERGY STAR rated appliances, including but not limited to, refrigerators, dishwashers, and clothes washers shall be installed when such appliances are provided or replaced within Low-Income Units and/or in on-site community facilities unless waived by the Executive Director.

Reason:

Clarifying language would list the appliances that must be Energy Star when such appliances are provided or replaced as part of the work. The new clarifying language also adds clothes dryers to the short list of covered appliances since they now have Energy Star ratings.

Section 10325(f)(7)(J) and (K)

Proposed Change:

- (J) Use of Low Volatile Organic Compound (VOC) paints, and stains, adhesives, and caulks. Meet CalGreen requirements. (Non-flat: 150 g/l or less, Flat: 50 g/l or less) for all interior surfaces where paints and stains are applied.

- (K) All fiberglass-based insulation shall meet the Greenguard Gold Certification Emission Criteria for Children and Schools (http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSchools.aspx).

Reason:

Updated language would add relevant Volatile Organic Compound (VOC) off-gassing materials to TCAC's minimum construction standards, and would reference State CalGreen standards in paragraph (J). New language would also correctly reference Greenguard's updated "Gold Certification" standard.

Section 10325(f)(7)(M) and (N)

Proposed Change:

- (M) All tax credit recipient projects shall adhere to the provisions of California Building Code Chapter 11(B) regarding accessibility to privately owned housing made available for public use. Tax credits shall be viewed as invoking those requirements as applicable, including a minimum of ten percent (10%) ~~five percent (5%)~~ of the units with mobility features, and four percent (4%) ~~two percent (2%)~~ with communications features. ~~Effective in 2015, those percentages rise to ten percent (10%) and four percent (4%) respectively.~~ These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.
- (N) Rehabilitation projects must undergo combustion safety testing: Test-in at application and test-out at placed-in-service. Testing must follow CTCAC Combustion Safety Testing Protocols, which include testing protocols and sampling rates. Results shall be reported by the BPI Building Analyst in the Sustainable Building Method Workbook, which includes the CTCAC Combustion Safety Worksheet.

If a rehabilitation applicant does not propose to meet the requirements of this subsection, its Capital Needs Assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive. All exemptions must be approved in advance by the Executive Director.

Compliance and Verification: For placed-in-service applications, for subsection (A), applicants with new construction projects must submit either (a), the appropriate California Energy Commission (CEC) compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards, or (b) a completed CUAC analysis establishing the total tenant energy load, and documentation of the PV output using CEC's PV Calculator, which shows the necessary percentage of tenant energy load offset from renewable energy. For subsection (A) applicants with rehabilitation projects, the applicant must submit the energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation estimated Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service package. With the exception of applicants developing a project in accordance with the minimum

requirements of LEED or GreenPoint Rated ~~Program Multifamily Guidelines~~, applicants must submit a completed Sustainable Building Method Workbook. For subsections (B) through (K) applicants shall submit third party documentation from one of the following sources confirming the existence of items, measures, and/or project characteristics: a certified HERS Rater, a certified GreenPoint rater, or a US Green Building Council certification. Failure to produce appropriate and acceptable third party documentation for (A) through (K) of this subsection may result in negative points.

Reason:

Proposed changes to paragraph (M) are non-substantive and simply eliminate outdated references to a 2014 standard. New paragraph (N) would require specified combustion safety testing using specific standardized protocols. Combustion testing is necessary in older buildings as weatherproofing and insulation become tighter, and in-unit gas-fueled appliances such as stoves, water heaters, and furnaces endanger air quality within the unit. Testing prior to rehabilitation helps scope the size and cost of necessary work, and post-rehabilitation testing assures safety for the residents.

Proposed language in the final text of Section 10325(f)(7) would establish an option for applicants in documenting post-development energy efficiency with renewable energy. The new option would permit use of the California Energy Commission's Photovoltaic calculator and CUAC modeling to establish energy efficiency results. This option would complement efforts in those projects proposing to use the CUAC in establishing the project's utility allowances.

Section 10327(c)(2)(B) and (C)

Proposed Change:

- (2) Developer fee. The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis, or two million (\$2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:
 - (A) For 9% competitive applications applying under section 10325 of these regulations, the following limitations shall apply:
 - (i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or one million four hundred thousand (\$1,400,000) dollars; or
 - (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or one million four hundred thousand (\$1,400,000) dollars; or the maximum developer fee that may be included in eligible basis for projects receiving a waiver of the project size limitations under section 10325(f)(9)(C) of these regulations is the lesser of 15% of the project's eligible basis or

\$1,680,000 for projects having between 201 and 250 units, \$1,750,000 for projects having between 251 and 300 units, and \$1,820,000 for projects having more than 300 units.

- (B) For 4% credit projects applying under Section 10326 of these regulations, the maximum developer fee that may be included in project costs is the lesser of 15% of the project's eligible basis or two million five hundred thousand dollars (\$2,500,000). Notwithstanding this limitation, for 4% credit new construction projects where the proposed project is 150 low income units or more, the maximum developer fee that may be included in project costs is the lesser of 15% of the project's eligible basis or five million dollars (\$5,000,000). However, project applications proposing a developer fee in excess of \$2.5 million must defer at least half of the proposed fee. A cost limitation on developer fees that may be included in eligible basis shall be as follows:
- (i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or two million five hundred thousand (\$2,500,000) dollars; Notwithstanding this limitation, for 4% credit new construction projects proposing 150 low income units or more, the maximum developer fee that may be included in eligible basis is the lesser of 15% of the project's eligible basis or five million dollars (\$5,000,000). However, project applications proposing a developer fee in excess of \$2.5 million must defer at least half of the proposed fee; or
 - (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis, or two million five hundred thousand (\$2,500,000) dollars. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(5) or for other acquisition/rehabilitation projects whose hard costs per unit in rehabilitation expenditures of at least \$15,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.
- (C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis. Both the developer fee limitations in total project costs described in paragraphs (2) and (2)(B) above, and the developer fee limitations in basis described in (2)(A) and (2)(B) above apply to projects developed as multiple simultaneous phases using the same credit type (all 9% or all 4% credits) in both phases. Only when a phased project is using both credit types may simultaneously phased projects exceed the limitations in (2), (2)(A), and (2)(B) in the aggregate. For purposes of this limitation,

“simultaneous” refers to projects consisting of a single building, or projects on the same or adjacent parcels with ~~substantially the same~~ construction start dates within six months of each other, or and completion dates that are within six months of each other.

- (D) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.

Reason:

Proposed changes would (a) increase the permissible developer fee for larger new construction projects seeking 4% credits, and (b) clarify the developer fee restrictions on simultaneously-phased projects.

As documented in the draft State Cost Study, larger new construction projects realize greater per-unit cost efficiency due to economies of scale. However, larger new construction projects also pose larger financial risks for the developer. Allowing the developer to be appropriately compensated for that larger risk could result in more larger-scale new construction developments. TCAC staff endorses enlarging the affordable rental housing stock in a cost-efficient manner.

New proposed language would require large scale project developers who are requesting a developer fee in excess of \$2.5 million to defer at least half of that larger fee. For example, a proposed \$4 million developer fee would require the proposed deferral of at least \$2 million. This deferred \$2 million would be owed by the property-owning partnership to the developer, and would typically be paid out of the project’s cash flow.

The reason for the deferral language is that the additional developer fee beyond the currently-permitted \$2.5 million would not add to a project’s development period financing burden. The additional developer fee would, however, be includable in eligible basis and would likely induce in additional equity from tax credit investors. The following example illustrates the benefit:

Example: Assume a project located in a Difficult Development Area (DDA) or a Qualified Census Tract (QCT); 150 low income units with \$300,000 in eligible basis costs per unit.

Total eligible basis: \$45 million

Permissible developer fee: 15% x \$45 million = \$6.75 million (capped at proposed \$5 million)

Deferred developer fee: \$5 million x 1/2 = \$2.5 million

Additional tax credit from deferred developer fee:

\$2.5 million x 130% = \$3.25 million

\$3.25 million x 3.2% (4% credit factor) = \$104,000 in annual federal credit

\$104,000 x 10 years = \$1.04 million

Anticipated equity at one dollar pricing on the credit: \$1.04 million

The example would provide an additional \$1.04 million to a very large project, with a partnership obligation to the developer of \$2.5 million to be paid over ten to 13 years. The project would not be encumbered by this debt, although the partnership would typically look to the project's cash flow as the primary source of repayment.

The proposed changes would appropriately mitigate developers' risk when developing large projects and could facilitate additional production of such large, cost-efficient projects. In addition, the proposed deferral requirement would bring additional equity into such projects to defray development costs other than developer fee.

TCAC staff is not proposing to change developer fee limitations for nine percent (9%) credit projects since Section 10325(f)(9)(A)(ii) limits 9% credit projects to a 150-unit maximum. In addition, 9% credits are a limited federal resource so that every additional tax credit dollar defraying a developer fee is a tax credit dollar that may not be spent on another meritorious project.

Section 10327(c)(5)(A)

Proposed Change:

- (5) **Threshold Basis Limits.** The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Tax Credits to amounts published on its website in effect at the time of application, and in accordance with the definition in Section 10302(nn) of these regulations. This limitation shall not apply for purposes of calculating the final Credit amount upon issuance of tax forms, including projects that have already received Reservation or allocations of Tax Credits.

Exceptions to limits.

- (A) Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed thirty-nine percent (39%).

A twenty percent (20%) increase to the unadjusted eligible basis for a development that is (i) paid for in whole or in part out of public funds and is therefore subject to a legal requirement for the payment of required by a public awarding body to pay state or federal prevailing wages; or (ii) subject to a project labor agreement within the meaning of Section 2500(b)(1) of the Public Contract Code that requires the employment of construction workers who are paid at least state or federal prevailing wages, or (iii) financed in part by a labor-affiliated organization that requires the employment of construction workers who are paid at least state or federal prevailing wages.

Reason:

Current regulations provide a 20 percent (20%) increase, or exception, to a project's requested eligible basis limit if that project is required to pay prevailing wages by a public funding source.

The proposed change would also extend the prevailing wage basis limit exception to projects subject to similar union wage-scale requirements. Specifically, the change would extend the exception to a project in which there is an obligation to use union-represented workers exclusively in constructing or rehabilitating the property.

Through a project labor agreement (PLA) or through a labor-affiliated funding source, projects are required to hire union labor for the various construction trades work. The collective bargaining agreements covering the unionized workers require payment of union wage scales that are equal to or greater than California's State prevailing wage rates. Failing to accommodate such projects with the prevailing wage exception would put them at a financial and competitive disadvantage relative to publicly-invoked prevailing wage projects. The proposed change would rectify that inequity, and allow project sponsors to request additional credits to offset any additional wage costs associated with a project labor agreement or lender requirement to use exclusively union labor.

Section 10327(c)(5)(B)(3)

Proposed Change:

- (3) Newly constructed project buildings shall be forty-five percent (45%) or more energy efficient than the ~~current~~ 2008 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). Four percent (4%)

Reason:

This change clarifies the applicable Code of energy efficiency standards and brings the reference in this section in conformance with Sections 10325(c)(6) and 10325(f)(7). By specifying the version by year, the change would avoid future confusion when Title 24 may be updated during a calendar year. TCAC is calibrating its energy efficiency standards against the 2008 standard in light of ongoing work to measure results against the new, 2013 standard.

Section 10327(g)(6)

Proposed Change:

- (6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except where a higher first year ratio is necessary to meet the requirements of subsection 10327(f) (under such an exception the year-15 cash flow shall be no more than one percent (1%) of the year-15 gross income), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during ~~each~~ any one of the first three years of project operation. Any excess cash flow beyond the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income first-three-year limitation shall be deposited into the project's replacement reserve, operating reserve, or social service reserve and shall be verified by the project's annual audited financial statements. Pro forma statement utilizing CTCAC underwriting

requirements and submitted to CTCAC at placed in service, must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

Reason:

The proposed change establishes a maximum year-15 cash flow limitation when cash flow in the first three years must exceed TCAC-established maximums. Exceeding the TCAC cash flow maximums is permitted in order to maintain a break-even or slightly positive cash flow in year-15. In the case that the limitation is exceeded in any of the first three years of operation, the second proposed change in the section would require that this excess cash flow be deposited into a replacement reserve, or an operating reserve, or a social service reserve. Such reserves would then be available and used for the benefit of the project's residents. The excess amount to be deposited into the replacement reserve account would be documented in the project's annual audited financial statements and certified by the owner pursuant to Section 10337(c)(3).
