CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE:	July 16, 2015
TO:	Tax Credit Stakeholders
FROM:	Mark Stivers, Executive Director
SUBJECT:	Proposed Regulation Changes with Initial Statement of Reasons

Attached for public review and comment are the regulation changes proposed by the California Tax Credit Allocation Committee (TCAC) staff. This summary memorandum highlights the substantive changes proposed. Attached to this memorandum is the complete set of proposed changes. The target date for regulation change adoption is September 23, 2015, however this date may be postponed to a subsequent Committee meeting if more time is needed to review, consider, and respond to public comments. TCAC staff will conduct public hearings to explain, answer questions, and solicit comments regarding the proposals at the following times and locations:

Wednesday July 29th	**San Diego** San Diego Housing Commission 1122 Broadway, Conference Room ~~106~~ **<u>119</u>** San Diego, CA 92101 12:30 p.m.
Thursday July 30th	**Los Angeles** Junipero Serra Building 320 W. 4th Street, 1st Floor (Carmel Room) Los Angeles, CA 90013 9:00 a.m.
Monday August 3rd	**Sacramento** Employment Development Department 722 Capitol Mall, Auditorium Sacramento, CA 95814 1:00 p.m.
Wednesday August 5th	**Oakland** Elihu M. Harris State Building 1515 Clay Street, Auditorium Oakland, CA 94612 12:30 p.m.

Please see the public notice for additional information regarding public comments on this proposed regulation changes. Interested persons wishing to express their views on the proposed regulation changes may do so either at a public hearing or may submit written comments to TCAC by 5:00 pm on Monday, August 31, 2015.

Context and Highlights

Currently, California does not utilize its entire private activity tax-exempt bond authority and accordingly does not access the 4% low-income housing tax credits to the fullest extent possible. In addition, the 9% tax credit program is highly oversubscribed resulting in worthy projects going unfunded. TCAC and CDLAC are committed to increasing the supply of affordable housing, which can best be achieved by putting the available tax exempt bonds and 4% tax credits to work any by increasing the efficiency of 9% tax credit projects.

While the biggest barrier to increased new construction is the lack of gap financing, TCAC and CDLAC are proposing changes to their respective regulations that will help close financing gaps by increasing the amount of equity investors are willing to contribute to each project and reducing project costs. The proposals will increase equity by allowing projects to achieve more "basis" from which the amount of credits is calculated by:

- Protecting projects from losing federal "Difficult Development Area" status, which provides a credit boost.
- For low-value existing affordable housing developments for which rehabilitation is proposed, establishing the acquisition cost as the amount of debt assumed by the buyer.
- Increasing the maximum developer fee allowed for 4% tax credit projects but, for projects with other public subsidies, requiring the developer to defer receipt of or contribute back to the project the entire increase.

The proposals will reduce costs or the need for public resources by:

- Incentivizing larger projects which enjoy economies of scale.
- Rewarding land donations and the utilization of "soft" financing from non-public sources.
- Relaxing amenity distances to reduce the cost of land.
- Capping the amount of structured parking for which developers may increase their cost basis limits and generally reward projects with lower parking ratios.
- Relieving projects of the requirement to exceed current energy efficiency building codes, which are the strictest in the nation.
- Reducing the percentage of 3-bedroom units required in large family projects from 30% to 25%.
- Relieving rehabilitation projects of the requirement to double accessibility requirements in current building codes, still increasing the number of accessible units to 5%.
- Relieving rehabilitation projects of the requirement to replace still serviceable flooring, doors, roofs, water heaters, insulation, and landscaping.
- Allowing existing affordable projects needing rehabilitation to apply with a combined application.
- Eliminating the need for a market study for existing affordable housing developments with low vacancy rates.
- Staggering deadlines for projects to start construction.

The proposed regulation changes also increase accountability and long-term project feasibility by:

- Allowing non-profit sponsors of new projects to purchase projects after 15 years for the amount of debt encumbering the property.
- Requiring new projects to fund 15-year rehabilitation needs first before future sale or refinancing proceeds are distributed to owners.
- With respect to existing projects seeking to resyndicate and from which sale or refinancing proceeds have been or will be distributed, excluding from eligible basis the costs of any 15-year rehabilitation needs which do not exceed the cumulative distributions.
- Limiting the distribution of sale or refinance proceeds from new projects in which rental assistance rents exceed tax credit rents.
- Establishing fines for compliance violations after year 15.
- Authorizing TCAC to audit final cost certifications for accuracy and reasonableness.

Other highlights include:

- Rewarding projects for using rainwater, graywater, or recycled water for irrigation purposes.
- Rewarding the provision of transit passes to residents.

Summary of Substantive Changes Proposed

The following section summarizes all of the proposed substantive changes to the TCAC regulations. Thereafter, the Initial Statement of Reasons provides the actual language and the explanation for each proposed change.

Proposed Changes: 4% Tax Credit Projects

1. To increase basis and help close funding gaps, increase the developer fee cap as follows. **Section 10327(c)(2)(B), page 58.**
    a. For projects with no public subsidy, $2.5 million + 10% of improvement basis and 5% of acquisition basis above $2.5 million. If the project includes 20% of units at 50% AMI, the developer may receive 15% of improvement basis and 5% of acquisition basis above $2.5 million.
    b. For projects with public subsidy, 15% of improvement basis and 5% of acquisition basis with any amount over $2.5 million deferred or contributed back to the project. The threshold at which deferral or contribution starts increases by $5000 per unit for each unit over 100.

2. Require developer to maintain the same proportion of acquisition basis to construction basis in the fee amounts below and above $2.5 million. **Section 10327(c)(2)(B), page 58.**

3. Allow applicants to forego an appraisal and use as the acquisition basis the amount of debt encumbering the property. **Section 10322(h)(9)(A), page 11 and Section 10327(c)(6), page 65.**

4. Require $15,000 in hard construction costs per unit in rehabilitation projects and $20,000 per unit if the project is a resyndication. **Section 10326(g)(7), page 55.**

5. Require applicants to submit the CDLAC bond application prior to or concurrently with the CTCAC application. **Section 10326(h), page 57.**

6. Require applicants to receive a CDLAC bond allocation within 90 days of receiving a tax credit reservation. **Section 10326(j)(1), page 57.**

7. Conform land use entitlement requirements to CDLAC requirements. **Section 10326(g)(3), page 55.**

8. Require applicants receiving CDLAC points for sustainability to provide documentation to TCAC at application and at placed in service. **Section 10325(f)(7), page 43 and 10325(f)(7)(A), page 45.**

Proposed Changes: 4% and State Tax Credit Projects

1. Make all state credits in 4% setaside available during the first round to maximum score projects and hold any remainder until the second round. **Section 10317(i)(1), page 8.**

2. Require projects to apply to CDLAC within 10 days after a TCAC reservation, as opposed to by the TCAC application deadline. **Section 10317(g)(4), page 6.**

3. Accept applications for State Farmworker Credits to be used with 4% federal credits over the counter. **Section 10317(h), page 7.**

Proposed Changes: 9% Tax Credit Projects

1. Grandfather for one year the Difficult Development Area (DDA) status of any project that loses DDA status. **Section 10327(d)(1), page 66.**

2. Require acquisition and/or rehabilitation projects applying for competitive tax credits to demonstrate that they are not feasible as 4% projects. **Section 10325(f)(12), page 52.**

3. Increase the $2.5 million cap on the maximum annual federal credit award by $10,000 per unit for each unit over 100 up to a maximum of $3 million. **Section 10325(f)(9)(D), page 50.**

4. Alter the homeless definition to eliminate the 90 day residency limit for persons coming out of an institution with no place to go. **Section 10315(b)(1)(C), page 3.**

5. Within the homeless assistance priority set a minimum contribution from the identified funding sources at $500,000 or $10,000 per total units, whichever is greater. **Section 10315(b), page 3.**

6. Increase the special needs housing goal to 25%. **Section 10315(g), page 5.**

7. Clarify the at-risk definition. **Section 10325(g)(5)(B)(i), page 54.**

8. Establish a 15% goal for acquisition and/or rehabilitation (20% in rural areas). **Section 10315(c) and (g), pages 4 and 5.**

9. Eliminate the requirement for special needs projects to meet an additional housing type and clarify the minimum construction standards for non-special needs units. **Section 10325(g)(4), page 53.**

10. Continue the Native American apportionment without a sunset date. Allow projects sponsored by a tribe to be off reservation, provided the units are reserved for tribal households. Clarify that TCAC may make all credits available in this apportionment during the first round. Allow tribal communities to score points in the general partner and management company experience categories according to

the requirements of Section 10325(c)(2), as opposed to requiring the communities to contract for these services, and require applications to score the minimum points in these categories, as opposed to the maximum. **Section 10315(c)(2), page 4.** Disregard site amenity points within the Native American apportionment. **Section 10325(c)(5)(A), page 22.**

11. Allow maximum points for general partner experience after 5 projects but generally require one project in service at least 5 years. Clarify that special needs projects may receive points for general experience or special needs experience. **Section 10325(c)(2), page 17.**

12. Allow site amenity points for being in a high-quality school area, once the Academic Performance Index is updated. **Section 10325(c)(5)(A), page 22.**

13. Widen the radii for site amenities. Provide site amenity points for the provision of transit passes. **Section 10325(c)(5)(A), page 22.**

14. Require applicants to provide committed services for 15 years, as opposed to 10. **Section 10325(c)(5)(B), page 26.**

15. Set the maximum sustainability points at 5 points. Allow points for the use of rainwater, greywater, or recycled water for irrigation. Allow energy efficiency points in lieu of certification points. Recalibrate energy efficiency and zero net energy levels. **Section 10325(c)(6), page 27.**

16. Remove continual staff training requirement from the sustainable building management category and reduce points from 3 to 2. **Section 10325(c)(6), page 27.**

17. Stagger 180-day readiness deadline randomly (half of projects at 180 days and half at 194 days). **Section 10325(c)(8), page 33; Section 10325(c)(3)(B), page 19; and Section 10328(c), page 70.**

18. Clarify the readiness points building permit requirement for design-build projects and cities that do not release permits until grading is complete. **Section 10325(c)(8), page 33.**

19. Remove readiness points for design review and accordingly reduce maximum readiness points to 15. **Section 10325(c)(8), page 33.**

20. Allow TCAC to impose negative points as an alternative to credit rescission for failure to meet the readiness deadline. **Section 10325(c)(8), page 33.**

21. Alter the smoke free points category to provide points for having a policy prohibiting smoking in certain units and, for projects with more than one building, having at least one smoke-free building. **Section 10325(c)(9), page 35.**

22. Broaden the community revitalization plan point category to include projects in Promise Zones and in census tracts with at least 50% of the households below 60% AMI. **Section 10325(c)(9), page 35.**

23. Alter the public funds factor of the tiebreaker to count leveraged soft resources, including public or private soft loans and land donations from unrelated entities (and land donations from related entities on a case by case basis). Count operating and rental subsidies from the California Department of Health Care towards the public funding numerator increase. Multiply the leveraged soft resources factor of the tiebreaker by a size factor. **Section 10325(c)(10), page 36.**

24. Alter the credit efficiency factor in the tiebreaker by adding back leveraged soft resources that supplant eligible basis. **Section 10325(c)(10), page 36.**

25. Allow TCAC to use its own appraisals to establish donated land values. **Section 10325(c)(10), page 36.**

26. Require high-cost projects seeking Committee approval to come before the Committee no later than the first meeting after the application deadline. **Section 10325(d), page 39.** Allow negative points for projects awarded credits in 2016 or after that exceed 140% of most recent threshold basis limit at placed in service. **Section 10325(c)(3)(S), page 20 and Section 10325(d), page 39.**

27. Prohibit substitution of HOME or RHS funds that qualified an applicant for those apportionments. **Section 10325(f)(3), page 42.**

28. Reduce 3-bedroom requirement for large family housing to 25%. **Section 10325(g)(1)(A), page 53.**

29. Set tax credit factor pricing at $1 for self-syndicating projects or projects in which the investor has an identity of interest. **Section 10327(c)(9), page 66.**

30. Subject new projects with only non-profit general partners to a right of first refusal for the general partners to purchase a project for debt plus taxes. **Section 10337(a)(1), page 71.**

31. Disqualify any applicant to TCAC who is debarred by CDLAC. **Section 10325(f)(13), page 52.**

32. Impose negative points for projects that have negative points from CDLAC. **Section 10325(c)(3)(T), page 20.**

Proposed Changes: 4% and 9% Tax Credit Projects

1. Define "tribal trust land." **Section 10302(qq), page 2.**

2. Allow the temporary use of hold harmless rents (for rents below 60% AMI) at resyndication. **Section 10327(g)(8), page 69.**

3. Require resyndication projects to keep existing affordability for another 55 years but allow waivers for projects with negative cash flow or specified losses of rental or operating subsidy. **Section 10325(f)(11), page 51, and Section 10326(g)(8), page 56.**

4. Require resyndication projects to use all funds in reserve accounts for rehabilitation of the property. **Section 10322(k), page 15.**

5. Define minimum distance at which a project is considered a scattered site. **Section 10302(kk), page 1.**

6. Allow any number and location of sites for a scattered-site acquisition and/or rehabilitation project with a pre-existing project-based Section 8 contract in effect for all the sites. In addition, allow scattered site rehabilitation projects of up to 5 existing affordable housing developments (or more if approved by the Executive Director) if all sites are either within the boundaries of the same city, within a 10-mile diameter circle in the same county, or within the same county if no location is within a city having a population of 500,000 or more. Limit new construction projects and all other

acquisition and/or rehabilitation projects to five scattered sites with all sites within a 1 mile diameter circle within the same county. **Section 10302(kk), page 1 and Section 10325(c), page 15.** For all scattered site projects, require files to be brought to one location for inspection upon request of TCAC. **Section 10337(c)(1), page 74.**

7. Allow scattered site rehabilitation projects to meet project type requirements at each site independently. **Section 10325(c)(4), page 21.**

8. Discount costs of leasing offices, parking facilities, or landscaping from the minimum rehabilitation thresholds. **Section 10325(f)(9)(D), page 50 and Section 10326(g)(7), page 55.**

9. Eliminate market study requirement for the rehabilitation of specified affordable housing developments. Allow scattered site projects to submit one market study with separate rent comparability matrices for each site. **Section 10322(h)(10), page 12 and Section 10325(f)(1)(B), page 41.**

10. Remove subjective language relating to neighborhood compatibility, durability, and suitability from the minimum construction standards. **Section 10325(f)(7), page 43.**

11. Require applicants to consult with the design team and energy efficiency experts early in the project design process to identify and consider cost-effective energy efficiency or generation measures beyond those required. **Section 10325(f)(7)(A), page 45.**

12. With respect to energy efficiency, require building to code for new construction. Maintain 10% improvement requirement for rehabilitation projects generally at the project level and expand the lookback period for recent energy efficiency improvements to 5 years, including government programs. **Section 10325(f)(7)(A), page 45.** Recalibrate energy efficiency percentages that apply to threshold basis limit increases accordingly. **Section 10327(c)(5)(B), page 63.**

13. Clarify that specified minimum construction standards only apply in rehabilitation projects if the items are being provided or replaced. **Section 10325(f)(7) (B), (D), (G), (H), and (I), pages 45-48.**

14. Require roofs to be replaced if they have 10 years or less of useful life. **Section 10325(f)(7)(C), page 47.**

15. Clarify the size requirement of energy efficient water heaters. **Section 10325(f)(7)(G), page 47.**

16. Clarify flooring requirement. **Section 10325(f)(7)(H), page 48.**

17. Cap the maximum number of managers' units at 4. Allow projects to forego a manager's unit if the appropriate number of property managers are employed full time on-site and the project has an equal number of security or desk staff on site at all other times. Disallow waivers to the manager's unit requirement. Also clarify language relating to number of manager units required. **Section 10325(f)(7) and Section 10325(f)(7)(J), page 48.**

18. Apply the 10% mobility/4% communications accessibility requirement to new construction only. **Section 10325(f)(7)(K), page 50.**

19. Allow project architects to certify compliance with specified minimum construction standards and threshold basis limit increase standards that are not sustainability related. **Section 10325(f)(7), page 43 and Section 10327(c)(5)(B), page 63.**

20. Prohibit threshold basis boost for structured parking for spaces beyond 1 space for studio/1 bedroom units and 1.5 space for 2+ bedroom units. **Section 10327(c)(5)(A), page 61.**

21. Allow prevailing wage threshold basis boost for projects required to pay prevailing wages as a result of receiving funds from a labor-affiliated lender. **Section 10327(c)(5)(A), page 61.**

22. Allow an additional 5% threshold basis limit boost for projects that are subject to a project labor agreement or that use a skilled and trained workforce, as defined. **Section 10327(c)(5)(A), page 61.**

23. Refine the break even definition for purposes of limiting cash flow in year 15 for projects that would otherwise experience negative year 15 cash flow. **Section 10327(g)(6), page 68.**

24. Codify current TCAC practice of not subordinating existing regulatory agreements but agreeing to a stand still agreement. **Section 10320(b), page 8.**

25. With respect to new projects, prohibit any distribution from refinancing or sale proceeds to an owner unless all rehabilitation work determined by a capital needs assessment to be necessary within 15 years is completed within one year. **Section 10337(a)(2), page 71.** TCAC shall not approve a change or ownership or stand still agreement unless the owner agrees to amend the regulatory agreement accordingly and set aside adequate funding for the rehabilitation. **Section 10320(b)(2), page 8 and (c)(1), page 10.** The costs of any rehabilitation items left uncompleted shall be excluded from basis if an owner resyndicates. **Section 10327(d)(3), page 67.**

26. With respect to existing projects that seek to resyndicate and from which sale or refinance proceeds have been distributed to owners over the previous 15 years, exclude from basis the costs of rehabilitation determined to be necessary by a 15-year capital needs assessment, up to the cumulative amount of proceed distributions. **Section 10327(d)(4), page 67.**

27. If a resyndication provides for the distribution of sale proceeds to a seller, exclude from basis the costs of rehabilitation determined to be necessary by a 15-year capital needs assessment. **Section 10327(d)(5), page 67.**

28. For new projects in which at least 50% of the units receive rental assistance, generally limit the cumulative distribution from refinancing and sale proceeds over the most recent 15-year period such that the distributions do not exceed the difference between the value of the property based on tax credit rent limits and the debt encumbering the property. **Section 10337(a)(3), page 71.** TCAC shall not approve a change of ownership or stand still agreement unless the owner demonstrates compliance with this limitation. **Section 10320(b)(3), page 8 and (c)(2), page 10.**

29. Require that an appraisal exclude the value of the property tax welfare exemption unless the owner can demonstrate that the welfare exemption was reflected in the purchase price when the current owner initially acquired the project. **Section 10322(h)(9)(A)(iii), page 11.** TCAC shall not approve a change of ownership or a stand still agreement related to a refinance unless this requirement is satisfied. **Section 10320(b)(4), page 8 and (c)(3), page 10.**

30. Prohibit rent increases on units at 50% or greater AMI from exceeding 5% per year. **Section 10328(a)(4), page 70.**

31. Authorize TCAC to audit final cost certifications for accuracy and reasonableness. **Section 10328(h), page 71.**

32. Require certification of cash flow limits for projects with state credits subject to such limits. **Section 10337(c)(3)(H), page 74.**

33. Institute fines for non-compliance during the extended use period and allow liens for non-payment. **Section 10337(f), page 75.**

34. Require applicants at placed in service to demonstrate site control. **Section 10322(i)(20), page 15.**

35. Allow the imposition of negative points for serious failure to submit required compliance documentation. **Section 10325(c)(3)(G), page 20.**

36. Allow for the imposition of negative points for failure to comply with a requirement of the regulatory agreement. **Section 10325(c)(3)(U), page 20.**

Attachment

Fall 2015 Proposed Regulation Change with Reason
July 16, 2015

Section 10302(kk)-(rr)

Proposed Change:

kk) Scattered Site Project. A project in which the parcels of land are not contiguous except for the interposition of a road, street, stream or similar property.

1) For acquisition and/or rehabilitation projects with a pre-existing project-based Section 8 contract is in effect for all the sites, there shall be no limit on the number or proximity of sites.

2) For acquisition and/or rehabilitation projects with any of the following: (A) existing federal or state rental assistance or operating subsidies, (B) an existing TCAC Regulatory Agreement, or (C) an existing regulatory agreement with a federal, state, or local public entity, the number of sites shall be limited to five, unless the Executive Director approves a higher number, and all sites shall be either within the boundaries of the same city, within a 10-mile diameter circle in the same county, or within the same county if no location is within a city having a population of five-hundred thousand (500,000) or more.

3) For new construction projects and all other acquisition and/or rehabilitation projects, the number of sites shall be limited to five, and all sites shall be within a 1 mile diameter circle within the same county.

ll) State Credit. The Tax Credit for low-income rental housing provided by the Revenue and Taxation Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, including the State Farmworker Credit, formerly the Farmworker Housing Assistance Program provided by the Revenue and Taxation Code Sections 12206,17058, and 23610.5 and by the Health and Safety Code Sections 50199.2 and 50199.7.

~~ll~~mm) Tax-Exempt Bond Project. A project that meets the definition provided in IRC Section 42(h)(4).

~~mm~~nn) Tax forms. Income tax forms for claiming Tax Credits: for Federal Tax Credits, IRS Form 8609; and, for State Tax Credits, FTB Form 3521A.

~~nn~~oo) Threshold Basis Limit. The aggregate limit on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Tax Credit amounts. These limits are published by CTCAC on its website, by unit size and project location, and are based upon average development costs reported within CTCAC applications and certified development cost reports. CTCAC staff shall use new construction cost data from both 9 percent and 4 percent funded projects, and shall eliminate extreme outliers from the calculation of averages. Staff shall publicly disclose the standard deviation percentage used in establishing the limits, and shall provide a worksheet for applicant use. CTCAC staff shall establish the limits in a manner that seeks to avoid a precipitous reduction in the volume of 9 percent projects awarded credits from year to year.

~~oo~~pp) Tribe. A federally recognized Indian tribe located in California, or an entity established by the tribe to undertake Indian housing projects, including projects funded with federal Low Income Housing Tax Credits.

~~pp~~qq) Tribal Trust Land. Real property located within the State of California that meets both the following criteria:

(1) is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States.

(2) the land may be leased for housing development and residential purposes under Federal law.

~~Pp~~rr) Waiting List. A list of Eligible Projects approved by CTCAC following the last application cycle of any calendar year, pursuant to Section 10325(h) below.

Reason: Scattered site projects are referred to in various places in the regulations. The current regulations establish the maximum parameters for a scattered project as parcels all within a five mile diameter circle except where a pre-existing project-based Section 8 contract is in effect. This change defines a scattered site project within the definition section of the regulations, clearly establishes the minimum parameters at which a project is considered to be a scattered site project instead of a regular project, and alters maximum parameters of what may be a scattered site project. With respect to the minimum parameters, the proposed change mirrors federal tax-exempt bond regulations (Treasury Regulation Section 1.103-8(b)(4)) by considering a project to be a scattered site project when the parcels of land are not contiguous except for the interposition of a road, street, stream or similar property. With respect to the maximum parameters, the proposed change 1) limits the number of sites to five (except for existing project-based Section 8 projects), 2) restricts proximity to a one mile diameter circle within the same county for new construction and currently non-restricted acquisition and/or rehabilitation projects, and 3) broadens the proximity requirement for acquisition and/or rehabilitation projects for which all sites are currently restricted or have a project-based Section 8 contract such that all sites must be within the boundaries of the same city, within a 10-mile diameter circle in the same county, or within the same county if no location is within a city having a population of five-hundred thousand (500,000) or more. In general, staff believes that scattered site projects are more difficult to manage, more difficult to monitor, and isolate tenants from services and management. For that reason, staff believes restricting the number and proximity of scattered site projects is appropriate. However, staff recognizes the cost savings and cross-subsidization benefits of combining multiple currently affordable projects together into a combined rehabilitation application and is willing to make an exception to the general rule for these applications. In this vein, the proposed changes also allow the Executive Director to accept an acquisition and/or rehabilitation application with more than 5 sites if the sites are currently restricted. The proposed changes also reletter the subsequent definitions.

The proposed changes also define the term Tribal Trust Land as used throughout the current regulations. The definition includes land held in trust by the United States for tribes or individual Indians but also includes restricted Indian land to which one or more tribes or individual Indians holds fee title but can alienate or encumber it only with the approval of the United States.

Section 10315(b)

Proposed Change:

(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) in the following priority order:

- First, projects with McKinney-Vento Homeless Assistance Act, MHP-Supportive Housing Program, ~~or~~ HCD Veterans Housing and Homeless Prevention Program ~~development capital funding committed~~, or Mental Health Services Act (MHSA) development capital funding committed ~~or anticipated~~. The amount of development capital funding committed shall be at least $500,000 or $10,000 per unit for all units in the project, whichever is greater.
- 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.

Reason: The current regulations give first priority within the non-profit set-aside to projects providing housing to homeless households that have McKinney-Vento Homeless Assistance Act, MHP-Supportive Housing Program, or HCD Veterans Housing and Homeless Prevention Program development capital funding committed, or Mental Health Services Act (MHSA) development capital funding committed or anticipated. The proposed changes establish a minimum capital funding commitment level in order for a project to qualify for the priority, namely $500,000 or $10,000 per unit for all units in the project, whichever is greater. This prohibits the practice of securing de minimus funding commitments in order to access the priority. It should be noted that the $10,000 per unit minimum relates to all units in the projects, not just the units assisted by the referenced programs. This prohibits access to the priority based on commitments for one or a few number of units. The proposed changes require all such funding to be committed at application, whereas MHSA funding may currently be "anticipated."

Section 10315(b)(1)(C)

Proposed Change:

(C) Is exiting an institution ~~where (s)he has resided for 90 days or less~~ and ~~who~~ resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

Reason: For purposes of the homeless assistance priority within the non-profit set-aside, the current regulations define a homeless person to include, among other things, a person exiting an institution after a stay of 90 days or less and who was homeless before entering that institution. Staff believes that persons who have been in institutions for longer than 90 and were homeless upon entry are equally if not more in need and should also qualify to live in homeless assistance developments.

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~~ both the Senior and Acquisition and/or Rehabilitation housing type goals 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~~the specified percentage of the rural set-aside had been committed to Senior and Acquisition and/or Rehabilitation housing type projects.

Reason: The proposed change in Section 10315(g) creates a 15% housing goal for acquisition and/or rehabilitation projects in the aggregate, with a 20% acquisition and/or rehabilitation housing goal for rural areas. The proposed changes to this section mirror those provisions and directly apply the 20% goal with the rural set-aside.

Section 10315(c)(2)

Proposed Change:

(2) Native American ~~pilot~~ apportionment. ~~In each of the 2014 and 2015 program years, one~~ One million dollars ($1 million) in annual federal credits shall be available during the first round and, if any credits remain, in the second round for applications proposing projects on ~~an Indian reservation~~land to be owned by a Tribe, whether the land is owned in fee or in trust, provided that if the land is off reservation occupancy will legally be limited to tribal households. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by TCAC under Section 10305(h). In addition, tribal communities shall garner the minimum points available for General Partner/Management Company Characteristics under Section 10325(c)(2) or shall partner or contract with a developer and with a

property management entity that would garner the ~~maximum~~ minimum points available for General Partner/Management Company Characteristics under Section 10325(c)(2), except that the management company minimum scoring cannot be obtained through the point category for a housing tax credit certification examination.

Reason: In 2014 and 2015, TCAC set aside $1 million in federal 9% tax credits from the rural set-aside for projects on Indian reservations. To date, TCAC has awarded credits to three Native American projects, one of which returned the credits. In the first round of 2015, two projects applied for credits. TCAC believes that there is a continuing need for affordable housing on tribal lands and that sufficient demand exists to continue the Native American set-aside indefinitely. In the event that insufficient applications come in during any year, the credits are available for rural projects. In addition to continuing the set-aside, the proposed changes:

- Clarify that TCAC will make available all $1 million in credits during the first round to projects meeting the minimum score. If credits remain, TCAC will make the remaining credits available in the second round. This prevents needless reapplications and speeds up the provision of affordable housing on tribal lands.
- Allow projects to be on land to be owned by a tribe, as opposed to on the reservation itself, provided that if the land is off reservation occupancy will legally be limited to tribal households. NAHASDA funding allows tribes to restrict occupancy to tribal households.
- Allow tribal communities to score points in the general partner and management company experience categories on their own, as opposed to requiring the communities to contract for these services, and require applications to score the minimum points in these categories, as opposed to the maximum. The applicants cannot meet the management company minimum scoring through the point category for a housing tax credit certification examination, however.

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, exclusive of the Acquisition and/or Rehabilitation housing type which is 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)(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%
Special Needs 25%
Acquisition and/or Rehabilitation 15% in aggregate and 20% within the rural set-aside
Single Room Occupancy 15%
At-Risk 15%
~~Special Needs 15%~~
Seniors 15%

Reason: Given that Special Needs projects have few viable alternative funding options outside of the 9% tax credit program, staff believes they should be a top priority of the program. In 2014, at least one Special Needs project was skipped over as a result of the current 15% housing goal for Special Needs projects. Staff believes that increasing the Special Needs housing goal to 25% will better reflect this priority and minimize the possibility of such projects being negatively affected by the first tiebreaker.

In addition, staff believes that the focus of the 9% tax credit program should be new construction projects. Staff is concerned about the increasing percentage of awards to acquisition and/or rehabilitation projects. In the first round of 2015, 36% of the projects receiving an allocation are acquisition and rehabilitation projects, well above the historic average. Moreover, acquisition and rehabilitation projects may have viable financing alternatives and seem to be advantaged by the current tiebreaker, resulting in the first round of 2015 in an 85% award rate for such projects, as opposed to 50% for new construction projects. In lieu of making ineligible or otherwise disadvantaging acquisition and rehabilitation projects, the proposed changes establish a 15% housing type goal for these projects in the aggregate. This will allow acquisition and/or rehabilitation projects to continue accessing and receiving 9% credit awards while ensuring that such projects do not consume too many credits that would otherwise support new construction projects. The proposed change to Section 10315(c) would apply this housing type goal within the rural set-aside, and this proposed change provides that CTCAC will allow up to 20% of credits in the rural set-aside to go to acquisition and/or rehabilitation projects while no more than 15% of competitive credits may go to such projects in the aggregate. Given that demand for new construction can be weaker in rural areas, staff believes that having a higher goal for acquisition and rehabilitation projects in rural areas is appropriate. The proposed change also clarifies that the acquisition and/or rehabilitation housing type only relates to the tiebreaker. Applicants must still apply under one of the other housing types, even for acquisition and/or rehabilitation projects.

Section 10317(g)(4)

Proposed Change:

(4) the applicant must demonstrate, by no later than ~~the application filing deadline~~10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for~~ prior to submitting under this subsection for State Tax Credits~~.

Reason: The current regulations require that projects requesting both 4% and state tax credits apply in the competitive rounds. Given the oversubscription for state credits available to 4% projects, a fair number of applicants do not receives awards. Nonetheless, the current regulations also require that such applicants have applied to or received an allocation of tax-exempt bond authority from the California Debt Limit Allocation Committee (CDLAC) prior to submitting the CTCAC application. This necessitates an investment of additional time and resources for projects that may not move forward. The proposed change allows projects requesting both 4% and state tax credits to apply to CTCAC without having applied to CDLAC. In the event a project receives a tax credit reservation, the proposed change requires the applicant to apply to CDLAC within 10 business days of receiving the reservation. This helps ensure that projects do not later fall behind development deadlines.

Section 10317(h)

Proposed Change:

(h) State Farmworker Credit. Applicants may request State ~~Tax~~ Farmworker Credits for eligible Farmworker Housing in combination with federal credits, or they may request State Farmworker Credits only. ~~Applicants may apply only during competitive rounds as announced by CTCAC.~~ If seeking a federal Credit Ceiling reservation ~~along with State Tax Credits for eligible Farmworker Housing~~, applicants may apply only during competitive rounds as announced by CTCAC and shall compete under the provisions of Section 10325(c) et. seq. ~~if~~ If requesting ~~State Tax Credits and~~ federal credits for use with tax exempt bond financing, or State Farmworker Credits only, applicants may apply over the counter and shall meet the threshold requirements for projects requesting 4% federal credits. ~~shall compete under the provisions of Section 10317(i)(2). State Farmworker Credits shall be awarded as follows:~~

~~(1) CTCAC shall award State Farmworker Credits to the highest scoring successful Farmworker Housing application requesting either (a) four percent (4%) federal credits in combination with State Tax Credits, or (b) State Farmworker Credits only.~~

(~~2~~1) If more than one applicant is requesting nine percent (9%) federal credits in combination with State Farmworker Credits during a competitive round, ~~State Farmworker Credits remain after awards made under paragraph (h)(1) above, then~~ CTCAC shall award available State Farmworker Credits to the highest scoring Farmworker Housing application that will receive a reservation of federal credits~~requesting nine percent (9%) federal credits in combination with State Tax Credits~~.

~~(3)~~ If available State Farmworker Credits are inadequate to fully fund a pending request for eligible Farmworker Housing, CTCAC may reserve a forward commitment of subsequent year's State Farmworker Credits for that project alone.

Reason: Current law and CTCAC regulations provide for $500,000 of State Farmworker Credits annually and subject such applications to a competitive process. The demand for State Farmworker Credits has been slack. CTCAC has not received an application since 2007, is expecting only one in 2015, and currently has roughly $5 million in such credits available. As a result, CTCAC is proposing to make the State Farmworker Credits available on an over-the-counter basis if the project is requesting State Farmworker Credits in conjunction with 4% tax credits or State Farmworker Credits alone. These projects would be considered in the order received and be subject to the threshold requirement for 4% projects but not the competitive scoring. Projects requesting 9% tax credits would still apply through the competitive rounds. Because projects requesting 4% credits would no longer apply with 9% applications, the proposed changes also remove the priority for 4% projects over 9% projects and clarify that, in the event that two or more projects seek 9% credits and State Farmworker Credits in the same round, CTCAC will award State Farmworker Credits to the highest scoring project that receives a reservation of federal credits. The proposed changes also clarify that all the references to State Credits in this subsection refer to State Farmworker Credits.

Projects applying for State Farmworker Credits are not eligible to apply for State Tax Credits in addition.

Section 10317(i)(1)

Proposed Change:

(1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects. In the first round of each year, CTCAC shall make reservations, up to the 15% limit, for all projects receiving maximum point scores in order of final tiebreaker scores. CTCAC shall make reservations of any remaining State Tax Credits within this set-aside during the second round;

Reason: The current regulations provide no guidance on how CTCAC should apportion State Tax Credits for 4% projects across the two competitive rounds. The proposed regulations provide such guidance, establishing a rule that CTCAC in the first round will make reservations, up to the 15% limit, for all projects receiving maximum point scores in order of final tiebreaker scores and that CTCAC will make reservations of any remaining State Tax Credits within this setaside during the second round. CTCAC considered awarding half of the State Tax Credits available in this set-aside in each round. However, awarding credits to all maximum score projects in the first round ensures that projects with a high probability of receiving an award are not needlessly delayed. By not awarding credits in the first round to projects to projects with less than a maximum score, the proposed change seeks to maintain an opportunity for second round applications that may be able to achieve a maximum score to receive an award.

Section 10320(b)

Proposed Change:

(b) Tax Credits and ownership transfers. No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. Said approvals that comply with the following provisions shall not be unreasonably withheld. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(M), in addition to other remedies.

(1) The following requirements apply to all ownership or Tax Credit transfers ~~requested after January 31, 2014~~.

(~~1~~A) Any transfer of project ownership (including changes to any general partner, member, or equivalent responsible party), or allocation of Tax Credits shall be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.

(~~2~~B) The entity replacing a party or acquiring ownership or Tax Credits shall be subject to a "qualifications review" by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee. Any general partner change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(2)(A) as the exiting general partner. At a minimum this must be three (3) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the three projects must be Low Income Housing Tax Credit projects in California. If the new general partner does not meet these experience requirements, then substitution of general partner shall not be permitted.

(2) Any transfer of project ownership (including the sale or assignment of a partnership interest) subject to the requirement to Section 10337(a)(2) shall not be approved unless the owner who shall own the property after the sale agrees to amend the regulatory agreement to meet the requirements of that section and has, in the determination of the Executive Director, set aside adequate funding to meet the rehabilitation requirement.

(3) Any transfer of project ownership (including the sale or assignment of a partnership interest) subject to the limit on cumulative distributions of refinancing and sale proceeds described in Section 10337(a)(3) shall not be approved unless the seller, transferor, or assignor demonstrates to the satisfaction of the Executive Director that the limitation has been satisfied. The amount of debt encumbering the property and the amounts of cumulative distributions over the most recent 15 year period shall be specified within an audited statement accompanying any request for approval of a change of ownership.

(4) For purposes of approving a change in ownership (including the sale or assignment of a partnership interest) for value, the applicant shall submit an appraisal consistent with the requirements of Section 10322(h)(9). Unless a waiver has been granted pursuant to Section 10322(h)(9)(A)(iii), CTCAC shall not approve a change of ownership if the sales price or valuation exceeds the appraised value.

Reason: The proposed changes to Section 10337(a)(2) prohibit any distribution from refinancing or sale proceeds to an owner of a project awarded tax credits in 2016 or later unless all rehabilitation work determined by a capital needs assessment to be necessary to be undertaken within 15 years will be completed with one year. In addition, the proposed changes to Section 10337(a)(3) limit the cumulative allowed distribution from refinancing and sale proceeds for new projects in which in which at least 50% of the units are subject to a continuing state or federal project-based rental assistance contract. The proposed changes to this section enforce these provisions by ensuring documentation of compliance before CTCAC will approve a change of ownership, including a sale or assignment of a partnership interest.

Likewise, the proposed changes to Section 10322(h)(9) require an appraisal to exclude the value of the welfare exemption unless a waiver is granted. The proposed changes to this section help enforce this provision by providing that CTCAC shall not approve a change of ownership, including the sale or assignment of a partnership interest, if the sales price or valuation used in a change of ownership for value exceeds the appraised value.

Section 10320(c) and (d)

Proposed Change:

(c) CTCAC shall initially subordinate its regulatory contract to a permanent lender but thereafter shall not subordinate existing regulatory contracts to acquisition or refinancing debt, except in relation to new Deeds of Trust for rehabilitation loans or FHA-insured loans. At the request of the owner, CTCAC shall enter into a stand-still agreement permitting the acquisition or refinance lender 60 days to work with the owner to remedy a breach of the regulatory contract prior to CTCAC implementing any of the remedies in the regulatory contract, except as follows:

(1) If the project is subject to the limit on distributions of refinancing and sale proceeds described in Section 10337(a)(2), the stand still agreement shall not be approved unless the owner agrees to amend the regulatory agreement to meet the requirements of that section and has, in the determination of the Executive Director, set aside adequate funding to meet the rehabilitation requirement.

(2) If the project is subject to the limit on cumulative distributions of refinancing and sale proceeds described in Section 10337(a)(3), the stand still agreement shall not be approved unless the owner demonstrates to the satisfaction of the Executive Director that the limitation has been satisfied. The amount of debt encumbering the property and the amounts of cumulative distributions over the most recent 15 year period shall be specified within an audited statement accompanying any request for execution of a stand still agreement.

(3) For purposes of approving a stand still agreement related to a refinancing in which proceeds will be distributed to an owner, the applicant shall submit an appraisal consistent with the requirements of Section 10322(h)(9). Unless a waiver has been granted pursuant to Section 10322(h)(9)(A)(iii), CTCAC shall not approve a the stand still agreement unless the appraised value used by the lender for purposes of establishing the loan to value ratio is less than or equal to the appraised value submitted to CTCAC. The lender shall certify that this requirement has been met.

(~~c~~d) False information. Upon being informed, or finding, that information supplied by an applicant, any person acting on behalf of an applicant, or any team member identified in the application, pursuant to these regulations, is false or no longer true, and the applicant has not notified CTCAC in writing, the Committee may take appropriate action as described in H & S Code Section 50199.22(b) and in section 10325(c)(3) of these regulations. Additionally the Executive Director may assess negative points to any or all members of the development team as described in Section 10322(h)(5).

Reason: The first paragraph of this proposed change codifies CTCAC's existing practice of not subordinating its regulatory agreements to acquisition or refinancing debt except in relation to rehabilitation loans or FHA-insured loans and its practice of executing stand still agreements providing the acquisition or refinance lender 60 days to work with the owner to remedy a breach of the regulatory agreement prior to CTCAC implementing any of the remedies in the regulatory agreement.

As described in the reasons relating to Section 10320(b) above, the remaining changes proposed in this section facilitate enforcement of the proposed provisions in later sections relating to the distribution of refinancing or sale proceeds and appraisals. Lastly, the proposed change reletters an existing subsection to accommodate the new provisions.

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. The value shall exclude the value of the property tax welfare exemption, except that an existing project may request a waiver to this provision if it can demonstrate to the satisfaction of the Executive Director that the welfare exemption was considered and reflected in the purchase price when the current owner initially acquired the project;
(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.

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 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 or in combination with State Tax Credits, the applicant may elect to forego the appraisal required pursuant to this Section 10322(h)(9) and use an acquisition basis equal to the sum of the third party debt encumbering the seller's property, which may increase during subsequent reviews to reflect the actual amount~~acquisition basis may increase with CTCAC's approval where (a) the sales price is no more than the sum of the assumed third-party debt on the property and other third party debt on the property that is required to be paid down or paid off, and (b) a third-party appraisal consistent with Section 10322(h)(9) supports the updated purchase price~~.

Reason: State law requires that the property tax welfare exemption be "used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households." To ensure that the value of the welfare exemption is not capitalized and continues to benefit the project upon sale or refinancing, this proposal requires appraisals to exclude the value of the welfare exemption. Project may obtain a waiver to this requirement, however, if the owner can demonstrate that the welfare exemption was considered and reflected in the purchase price when the current owner initially acquired the project.

CTCAC's current regulations generally limit acquisition basis in rehabilitation projects to the "as-is" appraised value of the property. With the Executive Director's approval, 4% percent projects may increase acquisition basis to the sales price that is less than or equal to the sum of the assumed third-party debt on the property and other third party debt on the property that is required to be paid down or paid off, provided that an appraisal supports this valuation.

In discussions with stakeholders, CTCAC staff has come to understand that not all appraisals account for the amount of debt the buyer will assume or pay down. These values are eligible acquisition basis, but because of the varying appraisal approaches they may not be allowed under the current regulations. The proposed change removes the requirement for Executive Director pre-approval and expressly allows an applicant proposing a 4% tax credit or 4% plus state tax credit rehabilitation project to forego the appraisal and use the sales price that is no more than the sum of the third party debt encumbering the property. The proposed change also recognizes that this amount may change during subsequent reviews to reflect the current amount of debt encumbering the property. This change is intended to ensure that 4% tax credit projects realize all of the acquisition basis to which they are entitled and are able to maximize the amount of equity that may be directed to the rehabilitation of the project.

Section 10322(h)(10)

Proposed Change:

(10) Market Studies. A full market study prepared within 180 days of the filing deadline by an independent 3rd party having no identity of interest with the development's partners, intended partners, or any other member of the Development Team described in Subsection (5) above. The study must meet the current market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. CTCAC shall publicly notice any changes to its market study guidelines and shall take public comment consistent with the comment period and hearing provisions of Health and Safety Code Section 50199.17. For scattered site projects, a market study may combine information for all sites into one report, provided that the market study has separate rent comparability matrices for each site.

A market study shall be updated when either proposed subject project rents change by more than five percent (5%), or the distribution of higher rents increases by more than 5%, or 180 days have passed since the first site inspection date of the subject property and comparable properties. CTCAC shall not accept an updated market study when more than twelve (12) months have passed ~~since~~ between the earliest listed site inspection date of either the subject property or any comparable property and the filing deadline. In such cases, applicants shall provide a new market study. If the market study does not meet the guidelines or support sufficient need and demand for the project, the application may be considered ineligible to receive Tax Credits. Except where a waiver is obtained from the Executive Director in advance of a submitted application, CTCAC shall not reserve credits for a rural new construction application if a tax credit or other publicly-assisted new construction project housing the same population either (a) already has a tax credit reservation from CTCAC, (b) is a higher ranking project that will receive a reservation in the same funding round, or (c~~b~~) is currently under construction within the same market area. The Executive Director may grant a waiver for subsequent phases of a single project, where newly constructed housing would be replacing specific existing housing, or where extraordinary demand warrants an exception to the prohibition.

For acquisition/rehabilitation projects meeting all of the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(iii) shall mean a written statement by a third party market analyst certifying that the project meets these criteria:

- All of the buildings in the project are subject to existing federal or state rental assistance or operating subsidies, an existing TCAC Regulatory Agreement, or an existing regulatory agreement with a federal, state, or local public entity.
- The proposed rents and income targeting levels shall not increase by more than five percent (5%) (except that proposed rents and income targeting levels for units subject to a continuing state or federal project-based rental assistance contract may increase more and proposed rents and income targeting levels for resyndication projects shall be consistent with Section 10325(f)(11) or Section 10326(g)(8)).
- The project shall have a vacancy rate of no more than five percent (5%) (ten percent (10%) for Special Needs and SRO projects) at the time of the tax credit application.

Reason: The proposed changes provide that a market study for a scattered site project may combine information for all sites into one report, provided that the market study has separate rent comparability matrices for each site. This is intended to reduce costs while continuing to provide TCAC with adequate information to assess market demand.

The proposed changes clarify that the earliest site inspection date used in a market study must be no more than 12 months old with respect to the CTCAC application deadline. This conforms with CTCAC's interpretation of the current regulation.

The proposed changes also clarify that CTCAC, absent a pre-approved waiver from the Executive Director, will not award credits to a rural new construction project if a higher ranking tax credit or other publicly-assisted new construction project housing the same population is a higher ranking project that will receive a reservation in the same funding round. This also conforms with CTCAC's interpretation of the current regulation.

In addition, the proposed changes create a streamlined market study process for acquisition and/or rehabilitation projects which meet all of the following criteria:

- All of the buildings in the projects are subject to existing federal or state rental assistance or operating subsidies, and/or 2) an existing TCAC Regulatory Agreement, or an existing regulatory agreement with a federal, state, or local public entity.

- The proposed rents and income targeting levels shall not increase by more than five percent (5%) (except that proposed rents and income targeting levels for units subject to a continuing state or federal project-based rental assistance contract may increase more and proposed rents and income targeting levels for resyndication projects shall be consistent with Section 10325(f)(11) or Section 10326(g)(8)).

- The project shall have a vacancy rate of no more than five percent (5%) (ten percent (10%) for Special Needs and SRO projects) at the time of the tax credit application.

The streamlined process entails a certification from a third party market analyst stating that these criteria have been met. Staff believes that currently affordable developments with low vacancy rates have shown sufficient demand and that, absent rent increases of more than 5%, will be able to lease up, particularly after rehabilitation. Streamlining the market study requirement, on the other hand, saves 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, with any solar values determined from the California Energy Commission's Photovoltaic Calculator. The CUAC estimate shall be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA). 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 CUAC is limited to new construction projects and to existing tax credit 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 and shall establish a fee to cover the costs of this review. ~~CTCAC may also establish a list of quality control reviewers to review projects requesting CUAC utility allowances. Once established, existing tax credit projects with MASH awards requesting CUAC utility allowances may, in lieu of CTCAC submitting modeled CUAC utility allowance estimates to a quality control reviewer, submit the modeled CUAC utility allowance estimates to a quality control reviewer from the list established by CTCAC and submit the completed quality control report to CTCAC.~~ Existing tax credit projects converting to the CUAC shall provide tenants at least 90 days prior to the effective date with an informative summary about the current utility allowance and the proposed CUAC allowances, including notice of any actual rent increase to the tenant. Such projects shall also provide CTCAC with the actual rent increases in the first year's CUAC update submittal. For ~~rehabilitation~~ existing 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.

Reason: Regulation changes adopted in early 2015 authorized CTCAC to establish an approved list of California Utility Allowance Calculator (CUAC) quality control reviewers to whom eligible CUAC users could submit CUAC utility allowances, in lieu of paying a fee to have CTCAC conduct the quality control through one of its contractors. CTCAC issued a Request for Qualifications in early 2015 but received no responses. In light its non-viability, the proposed changes delete this authorization. The proposed changes remove an erroneous reference to rehabilitation projects, given that the subsection only allows new construction projects and existing projects with a Multifamily Affordable Solar Housing (MASH) program awards to use the CUAC. Rehabilitation projects are not currently eligible.

The proposed changes also require use of the California Energy Commission's (CEC) Photovoltaic Calculator to determine any solar values. Staff understands that the CEC calculator is more accurate than other solar value calculators and does not require translation of annual solar values into monthly solar values, which CUAC requires.

Section 10322(i)(20)

Proposed Change:

(20) Evidence that the subject property is within the control of the applicant in the form of an executed lease agreement, a current title report (within 90 days of application) showing the applicant holds fee title, or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status.

Reason: The proposed changes require applicants at placed in service to provide documentation that the property is in the applicant's control, either in the form of a lease agreement, title report, or title status report. This allows CTCAC to verify that the partnership has ownership in the site.

Section 10322(k)

Proposed Change:

(k) Unless the proposed project is a Single Room Occupancy development, a Special Needs development, or within ten (10) years of an expiring tax credit regulatory agreement, applicants for nine percent (9%) Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall:

(1) certify that the property sales price is no more than the current debt balance secured by the property, and

(2) be prohibited from receiving any tax credits derived from acquisition basis.

All applicants for Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall use all funds in the applicant project's reserve accounts for rehabilitating the property to the benefit of its residents, except that an applicant may use existing reserves to reasonably meet CTAC's minimum reserve account requirement .

Reason: For all projects awarded tax credits since 1997, CTCAC has required all unexpended funds in project reserve accounts remain with the project (section 10327(c)(7)). Project receiving credits prior to 1997 are not subject to this requirement, but staff believes it should apply if the project seeks to resyndicate. As a result, the proposed change, with respect to applications seeking to resyndicate an existing tax credit project, requires that all funds in the project's reserve accounts be used for rehabilitating the existing property to the benefit of its residents, except that an applicant may use existing reserves to reasonably meet CTAC's minimum reserve account requirement.

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. 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,~~ Scattered Site Projects 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.

The number of awards received by individuals, entities, affiliates, and related entities is limited to no more than four (4) per competitive round. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint-control over an entity, having significant influence over an entity, or participating as key management of an entity. Related entity disclosure is required at the time of application. Furthermore, no application submitted by a sponsor may benefit competitively by the withdrawal of another, higher-ranked application submitted by the same sponsor or related parties as described above.

Reason: This proposed change conforms with the addition of a definition of Scattered Site Projects in Section 10302(kk).

Section 10325(c)(1)(A)

Proposed Change:

(A) Cost efficiency. A project application ~~for a new construction or an At-Risk development, or a substantial rehabilitation development where the hard costs of rehabilitation are at least $40,000 per unit,~~ whose total eligible basis is below the maximum permitted threshold basis limits after permitted adjustments, shall receive 1 point for each percent by which its eligible basis is below the maximum permitted adjusted threshold basis limit. In calculating the eligible basis under this scoring factor, CTCAC shall use all project costs listed within the application unless those costs are not includable in basis under federal law as demonstrated by the application form itself or by a letter from the development team's third party tax professional.

Reason: Whereas Section 10325(f)(10) establishes a minimum rehabilitation threshold for 9% projects of $40,000 in hard construction costs per unit or 20% of the adjusted basis, the proposed change simply removes this redundant reference to a minimum rehabilitation threshold. As a result, it is no longer necessary to describe the different types of projects as the paragraph applies to all applicants.

Section 10325(c)(2)

Proposed Change:

(A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, the proposed general partners, or a key person within the proposed general partner organization, must meet the following conditions:

(i) For projects in operation for over three years, submit a certification from a third party certified public accountant that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development's last financial statement has been prepared (which must be effective no more than one year prior to the application deadline) and have funded reserves in accordance with the partnership agreement and any applicable loan documents. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the number of years that the project was owned by that general partner. To obtain points for projects previously owned, the ending date of ownership or participation must be no more than 10 years from the application deadline. This certification must list the specific projects for which the points are being requested. The certification of the third party certified public accountant may be in the form of an agreed upon procedure report that includes funded reserves as of the report date, which shall be dated within 60 days of the application deadline. Where there is more than 1 general partner, experience points may not be aggregated; rather, points will be awarded based on the highest points for which 1 general partner is eligible.

3-~~6~~ 4 projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be California Low Income Housing Tax Credit projects- 4 points
~~7~~ 5 or more projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be California Low Income Housing Tax Credit projects 6 points

For special needs housing type projects only ~~projects~~ applying through the Nonprofit set-aside or Special Needs set-aside only, points are available ~~for special needs housing type projects only~~as described above or as follows:

3 Special Needs projects in service more than 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the 3 special needs projects 4 points
4 or more Special Needs projects in service more than 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the 4 special needs projects
6 points

(ii) General partners with fewer than two (2) active California Low Income Housing Tax Credit projects in service more than three years, and general partners for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit projects in service more than three years, shall contract with a bona-fide management company currently managing two (2) California Low Income Housing Tax Credit projects in service more than three years and which itself earns a minimum total of two (2) points at the time of application.

In applying for and receiving points in this category, applicants assure that the property shall be operated by a general partner in conformance with Section 10320(b).
(B) Management Company experience. To receive points under this subsection, the property management company must meet the following conditions. To obtain points for projects previously managed, the ending date of the property management role must be no more than 10 years from

the application deadline. In addition, the property management experience with a project shall not pre-date the project's placed-in-service date.

(i) 6-10 projects managed over 3 years 2 points

11 or more projects managed over 3 years 3 points

For special needs housing type projects only ~~projects~~ applying through the Nonprofit set-aside or Special Needs set-aside only, points are available as described above or~~for special needs housing type projects only~~ as follows:

2-3 Special Needs projects managed over 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the special needs projects 2 points
4 or more Special Needs projects managed over 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the special needs projects 3 points

Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a low income housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.

(ii) Management companies that do not meet the California Low Income Housing Tax Credit project requirement above~~managing fewer than two (2) active California Low Income Housing Tax Credit projects for more than 3 years, and management companies for projects applying through the Nonprofit or Special Needs set-aside managing no active California Low Income Housing Tax Credit projects for more than 3 years,~~ shall contract with a bona-fide management company currently managing two (2) California Low Income Housing Tax Credit projects for more than three years and which itself earns a minimum combined total of two (2) points at the time of application.

When contracting with a California-experienced property management company under the terms of paragraph (A)(ii) or (B)(ii) above, the general partner or property co-management entity must obtain training in: project operations, on-site certification training in federal fair housing law, and manager certification in IRS Section 42 program requirements from a CTCAC-approved, nationally recognized entity. Additionally, the experienced property management agent or an equally experienced substitute, must remain for a period of at least 3 years from the placed-in-service date (or, for ownership transfers, 3 years from the sale or transfer date) to allow for at least one (1) CTCAC monitoring visit to ensure the project is in compliance with IRC Section 42. Thereafter, the experienced property manager may transfer responsibilities to the remaining general partner or property management firm following formal written approval from CTCAC. In applying for and receiving points in these categories, applicants assure that the property shall be owned and managed by entities with equivalent experience scores for the entire 15-year federal compliance and extended use period, pursuant to Section 10320(b). The experience must include at least two (2) Low Income Housing Tax Credit projects in California in service more than 3 years.

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. For points to be awarded in subsection (B), an enforceable management agreement executed by both parties for the subject application must be submitted at the time of application. "Projects" as used in subsections (A) and (B) means multifamily rental affordable developments of over 10 units that are subject to a recorded regulatory agreement, or, in the case of housing on tribal lands, where federal HUD funds have been utilized in affordable rental developments. General

Partner and Management Company experience points may be given based on the experience of the principals involved, or on the experience of municipalities or other nonprofit entities that have experience but have formed single-asset entities for each project in which they have participated, notwithstanding that the entity itself would not otherwise be eligible for such points. For qualifying experience, "principal" is defined as an individual overseeing the day-to-day operations of affordable rental projects as senior management personnel of the General Partner or property management company.

Reason: The current 9% scoring system awards maximum points only to General Partner applicants who have 7 or more projects in service more than 3 years. Applicants with 3-6 projects in service more than 3 years receive partial points. Because applicants generally must receive maximum points to be competitive, this scoring effectively limits credits to applicants with 7 or more existing projects. While CTCAC staff continues to believe that General Partner experience is critical to project success, staff is not convinced that applicants with 7 projects are inherently more qualified that applicants with 5 projects. On the other hand, staff believes that the length of successful experience is as important as the volume of experience. For those reasons, the proposed changes alter the scoring such that applicants with 5 or more projects in service more than 3 years receive full points and applicants with 3-4 projects in service more than 3 years receive partial points. The proposed changes further require applicants to have at least one project in service more than 5 years in order to receive these points.

With respect to special needs projects, the proposed changes simply clarify that the general partner and management company experience points for special needs experience is an alternative to the general experience points. In other words, an applicant can receive maximum points through the general or special needs path. The proposed changes also clarify that special needs and tax credit project experience need not be from overlapping projects. In other words, an applicant may receive points and avoid the contracting requirement by having experience with non-tax-credit special needs projects and at least one tax credit project that need not be a special needs project.

Section 10325(c)(3)(B)

Proposed Change:

(B) failure to utilize Tax Credits within program time guidelines, including failure to meet the 180 day or 194 day, as applicable, readiness requirements, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;

Reason: The existing regulations allow the Executive Director to award negative points against one or more members of a development team for various types of violations, including failure of projects receiving full readiness points to meet the 180 day readiness requirements. The proposed change conforms to the change in Section 10325(c)(8), which randomly delays the readiness requirements to 194 for half of the projects receiving full readiness points.

Section 10325(c)(3)(G)

Proposed Change:

(G) serious or repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;

Reason: The current regulations allow the Executive Director to impose negative points for repeated failure to submit required compliance documentation. HUD now requires allocating agencies to report tenant demographic data, which CTCAC must collect from project managers. In the event that a current or former owner or management company refuses to provide this tenant demographic data, it may not be a repeated occurrence. Staff feels that this information is critical enough to warrant negative points for egregious one-time occurrences. The proposed changes allow CTCAC to impose negative points for serious failure to submit required compliance documentation.

Section 10325(c)(3)(S)-(U)

Proposed Change:

(S) the project's total eligible basis at placed in service exceeding the revised total adjusted threshold basis limits for the year the project is placed in service by 40%.

(T) where CDLAC has determined that a person or entity is subject to negative points under its regulations, CTCAC will deduct an equal amount of points for an equal period of time from tax credit applications involving that person or entity or a Related Party.

(U) failure to comply with a requirement of the regulatory agreement.

Reason: In an attempt to address high development costs, the current regulations provide that staff will not recommend a high-cost project for receipt of a 9% tax credit reservation. A project is considered high cost if a project's total eligible basis exceeds its total adjusted threshold basis limits by 30% at application. Applicants with high cost projects may petition the Committee to award credits to the project in spite of its costs.

The high cost test is applied only at the application stage, at which point projects costs are estimated. As development progresses, costs invariably change some up and can change significantly. Projects that were beneath the high cost threshold at application may exceed the threshold at placed in service. This creates a situation in which if CTCAC had known of the true costs of the project at application, it may not have reserved credits for the project. This creates an incentive for projects to hide project costs at application and undermines the effort to contain high costs. On the other hand, cost increases can be due to circumstances beyond the applicant's control (e.g., unforeseen construction issues; unexpected local government requirements; and general increases in construction costs).

The proposed changes seek to maintain the incentive to contain costs through construction and to create a consequence for high cost projects that evaded the application-stage filter. Specifically, the proposed changes allow the Executive Director to award negative points for future applications to applicant team members in cases in which the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limits for the year the project is placed in service by 40%. By using a higher 140% threshold, as opposed to 130% at application, and by calculating the percentage with respect to updated threshold basis limits in order to account for general cost increases, the proposed change also creates some cushion to account for possible circumstances beyond the developer's control.

Similarly to the changes proposed for Section 10325(f)(13), the proposed changes in (T) award negative points to persons or entities who have received negative points from CDLAC. The 9% tax credit program is extremely similar to the tax-exempt bond and 4% tax credit program. As a result, an entity sanctioned by CDLAC for violations relating to a tax-exempt bond and 4% tax credit project should similarly be sanctioned under the 9% tax credit program.

Lastly, the proposed change provides a general authority to award negative points for violations of the regulatory agreement. This is important given the additions to the regulatory agreement proposed in Section 10337(a).

Section 10325(c)(4)

Proposed Change:

(4) Housing Needs. (Points will be awarded only in one category listed below except that acquisition and/or rehabilitation Scattered Site Projects shall be scored 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 units in a proportionally scored project) shall also be the project category for purposes of the tie-breaker described in subsection 10325(c)(10) below.

Large Family Projects 10 points
Single Room Occupancy Projects 10 points
Special Needs Projects 10 points
Seniors Projects 10 points
At-Risk Projects 10 points

Reason: The current regulations provide points to projects meeting specified housing needs and specify that points will only be awarded in one category. CTCAC is seeing an increase in, and would like to encourage, applications combining multiple existing projects into one acquisition and rehabilitation project when otherwise a project would not be feasible. In some cases, the existing projects being combined may meet different housing needs. Unless the aggregate project can qualify as one of the defined housing types, even when each property in the aggregate project can qualify, the current regulations deny the project housing need points. The proposed changes allow scattered site rehabilitation projects to be scored proportionally based on each site's ability to meet the described housing need. The proposed changes also clarify that in such cases, the category represented by the highest percentage of units shall be the housing type for purposes of the tie-breaker.

Section 10325(c)(5)

Proposed Change:

(5) Amenities beyond those required as additional thresholds ~~Maximum 25 points~~

~~For site amenities and service amenities combined.~~

Reason: The current regulations limit the number of points that may be received in the site amenities category to 15 and in the service amenities category to 10. As a result, the reference to 25 maximum points between the two categories is redundant. The proposed changes delete the redundant reference.

Section 10325(c)(5)(A)

Proposed Change:

(A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application except as specified in paragraph (A)(1) and (A)(5) below. In addition, an amenity to be operated by a public entity that is (i) being constructed within the project as part of the tax credit development, (ii) is receiving development funding for the amenity from the public entity, and (iii) has a proposed operations budget from the operating public entity, would be considered "in place" at the time of application. Distances must be measured using a standardized radius from the development site to the target amenity, unless that line crosses a significant physical barrier or barriers. Such barriers include highways, railroad tracks, regional parks, golf courses, or any other feature that significantly disrupts the pedestrian walking pattern between the development site and the amenity. The radius line may be struck from the corner of development site nearest the target amenity, to the nearest corner of the target amenity site. However, a radius line shall not be struck from the end of an entry drive or on-site access road that extends from the central portion of the site itself by 250 feet or more. Rather, the line shall be struck from the nearest corner of the site's central portion. Where an amenity such as a grocery store resides within a larger shopping complex or commercial strip, the radius line must be measured to the amenity exterior wall, rather than the site boundary. The resulting distance shall be reduced in such instances by 250 feet to account for close-in parking,

No more than 15 points will be awarded in this category. For purposes of the Native American apportionment only, no points will be awarded in this category. However, projects that apply under the Native American apportionment that drop down to the rural set-aside will be scored in this category. Applicants must certify to the accuracy of their submissions and will be subject to negative points in the round in which an application is considered, as well as subsequent rounds, if the information submitted is found to be inaccurate. For each amenity, color photographs, a contact person and a contact telephone must be included in the application. The Committee may employ third parties to verify distances or may have staff verify them. Only one point award will be available in each of the subcategories (1-9) listed below. Amenities may include:

1. Transit Amenities

The project is located where there is a bus rapid transit station, light rail station, commuter rail station, bus station, or public bus stop within ~~1/4~~1/3 mile from the site with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday, and the project's density will exceed 25 units per acre. ~~"Rail station" means a heavy-rail or light-rail station within 1/4 mile of the proposed residential development. This includes a planned rail station otherwise meeting this definition, whose construction is programmed into a Regional or State Transportation Improvement Program to be completed within one year of the scheduled completion and occupancy of the proposed residential development.~~ 7 points

The site is within ~~1/4~~1/3 mile of a bus rapid transit station, light rail station, commuter rail station, ~~or~~ bus station, or public bus stop with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. ~~"Rail station" means a heavy-rail or light-rail station, within 1/4 mile of the proposed residential development. This includes a planned rail station otherwise meeting this definition, whose construction is programmed into a Regional or State Transportation Improvement Program to be completed within one year of the scheduled completion and occupancy of the proposed residential development.~~ 6 points

The site is within ~~1/3~~1/2 mile of a bus rapid transit station, light rail station, commuter rail station bus station, or public bus stop ~~public bus stop or rail station~~ with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. ~~"Rail station" means a heavy-rail or light-rail station, within 1/4 mile of the proposed residential development. This includes a planned rail station otherwise meeting this definition, whose construction is programmed into a Regional or State Transportation Improvement Program to be completed within one year of the scheduled completion and occupancy of the proposed residential development.~~ 5 points

The site is located within ~~1/4~~1/3 mile of a bus rapid transit station, light rail station, commuter rail station, bus station, or public bus stop~~regular public bus stop, or rapid transit system stop~~. (For Rural set-aside projects, full points may be awarded where van or dial-a-ride service is provided to tenants, if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided) 4 points

The site is located within ~~1/3~~1/2 mile of a bus rapid transit station, light rail station, commuter rail station, bus station, or public bus stop~~regular public bus stop or rapid transit system stop~~ 3 points

In addition to meeting one of the proximity categories described above, the applicant commits to provide to residents free transit passes or discounted passes priced at no more than half of retail cost. Passes shall be made available to each Rent-Restricted Unit for at least 15 years.

At least one pass per Tax Credit unit . 3 points
At least one pass per each 2 Tax Credit units 2 points

"Light rail station" or "commuter rail station" includes a planned rail station whose construction is programmed into a Regional or State Transportation Improvement Program to be completed within one year of the scheduled completion and occupancy of the proposed residential development.

A private bus or transit system providing service to residents may be substituted for a public system if it (a) meets the relevant headway and distance criteria, and (b) if service is provided free to the residents. Such private systems must receive approval from the CTCAC Executive Director prior to the application deadline. Multiple bus lines may be aggregated for the above points, only if multiple lines from the designated stop travel to an employment center. Such aggregation must be demonstrated to, and receive prior approval from, the CTCAC Executive Director in order to receive competitive points.

2. The site is within ~~1/4~~1/2 mile of a public park (~~1/2~~1 mile for Rural set-aside projects) (not including school grounds unless there is a bona fide, formal joint use agreement between the jurisdiction responsible for the parks/recreational facilities and the school district or private school providing availability to the general public of the school grounds and/or facilities) or a community center accessible to the general public 3 points
or within ~~1/2~~3/4 mile (1.5 miles for Rural set-aside projects) 2 points

3. The site is within ~~1/4~~1/2 mile of a book-lending public library that also allows for inter-branch lending (when in a multi-branch system) (~~1/2~~1 mile for Rural set-aside projects) 3 points
or within ~~1/2~~1 mile (~~1~~2 miles for Rural set-aside projects) 2 points

4. The site is within ~~1/4~~1/2 mile of a full scale grocery store/supermarket of at least 25,000 gross interior square feet where staples, fresh meat, and fresh produce are sold (~~1/2~~1 mile for Rural set-aside projects). A large multi-purpose store containing a grocery section may garner these points if the application contains the requisite interior measurements of the grocery section of that multipurpose store. The “grocery section” of a large multipurpose store is defined as the portion of the store that sells fresh meat, produce, dairy, baked goods, packaged food products, delicatessen, canned goods, baby foods, frozen foods, sundries, and beverages. 5 points
or within ~~1/2~~1 mile (~~1~~ 2 miles for Rural set-aside projects) 4 points
or within 1.5 miles (3 miles for Rural set-aside projects) 3 points

The site is within 1/4 mile of a neighborhood market of 5,000 gross interior square feet or more where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural Set-aside projects). A large multi-purpose store containing a grocery portion may garner these points if the application contains interior measurements of the grocery section of that multi-purpose store. The “grocery section” of a large multipurpose store is defined as the portion of the store primarily devoted to food stuffs that sells fresh meat, produce, dairy, baked goods, packaged food products, delicatessen, canned goods, baby foods, frozen foods, sundries, and beverages. 4 points
or within 1/2 mile (1 mile for Rural Set-aside projects) 3 points

The site is within ~~1/4~~1/2 mile of a weekly farmers market certified by the California Federation of Certified Farmers’ Markets, and operating at least 5 months in a calendar year 2 points
or within ~~1/2~~1 mile 1 point

5. For a development wherein at least ~~30~~ 25 percent (~~30~~25%) of the residential unit shall be three-bedroom or larger units, the site is within 1/4 mile of a public elementary school; 1/2 mile of a public middle school; or one (1) mile of a public high school, (an additional 1/2 mile for each public school type for Rural set-aside projects) and that the site is within the attendance area of that school. Public schools demonstrated, at the time of application, to be under construction and to be completed and available to the residents prior to the housing development completion are considered in place at the time of application for purposes of this scoring factor. 3 points
or within an additional 1/2 mile for each public school type (an additional 1 mile for Rural set-aside projects) 2 points

Once the California State Board of Education updates the Academic Performance Index methodology on or after July 1, 2015, the school receiving points is ranked, or was ranked in the calendar year prior to application, with a 7 or higher on the statewide Academic Performance Index as compiled by the California Department of Education. 2 points in addition to the distance points

6. For a Senior Development, the site is within ~~1/4~~1/2 mile of a daily operated senior center or a facility offering daily services specifically designed for seniors (not on the development site) (~~1/2~~1 mile for Rural set-aside projects) 3 points
or within ~~1/2~~3/4 mile (~~1~~1.5 miles for Rural set-aside projects) 2 points

7. For a Special Needs or SRO development, the site is located within 1/2 mile of a facility that operates to serve the population living in the development
3 points
or within 1 mile 2 points

8. The site is within 1/2 mile (for Rural set-aside projects, 1 mile) of a qualifying medical clinic with a physician, physician's assistant, or nurse practitioner onsite for a minimum of 40 hours each week, or hospital (not merely a private doctor's office). A qualifying medical clinic must accept Medi-Cal payments, or Medicare payments for Senior Projects, or Health Care for the Homeless for projects housing homeless populations, or have an equally comprehensive subsidy program for low-income patients. 3 points
The site is within 1 mile (for Rural set-aside projects, 1.5 miles) of a qualifying medical clinic with a physician, physician's assistant, or nurse practitioner onsite for a minimum of 40 hours each week, or hospital 2 points

9. The site is within ~~1/4~~1/2 mile of a pharmacy (for Rural projects, ~~1/2~~1 mile) 2 points
or within ~~1/2~~1 mile (~~1~~2 miles for Rural projects) 1 point

10. High speed internet service, with a minimum average download speed of 768 kilobits/second must be made available to each unit for a minimum of ~~10~~ 15 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. Will serve letters or other documentation of internet availability must be documented within the application. If internet is selected as an option in the application it must be provided even if it is not needed for points. 2 points (3 points for Rural projects)

Reason: With respect to the Native American apportionment, staff has received feedback that it is very difficult for many tribes, whose lands are often remote and cannot be moved, to receive site amenity points. As a result, while they still have housing needs, remote tribes are at an inherent disadvantage in the competition. The proposed changes seek to recognize the unique and inalterable locations of tribal lands and to even the competitive playing field among tribes by removing the site amenities points from the scoring for the tribal apportionment only. If a project is not funded in the Native American apportionment and falls into the rural set-aside, site amenity points will be scored.

The current regulations provide a menu of site amenity points based on a project's proximity to various types of tenant-serving facilities. Staff has received significant feedback that the current proximity distances are overly restrictive, which increases land prices for those few parcels that can score maximum points. Rural developers have also stated that most sites which can score maximum points have already been developed. The proposed changes seek to respond to this feedback and reduce overall project costs while maintaining a significant role for proximity to amenities that benefit tenants and create opportunity. Specifically, the proposed changes broaden the proximity distances for which projects receive a point score.

In addition, the following changes are proposed within the transit amenities category:

- Clarify terms by referring more specifically to bus rapid transit stations and light rail stations, as opposed to the vaguer terms transit stations and rail stations, and use the terms consistently through the menu.
- Relax the headway requirements during peak hours for commuter rail.
- For projects receiving transit amenity points, allow additional points for the provision of transit passes for free or at no more than half of the retail cost for at least 15 years. Applicants providing at least one pass per tax credit unit receive maximum points. Applicants providing at least one pass for each two tax credit units receive partial points. These proposed changes seek to maximize the impact of proximity to transit and reward the provision of a significant tenant benefit.

With respect to public park proximity, the proposed changes also allow points when there is a formal joint use agreement between the jurisdiction and a private school, as opposed to just a public school district, providing access to school grounds for the general public. Staff believes there is no significant difference in recreational opportunities between private and public school grounds.

With respect to the school proximity category, the proposed changes:

- Conform the 3-bedroom percentage requirement to the change proposed in Section 10325(g)(1)(A).
- For projects receiving school amenity points, provide additional points if the scored school points is ranked, or was ranked in the calendar year prior to application, with a 7 or higher on the statewide Academic Performance Index as compiled by the California Department of Education. This provision only applies after the California State Board of Education updates the Academic Performance Index methodology on or after July 1, 2015 (see https://www.ed-data.k12.ca.us/Pages/UnderstandingTheAPI.aspx). The intent of this change is to reward school quality in addition to school proximity. The proposed changes also seek to build on recent research regarding the benefit to children of growing up in opportunity areas.

With respect to points for high-speed internet service, the current regulations require that the service be provided for 10 years. While this is a site amenity rather than a service amenity, staff believes that internet service should be available for the same term as service amenities. As a result, the proposed change lengthens the required term to 15 years, consistent with the proposed change to Section 10325(c)(5)(B) to require service provision for 15 years.

Section 10325(c)(5)(B)

Proposed Change:

(B) Projects that provide high-quality services designed to improve the quality of life for tenants are eligible to receive points for service amenities. Services must be appropriate to meet the needs of the tenant population served and designed to generate positive changes in the lives of tenants, such as by increasing tenant knowledge of and access to available services, helping tenants maintain stability and prevent eviction, building life skills, increasing household income and assets, increasing health and well-being, or improving the educational success of children and youth.

Except as provided below, in order to receive points in this category, physical space for service amenities must be available when the development is placed-in-service. Services space must be located inside the project and provide sufficient square footage, accessibility and privacy to accommodate the proposed services.

The amenities must be available within 6 months of the project's placed-in-service date. Applicants must commit that services shall be provided for a period of ~~10~~ 15 years.
All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development (1½ miles for Rural set-aside projects) provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. All organizations providing services for which the project is claiming service amenities points must have at least 24 months experience providing services to one of the target populations to be served by the project.

No more than 10 points will be awarded in this category.

Reason: The current regulations provide points to projects that provide high-quality services designed to improve the quality of life for tenants and require projects receiving points to commit to provide the services for a period of ten years. Staff believes that services are a critical component of 9% tax credit projects and that maintaining such services throughout the tax credit compliance period has strong public policy benefits. In most cases, applicants already budget for 15 years worth of services in their pro forma. As a result, the proposed changes require that projects receiving service points commit to providing the services for 15 years.

Section 10325(c)(6)

Proposed Change:

(6) Sustainable building methods. Maximum ~~10~~ 5 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. The application shall include a statement committing the property owner to at least maintain the installed energy efficiency and sustainability features' quality when replacing any such feature.

(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.

5 points

(B) ~~For projects receiving points under section 10325(c)(6)(A), additional points~~ New Construction and Adaptive Reuse Projects: 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~~ 2013 Title 24, Part 6, of the California Building Code (the ~~2008~~ 2013 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**~~
~~32.5~~15 percent	~~2~~ 5 points	~~3 points~~
~~35~~ 9 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:

Offset of Tenants' Load	**Low-Rise Multifamily**	**High-Rise Multifamily**
~~20 percent~~	~~2 points~~	~~3 points~~
~~30~~ 20 percent	3 points	4 points
~~40~~ 30 percent	4 points	5 points
~~50~~ 40 percent	5 points	

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 associates 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** Silver Gold~~
~~3 points 5 points~~

(~~D~~C) 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~~D) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) based on existing conditions. In the case of projects in which energy efficiency improvements have been completed within ~~two~~ five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. 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** Moderate Substantial~~
~~**Green Communities** Rehabilitation Rehabilitation~~
~~2 points 3 points 5 points~~

(~~G~~E) 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~~ 2 points

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

3. Projects shall individually meter or sub-meter currently master-metered gas, electricity, or central hot water systems for all tenants. ~~3~~ 2 points

(~~H~~F) Water efficiency:

Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens) 3 points

(G) Compliance and Verification:

1. For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building methods of Section 10325(c)(6) have been incorporated into the project, if applicable. For applications incorporating the requirements of subsections (A) and (~~D~~C) Green Communities option, and for applications incorporating the requirements of subsections (B), (~~E~~D), and (~~G~~E) above, applicants must include a completed Sustainable Building Method Workbook.

2. For placed-in-service applications to receive points under section~~s~~ 10325(c)(6)(A) ~~and (C)~~ and section~~s~~ 10325(c)(6)(~~D~~C)~~ and (F)~~, the applicant must submit the appropriate required third party verification documentation showing the project has met the requirements for the relevant program.

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). 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.

5. For rehabilitation project placed-in-service applications to receive points under section10325(c)(6)(~~E~~D), 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, completed by a CABEC certified CEA, which shows the pre- and post- rehabilitation estimated TDV energy use demonstrating the required improvement. 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.

6. For rehabilitation project placed-in-service applications to receive points under section 10325(c)(6)(~~G~~E) 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. The applicant shall use the California Energy Commission's Photovoltaic Calculator for purposes of determining the solar values to be input into the CUAC calculator.

(ii) For projects including photovoltaic generation that offsets common area load, the energy analyst shall provide documentation of the load serving the common area and the output calculations of the photovoltaic generation.

(~~ii~~iii) For sustainable building management practices ~~implemented by appropriately trained onsite staff~~, the applicant must submit a copy of the energy management and maintenance manual~~, 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). Projects awarded Tax Credits after January 1, 2015 shall use the CTCAC Green Building Maintenance Manual Template when submitting a copy of the energy management and maintenance manual.~~

(~~iii~~iv) 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.

7. For placed in service applications to receive points under Section 10325(c)(6)(H), the project architect shall certify that reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property (excepting water used for Community Gardens) under normal conditions.

8. Failure to produce the appropriate documentation for (2) through (~~6~~7) of this subsection may result in an award of negative points for the development team.

Reason: The current regulations allow a maximum of 10 points in the sustainable building methods category. Given that projects must often score all 10 points to be competitive, this effectively requires applicants to obtain points in multiple sustainability subcategories. For example, a project that proposed to achieve the minimum certification of the Leadership in Energy & Environmental Design (LEED), Green Communities, or the GreenPoint Rated Programs for 5 points would also have to achieve an additional 5 points through a higher level of certification, additional energy efficiency or generation, or a combination of partial points from these and the remaining smaller sustainability categories.

The proposed changes reduce the maximum points available in the sustainable building methods category to 5. As a result, to achieve maximum points projects would need to achieve only one of the major sustainability subcategories. Going back to the example, the project would need to propose minimum certification from the LEED, Green Communities, or the GreenPoint Rated Programs **or** achieve 5 points through energy efficiency or generation or a combination of partial points from these and the remaining smaller sustainability categories. Staff believes that the proposed changes continue to encourage and effectively require a higher level of sustainability than

California's most-stringent-in-the-nation building codes require while balancing this benefit with the increasing marginal costs of staying above increasing code requirements.

The proposed changes also:

- Require applicants receiving sustainability points to commit to at least maintaining the installed energy efficiency and sustainability features' quality when replacing any such feature. This language currently exists in Section 10325(f)(7).
- Update the energy efficiency points thresholds to reflect the 2013 building code amendments. The proposed changes provide 5 points to projects that improve energy efficiency by at least 15% over the 2103 code requirements and 3 points to projects that achieve a 9% improvement.
- Recalibrate the zero net energy solar offset percentages to be more comparable to the revised energy efficiency scoring. Projects offsetting tenant energy loads by 20% would receive 3 points, by 30% would receive 4 points, and by 40% would receive 5 points.
- Delete the references to a higher level of LEED and GreenPoint Rated certification as achieving minimum certification will score maximum points.
- Increase the lookback period from 2 to 5 years for projects that have completed recent energy efficiency improvements and include improvements made through governmental programs.
- Delete the 7 and 10 point energy efficiency thresholds for rehabilitation projects and reduce from 3 to 2 the possible points for additional rehabilitation project measures to reflect the 5 point maximum in the overall sustainability category.
- Within the sustainable building management practices category, eliminate the requirement and associated verification protocols to certify building management staff in sustainable building operations per BPI Multifamily Building Operator or an equivalent training program and reduce the points in this category to 2. Given the high turnover rate among management staff, CTCAC staff is concerned about the on-going cost of keeping employees certified. In addition, CTCAC staff is uncomfortable with referring only to one training provider, given that no equivalent training programs have been identified. Reducing the points available reflects the lessening of requirements in this category.
- Allow projects to obtain 3 points for irrigating (except for community gardens) only with reclaimed water, greywater, or rainwater. This subcategory recognizes the current drought conditions and the long-term water reliability concerns facing California.
- Require rehabilitation applicants including photovoltaic generation that offsets tenant loads to use the California Energy Commission's (CEC) Photovoltaic Calculator for purposes of determining the solar values to be input into the CUAC calculator. Staff understands that the CEC calculator is more accurate than other solar value calculators and does not require translation of annual solar values into monthly solar values, which CUAC requires.
- For projects obtaining points for photovoltaic generation that offsets common area load, require the energy analyst to provide documentation of the load serving the common area and the output calculations of the photovoltaic generation.
- Require applicants obtaining water efficiency points to have the architect certify at placed in service that reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property (excepting water used for Community Gardens) under normal conditions.
- Update lettering and cross-references to reflect these changes.

Section 10325(c)(8)

Proposed Change:

(8) Readiness to Proceed. ~~20~~ 15 points will be available to projects that document items (A) through (~~D~~C) below, and commit to begin construction within 180 days of the Credit Reservation (after preliminary reservation CTCAC will randomly assign a 180 day deadline for half of the projects receiving a Credit Reservation within each round and a 194 day deadline for remaining projects), as evidenced by submission, within that time, of: a completed updated application form along with a detailed explanation of any changes from the initial application, an executed construction contract, a construction lender trade payment breakdown of approved construction costs, recorded deeds of trust for all construction financing (unless a project's location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 180 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

~~For projects that are federal funding recipients and receiving competitive reservations in the first round of 2013, the 180-day references in the preceding paragraph shall be extended by forty-five (45) days. The extension is provided to projects documenting that the federal government shutdown impacted their ability to meet Readiness to Proceed requirements.~~

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet the 90 day due date, or the 180-day or 194-day due date if applicable, shall result in rescission of the Tax Credit Reservation or negative points.

Five (5) points shall be awarded for submittals within the application documenting each of the following criteria, up to a maximum of ~~20~~ 15 points. The 180-day or 194-day requirements shall not apply to projects that do not obtain the maximum points in this category. Within the preliminary reservation application, the following must be delivered:

(A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);

(B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA, NEPA, and applicable tribal land environmental reviews) necessary to begin construction are either finally approved or unnecessary; and

(C) evidence of all necessary public or tribal approvals (other than those covered by (B)) except building permits~~; and~~.

~~(D) evidence of design review approval.~~

For paragraphs (B)~~,~~ and (C)~~, and (D)~~ an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that time period were resolved within that 30-day period to garner local approval readiness points.

Reason: The current regulations provide up to 20 points to projects that have met specific project thresholds and commit to being construction within 180 days. The proposed changes remove reference to, and corresponding points, for evidence of design review approval. Not all jurisdictions require design review. Moreover, the readiness category provides points for those discretionary decisions that can derail a project, and where design review exists it is generally a ministerial process, such that it cannot result in the denial of the project. Lastly, design review often happens late in the process, and staff sees no need to require design review approval by the application date. The proposed changes reduce the maximum points in the readiness category to 15 to reflect this deletion.

Staff has received feedback that having one deadline for all projects (generally 40 or more) that receive full readiness points and tax credit reservations in a particular round creates a logjam of work for consultants, attorneys, and others who are involved in closing multiple transactions, which in turn results in higher costs for these services. The proposed changes seek to stagger closing dates and thereby reduce costs for closing services. While all projects would still need to commit to a 180-day construction start at application, staff is proposing to randomly assign a 180-day deadline to half of the awarded projects that received full readiness points and a 194-day construction begin deadline for the other half of projects that receive full readiness points.

The current regulations provide that an applicant's failure to meet a 90-day or 180-day deadline shall result in rescission of the tax credit reservation. Staff believes that this is an appropriate response in most cases but that some failures can be due to issues beyond an applicant's control. In such cases, rescission of the credits is a drastic penalty. Staff believes that strong consequences must follow a failure to meet deadlines for which an applicant received competitive points but that allowing for negative points as an alternative to rescission provides some discretion and flexibility to deal with more nuanced cases.

The proposed changes also clarify some issues relating to building permits that have arisen. The current regulations require an applicant who received full readiness points to have received all building permits by the 180 day deadline and specifically state that grading permits do not suffice. Some jurisdictions as a rule do not issue building permits until grading is complete, creating a dilemma for applicants. The proposed changes provide that a grading permit shall suffice if that is the jurisdiction's general practice. Likewise, projects utilizing a design-build method generally seek building permits in stages, with the last-designed elements obtaining permits after construction has started. In such cases, the proposed changes provide that the city's or county's approval to begin construction shall suffice.

Projects that do not have final site plan approval or all local land use environmental review clearances are currently docked five points in both paragraph (B) and (C) for a total ten point reduction. The proposed changes clarify that the lack of such approvals are covered only in paragraph (B) and result in only a 5 point reduction.

Lastly, the proposed changes delete an obsolete paragraph relating to 2013 reservations.

Section 10325(c)(9)

Proposed Change:

(9) Miscellaneous State and Federal Policies Maximum 2 points

(A) State Credit Substitution. For applicants that agree to exchange Federal Tax Credits for State Tax Credits in an amount that will yield equal equity as if only Federal Credits were awarded. 2 points

(B) Enhanced Accessibility and Visitability. Project design incorporates California Building Code Chapter 11(B) and the principles of Universal Design in at least half of the project's units by including:
• Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34" clear width for all doors on an accessible path.
• Interior doors with lever hardware and 42" minimum width hallways.
• Fully accessible bathrooms complying with California Building Code (CBC) Chapter 11(A) and 11(B). In addition, a 30"x48" clearance parallel to and centered on the bathroom vanity.
• Accessible kitchens with 30"x48" clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and sink).
• Accessible master bedroom size shall be at least 120 square feet (excluding the closet), shall accommodate a queen size bed, shall provide 36" in clearance around three sides of the bed, and shall provide required accessible clearances, free of all furnishings, at bedroom and closet doors. The master bedroom closet shall be on an accessible path.
• Wiring for audio and visual doorbells required by UFAS shall be installed.
• Closets and balconies shall be located on an accessible route.
• 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.
• Applicant must commit to obtaining confirmation from a Certified Accessibility Specialist that the above requirements have been met. 2 points

(C) Smoke Free Residence. The proposed project commits to having at least one nonsmoking building and incorporating the prohibition into the lease agreement for the affected units. If the proposed project contains only one building, the proposed project shall commit to prohibiting smoking in designated contiguous units and incorporating the prohibition into the lease agreement for the affected units. ~~will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous.~~ 2 points

(D) Historic Preservation. The project proposes to use Historic Tax Credits 1 point

(E) ~~Qualified Census Tract~~Revitalization Area Project. The project is located within a Qualified Census Tract (QCT), a census tract in which at least 50% of the households have an income of less than 60% of the area median income, or a federal Promise Zone and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 2 points

(F) Eventual Tenant Ownership. The project proposes to make tax credit units available for eventual tenant ownership and provides the information described in Section ~~13025~~10325(c)(7) of these regulations. 1 point

Reason: The proposed changes alter the requirements to receive points for smoke free residences. Compliance staff finds it very difficult, if not impossible, to monitor buildings in which only certain sections are smoke free. Monitoring at a whole building level is much more practical. Not all projects have more than one building, however, such that it would be unfair to require at least one building to be smoke free. As a result, the proposed changes provide points for projects that commit to having at least one nonsmoking building and incorporating this prohibition into the lease agreements for the affected units. However, if the project contains only one building, the project may still receive points for prohibiting smoking in designated contiguous units and incorporating the prohibition into the lease agreement for the affected units. Compliance staff will verify that the prohibition is in place and that the leases for inspected units falling under the prohibition contain the non-smoking provision but will not inspect affected units for evidence of smoking.

With respect to points for being part of a community revitalization plan, the current regulations require the project to be in a qualified census tract. The proposed changes also make eligible projects that are part of a community revitalization plan within a census tract in which at least 50% of the households have an income of less than 60% of the area median income or a federal Promise Zone. Staff believes that all these of these area types would benefit from a community revitalization effort and that projects supporting those goals should be recognized.

Section 10325(c)(10)

Proposed Change:

(10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed: For applications for projects within single-jurisdiction regional competitions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence within the submitted application of a formal letter of support for the project from either the San Francisco Mayor's Office of Housing or the Los Angeles Housing + Community Investment Department respectively. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and

Second, the highest of the sum of the following two ratios:

(A) Leveraged soft resources~~Committed permanent public funds~~, as described ~~in Section 10325(c)(1)(C)~~below, defraying residential costs to total residential project development costs, with the resulting figure multiplied by a size factor. The size factor shall equal fifty percent plus the total number of units divided by 140 (50% + (total units/140)). Except where a third-party funding commitment is explicitly defraying non-residential costs only, ~~public funds~~leveraged soft resources shall be discounted by the proportion of the project that is non-residential. ~~Permanent funds~~Leveraged soft resources shall be demonstrated through documentation including but not limited to ~~public~~ funding award letters, committed land donations, or documented project-specific local fee waivers.

Leveraged soft resources shall include all of the following:

(i) public funds, as described in Section 10325(c)(1)(C).
(ii) soft loans that meet the criteria described in Section 10325(c)(1)(C) (except that terms shall be of at least 55 years), or grants, from unrelated non-public entities that are not covered by subparagraph (i).
(iii) the value of donated land and improvements that are not covered by subparagraph (i), that meet the criteria described in Section 10325(c)(1)(C), and that are contributed by an unrelated entity (unless otherwise approved by the Executive Director), so long as the contributed asset has been held by the entity for at least 10 years prior to the application due date. ~~The numerator of this ratio may include permanent funding committed by a Community Foundation or a charitable foundation where a public body appoints a majority of the voting members . Additionally the numerator may include the value of land and improvements contributed by an unrelated organization formed under Internal Revenue Code Section 501(c), so long as the contributed asset has been held by the organization for at least 10 years prior to the application due date. Such foundation or organization contributions must be in the form of a grant or residual receipts loan. Local land~~
Land donations include land leased ~~from a public entity, or permitted foundation or organization~~ for a de minimis annual lease payment. CTCAC may commission and use its own appraisal to determine the value of land and improvements contributed to a project.

Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

The numerator of projects with public operating- or rental-subsidies may be increased by 25 percent (25%) of the percentage of proposed tax credit assisted units benefitting from the subsidy. Such subsidies must be received from one or more of the following programs: Project Based Section 8; PRAC (Section 202 and 811); USDA Section 521 Rental Assistance; Shelter Plus Care; McKinney Act Supportive Housing Program Grants; Native American Housing Block Grant (IHBG); California Mental Health Services Act operating subsidies; California Department of Health Care Services; and Public Housing Annual Contributions contracts. Applicants seeking scoring consideration for other public sources of operating- or rent-subsidies must receive written Executive Director approval prior to the application due date.

(B) One (1) minus the ratio of requested unadjusted eligible basis to total residential project development costs, with the resulting figure divided by three. For purposes of this tiebreaker paragraph only, requested unadjusted eligible basis shall be increased by the amount of any reduction to eligible basis that is less than or equal to the amount of leveraged soft resources, as described above but exclusive of donated land value, committed to the project.

The resulting tiebreaker score must not have decreased following award or negative points may be awarded.

Reason: The current tiebreaker sums two factors. The first factor is the percentage of committed public funds defraying residential costs to total residential project costs. The current regulations count as committed permanent public funds land and funds from a true public entity, funds from a government-controlled community foundation, and the value of land and improvements contributed by an unrelated non-profit entity provided that the latter has been held by the entity for at least ten years. Staff believes that the tiebreaker should encourage any true donation of land or source of soft financing, whether from a public or private source. A private or corporate contribution of land of soft financing to a project has the same benefit to the project as a public or non-profit donation and actually grows the proverbial pie of resources that is available for affordable housing. The proposed changes redefine the first tiebreaker factor as a "leveraged soft resources" factor and generally count towards the tiebreaker numerator the amount of soft funding and the value of land and improvements contributed by unrelated public or private entities. With respect to land donations, the proposed changes apply the rule that the land have been held by the donating entity for at least ten years to all non-public donations and allow the Executive Director to approve land donations from related entities on a case by case basis. With respect to soft loans from non-public sources, the proposed changes require the term to be 55 years so that any such non-public lender may not foreclose on the loan during the term of affordability. Otherwise, the proposed changes apply to all public or non-public contributions of land or soft financing the criteria of Section 10325(c)(1)(C), including the provision that there shall be conclusive evidence presented that any new funds have been firmly committed to the proposed project and require no further approvals and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land.

While staff appreciates the benefits of rewarding public contributions to projects, the current factor rewards projects that can bring a high amount of public funds to a small number of units. The proposed move to count leveraged soft resources likewise would reward a high amount of leveraged soft resources to a small number of units. The 2014 Affordable Housing Cost Study found that affordable housing is characterized by economies of scale, with larger projects costing less per unit than smaller projects. Namely, for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent. Staff believes that creating a tiebreaker incentive for larger projects will help reduce costs in the aggregate. Moreover, the current factor has, on occasion, resulted in projects being proposed at less than optimal size, or even downsized for a second application, in order to make a project competitive. Staff believes that rewarding such reductions in project size is unacceptable given the dire need for additional affordable housing units. As a result, the proposed changes multiply the current public funds factor by a size factor equal to fifty percent plus the total number of units divided by 140 (50% + (total units/140)). This size factor is effectively half of the difference between the proposed project size and a hypothetical project of 70 units. This rewards naturally larger projects and removes the incentive to downsize projects. Staff considered using other hypothetical project sizes, but the absolute hypothetical project size is not that important as the size factor measures relativity. Staff believes that using half the difference between the proposed project size and the hypothetical project size gives the size factor significance without overemphasizing it.

The current regulations specify that the value of any land and improvements shall be established by an appraisal ordered by the applicant from an unrelated appraiser. In various instances, the accuracy of such appraisals has been called into question. CTCAC staff closely reviews appraisals but has limited expertise to overrule a licensed appraiser's valuation. In order to better evaluate disputed appraisals and encourage accurate appraisals, the proposed changes provide that CTCAC may commission and use its own appraisal to determine the value of land and improvements contributed to a project.

Lastly, with respect to the public funds portion of the tie breaker, the proposed changes recognize operating and rental subsidies provided by the California Department of Health Care Services for purposed of increasing the numerator of the public funds ratio. Such subsidies are new but of similar structure and benefit as the sources currently enumerated.

The second factor of the current tiebreaker is one minus the ratio of requested unadjusted eligible basis to total residential project development costs, with the resulting figure divided by three. An applicant can reduce a project's requested basis relative to project costs by leveraging other hard or soft financing sources. To the extent that the applicant leverages other public sources under the current tiebreaker, the applicant receives a reward in both tiebreaker factors: the total amount of the public sources in the first factor and the amount of tax credits supplanted by public sources in the second factor. In essence, the current aggregate tiebreaker double counts public leverage. Likewise, to the extent that the applicant were to leverage other soft sources under the newly proposed first tiebreaker factor, the applicant would also receive a reward in both tiebreaker factors. Staff believes that it is appropriate to correct this double counting of public funds that supplant tax credits and indirectly give the leverage of hard financing some additional weight. As a result, the proposed changes, for purposes of the tiebreaker only, add back to the requested unadjusted eligible basis numerator any reduction in eligible basis that is less than or equal to the amount of leveraged soft resources, exclusive of donated land value, committed to the project. Staff notes that because this second tiebreaker factor is still divided by three, leveraged soft resources would still carry three times more weight than the leverage of hard financing in the overall tiebreaker score.

Section 10325(d)

Proposed Change:

(d) Application selection for evaluation. Except where CTCAC staff determines a project to be high cost, staff shall score and rank projects as described below. Staff shall identify high cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits. CTCAC shall calculate total eligible basis consistent with the method described in Section 10325(c)(1)(A). A project would be designated "high cost" if a project's total eligible basis exceeds its total adjusted threshold basis limits by 30%. Staff shall not recommend such project for credits, but shall advise the project's sponsors that they may petition the Committee to award the project credits in spite of its cost. Such petitioners shall be calendared to appear before the Committee prior to the application deadline, if possible, but in no case later than the first meeting after the application deadline~~in advance of the Committee acting on staff recommendations~~. Prior to the Committee meeting, staff shall provide the Committee with available data on the costs of any similar projects developed within the project's community, as well as any other mitigating information provided within the application, along with a recommendation. Petitioners must explain in writing the project's unusual cost features, and explain why awarding credits would be sound public policy in spite of those costs. In addition, petitioning sponsors must be accompanied by a representative from the relevant local public entity who must also endorse awarding the credits and explain the compelling reason why the Committee should award the requested credits. Only if the Committee acts to authorize consideration of the application in the current competition would the project be considered for credits. Any project that receives a reservation on or after January 1, 2016, regardless of whether or not it is considered high cost at preliminary reservation, shall be subject to negative points if the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limits for the year the project is placed in service by 40%.

Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Tax Credits shall be made for those applications of highest rank in the following manner.

Reason: This proposed changed reiterates the addition of Section 10325(c)(3)(S) in the negative points section of the scoring criteria. In an attempt to address high development costs, the current regulations provide that staff will not recommend a high-cost project for receipt of a 9% tax credit reservation. A project is considered high cost if a project's total eligible basis exceeds its total adjusted threshold basis limits by 30% at application. Applicants with high cost projects may petition the Committee to award credits to the project in spite of its costs.

The high cost test is applied only at the application stage, at which point projects costs are estimated. As development progresses, costs invariably change some and can change significantly. Projects that were beneath the high cost threshold at application may exceed the threshold at placed in service. This creates a situation in which if CTCAC had known of the true costs of the project at application, it may not have reserved credits for the project. This creates an incentive for projects to hide project costs at application and undermines the effort to contain high costs. On the other hand, cost increases can be due to circumstances beyond the applicant's control (e.g., unforeseen construction issues; unexpected local government requirements; and general increases in construction costs).

The proposed changes seek to maintain the incentive to contain costs through construction and to create a consequence for high cost projects that evaded the application-stage filter. Specifically, the proposed changes allow the Executive Director to award negative points for future applications to applicant team members in cases in which the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limits for the year the project is placed in service by 40%. By using a higher 140% threshold, as opposed to 130% at application, and by calculating the percentage with respect to updated threshold basis limits in order to account for general cost increases, the proposed change also creates some cushion to account for possible circumstances beyond the developer's control.

The proposed changes also clarify the timing of a petition to the Committee. They require the petition hearing to occur prior to the application deadline, if possible, but in no case later than the first meeting after the application. In the event that the Committee wishes to grant a petition, this ensures that the overall ranking of applications can accommodate the inclusion of the high cost project.

Section 10325(f)(1)(B)

Proposed Change:

(B) except as provided in Section 10322(h)(10), a market study as described in Section 10322(h)(10) of these regulations, which provides evidence that:

(i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below the weighted average rent ~~rents~~ for the same unit types in comparable market rate rental properties;

(ii) The proposed unit value ratio stated as dollars per square foot ($/s.f.) will be no more than the weighted average unit value ratios for comparable market rate units;

(iii) In rural areas without sufficient three- and four-bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at least 20% below the rents for single family homes and the $/s.f. ratio will not exceed that of the single family homes; and

(iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy – 90% occupancy for SRO and Special Needs projects and 95% for all other projects – within six months of being placed in service for projects of 150 units or less, and within 12 months for projects of more than 150 units and senior projects.

- ~~The CTCAC Executive Director may waive the value ratio requirement in items (ii) and (iii) above for acquisition/rehabilitation projects with any of the following: existing federal or state rental assistance or operating subsidies and/or 2) an existing TCAC Regulatory Agreement. In such cases, the proposed rents and income targeting levels shall not increase by more than five percent (5%) and the project shall have a vacancy rate of no more than five percent (5%) at the time of the tax credit application. Such waiver requests must be approved prior to the application submission and must include evidence from the project market analyst, including relevant market study pages, as to why the project is unable to meet the requirement.~~

~~Scattered-site projects that have received a waiver of the market study requirement from the California Debt Limit Allocation Committee (CDLAC) per Article 10. Section 5250.3 of the CDLAC Regulations are exempt from the market study requirements of Sections 10322(h)(10), 10325(f)(1)(B), and 10326(g)(1)(B). For such projects, a comprehensive market study as outlined in IRS Section 42(m)(iii) shall mean a written statement by a third party market analyst certifying that the project meets the requirements of Article 10. Section 5250.3 of the California Debt Limit Allocation Committee Regulations.~~

Market studies will be assessed thoroughly. Meeting the requirements of subsection (B) above is essential, but because other elements of the market study will also be considered, meeting those requirements in subsection (B) will not in itself show adequate need and demand for a proposed project or ensure approval of a given project.

Reason: The current regulations establish as a threshold requirement that applicants demonstrate that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. As part of this evaluation, the regulations require the submission of a market study. The Executive Director may waive one of the ratios, the value ratio, for acquisition and/or rehabilitation projects with existing federal or state rental assistance or operating subsidies and/or an existing TCAC Regulatory Agreement. In addition, scattered site projects that are exempt from market study requirements pursuant to CDLAC regulations may submit a specified statement in lieu of the market study.

The proposed changes to Section 10322(h)(10) create a streamlined market study process for specified acquisition and/or rehabilitation projects that makes the existing exemption and waiver obsolete. As a result, the proposed changes to this section delete the current exemption and waiver provisions. Lastly, the proposed changes codify TCAC's current policy that comparable properties are weighted in relation to their size for purposes of the value ratio.

Section 10325(f)(3)

Proposed Change:

(3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:

(A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;

(B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;

(C) have a term of at least fifteen (15) years if it is permanent financing;

(D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,

(E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and

(F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application.

Projects awarded under a Nonprofit set-aside homeless assistance priority or a Rural set-aside RHS or HOME apportionment pursuant to a funding commitment may not substitute other funds for this commitment after application to CTCAC. Failure to retain the funding may result in an award of negative points.

For projects using FHA-insured debt, the submission of a letter from a Multifamily Accelerated Processing (MAP) lender stating that they have underwritten the project and that it meets the requirements for submittal of a multifamily accelerated processing firm commitment application to HUD. For 2015 competitive tax credit applications with Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) included as funding sources, a project's recommendation by state program staff may be substituted for evidence that the funding has been firmly committed, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award.

Reason: The current regulations generally allow an applicant to substitute committed funds with other funds similar to that of the original funding (e.g., public funds for public funds). In the event that a project has qualified for a funding specific apportionment or priority, namely the homeless assistance priority or the RHS or HOME apportionments, substitution of these funds with other public funds that do not qualify for the apportionment or priority allows for manipulation. As a result, the proposed changes disallow the substitution of funds used to qualify a project for these apportionments or priorities.

Section 10325(f)(4)

Proposed Change:

(4) Local approvals and Zoning. Applicants shall provide evidence, at the time the application is filed, that the project as proposed is zoned for the intended use, and has obtained all applicable local land use approvals which allow the discretion of local elected officials to be applied. Examples of such approvals include, but are not limited to, general plan amendments, rezonings, and conditional use permits. Notwithstanding the first sentence of this subsection, local land use approvals not required to be obtained at the time of application include, design review, initial environmental study assessments, variances, and development agreements. The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction.

Reason: The proposed changes correct a grammatical error.

Section 10325(f)(7)

Proposed Change:

(7) Minimum construction standards. For preliminary reservation applications, applicants shall provide a statement ~~of their intent to utilize landscaping and construction materials compatible with the proposed project's neighborhood, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note~~ that the following minimum specifications will be incorporated into the project design for all new construction and rehabilitation projects. ~~Finally~~In addition, a statement shall commit the property owner to at

least maintaining the installed energy efficiency and sustainability features' quality when replacing each of the following listed systems or materials:

[See subsequent entries for changes to subparagraphs (A) through (K)]

If a rehabilitation applicant does not propose to meet the requirements of this subsection (except for paragraph (J), which is ineligible for an exemption), 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 that will receive points from CDLAC pursuant to Section 5230(k)(7) of the CDLAC regulations 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 who will not receive points pursuant to Section 5230(k)(9) or (10) of the CDLAC regulations, 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, or the project architect. Failure to produce appropriate and acceptable third party documentation for (A) through (K) of this subsection may result in negative points.

Reason: The current regulations require applicants to provide a statement of their intent to utilize landscaping and construction materials compatible with the proposed project's neighborhood and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. While these objectives are important, staff believes that these statements are so subjective as to be unenforceable and that such determinations are appropriately and more practically the function of the local reviewing agency. As a result, the proposed changes eliminate this subjective statement of intent.

In light of this additional flexibility related to manager's units proposed in Section 10325(f)(7)(J) and explained below, the proposed changes eliminate TCAC's ability to approve waiver requests related to the manager's unit requirement.

The limitation of the verification language for new construction energy efficiency to projects receiving CDLAC energy efficiency points conforms to the proposed changes in Section 10325(f)(7)(A), which are explained below.

The current regulations require documentation of compliance with all of the minimum construction standards, except for energy efficiency, from a certified HERS Rater, a certified GreenPoint rater, or a US Green Building Council certification. Some of these construction standards, such as those related to accessibility and managers' units, are not related to sustainability. Moreover, other standards do not require the level of expertise a sustainability rater possesses. As a result, the proposed changes allow the project architect to confirm compliance with any or all of the minimum construction standards, except for energy efficiency.

Section 10325(f)(7)(A)

Proposed Change:

(A) Energy Efficiency. ~~New construction buildings shall be 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 in Section 10325(c)(6)(B)(ii).~~ New construction and rehabilitation applicants shall consult with the design team and energy efficiency experts early in the project design process to identify and consider cost-effective energy efficiency or generation measures beyond those required by this subsection. In addition, a~~A~~ll 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. Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency ~~achieved for each building~~ achieved for the project as a whole, except that Scattered Site applications shall also document at least a 5% post-rehabilitation improvement over existing conditions energy efficiency achieved for each site. In the case of projects in which energy efficiency improvements have been completed within ~~two~~ five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. Furthermore, ~~all~~ rehabilitation 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. In addition, all applicants who will receive points from CDLAC pursuant to Sections 5230(k)(7),(9), or (10) of the CDLAC regulations must submit a completed Sustainable Building Method Workbook with their preliminary reservation application.

Reason: The current regulations require all 9% and 4% new construction projects to attain energy efficiency that is at least 30% above the 2008 California Building Standards Code requirements or a 20% Zero Net Energy Standard. While staff believes that above-code energy efficiency has a strong public and environmental benefit, many developers have stated that attaining efficiencies significantly above California's already most-stringent-in-the-nation energy codes adds significant cost to projects. These costs are partly in materials but also in the consulting and verification costs. At a time when gap funding is scarce, tax-exempt bond authority and 4% tax credits are significantly underutilized, and developers' ability to make new construction projects feasible with 4% tax credits is compromised, staff believes that applying California's already aggressive energy codes to new construction is sufficient as a minimum construction standard. Staff further believes that simply applying code to new construction will reduce projects costs and result in feasibility for additional projects. As a result, the proposed changes eliminate the above-code minimum energy efficiency standard for new construction projects. This change is likely to affect only 4% projects, as 9% projects will generally still need to exceed code in order to score sustainability points and be competitive. Staff also notes that energy efficiency project costs remain eligible basis items and that applicants will continue to receive threshold basis limit increases for such features as well. In sum, the proposed changes encourage and incentivize above-code energy efficiency without requiring it for new construction projects.

With respect to rehabilitation projects, the proposed changes maintain the current requirement to attain a 10% post-rehabilitation improvement over the project's existing energy efficiency. Staff believes that the rehabilitation of older buildings presents an opportunity to increase efficiencies at minimal additional cost. Moreover, rehabilitation projects do not suffer from the same feasibility issues as new construction in the current market. The proposed changes, however, do allow applicants to meet the 10% requirement across the project, as opposed to at each individual building, except that scattered site projects would need to show at least a 5% improvement at each site. Staff believes allowing per project improvement, as opposed to a per building improvement, results in the same energy efficiency benefit but provides applicants with additional flexibility. In addition, with respect to projects that have undergone recent energy efficiency improvements, the proposed changes allow a longer lookback (five years as opposed to two) and include improvements made pursuant to governmental programs (such as HUD efficiency programs). Staff believes that it is appropriate to count recent energy improvements towards the 10% requirement, so as not to discourage owners from improving efficiencies prior to seeking tax credits.

Lastly, in recognition of the remaining program incentives for energy efficiency and the fact that many features are cost-effective in their own right, the proposed changes require both new construction and rehabilitation applicants to consult with the design team and energy efficiency experts early in the project design process to identify and consider cost-effective energy efficiency or generation measures beyond those required by these regulations.

As a conforming measure, the proposed changes limit the verification requirements relating to new construction energy efficiency to projects seeking CDLAC energy efficiency points.

Section 10325(f)(7)(B)

Proposed Change:

(B) Landscaping. ~~A~~ If landscaping is to be provided or replaced, a variety of plant and tree species that require low water use shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs. Projects shall follow the requirements of the state Model Water Efficient Landscape Ordinance (http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) unless a local landscape ordinance has been determined to be at least as stringent as the current model ordinance.

Reason: The proposed changes clarify that the low water use landscaping requirement only applies if landscaping is being provided or replaced. Applicants are not required to replace existing landscaping.

Section 10325(f)(7)(C)

Proposed Change:

(C) Roofs. ~~Roofing~~ Newly installed roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty. With respect to rehabilitation projects, if a roof has less than 10 years of remaining useful life or less than 10 years remaining on the manufacturer's warranty, it shall be replaced.

Reason: The proposed changes clarify that the 20-year roof requirement only applies to newly installed roofs. The proposed changes also establish a rule for when roofs must be replaced in rehabilitation projects, namely when the roof has less than 10 years of remaining useful life or less than 10 years remaining on the manufacturer's warranty. A waiver to this rule can be requested under the general waiver provision of the minimum construction standards.

Section 10325(f)(7)(D)

Proposed Change:

(D) Exterior doors. If exterior doors are to be provided or replaced, insulated~~Insulated~~ or solid core, flush, paint or stain grade exterior doors shall be made of metal clad, hardwood faces, or fiberglass faces, with a standard one-year guarantee and all six sides factory primed.

Reason: The proposed changes clarify that the exterior door requirement only applies if exterior doors are being provided or replaced. Applicants are not required to replace existing doors.

Section 10325(f)(7)(G)

Proposed Change:

(G) Water heater. If water heaters are to be provided or replaced, for~~For~~ units with individual tank-type water heaters, minimum capacities are to be ~~30~~ 28 gallons for one- and two-bedroom units and ~~40~~ 38 gallons for three-bedroom units or larger.

Reason: If a project will include water heaters for each unit, the current regulations require tank sizes of 30 gallons for one- and two-bedroom units and 40 gallons for larger units. Staff has been advised that certain high-efficiency water heaters come in slightly smaller sizes. The proposed changes reduce the tank size minima to 28 and 38 gallons respectively. Staff believes that this will allow for use of these efficient heaters without discernable impact to tenants. The proposed changes also clarify that the water heater requirement only applies if water heaters are being provided or replaced. Applicants are not required to replace existing water heaters.

Section 10325(f)(7)(H)

Proposed Change:

(H) Floor coverings. If floor coverings are to be provided or replaced, a~~A~~ hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Any carpet ~~Carpet~~ provided or replaced shall comply~~ing~~ with U.S. Department of Housing and Urban Development/Federal Housing Administration UM44D~~, or alternatively, cork, bamboo, linoleum, or hardwood floors shall be provided in all other floor spaces unless this requirement is specifically waived by the Executive Director~~.

Reason: The current regulations require all non-kitchen and non-bath areas to have carpet complying with specified standards, cork, bamboo, linoleum, or hardwood flooring unless waived by the Executive Director. TCAC has received and granted numerous waiver requests to the flooring requirement. Vinyl is the most common type of flooring requested by waiver. Staff believes that flooring types can reasonably be left to building codes and need not be determined by TCAC. The proposed changes remove the explicit list of allowed flooring types and state generally that a hard, water resistant, cleanable surface is required for all kitchen and bath areas and that any carpet shall comply with U.S. Department of Housing and Urban Development/Federal Housing Administration UM44D. The proposed changes also clarify that the floor covering requirement only applies if floor coverings are being provided or replaced. Applicants are not required to replace existing floor coverings.

Section 10325(f)(7)(I)

Proposed Change:

(I) All fiberglass-based insulation provided or replaced shall meet the Greenguard Gold Certification (http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSchools.aspx).

Reason: The proposed changes clarify that the fiberglass-based insulation requirement only applies if insulation is being provided or replaced. Applicants are not required to replace insulation.

Section 10325(f)(7)(J)

Proposed Change:

(J) Consistent with California State law, projects with 16 or more residential units must have an on-site manager's unit. Projects with at least 161 units shall provide a second ~~In addition, for every 80 non-manager units in a project, at least one~~ on-site manager's unit ~~shall also be provided~~ for either another on-site manager or other maintenance personnel, and there shall be one additional on-site manager's unit for either another on-site manager or other maintenance personnel for each 80 units beyond 161 units, up to a maximum of four on-site manager's units. ~~Special needs projects may demonstrate 24-hour desk staffing in lieu of an on-site manager's unit.~~ Scattered site projects totaling 16 or more units must have at least one on-site manager's unit for the entire project, and at least one manager's unit at each site where that site's building(s) consist of 16 or more units. Scattered sites within 100 yards of each other shall be treated as a single site for purposes of the on-site manager rule only.

In lieu of on-site manager units, a project may commit to employ an equivalent number of on-site full-time property management staff (at least one of whom is a property manager) and provide an equivalent number of desk or security staff capable of responding to emergencies for the hours when property management staff is not working. All staff or contractors performing desk or security work shall be knowledgeable of how the property's fire system operates and be trained in, and have participated in, fire evacuation drills for tenants. CTCAC reserves the right to require that one or more on-site managers' units be provided and occupied by property management staff if, in its sole discretion, it determines as part of any on-site inspection that the project has not been adequately operated and/or maintained.

Reason: The current regulations require any project with more than 16 units to have an on-site manager's unit. Projects with 161 or more units must have a second on-site manager's unit plus one for each additional 80 units. The only current exception to this rule is that special needs projects may demonstrate 24-hour desk staffing in lieu of an on-site manager's unit.

The proposed first clarify the existing rule regarding the number of managers' units required for larger projects as the current language was somewhat ambiguous as whether a second unit was required at 81 or 161 units. A second unit is not required until the project reaches 161 units in size. Likewise, a third unit is required at 241 units.

Second, the proposed changes cap the number of managers' units required at four. Staff believes there is marginal benefit to additional managers' units in very large projects and that these units are better used for low-income households.

Third, the proposed changes expand and alter the existing exception for 24-hour desk staffing. Given the changing practices of staffing rental housing to attend to tenant needs and maintenance, staff has received a number of waiver requests to the manager's unit requirement. Developers state that it is increasingly difficult to employ high-quality management staff if they must live on-site. On the other hand, owners are increasingly supplying 24-hour staffing in other ways, be they desk staff or security personnel. Whereas live-in managers and maintenance staff cannot be expected to be present or on duty all the time, desk and security staff are on-site and on the clock during a manager's off hours. TCAC staff does not believe that desk and security staff provide equivalent tenant service as a manager or maintenance person, but TCAC staff believes that a combination of the two can be as effective as a live-in manager or maintenance person. As a result, the proposed changes allow an applicant, in lieu of the manager's unit requirement, to commit to employing an equivalent number of on-site full-time property management staff (at least one of whom is a property manager) and provide an equivalent number of desk or security staff capable of responding to emergencies for the hours when property management staff is not working. To use this more general exception, applicants must ensure that all staff or contractors performing desk or security work are knowledgeable of how the property's fire system operates and be trained in, and have participated in, fire evacuation drills for tenants. CTCAC reserves the right to require that one or more on-site managers' units be provided and occupied by property management staff if, in its sole discretion, it determines as part of any on-site inspection that the project has not been adequately operated and/or maintained. This proposed change ensures that full-time professional property management staff is available to tenants while allowing developers some flexibility on how to staff the project during off hours. The proposed change also ensures that desk and security staff are adequately trained to respond to emergencies.

In light of this additional flexibility, the proposed changes eliminate TCAC's ability to approve waiver requests related to the manager's unit requirement.

Section 10325(f)(7)(K)

Proposed Change:

(K) 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~~ except that new construction projects shall include a minimum of ten percent (10%) of the units with mobility features~~,~~ and four percent (4%) with communications features. ~~These~~ Accessible 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.

Reason: The current regulations apply the California Building Standards Code chapter related to accessibility in privately owned housing made available for public use to tax credit projects and also double these requirements for both new construction and rehabilitation projects. Whereas the building code requires privately owned housing made available for public use (i.e., affordable housing generally) to provide 5% of units with mobility features and 2% percent with communications features, the TCAC regulations require tax credit projects to provide 10% of units with mobility features and 4% percent with communications features. In the context of new construction, achieving these higher levels of accessibility can be achieved with minimal cost and complication. In a rehabilitation project, however, creating additional accessible units often requires the moving of walls, including load-bearing walls, plumbing, and other expensive alterations. Staff has seen a number of cost estimates for the additional accessibility in rehabilitation projects that exceed $500,000. In seeking to balance the benefits and costs of accessibility, staff believes that maintaining the 10%/4% requirement for new construction is appropriate but that applying the building code's 5%/2% standard to rehabilitation will still increase accessibility over the building's current design while minimizing costs. The proposed changes apply the 10%/4% requirement solely to new construction projects.

Staff notes that Section 10337(b)(2) of the regulations also require owners to make accessible units available to persons who need such units, even if that requires skipping down the project's waiting list. Staff believes that this is an important recent policy change that ensures accessible units that currently exist benefit the population they were designed to serve.

Section 10325(f)(9)(D)

Proposed Change:

(D) The maximum annual Federal Tax Credits available for award to any one project in any funding round shall not exceed Two Million Five Hundred Thousand ($2,500,000) Dollars, except that this limit shall increase by $10,000 per Tax Credit unit for each Tax Credit unit in excess of 100 units up to a maximum of Three Million ($3,000,000) Dollars.

Reason: Average project sizes in the 9% tax credit program have been declining slightly for some time. While there are undoubtedly many factors influencing this, staff believes that the cap on tax credit reservations to a particular project is a factor. The current cap of $2.5 million in annual federal credit has remained constant for some time, while project costs have risen. As a result, the number of units that can be financed under the cap has declined. Staff believes that raising the cap incrementally based on project size can encourage larger (and hopefully more cost efficient) projects. As a result, the proposed changes allow projects with more than 100 tax credit units to access $10,000 more in annual federal credit for each tax credit unit over 100, up to a maximum reservation of $3 million. By design, the increased cap is not available to smaller projects. To make smaller projects eligible would encourage more costly projects and could reduce the aggregate number of units financed with 9% tax credits.

Section 10325(f)(10)

Proposed Change:

(10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of $40,000 in hard construction costs per unit or 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I). Notwithstanding Section 10302(u), for purposes of meeting this threshold, hard construction costs shall not include the costs of rehabilitation for leasing offices, parking facilities, or landscaping.

Reason: In order to be eligible for the 9% tax credit program, the current regulations require rehabilitation projects to have hard construction costs in excess of $40,000 per unit or 20% of the adjusted basis of the building. Compliance staff has noted a number of instances in which a disproportionate amount of construction cost has benefitted leasing offices, landscaping, and parking facilities, rather than tenant units or building structures. While staff believes that all rehabilitation costs should continue to qualify as basis, for purposes of meeting the minimum rehabilitation threshold, staff believes that the minimum threshold should only count costs benefitting units and overall structures. As a result, the proposed change excludes from the calculation of the minimum rehabilitation threshold costs relating to the rehabilitation of leasing offices, parking facilities, and landscaping.

Section 10325(f)(11)

Proposed Change:

(11) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive

Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility.

Reason: TCAC has experienced a growing number of resyndications (tax credit projects seeking new tax credits after the 15-year compliance period) in the last few years. Because the existing regulatory agreements on these properties run for up to 40 additional years, it has been TCAC's policy to require the new regulatory agreement to maintain the rent and income limits of the original regulatory agreement for the remainder of the original term while applying any new rent and income limits to the overhang period of time. This ensures that owners do not use resyndication to remove the original affordability commitment. Staff believes that if a resyndicating project is feasible for 30-40 years under the rent and income levels of the original affordability agreement, it is feasible for the entire 55-year term of the new regulatory agreement. In fact, in reviewing applications, TCAC only analyzes cash flow for the first 15 years of a project's life. As a result, the proposed changes expand on the current policy and generally require a resyndication project to maintain the project's rent and income levels for the full 55-year term of the new regulatory agreement. The proposed changes, however, do allow the Executive Director to approve an exception for projects suffering negative cash flow over at least the preceding three years or for projects or that within the next five years will lose a rental or operating subsidy that was factored into the project's original feasibility analysis, provided that any new rent levels shall be as low as possible to maintain project feasibility.

Section 10325(f)(12)

Proposed Change:

(12) A project applying for competitive Tax Credits and involving the acquisition and/or rehabilitation of existing buildings shall demonstrate to the satisfaction of the Executive Director that the project is not financially feasible as a 4% tax credit project.

Reason: The proposed changes to Section 10315(g) establish a housing goal of 15% for acquisition and/or rehabilitation projects. To the extent that this may limit the number of acquisition/rehabilitation projects that receive a 9% tax credit award, staff believes that it is important to prioritize 9% tax credits to acquisition/rehabilitation projects that are not feasible as 4% tax credit projects. As a result the proposed changes require acquisition/rehabilitation projects seeking 9% tax credits to demonstrate to the Executive Director's satisfaction that the project is not financially feasible as a 4% tax credit project.

Section 10325(f)(13)

Proposed Change:

(13) CTCAC shall not accept an application from any party that is debarred from applying to CDLAC.

Reason: Persons or entities who are debarred from participating in CDLAC's program are therefore ineligible to receive a 4% tax credit reservation. These persons, however, are not debarred from applying to the 9% tax credit program. The proposed changes recognize the fact that the two programs are extremely alike and make ineligible for the 9% tax credit program any applicant who is debarred by CDLAC.

Section 10325(g)(1)(A)

Proposed Change:

(A) At least ~~thirty~~ twenty-five percent (~~30~~25%) of the Tax Credit units in the project shall be three-bedroom or larger units, with the remaining units configured based on the demand established in the basic threshold requirements except that for projects qualifying for and applying under the At-risk set-aside, the Executive Director may grant a waiver from this requirement if the applicant shows that it would be cost prohibitive to comply;

Reason: The current regulations require that at least 30% of the units in a large family project contain three or more bedrooms. Staff has received feedback that three-bedroom units can be difficult to lease in many markets given recent changes in household sizes and structures. Larger units are also more costly to construct. Staff believes that it remains important to serve larger households but that reducing the required percentage of three-bedroom or larger units balances these goals. As a result, the proposed changes reduce from 30% to 25% the number of three-bedroom or larger units required in large family projects.

Section 10325(g)(4)

Proposed Change:

(4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental or mental health disabilities; individuals who are survivors of physical abuse; individuals who are homeless as described in Section 10315(b); individuals with chronic illness, including HIV; homeless youth as defined in Government Code Section 11139.3(e)(2); or another specific group determined by the Executive Director to meet the intent of this housing type. The Executive Director shall have sole discretion in determining whether or not an application meets these requirements. ~~In the case of a development that is less than 75% special needs, the non-special needs units must meet another housing type (for example, large family), although the project will be considered as a special needs project for purposes of Section 10325.~~ At least 10% of the non-special needs units in the project shall be one-bedroom units, and at least 20% of the non-special needs units in the project shall be larger than one-bedroom units, unless waived by the Executive Director. For non-special needs units, studio or SRO units must include at least 200 square feet, one-bedroom units must include at least 500 square feet, and two-bedroom units must include at least 750 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director;

Reason: The current regulations require that special needs projects reserve at least 50% of the units for the special needs population but also provide that such projects with less than 75% special needs units must meet a second housing type for the non-special needs units. In effect, this means that any non-special needs units in such projects must meet the large family requirements, particularly the requirement that 30% of the non-special needs units contain three or more bedrooms. Staff has received feedback that attracting families into a project with at least 50% special needs households can be very challenging. Moreover, including a significant number of units with three or more bedrooms adds to costs. The proposed changes delete the requirements that non-special needs units in projects with less than 75% special needs units meet a second housing type. Because the non-special needs units would no longer subject to the requirements of a second housing type, the proposed changes also specify threshold requirements for these units. Namely, at least 10% of the non-special needs units shall be one-bedroom units, and at least 20% of the non-special needs units must contain at least two bedrooms, unless waived by the Executive Director. In addition, studio or SRO units must include at least 200 square feet, one-bedroom units must include at least 500 square feet, and two-bedroom units must include at least 750 square feet of living space, except that the Executive Director may waive these limits for rehabilitation projects.

Section 10325(g)(5)(B)(i)

Proposed Change:

(i) before applying for Tax Credits, the project must meet the At-risk eligibility requirements under the terms of applicable federal and state law as verified by a third party legal opinion, except that a project that has been acquired by a qualified nonprofit organization within the past five years of the date of application with interim financing in order to preserve its affordability and that meets all other requirements of this section, shall be eligible to be considered an "at-risk" project under these regulations. A project application will not qualify in this category unless it is determined by the Committee that the project is at-risk of losing affordability on at least 50% of the restricted units due to market or other conditions;

Reason: The current regulations define the at-risk housing type and, among other things, require that CTCAC determine that the project is at-risk of losing affordability due to market or other conditions. Staff has always interpreted this provision to mean that at least 50% of the units in the project must be at-risk of losing affordability. The proposed changes codify this interpretation, explicitly requiring that CTCAC determine that the project is at-risk of losing affordability on at least 50% of the restricted units due to market or other conditions.

Section 10326(g)(2)

Proposed Change:

(2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission as set forth in Section 10325(f)(2).

~~(A) Site control may be evidenced by:~~

~~(i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;~~

~~(ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property;~~

~~(iii) an executed disposition and development agreement between the applicant and a public agency; or~~

~~(iv) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence that all extensions necessary to keep agreement current through the application filing deadline have been executed must be included in the application.~~

~~(B) A current title report (within 90 days of application) or, for tribal trust land, a title status report, shall be submitted with all applications for purposes of this threshold requirement.~~

Reason: The proposed changes align the site control documentation standards for 4% tax credit project with those for 9% tax credit projects in order to ensure consistency.

Section 10326(g)(3)

Proposed Change:

(3) Local approvals and Zoning. Applicants shall provide evidence, at the time the application is filed, that the project, as proposed, is zoned for the intended use, and has obtained all applicable local land use approvals which allow the discretion of local elected officials to be applied. Examples of such approvals include, but are not limited to, general plan amendments, rezonings, conditional use permits. Notwithstanding the first sentence of this subsection, ~~local land use approvals not required to be~~applicants need not have obtained design review approval at the time of application ~~include, design review, initial environmental study assessments, variances, and development agreements~~. The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction.

Reason: The current CTCAC regulations require that 4% tax credit applicants have all local discretionary land use approvals in place at time of application, except for design review, initial environmental study assessments, variances, and development agreements. This is inconsistent with CDLAC regulations that require the same projects to have all discretionary local land use approvals except design review. The proposed changes conform the CTCAC regulations to the CDLAC standard, requiring applicants to have all discretionary local land use approvals except design review.

Section 10326(g)(7)

Proposed Change:

(7) Minimum Rehabilitation Project Costs. Projects involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:

(A) ~~$10,000~~$20,000 in hard construction costs per unit for resyndications and $15,000 in hard construction costs per unit for all other projects; or

(B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I)

Notwithstanding Section 10302(u), for purposes of meeting this threshold, hard construction costs shall not include the costs of rehabilitation for leasing offices, parking facilities, or landscaping.

Reason: The current regulations require 4% tax credit rehabilitation projects to include the higher of $10,000 per unit in hard construction costs or 20% of the adjusted basis of the project. Staff is concerned that this low bar encourages the unnecessary resyndication of projects that have minimal rehabilitation needs. Staff further believes that tax credits should be reserved for projects, whether resyndicated or not, with more significant rehabilitation needs. As a result, the proposed changes raise the minimum hard construction cost minimum to $15,000 per unit for rehabilitation projects generally and $20,000 per unit for resyndication projects, or 20% of the project's adjusted basis if greater.

In addition, compliance staff has noted a number of instances in which a disproportionate amount of construction cost has benefitted common areas, office space, and parking facilities, rather than tenant units or building structures. While staff believes that all rehabilitation costs should continue to qualify as basis, for purposes of meeting the minimum rehabilitation threshold, staff believes that the minimum threshold should only count costs benefitting units and overall structures. As a result, the proposed change excludes from the calculation of the minimum rehabilitation threshold costs relating to the rehabilitation of common areas, office, parking facilities, and landscaping.

Section 10326(g)(8)

Proposed Change:

(8) Existing tax credit projects applying for additional tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility.

Reason: TCAC has experienced a growing number of resyndications (tax credit projects seeking new tax credits after the 15-year compliance period) in the last few years. Because the existing regulatory agreements on these properties run for up to 40 additional years, it has been TCAC's policy to require the new regulatory agreement to maintain the rent and income limits of the original regulatory agreement for the remainder of the original term while applying any new rent and income limits to the overhang period of time. This ensures that owners do not use resyndication to remove the original affordability commitment. Staff believes that if a resyndicating project is feasible for 30-40 years under the rent and income levels of the original affordability agreement, it is feasible for the entire 55-year term of the new regulatory agreement. In fact, in reviewing applications, TCAC only analyzes cash flow for the first 15 years of a project's life. As a result, the proposed changes expand on the current policy and generally require a resyndication project to maintain the project's rent and income levels for the full 55-year term of the new regulatory agreement. The proposed changes, however, do allow the Executive Director to approve an exception for projects suffering negative cash flow over at least the preceding three years or for projects that or within the next five years will lose a rental or operating subsidy that was factored into the project's original feasibility analysis, provided that any new rent levels shall be as low as possible to maintain project feasibility. This proposed change is identical to the proposed change in Section 10325(f)(11) relating to 9% tax credit applications.

Section 10326(h)

Proposed Change:

(h) Additional condition on applications. The following additional condition shall apply to applications for Tax Credits pursuant to this Section: Except as provided in Section 10317(g)(4), if~~If~~ not currently possessing a bond allocation for the proposed project, ~~at the time the application is considered by the Committee,~~ the applicant shall have either applied for a bond allocation ~~at~~ from the California Debt Limit Allocation Committee~~'s~~ (CDLAC) ~~next scheduled meeting~~prior to or concurrently with submitting an application to CTCAC, or shall have received an initial loan commitment from the California Housing Finance Agency (CalHFA).

Reason: The current regulations require applicants for 4% tax credits, prior to the date of reservation, to have applied for or received an allocation of tax-exempt bond authority from CDLAC or have received an initial loan commitment from CalHFA. The proposed changes in Section 10317(g)(4), however, allow an applicant requesting both 4% federal tax credits and state tax credits to apply to CDLAC for a bond allocation within 10 business of receiving a tax credit allocation. The proposed changes to this section exempt 4% plus state tax credit applications from the general rule to reflect the different standard established in Section 10317.

The proposed changes also alter the application timing rule for projects requesting 4% tax credits without state tax credits. The current rule allows a 4% project to submit applications to CDLAC prior to the committee hearing at which CTCAC makes the tax credit reservation. Because the CTCAC staff report includes commitments made to CDLAC for point scoring purposes, CTCAC needs to know what the commitments to CDLAC will be before it makes a tax credit reservation. As a result, CTCAC needs applicants to apply to CDLAC earlier than the current rule requires. The proposed changes require a 4% project applicant to submit the CDLAC bond application prior to or concurrently with the CTCAC application.

Section 10326(j)(1)

Proposed Change:

(1) CDLAC allocation. The applicant shall ~~have received~~receive a bond allocation from CDLAC for the proposed project within 90 days of receiving a reservation;

Reason: The existing regulations in Section 10326(h) allow a 4% tax credit applicant to apply for a CDLAC allocation after submitting the TCAC application but before TCAC makes a reservation. This subsection states that the holder of a TCAC reservation shall have received a bond allocation from CDLAC. While the two subsections appear to be in conflict, staff has interpreted this subdivision to mean that the holder of a TCAC reservation must obtain a CDLAC allocation within a reasonable time or forfeit the tax credit reservation. The proposed changes to this subsection conform the language to this interpretation, requiring the holder of a 4% tax credit reservation to receive a CDLAC allocation within 90 days of the tax credit reservation.

Section 10327(c)(2)(B)

Proposed Change:

(B) For 4% credit projects applying under Section 10326 of these regulations, the maximum developer fee that may be included in project costs and eligible basis ~~is the lesser of 15% of the project's eligible basis or two million five hundred thousand dollars ($2,500,000). A cost limitation on developer fees that may be included in eligible basis~~ shall be as follows:

(i) for new construction or rehabilitation only projects financed solely with tax-exempt bonds, 4% tax credit equity, and other non-public sources, the maximum developer fee that may be included in project costs and eligible basis ~~for a new construction or rehabilitation only project~~ is ~~the lesser of~~ 15% of the project's unadjusted eligible basis~~, or~~ up to two million five hundred thousand ($2,500,000) dollars~~; or~~ plus one of the following:

1. 10% of the project's unadjusted eligible basis beyond the amount used to calculate a developer fee of two million five hundred thousand ($2,500,000) dollars.

2. 15% of the project's unadjusted eligible basis beyond the amount used to calculate a developer fee of two million five hundred thousand ($2,500,000) dollars if the project will restrict at least 20% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

For purposes of this subsection only, public sources are any funds, but not land value, committed to the project by a public entity.

(ii) the maximum developer fee that may be included in project costs and eligible basis for acquisition/rehabilitation projects financed solely with tax-exempt bonds, 4% tax credit equity, and other non-public sources is ~~the lesser of~~ 15% of the unadjusted eligible construction related basis and ~~five (~~5%~~)~~ percent of the unadjusted eligible acquisition basis~~, or~~ up to two million five hundred thousand ($2,500,000) dollars plus one of the following:

1. 10% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis beyond the amount used to calculate a developer fee of two million five hundred thousand ($2,500,000) dollars.

2. 15% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis beyond the amount used to calculate a developer fee of two million five hundred thousand ($2,500,000) dollars if the project will restrict at least 20% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

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 construction costs per unit in rehabilitation expenditures ~~of~~ are at least ~~$15,000~~$30,000 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.

If the developer fee exceeds two million five hundred thousand ($2,500,000), the first two million five hundred thousand ($2,500,000) of the developer fee must be attributed to acquisition and improvements in the same proportion as reflected in the total development fee calculation assuming a 15% fee is earned on improvements.

For purposes of this subsection only, public sources are any funds, but not land value, committed to the project by a public entity.

(iii) for all other new construction or rehabilitation only projects the maximum developer fee that may be included in project costs and eligible basis is 15% of the project's unadjusted eligible basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $5000 per unit for each unit in excess of 100 shall be deferred or contributed as equity to the project.

(iv) for all other acquisition/rehabilitation projects the maximum developer fee that may be included in project costs and eligible basis is 15% of the unadjusted eligible construction related basis and 5% percent of the unadjusted eligible acquisition basis.

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 construction costs per unit in rehabilitation expenditures are at least $30,000 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. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $5000 per unit for each unit in excess of 100 shall be deferred or contributed as equity to the project.

If the developer fee exceeds two million five hundred thousand ($2,500,000), the first two million five hundred thousand ($2,500,000) of the developer fee must be attributed to acquisition and improvements in the same proportion as reflected in the total development fee calculation assuming a 15% fee is earned on improvements.

Reason: The current regulations limit developer fees for 4% tax credit applications as follows:

- The maximum fee for new construction and rehabilitation-only projects is 15% of the project's unadjusted eligible basis, up to $2.5 million.
- The maximum fee for acquisition/rehabilitation projects in general is 5% of the unadjusted eligible acquisition basis and 15% of the unadjusted eligible construction-related basis, up to $2.5 million.
- The maximum fee for acquisition/rehabilitation projects that involve at-risk properties, hard costs of rehabilitation of at least $15,000 per unit, or at least 30% of units affordable to households earning no more than 50% of the area median income, is 15% of both the unadjusted eligible acquisition basis and of the unadjusted construction-related basis, up to $2.5 million.

California currently has billions of dollars in unused tax-exempt bond authority. Were multifamily housing projects able to employ this resource, they would also qualify for unlimited 4% tax credits. In other words, California is leaving significant federal resources on the table that could be put to use to help meet its severe affordable housing shortage. The main reason for this is that it is difficult, especially in light of the drastic reduction in available gap funding sources, for developers to put together feasible projects with the relatively shallow subsidies that tax-exempt bonds and 4% credits provide. Financial gaps remain. Allowing higher developer fees increases the eligible basis and the amount of tax credits available to a project, which can help close these financial gaps and allow previously infeasible projects to move forward. The large majority of other states maximize this eligible basis by limiting developer fees to 15% of eligible basis with no dollar cap.

While increased developer fees do increase eligible basis, they also increase projects costs. The impact of this on project financing can be mitigated, however, by deferring the payment of these developer fees over time or by the developer contributing some portion of the fee back to the project. In cases where no other public funds are involved, the developer will have to structure the increased fee in a way to cover the costs and realize the benefit of additional equity. For these projects without public funds, the proposed changes generally allow a developer to increase his or her developer fee to $2.5 million plus 10% of the project's unadjusted eligible basis (or 5% of the acquisition basis and 10% of the construction related basis for acquisition and rehabilitation projects) beyond the amount used to calculate a developer fee of $2.5 million. If the developer agrees to maintain at least 20% of the total units in the project to households earning 50% or less of the Area Median Income for the term of the regulatory agreement, then the maximum developer fee would increase to $2.5 million plus 15% of the project's unadjusted eligible basis (or 5% of the acquisition basis and 15% of the construction related basis for acquisition and rehabilitation projects) beyond the amount used to calculate a developer fee of $2.5 million. Projects that involve the acquisition/rehabilitation of at-risk properties, hard costs of rehabilitation of at least $30,000 per unit (as opposed to $15,000 in the current regulations), or have at least 30% of units affordable to households earning no more than 50% of the area median income would continue to calculate developer fees based on 15% of the unadjusted eligible acquisition basis. For purposes of applying these developer fee formulas only, the proposed changes define public funds as any funds, but not land value, committed to the project by a public entity.

In projects with public funds, there is a concern that the developer might ask the public lender for additional funding to cover the additional cost. The proposed changes seek to access additional basis in order to close project financial gaps while protecting public lenders from requests for additional funding. In these cases of projects with public funds, the proposed changes allow a developer to increase his or her developer fee to 15% of the project's unadjusted eligible basis (or 5% of the acquisition basis and 15% of the construction related basis for acquisition and rehabilitation projects) but require the developer to defer or contribute back to the project any amount in excess of $2.5 million. Again, projects that involve the acquisition/rehabilitation of at-risk properties, hard costs of rehabilitation of at least $30,000 per unit (as opposed to $15,000 in the current regulations), or have at least 30% of units affordable to households earning no more than 50% of the area median income would continue to calculate developer fees based on 15% of the unadjusted eligible acquisition basis. To the extent that a portion of the increased developer fee is deferred, the payments to the developer over time out of cash flow may reduce a public lender's residual receipts, but deferring the fee eliminates the need to provide additional capital sources at the initial financing stage.

Given the various percentages that are applied under this proposed framework, the proposed changes also require that the first $2.5 million of the developer fee must be attributed to acquisition and improvements in the same proportion as reflected in the total development fee calculation assuming a 15% fee is earned on improvements. TCAC will post a calculator to its website to demonstrate how the calculation will be applied.

Section 10327(c)(5)(A)

Proposed Change:

(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 paid for in whole or in part out of public funds and is ~~required by a public awarding body to pay~~ subject to a legal requirement for the payment of state or federal prevailing wages or 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. An additional five percent (5%) increase to the unadjusted eligible basis shall be available for projects that certify that they are 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 that they will use a skilled and trained workforce, as defined in Section 25536.7 of the Health and Safety Code, to perform all onsite work within an apprenticeable occupation in the building and construction trades. All applicants under this paragraph shall certify that contractors and subcontractors will comply with Section 1725.5 of the Labor Code, if applicable;

A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not "tuck under" parking) or through construction of an on-site parking structure of two or more levels, provided that the project will have no more than 1 parking space per studio or one-bedroom unit and 1.5 parking spaces for units with two or more bedrooms;

A two percent (2%) increase to the unadjusted eligible basis where a day care center is part of the development;

~~An increase equal to any Local Development Impact Fees as defined in Section 10302 of these regulations if the fees are documented in the application submission by the entities charging such fees;~~

A two percent (2%) increase to the unadjusted eligible basis where 100% of the units are for special needs populations;

A ten percent (10%) increase to the unadjusted eligible basis for a development wherein at least 95% of the project's upper floor units are serviced by an elevator.

With the exception of the prevailing wage increase, the Local Impact Fee increase, and the special needs increase, in order to receive the basis limit increases by the corresponding percentage(s) listed above, a certification signed by the project architect shall be provided within the application confirming that item(s) listed above will be incorporated into the project design.

Reason: The current regulations provide an increase to the threshold basis limits for projects that are required by a public awarding body to pay state or federal prevailing wages. Prevailing wage requirements are generally a function of state or federal law, rather than a requirement of the public awarding body per se. As a result, the proposed changes clarify that the increase is available to projects subject to a legal requirement for the payment of federal or state prevailing wages.

The proposed changes also allow this increase for projects financed in part by a labor-affiliated organization that requires the payment of at least prevailing wages. Failing to accommodate such projects with the threshold basis limit increase would put them at a financial and competitive disadvantage relative to projects subject to prevailing wage laws. The proposed change rectify that inequity and allow project sponsors to offset any additional wage costs associated with a lender requirement to use exclusively union labor.

The proposed changes provide an additional 5% threshold basis limit increase to projects that are subject to a project labor agreement or that will use a skilled and trained workforce to perform all onsite work within an apprenticeable occupation in the building and construction trades. Under state law, a "skilled and trained workforce" is defined as a construction workforce in which all the workers are either registered apprentices or skilled journeypersons and in which at least 60% of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation that was either approved by the Department of Industrial Relations or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor. This additional increase recognizes the benefits of and incentivizes the use of highly skilled construction workers to help ensure high-quality construction.

SB 854 (Chapter 28, Statutes of 2014) requires a contractor to be registered and qualified by the Department of Industrial Relations in order to bid on, be listed in a bid proposal for, or engage in the performance of any contract for a public work. The proposed change requires an applicant requesting the increase to the threshold basis limit for payment of prevailing wages to certify that contractors and subcontractors will comply with this legal requirement, if applicable. This change will help educate applicants about the legal obligations of their contractors and facilitate compliance.

The current regulations also provide an increase to the threshold basis limits for new construction projects where parking is required to be provided beneath the residential units (but not "tuck under" parking) or through construction of an on-site parking structure of two or more levels. Underground or podium parking is extremely expensive, and the tax credit program and other public funders largely foot the bill. Various studies have also shown that affordable housing residents own fewer cars than residents of similar market-rate housing and that the minimum parking requirements applied to affordable housing developments are often excessive. The proposed changes seek to limit CTCAC's exposure to high parking costs. Namely, the proposed changes make the threshold basis limit increase for parking available only to those projects that will have no more than 1 parking space per studio or one-bedroom unit and 1.5 parking spaces for units with two or more bedrooms. If the project will have more parking that this, it may still include parking costs in eligible basis to the extent that the project's total requested basis remains under the threshold basis limit. CTCAC understands that local governments, not applicants, establish parking ratios. While this proposed change may put developers in a bind if the local government requires parking above the thresholds and the project's requested basis then exceeds the threshold basis limits, the intent is to encourage local governments to lessen parking requirement for projects that require expensive structured parking.

The proposed changes also move the threshold basis limit increase for local development impact fees to a different subsection in order to clarify that this increase is no subject to the 39% cap on the remaining increases within this subsection.

Section 10327(c)(5)(B)

Proposed Change:

(B) A further increase of up to ten percent (10%) in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that include one or more of the following energy efficiency/resource conservation/indoor air quality items:

(1) Project shall have onsite renewable generation estimated to produce 50 percent (50%) or more of annual electricity use (dwelling unit and common area meters combined). If the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. Five percent (5%)

(2) Project shall have onsite renewable generation estimated to produce 75 percent (75%) or more of annual common area electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 75% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. Two percent (2%)

(3) Newly constructed project buildings shall be ~~forty-five percent (45%)~~fifteen percent (15%) or more energy efficient than the ~~2008~~ 2013 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). Four percent (4%)

(4) Rehabilitated project buildings shall have eighty percent (80%) decrease in estimated TDV energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the appropriate performance module of CEC approved software. Four percent (4%)

(5) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens). One percent (1%)

(6) Community Gardens of at least 60 square feet per unit. Permanent site improvements that provide a viable growing space within the project including solar access, fencing, watering systems, secure storage space for tools, and pedestrian access. One percent (1%)

(7) Install bamboo, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all kitchens, living rooms, and bathrooms (where no VOC adhesives or backing is also used). One percent (1%)

(8) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all common areas. Two percent (2%)

(9) Meet all requirements of the U.S. Environmental Protection Agency Indoor Air Plus Program. Two percent (2%)

Compliance and Verification: For placed-in-service applications, in order to receive the increase to the basis limit, the application shall contain a certification from the a HERS Rater, a GreenPoint Rater, or an accredited LEED for Homes Green Rater verifying that item(s) listed above have been incorporated into the project, except that items (5) through (8) may be verified by the project architect. For items (3) and (4), 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 application. Applicants must submit a Sustainable Building Method Workbook with the original application and the placed-in-service application. Additionally, for item (6) a management plan must be submitted and must be available to onsite staff. Failure to incorporate the features, or to submit the appropriate documentation may result in a reduction in credits awarded and/or an award of negative points.

Reason: The current regulations provide an increase to the threshold basis limits of up to 10% for projects that include one or more energy efficiency/resource conservation/indoor air quality items. One of these increases is for projects that will be at least 45% more energy efficient than the 2008 California Building Code standards. The proposed changes to this subsection reflect the recalibration to the 2013 California Building Code standards proposed for Section 10325(c)(6). Projects that receive maximum points for energy efficiency will be eligible for the increase to the threshold basis limits.

The proposed changes also require applicants seeking the threshold basis limit increase for energy efficiency to 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 energy use demonstrating the required improvement, in their placed-in-service application. Applicants must submit a Sustainable Building Method Workbook with the original application and the placed-in-service application. Given that the proposed changes in 10325(f)(7) would eliminate the requirement that all new construction projects increase energy efficiency above code, this proposed change will ensure proper verification that the applicant has qualified for the threshold basis limit increase in the event he or she chooses to increase energy efficiency.

The current regulations require a HERS Rater, a GreenPoint Rater, or an accredited LEED for Homes Green Rater to verify the completion of any of the energy efficiency/resource conservation/indoor air quality items. Some of the items, namely the alternative irrigation, community gardens, and environmental flooring items do not require the expertise of an environmental rater. The proposed changes allow the project architect to verify the completion of these specific items.

Section 10327(c)(5)(E)

Proposed Change:

(E) An increase equal to any Local Development Impact Fees as defined in Section 10302 of these regulations if the fees are documented in the application submission by the entities charging such fees.

Reason: The proposed change clarifies that the threshold basis limit increase for local development impact fees is not subject to the 39% cap on the increases with subsection (B). The 2013 regulation changes that moved the local development impact fee language into (B) are clear that it was never the intent to subject them to the 39% limit.

Section 10327(c)(6)

Proposed Change:

(6) Acquisition costs. Applications including acquisition and rehabilitation costs for existing improvements shall be underwritten using the lesser amount of the purchase price or the “as is” appraised value of the subject property (as defined in Section 10322(h)(9)) and its existing improvements without consideration of the future use of the property as rent restricted housing except if the property has existing long term rent restrictions that affect the as-is value of the property. The land value shall be based upon an “as if vacant” value as determined by the appraisal methodology described in Section 10322(h)(9) of these regulations. If the purchase price is less than the appraised value, the savings shall be prorated between the land and improvements based on the ratio in the appraisal. The Executive Director may waive this requirement where a local governmental entity is purchasing, or providing funds for the purchase of land for more than its appraised value in a designated revitalization area when the local governmental entity has determined that the higher cost is justified.

For tax-exempt bond-funded properties receiving credits under Section 10326 only or in combination with State Tax Credits, applications including acquisition and rehabilitation costs for existing improvements shall be underwritten using the sales price that is no more than the greater of the amount of debt encumbering the property or the value established by a third-party appraisal consistent with Section 10322(h)(9). If the purchase price is greater than the appraised value, the additional basis shall be prorated between the land and improvements based on the ratio in the appraisal. If the sales price is no more than the amount of debt encumbering the property and the applicant foregoes an appraisal pursuant to Section 10322(h)(9), TCAC shall approve a reasonable proration of land and improvement basis consistent with similar projects in the market area,

Reason: The proposed changes to Section 10322(h)(9)(A) allow the acquisition basis for both 4% tax credit and 4% plus state tax credit rehabilitation projects to be the greater of the sales price that is no more than the sum of the debt encumbering the property or the value established by a third-party appraisal. In the case of the former, no appraisal is required. The proposed change to this subsection conforms to the earlier change and ensures that the acquisition cost used for eligible basis purposes is the same as the acquisition cost used for underwriting purposes. The proposed change further clarifies that, in the event there is no appraisal, the applicant shall propose and TCAC shall approve a reasonable proration of the acquisition basis between land and improvements consistent with similar projects in the market area.

Section 10327(c)(9)

Proposed Change:

(9) Self-syndication. If the applicant or a Related Party intends to be the sole or primary tax credit investor in a project seeking Federal Credit Ceiling, the project shall be underwritten using a tax credit factor (i.e., price) of $1 for each dollar of federal tax credit and $.65 dollars for each dollar of State Tax Credit, unless the applicant proposes a higher value.

Reason: In the large majority of projects, developers bring in outside investors who contribute equity in exchange for access to the tax credits. The credit pricing in these cases is determined on the open market through arms-length transactions. In a few cases, the applicant or a related party may be the investor. In these cases, the credits are not offered on the open market, so there is no incentive for the investor to pay market prices. The credit pricing proposed in these applications is generally at CTCAC's minimum pricing level (currently $.90 for federal credits), which qualifies the applicant for more tax credits and allows the investor to profit by paying a lower price per dollar of tax credits. The proposed changes seek to avoid this inefficient use of credits by establishing a floor of $1 per dollar of federal credit and $.65 per dollar of state credit for purposes of determining the maximum credit amount available to the project. If the applicant proposes a higher price, the higher price will be used.

Section 10327(d)(1)

Proposed Change:

(1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations. Pursuant to Authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications relating to sites that have lost their difficult development area status within the previous 12 months as a difficult development area (DDA).

Reason: Under federal law, projects located in a qualified census tract or difficult development area (DDA) qualify for a 30% increase to eligible basis. This basis boost brings helps close financing gaps by bringing additional equity into projects, making projects financially feasible. The federal

Department of Housing and Urban Development (HUD) determines and publishes a list of DDAs, though within the 9% tax credit program CTCAC may expand DDA status to any or all 9% projects.

For 2016, HUD is changing its methodology to move from county-wide DDAs to "small area" DDAs defined by zip code boundaries. This change is expected to have a major impact in California, significantly decreasing the area of the state that falls within a DDA. HUD has not yet published the official DDA boundaries for 2016. Moreover, because it often takes years to bring a project to the stage at which it's ready to apply for tax credits, any change in DDA status can make a long-pending project financially infeasible overnight.

In lieu of the dramatic impacts that a change in DDA status can have on pipeline projects and the likelihood that moving to small area DDAs will create much more volatility into the future, the proposed changes for this and future years grandfather any 9% tax creidt project that loses DDA status for a 12 month period. In other words, CTCAC will grant DDA status to any project that was in a DDA within 12 months of the application date. CTCAC does have legal authority to extend DDA status to 4% tax credits projects.

Section 10327(d)(3)-(5)

Proposed Change:

(3) If a project subject to the requirements of Section 10337(a)(2) seeks a new reservation of Tax Credits (i.e. resyndication), the costs of any rehabilitation work determined by the capital needs assessment conducted at the time of the sale or refinancing to be necessary to be undertaken within 15 years and that remain uncompleted on the date of application shall be excluded from eligible basis.

(4) If a project that is not subject to the requirements of Section 10337(a)(2) seeks a new reservation of Tax Credits (i.e. resyndication) and has distributed refinancing and/or sale proceeds to any owner or previous owner over the last 15 year period, the costs of any rehabilitation work determined by the application's capital needs assessment to be necessary to be undertaken within 15 years, up to the cumulative amount of refinancing and/or sale proceeds distributed to any owner or previous owner over the last 15 year period, shall be excluded from eligible basis. The capital needs assessment shall be ordered by an investor or by a first mortgage or public lender who will have a loan outstanding after the resyndication. The history of cumulative distributions over the most recent 15 year period shall be specified within an audited statement accompanying the application.

(5) If an application seeking a new reservation of Tax Credits (i.e. resyndication) provides for the distribution of sale proceeds to a seller, except in the form of a seller carryback note with a term of at least 55 years, the costs of any rehabilitation work determined by the application's capital needs assessment to be necessary to be undertaken within 15 years shall be excluded from eligible basis. The capital needs assessment shall be ordered by an investor or by a first mortgage or public lender who will have a loan outstanding after the resyndication.

Reason: When a project has equity, staff believes that that equity should first benefit the rehabilitation of the project. These proposed changes generally require owners to use equity first to fund a project's 15-year rehabilitation needs by excluding the costs of such improvements from eligible basis to the extent equity was or is available.

The proposed changes to Section 10337(a)(2) prohibit any distribution from refinancing or sale proceeds to an owner of a project awarded tax credits in 2016 or later unless all rehabilitation work determined by a capital needs assessment to be necessary to be undertaken within 15 years will be completed with one year. The proposed change to this section helps enforce that requirement by excluding from eligible basis during a future resyndication the costs of any such improvements which were not completed.

For existing projects not subject to the proposed Section 10337(a)(2) and from which sale or refinance proceeds have been distributed to owners over the 15 years prior to resyndication, the proposed changes exclude from eligible basis the costs of 15-year rehabilitation needs identified in a current capital needs assessment that are less than or equal to the cumulative amount of refinancing and/or sale proceeds distributed to any owner or previous owner over the previous 15 years. The proposed changes further require that the capital needs assessment be ordered by an investor, first mortgage lender, or public lender who funds will remain in the project and that the applicant document the history of cumulative distributions.

In the case of both existing and future projects, whether or not they are subject to the proposed Section 10337(a)(2), if the applicant seeks to distribute sale proceeds to a seller through the resyndication, except in the form of a seller carryback note with a term of at least 55 years, the proposed changes exclude from eligible basis the costs of any rehabilitation work determined by the application's capital needs assessment to be necessary to be undertaken within 15 years. The proposed changes likewise require that the capital needs assessment be ordered by an investor, first mortgage lender, or public lender who funds will remain in the project.

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 the greater of 1) two percent (2%) of the year-15 gross income or 2) the lesser of $500 per unit or $25,000 total), "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 of the first three years of project operation. 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.

The reduction in maximum annual Federal Credit may not be increased subsequent to any adjustment made under this section.

Reason: Under the current regulations, projects generally must not have excess cash flow in the first three years of operation unless necessary to maintain a break-even or slightly positive cash flow in year 15. Regulation changes adopted in January 2015 sought to define break even cash flow in year 15 as no more than 2% of the year-15 gross income. In applying this new definition, CTCAC staff has realized that 2% of gross income can be a very small number for deeply targeted projects with little income. The proposed changes seek to refine the break even definition and establish a more viable amount of cash flow in year 15 for projects that would otherwise experience negative year 15 cash flow. The proposed limit on year 15 cash flow for these projects is the greater of 2% of the year-15 gross income or an absolute dollar value. The absolute dollar value would be the lesser of $500 per unit or $25,000 total.

Section 10327(g)(8)

Proposed Change:

(8) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) that are subject to the hold harmless rent provisions of the federal Housing and Economic Recovery Act of 2008 (HERA) at application shall be underwritten at the hold harmless rent limits to the extent that they do not exceed the elected federal set-aside current tax credit rent limits, except that the application of the rent adjuster shall be delayed for a number of years equal to the percentage difference between the hold harmless rent limits and the current tax credit rent limits, with the result divided by 2.5 and rounded to the nearest year. The new regulatory agreement shall reflect the current tax credit rent limits, but the project may continue to charge hold harmless HERA rents for units targeted below the elected federal set-aside (i.e,, 40% of units at 60% AMI or 20% of units at 50% AMI) provided that the hold harmless rents do not exceed the rent level for the applicable elected federal set-aside and only until such time as the current tax credit rent limits equal or exceed the hold harmless rents.

Reason: The federal Housing and Economic Recovery Act of 2008 (HERA) allows existing tax credit projects for which area median incomes (AMI) and therefore rent limits have declined to maintain their highest historic rent limit. This is known as the "hold harmless" provision of the act.

If a project resyndicates, however, the rent limits generally are reset at the limits in place on the placed in service date. In the event that these reset rent limits are below the highest historic rent limit, the owner must reduce rents. This benefits tenants but reduces the amount of debt that the project can support as part of the resyndication. Moreover, some developers have argued that, when a property is up for sale, a buyer who intends to resyndicate (and therefore lengthen the affordability term on the property) is at a disadvantage to a "yield buyer" who may seek to convert the property to market rate at the earliest possible date. They believe it is good public policy to encourage projects eventually to lengthen their affordability terms. These developers would like CTCAC to apply the hold harmless rule at resyndication, thereby allowing the highest historic rents to remain in place. CTCAC's legal authority to allow this is limited to units for which the highest historic rents are no more than the Internal Revenue Code Section 42 rent limits. In other words, CTCAC cannot allow any rent to exceed the current rent limit for a 60% AMI unit, or a 50% AMI unit if the developer elects this as his or her federal set-aside. CTCAC can, however, allow hold harmless rents to remain in place for all more deeply targeted units.

Staff believes that it is poor public policy to disadvantage buyers who may wish eventually to lengthen the term of affordability through a resyndication. As a result, the proposed changes allow projects at resyndication to maintain their highest historic rents for those units that remain under federal tax law rent limits. The regulatory agreement would continue to list the underlying rent and income level restrictions but provide the authority to exceed those limits until current area median incomes and rent limits catch up. For the purposes of underwriting such projects, CTCAC would use the hold harmless rents but delay the application of the rent adjuster by the expected number of years that the hold harmless rents would be in effect, assuming AMI increases of 2.5% per year.

Section 10328(a)(4)

Proposed Change:

(4) Rents in units targeted at 50% or more of AMI shall not increase more than 5% in any 12-month period.

Reason: In times and geographic areas when area median incomes increase rapidly, tenants rent limits will increase rent rapidly as well. In less-deeply targeted units, the absolute amount of these rent increases may be high and particularly difficult for tenants to absorb. The proposed changes seek to avoid short term rent shocks to tenants by phasing in any large increase to a rent limit over time. Specifically, the proposed changes prohibit rents in units targeted at 50% AMI or higher from increasing more than 5% in any 12-month period.

Section 10328(c)

Proposed Change:

(c) Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation but who did not receive all 20 points in the Readiness to Proceed point category shall provide the Committee with a completed updated application form no later than 180 days or 194 days, as applicable, following Credit reservation.

Upon receipt of the updated application form, the Committee shall conduct a financial feasibility and cost reasonableness analysis for the proposed project~~,~~ and determine if all conditions of the preliminary reservation have been satisfied. Substantive changes to the approved application form, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee.

Reason: This proposed change simply conforms to the staggered readiness deadlines proposed in Section 10325(c)(8).

Section 10328(h)

Proposed Change:

(h) CTCAC may contract with accountants and contractors or construction engineers to review the accuracy and reasonableness of a subset of final cost certifications submitted each year. The owner of a project selected for review and the accountant who prepared the final cost certification for such a project shall provide all requested information and generally facilitate the review.

Reason: CTCAC has been concerned about high project costs. In addition, CTCAC is aware of one case in which the developer is alleged to have falsified invoices for construction work. In order to help ensure the accuracy of final cost certifications and the reasonableness of project costs, the proposed changes permit CTCAC to contract with accountants and contractors or construction engineers to review the accuracy and reasonableness of a subset of final cost certifications submitted each year. The concept is to spot audit the auditors. The proposed changes also require the owner of a project selected for review and the accountant who prepared the final cost certification for such a project to provide all requested information and facilitate the review.

Section 10337(a)

Proposed Change:

(a) Regulatory Agreement. All recipients of Tax Credits, whether Federal only, or both Federal and State, are required to execute a regulatory agreement, as a condition to the Committee's making an allocation, which will be recorded against the property for which the Tax Credits are allocated, and, if applicable, will reflect all scoring criteria proposed by the applicant in the competition for Federal and/or State housing Credit Ceiling.

(1) For all projects receiving a reservation of competitive 9% federal tax credits on or after January 1, 2016 for which all general partners will be Qualified Nonprofit Organizations, the partnership agreement shall include a Right of First Refusal (“ROFR”) for one or more of the nonprofit general partners to purchase the project after the end of the 15-year federal compliance period. The price to purchase the project under this ROFR shall be the minimum price allowed under IRC Section 42(i) plus any amounts required to be paid to the tax credit investors that remains unpaid for approved Asset Management Fees and required payments under the limited partnership agreement for tax credit adjusters that remain outstanding at the time of the sale. The applicant shall demonstrate compliance with this requirement prior to the issuance of the 8609 forms.

(2) For all projects receiving a reservation of 4% and 9% federal tax credits on or after January 1, 2016, the regulatory agreement shall prohibit any distribution from refinancing or sale proceeds to an owner or owners unless all rehabilitation work determined by a capital needs assessment to be necessary to be undertaken within 15 years from the date of sale or refinancing shall be completed within one year of the date of sale or refinancing. The capital needs assessment shall be ordered by a first mortgage or public lender who shall have a loan outstanding after the sale or refinancing.

(3) The regulatory agreement for projects that receive a reservation of 4% or 9% federal tax credits on or after January 1, 2016 and in which at least 50% of the units are subject to a continuing state or federal project-based rental assistance contract shall limit the cumulative allowed distribution from refinancing and sale proceeds permitted to an owner or owners, and/or to a previous owners as a payoff of a seller carryback note, over the most recent 15-year period of ownership. For

purposes of calculating the limitation amount, the total distributions shall be reduced by the percentage of non-Tax Credit units in the project and shall not include any amount that is financed with a seller carryback note with a term of at least 55 years. If the rental assistance rents exceed the TCAC rent limits on the date of sale or refinancing, the cumulative distribution permitted (after funding the rehabilitation required as a result of the 15-year capital needs assessment pursuant to paragraph (2)) shall not exceed the difference between the value of the property based on tax credit rent limits and the debt encumbering the property, as determined by a CTCAC-ordered appraisal.

(4) Where a Project is receiving renewable project-based rental assistance or operating subsidy:

(~~1~~A) the Sponsor shall in good faith apply for and accept all renewals available;

(~~2~~B) if the project-based rental assistance or operating subsidy is terminated through no fault of the owner, the property owner shall notify CTCAC in writing immediately and shall make every effort to find alternative subsidies or financing structures that would maintain the deeper income targeting contained in the recorded CTCAC regulatory agreement. Upon documenting to CTCAC's satisfaction unsuccessful efforts to identify and obtain alternative resources, the owner may increase rents and income targeting for Rent Restricted Units above the levels allowed by the recorded regulatory agreement up to the federally-permitted maximum. Rents shall be raised only to the extent required for Financial Feasibility, as determined by CTCAC. Where possible, remedies shall include skewing rents higher on portions of the project in order to preserve affordability for units regulated by TCAC at extremely low income targeting. Any necessary rent increases shall be phased in as gradually as possible, consistent with maintaining the project's Financial Feasibility. If housing Special Needs populations, the property owner shall attempt to minimize disruption to existing households, and transition to non-Special Needs households only as necessary and upon vacancy whenever possible.

Reason: As owners of the property, the tax credit investor and the developer negotiate the terms of the end of their relationship in a partnership agreement. Currently, partnership agreements are structured for the appreciation in value of the property to be shared between the parties when there is a transfer of ownership. At the end of the 15-year federal compliance period, tax credit investors generally seek to terminate their ownership of a project. Given the escalation of property values in many high cost areas in California, this can result in the appreciated value of the property remaining with the investor when it could otherwise be borrowed against to rehabilitate the property. Historically, an investor's equity contributions to the project have been based on the tax benefits to be received over time, which means that an equity distribution is an unexpected gain for owners for which little to no public benefit was received. Given that the development of the project was only feasible as a result of the tax credits available to the project (i.e., through indirect public investment), staff believes it is appropriate to require 9% tax credit projects with only non-profit general partners to be subject to a right of first refusal for the general partner to purchase the property, consistent with federal law, for an amount equal to the principal amount of the outstanding indebtedness on the property and the taxes attributable to the sale. The right of first refusal will allow the non-profit partner to purchase the property at a value of debt plus taxes. As a result, the proposed changes state that CTCAC will not issue tax form 8609 until the owner provides CTCAC with evidence that such a right of first refusal is included in the partnership agreement. Requiring this right of first refusal for non-profit projects will ensure that equity in the project remains with the project. CTCAC is not proposing to apply this right of first refusal to projects that have a for-profit general partner. Federal law only provides a right of first refusal to a non-profit or public entity. While projects with for-profit general partners usually have a non-profit managing general partner, giving only the non-profit general partner the right of first refusal essentially cuts the for-profit partner out of the ownership structure and any value that the project has created. It is not CTCAC's intent to alter general partner interests with this provision.

When a project has equity, staff believes that that equity should first benefit the rehabilitation of the project. As a result, the proposed change prohibits any distribution from refinancing or sale proceeds to an owner of a project awarded tax credits in 2016 or later unless all rehabilitation work determined by a capital needs assessment to be necessary to be undertaken within 15 years will be completed with one year. The proposed change further requires that the capital needs assessment be ordered by a first mortgage or public lender whose funds will remain in the project. This is intended to ensure greater objectivity in the capital needs assessment.

Staff also believes that projects with rental assistance contracts have the greatest likelihood of creating high value, because rental assistance rents may exceed CTCAC rent limits over time. In such cases, the appreciation resulting from this rent overhang is less a result of the owner's efficient management practices than a result of the policies of the public entity providing the rental assistance. Staff therefore believes it is appropriate to limit the cumulative distribution of sale or refinancing proceeds to such owners to ensure that any value created by the rent overhang remains with the project and is available to finance rehabilitation needs. As a result, with respect to projects that receive a reservation of 4% or 9% federal tax credits in 2016 or later and in which at least 50% of the units are subject to a continuing state or federal project-based rental assistance contract, the proposed changes limit the cumulative distribution from refinancing and sale proceeds to current or previous owners over a 15-year period. If the rental assistance rents exceed the TCAC rent limits on the date of sale or refinancing, the cumulative distribution permitted (after funding the rehabilitation required as a result of the 15-year capital needs assessment as discussed above) shall not exceed the difference between the value of the property based on tax credit rent limits and the debt encumbering the property, as determined by a CTCAC-ordered appraisal. In essence, the owner may only distribute value which is not created by the rent overhang. To account for mixed-income projects, the total distributions are reduced by the percentage of non-Tax Credit units in the project. The language also clarifies that the total distributions do not include any amount that is financed with a seller carryback note with a term of at least 55 years.

Lastly, the proposed changes reletter an existing paragraph to accommodate the new provisions.

Section 10337(b)(2)

Proposed Change:

(2) Accessible Units: Reasonable Accommodations. ~~Projects~~ All new and existing Tax Credit projects with fully accessible units for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows.

Reason: The current regulations require projects to provide priority access to accessible units to persons who need the accessibility features. The proposed changes clarify that this requirement applies to existing as well as new tax credit projects.

Section 10337(c)(1)

Proposed Change:

(1) Record keeping. The owner of a Credit project is required to keep records for each qualified low income building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms, and unit size in square feet); the percentage of residential rental units in the building that are low-income units; the rent charged for each unit; a current utility allowance as specified in 26 CFR Section 142.10(c) and Section 10322(h)(21) of these regulations (for buildings using an energy consumption model utility allowance, that allowance must be calculated using the most recent version of the CUAC); the number of household members in each unit; notation of any vacant units; move-in dates for all units; tenant's (i.e., household) income; documentation to support each household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the Credit period; and, the character and use of any nonresidential portion of the building included in the building's eligible basis.

Upon request, scattered site projects shall make these records available for inspection by CTCAC staff at a single location.

Reason: The proposed definition of a scattered site project in Section 10302(kk) generally expands the universe of rehabilitation projects that may come in as scattered site projects. While this helps reduce the costs of rehabilitation projects, it creates complications for CTCAC's compliance section which must not only conduct site inspections are more far-flung locations but also review tenant files from disparate locations. While the former is unavailable, the proposed change seeks to mitigate the latter by requiring projects, upon request, to make tenant files available for inspection by CTCAC staff at a single location.

Section 10337(c)(3)(H)

Proposed Change:

(H) if the project is subject to a cash flow limitation in its Regulatory Agreement, that the limitation has been met.

Reason: Current regulatory agreements for projects that have received state tax credits contain a limitation on project cash flow. The proposed changes require owners of projects subject to such limitation to certify annually that the limitation has been met.

Section 10337(f)

Proposed Change:

(f) Fines for uncorrected non-compliance during the extended use period. CTCAC shall develop a schedule of tenant eligibility and affordability violations and housing quality standard violations for which fines may be levied during the extended use period if the violations are not corrected during the correction period. The schedule shall also contain fine amounts. CTCAC shall adopt and revise the schedule by resolution at a public meeting.

Any fines not paid within six months shall become a lien against the property. An owner may appeal the imposition of a fine to the Executive Director, and the Executive Director may also approve a payment plan.

Reason: During a project's 15-year federal compliance period, uncorrected violations result in CTCAC filing a form 8823 with the Internal Revenue Service, which may result in a recapture of tax credits from the project. This has proven to be an effective remedy to get violations corrected. After the 15-year compliance period, recapture is not available as a remedy. CTCAC may impose negative points on an owner or project team member, but this is only effective to the extent that the person or entity plans to submit new applications. CTCAC can also bring suit against the owner to correct violations, but this is an expensive and time-consuming endeavor.

In order to help ensure long-term compliance with program rules and regulations, the proposed changes seek a more effective and less drastic remedy for violations that occur after the federal 15-year compliance period. Specifically, the proposed changes require CTCAC to develop a schedule of tenant eligibility and affordability violations and housing quality standard violations for which fines may be levied during the extended use period if the violations are not corrected during the correction period. CTCAC shall adopt and revise the schedule, including fine amounts, by resolution at a public meeting.

In the event that CTCAC were to levy a fine pursuant to the adopted schedule and the owner were not to pay the fine within six months, the proposed changes further provide that the unpaid amount shall become a lien against the property. Lastly, the proposed changes allow an owner to appeal the imposition of a fine to the Executive Director and the Executive Director to approve a payment plan.