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Mark Stivers

DATE: October 9, 2015

TO: Low Income Housing Tax Credit Stakeholders

FROM: Mark Stivers, Executive Director

SUBJECT: Fall 2015 Final Proposed Regulation Changes: Responses to Comments Received

On July 16, 2015 the California Tax Credit Allocation Committee (TCAC or the Committee) released proposed regulation changes. TCAC staff subsequently held four public hearings on the following dates:

- San Diego, Wednesday, July 29th, 2015
- Los Angeles, Thursday, July 30th, 2015
- Sacramento. Monday August 3rd, 2015
- Oakland, Wednesday August 5th, 2015

TCAC accepted written comments on these initial proposed regulation changes through Monday, August 31, 2015.

On September 8, 2015 TCAC subsequently proposed significant revisions to certain sections of the initially proposed regulation changes. TCAC accepted written comments on these revised sections through September 30, 2015.

In total, 156 individuals, organizations, and groups formally commented on the initial and revised proposed regulation changes. TCAC staff carefully considered all comments received and has finalized the recommendations to the Committee for consideration and adoption on Wednesday, October 21, 2015. The attached Final Statement of Reasons summarizes comments received, TCAC staff's responses to those comments, and any revised proposed changes. The initially proposed changes, as revised by the September 8 revision document, are shown in red with single-underlined additions (additions) and single strikeout deletions (~~deletions~~). Additional changes or deletions suggested by this Final Statement of Reasons are shown in red, highlighted in yellow, and signified by double-underlined additions (additions) and double strikeout deletions (~~deletions~~).

Staff proposes to withdraw the following proposed changes:

1. Withdraw the required submittal of the baseline assessed valuation with the place in service package or within 30 days of receipt by the owner in order to implement the proposed changes in Section 10337(a)(3). **Section 10322(i)(21), Page 40.**

2. Withdraw the proposal to 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 50.**

3. Withdraw the proposal to require new construction projects to include systems sufficient to irrigate only with reclaimed water, greywater, or rainwater under normal conditions. **Section 10325(f)(7)(L), Page 87.**

4. Withdraw the proposal to 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 89.**

5. Withdraw the proposal to require for 9% projects that at least $36,000 in hard construction costs per unit be for rehabilitation costs other than the costs of rehabilitation for leasing offices, parking facilities, or landscaping. **Section 10325(f)(10), Page 90.**

6. Withdraw the proposal to require acquisition and/or rehabilitation projects applying for 9% tax credits to demonstrate that they are not feasible as 4% tax credit projects. **Section 10325(f)(12), Page 91.**

7. Withdraw the proposal to require that at least $18,000 in hard construction costs per unit for 4% resyndication projects and $13,000 per unit in other 4% projects be for rehabilitation costs other than the costs of rehabilitation for leasing offices, parking facilities, or landscaping. **Section 10326(g)(7), Page 97.**

8. Withdraw the proposal to decrease the threshold basis limit increase for structured parking by a percentage equal to the percentage by which the number of parking spaces exceeds proposed benchmark ratios. **Section 10327(c)(5)(A), Page 104.**

9. Withdraw the proposal to prohibit rent increases on units at 50% or greater AMI from exceeding 5% per year. **Section 10328(a)(4), Page 114.**

10. Withdraw the proposal, for new 4% and 9% tax credit projects, to require the contribution of a share of net equity from a future Transfer Event to a sponsor-held trust account to be used for affordable housing purposes. **Section 10337(a)(3), Page 117.**

11. Withdraw the proposal to institute fines for non-compliance during the extended use period and allow liens for non-payment. **Section 10337(f), Page 123.**

Pursuant to comments received, staff proposes to amend the following proposals:

1. Continue to define “Net Project Equity,” “Qualified Capital Needs Assessment,” “Scattered Site Project,” “Transfer Event,” and “Tribal Trust Land” but 1) clarify that the reference in the “Scattered Site” definition to “a pre-existing project-based Section 8 contract” refers to one contract, 2) allow qualified capital needs assessments to meet FHA or Freddie Mac standards and clarify that an analyst meeting the ASTM standards shall use a recognized industry standard to establish useful life estimates for the replacement reserve analysis, and 3) additionally exclude from the definition of a “Transfer Event” a) a project with less than 50% tax credit units, b) a transfer of the ownership of a project subject to an existing tax credit regulatory agreement with a remaining term of 5 or less years if the transfer is made in connection with a new reservation of 9% or 4% tax credits, and c) the arms-length sale of a project for which the parties entered into a purchase agreement prior to October 9, 2015. **Section 10302(cc)-(uu), Page 12.**

2. Within the homeless assistance priority, continue to set a minimum contribution from the identified funding sources at $500,000 or $10,000 per total units, whichever is greater, but clarify that the $10,000 per unit refers to all units in the project irrespective of the number of units assisted by the referenced programs. Continue to require commitment of Mental Health Services Act funds at time of application. **Section 10315(b), Page 19.**

3. Continue to establish a housing type goal for acquisition and/or rehabilitation projects solely for purposes of the tiebreaker but set the goal at 20% both statewide and within the rural set-aside and clarify that a project will be considered an acquisition and/or rehabilitation project if at least 50% of the units were previously residential dwelling units. **Section 10315(g), Page 23.**

4. Continue to require written approval of the Executive Director for a Transfer Event related to an existing or new tax credit project and condition approval on the submission of a Qualified Capital Needs Assessment and the post-Transfer Event owner’s entrance into a covenant with TCAC to set aside at closing adequate funds to perform short term work identified as needed within two years and to make deposits to reserves as are necessary to fund remaining work identified as needed within 15 years. Amend the language to clarify that a waiver or modification may be granted if the owner can demonstrate that the transfer event will not produce sufficient Net Project Equity to fund “all or any portion of the work” contemplated by the Qualified Capital Needs Assessment. Further amend the waiver language to provide that the presumption of insufficient equity will apply even if there are distributions to limited partners to cover the limited partners’ taxes related to the transfer event. Further clarify the exemption language in (b)(4) for projects subject to a covenant that have a remaining term of five or less years.

   Continue to subordinate the covenant to any third party lender and require the owner to certify compliance with the covenant annually.

   Continue to require resyndication projects subject to a covenant to include a capitalized replacement reserve equal to the cost of any uncompleted 2-year short term work from the

covenant and to require that any increase in the acquisition price which is attributable to a reduction in the amount of annual deposits into the replacement reserve account to remain in the project as a seller carryback note or a general partner equity contribution.

Restore the language clarifying that paragraph (1) applies to all ownership or Tax Credit transfers requested after January 31, 2014. Clarify that the requirements of (b)(2) apply to all transfer events for which approval is requested on or after the effective date of the regulations. **Section 10320(b), Page 29.**

5. Continue to prohibit the execution of a stand-still agreement related to a Transfer Event unless the conditions of Section 10320(b) have been satisfied but clarify that the requirements of Section 10320(b) apply to requests made on or after October 21, 2015 and correct an incomplete cross-reference. **Section 10320(c) and (d), Page 34.**

6. Continue to streamline the market study requirement for the rehabilitation of specified affordable housing developments but correct a mistaken cross-reference. **Section 10322(h)(10), Page 37.**

7. Continue to require resyndication projects to use all funds in reserve accounts for rehabilitation of the property but clarify that the language relates only to funds in replacement reserve accounts and allow reserve funds to be used to capitalize another funder's minimum reserve requirement. **Section 10322(k), Page 40.**

8. Continue to allow the imposition of negative points for serious failure to submit required compliance documentation but provide that affected entities shall first receive notice and have a cure period for such serious violations. **Section 10325(c)(3)(G), Page 46.**

9. Continue to allow for the imposition of negative points for failure to comply with a requirement of the TCAC regulatory agreement or a covenant related to a Transfer Event but delete the provision relating to an automatic notice and cure period. **Section 10325(c)(3)(U), Page 47.**

10. Expand the points option in the sustainability category to provide points for both new construction and rehabilitation projects that use rainwater, greywater, or recycled water to meet irrigation needs. **Section 10325(c)(6), Page 57.**

11. Continue to remove separate readiness points for design review and accordingly reduce maximum readiness points to 15 but clarify in the general land use readiness provision that the project must have all approvals subject to the discretion of local or tribal officials. **Section 10325(c)(8), Page 62.**

12. Continue to 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, but clarify that the language prohibiting the provider from receiving a benefit from any member of the development team refers to benefits received at any time. **Section 10325(c)(10), Page 67.**

13. Continue to multiply the leveraged soft resources factor of the tiebreaker by a size factor for projects with 50 or more new construction units but delay implementation of the size factor until 2017 and clarify that the formula refers to tax credit units. **Section 10325(c)(10), Page 67.**

14. Continue to alter the credit efficiency factor in the tiebreaker by adding back leveraged soft resources that supplant eligible basis but exclude fee waivers. **Section 10325(c)(10), Page 67.**

15. Continue to allow the use of an appraisal reviewer if a 15% reduction in the value of land and improvements would change an award outcome but clarify that it relates only to donated land and improvements, that the reviewer shall develop his or her own opinion of value if the submitted appraisal is inappropriate, misleading, or inconsistent with the data, and that the use of the reviewer's value is only for purposes of the tiebreaker. **Section 10325(c)(10), Page 67.**

16. Continue to allow negative points for projects awarded credits in 2016 or after that exceed 140% of most recent threshold basis limit at placed in service but provide that the increase in costs shall be measured against the higher of the threshold basis limit at application or placed in service and, for a high-cost project permitted by the Committee at application, allow for a 10% increase over the percentage approved by the Committee based also on the higher of the threshold basis limits at application or placed in service. **Section 10325(d), Page 73.**

17. Continue to delete the waiver authority relating to specified ratios in the market study to reflect the more generous streamlining of the market study for similar projects in Section 10322(h)(10) but exempt SRO rehabilitation projects from the square foot ratio requirement in the market study. **Section 10325(f)(1)(B), Page 75.**

18. Withdraw the proposal to specifically disallow waivers to the manager unit requirement and instead add a clearer authority for both new construction and rehabilitation projects to seek a waiver with respect to managers' units. **Section 10325(f)(7), Page 78.**

19. Continue to require applicants to consult with the design team and an energy analyst early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency or generation measures beyond those required but add specificity to the language by 1) requiring applicants to meet with a Certified Energy Analyst (CEA) and LEED or Green Point rater (which may be one person), 2) requiring energy analysts to complete an energy analysis prior to the meeting and applicants to report on the model results, meeting agenda, attendees, and outcomes in the application, and 3) to delete the reference to cost-effective strategies as unnecessary. **Section 10325(f)(7)(A), Page 80.**

20. Continue to clarify that roofing minimum construction standards only apply in rehabilitation projects if new roofing is being installed but remove the requirement that roofing be replaced if it has less than ten years useful remaining life. **Section 10325(f)(7)(C), Page 82.**

21. Continue to require resyndication projects to keep existing affordability for another 55 years and allow waivers for projects with negative cash flow or specified losses of rental or

operating subsidy but expand the waiver authority to allow a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional. **Section 10325(f)(11), Page 90 and Section 10326(g)(8), Page 98.**

22. Continue to disqualify any applicant to TCAC who is debarred by CDLAC but correct the paragraph numbering. **Section 10325(f)(13), Page 92.**

23. Continue to reduce the 3-bedroom requirement for large family housing to 25% but alter the 2-bedroom requirement to require an additional 25% of units that are 2-bedroom or larger and clarify that the two-bedroom requirement only applies to projects receiving entitlements after January 1, 2016 . **Section 10325(g)(1)(A), Page 93.**

24. Alter the requirement for special needs projects to meet an additional housing type by allowing projects to meet SRO or senior housing type requirements for the non-special needs units or to meet an alternative unit mix requirement of 20% 1-bedroom units and 10% larger units among the non-special needs units. Allow the Executive Director to grant a waiver if the new unit mix requirements conflict with entitlements received prior to January 1, 2016. **Section 10325(g)(4), Page 94.**

25. Continue to increase the minimum rehabilitation requirement for 4% projects but require $15,000 in hard construction costs per unit for all projects as opposed to that amount for non-resyndication projects and $20,000 per unit for resyndication projects. **Section 10326(g)(7), Page 97.**

26. Continue to increase developer fees for 4% projects but remove the distinction between projects with and without public funds and instead require the increase in fees above $2.5 million to be deferred or contributed back to the project for all projects. Continue to increase the deferral threshold on a per unit basis for projects over 100 units but double the per unit increase to $10,000 per unit. Continue to increase the threshold at which applicants earn a developer fee based on 15% of the acquisition but set the threshold at rehabilitation costs of $20,000 per unit instead of $30,000 per unit. **Section 10327(c)(2)(B), Page 100.**

Staff proposes to proceed with the following changes as originally proposed or as revised on September 8:

1. Alter the homeless definition to eliminate the 90 day residency limit for persons coming out of an institution. **Section 10315(b)(1)(C), Page 21.**

2. Apply the housing type goal for rural acquisition and/or rehabilitation projects proposed in Section 10315(g) within the rural set-aside. **Section 10315(c), Page 21.**

3. 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), removing the requirement for these communities to contract with LIHTC developers, and require applications to score the minimum points in these categories, as opposed to the maximum. **Section 10315(c)(2), Page 22.**

4. Increase the special needs housing type goal to 25%. **Section 10315(g), Page 23.**

5. Require 4% tax credit projects requesting state tax credits to apply to CDLAC within 10 days after a TCAC reservation, as opposed to by the TCAC application deadline. **Section 10317(g)(4), Page 27.**

6. Accept applications for State Farmworker Credits to be used with 4% federal credits over the counter. Clarify that State Farmworker Credits may be awarded during competitive rounds to 9% tax credit projects based on the highest scoring Farmworker Housing applications that will receive a reservation of federal credits. **Section 10317(h), Page 27.**

7. 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 28.**

8. Codify TCAC's current policy on subordinations and stand-still agreements and specifically allow for subordination to restructured public loans. Give the Executive Director the authority to permit other subordinations as appropriate. **Section 10320(c) and (d), Page 34.**

9. 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 36.**

10. Allow scattered site projects to submit one market study with separate rent comparability matrices for each site. Clarify timing requirements for market study inspections and the rule regarding the award of credits in locations where other projects have or will receive an award. **Section 10322(h)(10), Page 37.**

11. Delete language referring to a list of CUAC quality control reviewers. Remove an erroneous reference to rehabilitation projects. Require use of the California Energy Commission's Photovoltaic Calculator to determine any solar values. **Section 10322(h)(21), Page 39.**

12. Require applicants at placed in service to demonstrate site control. **Section 10322(i)(20), Page 39.**

13. Delete the definition of a scattered site project to conform with the addition of a definition of Scattered Site Projects in Section 10302. **Section 10325(c), Page 41.**

14. Remove a redundant reference to a minimum rehabilitation threshold. **Section 10325(c)(1)(A), Page 42.**

15. 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 43.**

16. Update the negative point category for readiness to conform to the staggered 180- and 194-day deadline proposed in Section 10325(c)(8). **Section 10325(c)(3)(B), Page 46.**

17. Allow the imposition of negative points for failure to obtain prior approval of a Transfer Event. **Section 10325(c)(3)(M), Page 47.**

18. Allow the imposition of negative points for projects awarded credits in 2016 or after that exceed 140% of the most recent threshold basis limit at placed in service. Impose negative points for projects that have negative points from CDLAC. **Section 10325(c)(3)(S) and (T), Page 47.**

19. Allow scattered site rehabilitation projects to meet project type requirements at each site independently. **Section 10325(c)(4), Page 49.**

20. Delete redundant references in the beginning of the site and service amenity scoring category. **Section 10324(c)(5), Page 49.**

21. Disregard site amenity points within the Native American apportionment. Widen specified radii for site amenities. Provide site amenity points for the provision of transit passes. **Section 10325(c)(5)(A), Page 50.**

22. Require applicants to provide committed services for 15 years. **Section 10325(c)(5)(B), Page 56.**

23. Set the maximum sustainability points at 5 points. Allow energy efficiency points in lieu of certification points. Recalibrate energy efficiency and zero net energy levels. Extend the lookback period for recent improvements to rehabilitation projects. Remove continual staff training requirement from the sustainable building management category and reduce points from 3 to 2. Update the verification requirements. **Section 10325(c)(6), Page 57.**

24. Stagger 180-day readiness deadline randomly (half of projects at 180 days and half at 194 days). Clarify the readiness points building permit requirement for design-build projects and cities that do not release permits until grading is complete. Allow TCAC to impose negative points as an alternative to credit rescission for failure to meet the readiness deadline. **Section 10325(c)(8), Page 62.**

25. 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. 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 65.**

26. Count operating and rental subsidies from the California Department of Health Care towards the public funding numerator increase of the tiebreaker. **Section 10325(c)(10), Page 67.**

27. 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 73.**

28. Codify TCAC's current policy that comparable properties are weighted in relation to their size for purposes of the value ratio in the market study. **Section 10325(f)(1)(B), Page 75.**

29. Prohibit substitution of HOME or RHS funds that qualified an applicant for those apportionments. **Section 10325(f)(3), Page 76.**

30. Correct a grammatical error. **Section 10325(f)(4), Page 78.**

31. Remove subjective language relating to neighborhood compatibility, durability, and suitability from the minimum construction standards. Require applicants receiving CDLAC points for sustainability to provide documentation to TCAC at application and at placed in service. 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 78.**

32. With respect to minimum construction standards for 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. Require applicants receiving CDLAC points for sustainability to provide documentation to TCAC at application and at placed in service. **Section 10325(f)(7)(A), Page 80.**

33. Clarify that landscaping minimum construction standards only apply in rehabilitation projects if the landscaping is being provided or replaced. **Section 10325(f)(7)(B), Page 82.**

34. Clarify that exterior door minimum construction standards only apply in rehabilitation projects if exterior doors are being provided or replaced. **Section 10325(f)(7)(D), Page 83.**

35. Alter the size requirement for water heaters and clarify that water heater minimum construction standards only apply in rehabilitation projects if water heaters are being provided or replaced. **Section 10325(f)(7)(G), Page 84.**

36. Simplify flooring minimum construction standards and clarify that flooring minimum construction standards only apply in rehabilitation projects if flooring is being provided or replaced. **Section 10325(f)(7)(H), Page 84.**

37. Clarify that insulation minimum construction standards only apply in rehabilitation projects if the insulation is being provided or replaced. **Section 10325(f)(7)(I), Page 85.**

38. 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. Clarify language relating to number of manager units required. **Section 10325(f)(7)(J), Page 85.**

39. Apply California Building Code accessibility standards to rehabilitation projects in general but require them to provide 4% communications accessible units in accordance with Chapter 11(B). **Section 10325(f)(7)(K), Page 86.**

40. Clarify the at-risk definition. **Section 10325(g)(5)(B)(i), Page 95.**

41. Align the site control documentation standards for 4% tax credit project with those for 9% tax credit projects. **Section 10326(g)(2), Page 95.**

42. Conform land use entitlement requirements for 4% tax credit applications to CDLAC requirements. **Section 10326(g)(3), Page 96.**

43. Require applicants to submit the CDLAC bond application prior to or concurrently with the CTCAC application. **Section 10326(h), Page 99.**

44. Require applicants to receive a CDLAC bond allocation within 90 days of receiving a tax credit reservation. **Section 10326(j)(1), Page 99.**

45. Clarify that the prevailing wage threshold basis limit increase is available to projects subject to a legal requirement for the payment of federal or state prevailing wages. Allow this increase for projects financed in part by a labor-affiliated organization that requires the payment of at least prevailing wages. 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. Require an applicant requesting the increase to the threshold basis limit for payment of prevailing wages to certify that contractors and subcontractors will comply with SB 854 (Chapter 28, Statutes of 2014), if applicable. Move the threshold basis limit increase for local development impact fees to a different subsection in order to clarify that this increase is not subject to the 39% cap on the remaining increases within this subsection. **Section 10327(c)(5)(A), Page 104.**

46. Recalibrate the energy efficiency benchmark at which a threshold basis limit increase is available to conform with the benchmarks proposed for Section 10325(c)(6). Allow project architects to certify compliance with specified minimum construction standards and threshold basis limit increase standards that are not sustainability related. **Section 10327(c)(5)(B), Page 108.**

47. Place the threshold basis limit increase for local development impact fees in this subsection in order to clarify that this increase is not subject to the 39% cap on the remaining increases within subsection (A). **Section 10327(c)(5)(E), Page 109.**

48. Allow applicants to forego an appraisal and use as the acquisition basis the amount of debt encumbering the property. Provide guidance for how to apportion the value of land and improvements. **Section 10327(c)(6), Page 110.**

49. Set tax credit factor pricing at $1 for self-syndicating 9% tax credit projects or projects in which the investor is the applicant or a Related Party. **Section 10327(c)(9), Page 111.**

50. Grandfather for one year the Difficult Development Area (DDA) status of any 9% tax credit project that loses DDA status. **Section 10327(d)(1), Page 111.**

51. 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 112.**

52. Allow the temporary use of hold harmless rents (for rents below 60% AMI) at resyndication. **Section 10327(g)(8), Page 113.**

53. Conform to the change in Section 10325(c)(8). **Section 10328(c), Page 115.**

54. Authorize TCAC to audit final cost certifications for accuracy and reasonableness. **Section 10328(h), Page 116.**

55. Subject new 9% tax credit 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. Include within regulatory agreements for projects receiving a reservation of 4% and 9% federal tax credits on or after January 1, 2016 a requirement that owners shall obtain written approval of the Executive Director for any Transfer Event. **Section 10337(a), Page 117.**

56. Clarify that the requirement to give preference for accessible units to persons with mobility impairments or hearing, vision or other sensory impairments applies to existing as well as new tax credit projects. **Section 10337(b)(2), Page 122.**

57. For all scattered site projects, require files to be brought to one location for inspection upon request of TCAC. **Section 10337(c)(1), Page 122.**

58. Require certification of cash flow limits for projects with state credits subject to such limits. **Section 10337(c)(3)(H), Page 123.**

Section 10302(cc)-(uu)

Initial and Revised Proposed Changes:

Define "Net Project Equity," "Qualified Capital Needs Assessment," "Scattered Site Project," "Transfer Event," and "Tribal Trust Land."

Comments Received:

Net Project Equity

One commenter, for purposes of the equity sharing provisions of Section 10337(a), urged that the definition exclude equity contributions by partners who do not receive more than 1% of the benefit of the tax credits.

One commenter suggested that the calculation should reflect only the cash distribution to the developer and deduct income taxes and investor distributions and payments.

Qualified Capital Needs Assessment

One commenter encouraged explicitly allowing capital needs assessments to meet Freddie Mac and FHA standards and giving the Executive Director authority to accept other standards as required by the primary lender.

One commenter argued that the standard for determining that the capital needs assessment "clearly set[s] forth" the short and long term needs is vague and should be clarified such that the buyer or seller self-certifies compliance.

Scattered Sites

Six commenters, including two organizational commenters, supported expanding the definition of scattered site projects.

One commenter generally supported the definition but urged no numerical limit on the number of existing affordable housing sites in a scattered site application.

One commenter generally supported the scattered site definition but suggesting removing the requirement that projects meeting the distance requirement be in the same city or county.

One commenter supported the definition of scattered sites but recommended waiver authority for the 1-mile diameter on the conversion of non-restricted units.

One commenter suggested that TCAC limit the proximity of scattered site rehabilitation projects under a single project-based Section 8 contract to the same region to avoid difficulties in assigning credits and tiebreakers in cases where a project crosses a regional boundary.

One organizational commenter, endorsed by another commenter, appreciated this proposal's attempt at allowing tax credits to be better utilized for scattered sites but expressed concerns about the impact of the 1 mile radius in rural areas. The commenter suggested increasing the radius to 2 miles for rural areas and providing the Executive Director discretion to allow exceptions to the rule.

Two commenters, including an organization commenter, recommended that TCAC allow scattered site rehabilitation projects in rural areas to cross county boundaries as single site projects are often not large enough for resyndication.

One commenter stated that limiting scattered-site projects from a 5-mile to a 1-mile diameter is overly restrictive and will greatly reduce the possibility of piecing together scattered site projects. Restrictive zoning limits make it difficult to find sites that can support densities needed to achieve economically viable projects, and many communities oppose permanent supportive housing on large single sites. Moreover, the commenter states that tenants will not be isolated because developers are required to provide minimum amounts of services and management.

Two commenters, including one organizational commenter, supported the provisions except for the limitation of 1 mile for new construction or conversion projects. Given community opposition, a strategy to increase project size in special needs projects is to combine multiple sites. A 1-mile requirement limits this strategy. The commenter recommends maintaining the 5-mile allowance.

One organizational commenter recommended allowing a 5-mile diameter for up to five new construction and conversion projects and creating specific requirements to address the quality and availability of services and management.

Transfer Event

Two commenters sought an exemption for a transfer of the ownership of a project subject to an existing tax credit regulatory agreement with a remaining term of five (5) or less years if the transfer is made in connection with a new reservation of 9% or 4% tax credits.

Two commenters, including one organizational commenter, recommended exempting sales in which the purchase contract was entered into prior to the effective date of the regulations.

Three commenters, including one organizational commenter, suggested exempting sales or additional debt in which the only distributions are to pay the investor's taxes and related liabilities.

Tribal Trust Land

One commenter suggested that the defined term be "Tribal Land" to be consistent with the expansion to off-reservation land.

Response to Comments:

Net Project Equity

Because staff is proposing to withdraw the addition of Section 10337(a)(3), the comment requesting exclusion of equity contributions by partners who do not receive more than 1% of the benefit of the tax credits is moot.

Staff continues to believe that equity distributions to investors should be treated equally as distributions to general partners.

Qualified Capital Needs Assessment

Staff believes that explicitly stating the capital needs assessment standards that must be met will provide greater clarity and facilitate the timely approval of transfer events. Staff concurs that capital needs assessments meeting FHA or Freddie Mac standards are acceptable and proposes to add a corresponding reference. With respect to the ASTM standard that does not address how an analyst should determine the useful life of building components, staff proposes language requiring that the analyst use a recognized industry standard to establish useful life estimates for the replacement reserve analysis.

Staff believes that the proposed language is clear with respect to the short and long terms needs that must be identified and quantified. Capital needs assessments include a table of when repairs and replacements are projected to be needed and the estimated costs of those improvements. For improvements included in the columns for the first two years, TCAC will require a capitalized replacement reserve. For the long term needs, the capital needs assessments must include a reserve study estimating the projected contributions to reserves that will be needed to complete the remaining improvements identified as needed within 15 years. The person performing the capital needs assessment shall certify that the assessment complies with the listed professional standards.

Scattered Sites

Staff continues to believe that scattered site projects are more difficult to manage, more difficult to monitor, and isolate tenants from services and management. For that reason, staff is interested in restricting the number and proximity of scattered site projects.

Other than for preservation, staff does not want to encourage scattered site projects and therefore believes the 1-mile diameter is appropriate. As we create new affordable housing, staff believes that single-site or close-in-proximity sites create the best conditions for success. CDLAC has used a 1-mile diameter rule for new construction projects for some time.

In the interests of promoting the preservation of the existing affordable housing stock that in many cases cannot be resyndicated without aggregation, however, the proposed regulation changes more generously allow a portfolio application of existing affordable housing projects consisting of five separate sites within a broader diameter. These projects already exist and must be maintained somehow. More than five sites, however, is likely to be less manageable from an owner and TCAC perspective.

TCAC is not supportive of allowing scattered site projects to cross county lines as then a single project would have multiple rent limits, creating a host of implementation issues. With respect to Section 8 projects, there is no need to restrict sites under a single Section 8 contract to a single county or region as HUD confirmed that its scattered site properties do not cross city or county lines as a general rule.

Staff proposes an amendment to the "Scattered Site" definition to clarify that the language refers to a single Section 8 contract.

Transfer Event

Staff concurs with the requested exemptions to the definition of transfer event for at-risk projects and arms-length sales with a prior purchase contract and proposes to amend the language accordingly. The first exemption is for the transfer of ownership of an existing at-risk tax credit project with five years or less remaining on the TCAC regulatory agreement if the transfer is made in connection with a resyndication. The second is for transfers for which a purchase contract was entered into prior to October 9, 2015, the date on which the final recommendations are issued.

Staff further concurs with the comment to exempt sales and refinancings in which debt is increased to pay an investor's tax liabilities related to the event. Staff does concur with further exemption an investor's other liabilities, as it is unclear what those entail. Nonetheless, staff proposes to address this issue in Section 10320(b) rather than in the definition of "Transfer Event."

Staff further concurs with a comment made with respect to Section 10320(b) and (c) that projects with less than 50% tax credits units should be exempt from those sections. Staff proposes to add the exemption here in the definition of "Transfer Event."

Tribal Trust Land

Staff does not deem it necessary to change the defined term as the allowance for projects off reservation does not refer to the definition of Tribal Trust Lands.

Final Proposed Change:

(cc) "Net Project Equity" shall mean the total sale or refinancing proceeds resulting from a Transfer Event less the payment of all obligations and liabilities of the owner, including any secured and unsecured related and third party debt thereof (including, without limitation, repayment of deferred developer fees and repayment of any advances made by a partner to fund operating and/or development deficits).

~~cc~~dd) Net Tax Credit Factor. The estimated or actual equity amount raised or to be raised from a tax credit syndication or other instrument, not including syndication related expenses, divided by the total amount of Federal and State Tax Credits reserved or allocated to a project. The calculation must include the full ten-year amount of Federal Tax Credits and the total amount of State Tax Credits.

~~dd~~ee) QAP. The "Low Income Housing Tax Credit Program Qualified Allocation Plan," as adopted in regulation Sections 10300 et. seq., and in accordance with the standards and procedures of IRC Section 42(m)(1)(B).

(ff) "Qualified Capital Needs Assessment" shall mean a capital needs assessment for a property subject to a Transfer Event dated within one hundred eighty (180) days of the proposed Transfer Event which (i) meets the requirements of (a) the Fannie Mae Multifamily Instructions for the PNA Property Evaluator, ~~or~~ (b) Freddie Mac's Property Condition Report requirements in Chapter 14 of the Small Balance Loan Addendum, (c) HUD's Multifamily Capital Needs Assessment section in Appendix 5G of the Multifamily Accelerated Process Guide, or (d) Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Designation E 2018-08) utilizing a recognized industry standard to establish useful life estimates for the replacement reserve analysis, and (ii) clearly sets forth (a) the

capital needs of the project for the next two (2) years (the "Short-Term Work") and the projected costs thereof, and (b) the capital needs of the project for the subsequent thirteen (13) years (the "Long Term Work") and the projected contributions to reserves that will be needed to accomplish that work.

eegg) Qualified Nonprofit Organization. An organization that meets the requirements of IRC Section 42(h)(5), whose exempt purposes include the development of low-income housing as described in IRC Section 42, and which, if a State Tax Credit is requested, also qualifies under H & S Code Section 50091.

ffhh) RHS. United States Rural Housing Service, formerly Rural Housing and Community Development Service or RHCDS, formerly Farmers Home Administration or FmHA

ggii) Related Party.

(1) the brothers, sisters, spouse, ancestors, and direct descendants of a person;

(2) a person and corporation where that person owns more than 50% in value of the outstanding stock of that corporation;

(3) two or more corporations, general partnership(s), limited partnership(s) or limited liability corporations connected through debt or equity ownership, in which

(A) stock is held by the same persons or entities for (i) at least 50% of the total combined voting power of all classes that can vote, or
(ii) at least 50% of the total value of shares of all classes of stock of each of the corporations or
(iii) at least 50% of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing that voting power or value, stock owned directly by that other corporation;

(B) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, or a separate entity from which income is derived;

(C) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, or a separate entity where a sale-leaseback transaction provides the parent or related entity with income from the property leased or that creates an undue influence on the separate entity as a result of the sale-leaseback transaction;

(D) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, of a separate entity where an interlocking directorate exists between the parent or related entity and the separate entity.

(4) a grantor and fiduciary of any trust;

(5) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) a fiduciary of a trust and a beneficiary of that trust;

(7) a fiduciary of a trust and a corporation where more than 50% in value of the outstanding stock is owned by or for the trust or by or for a person who is a grantor of the trust;

(8) a person or organization and an organization that is tax-exempt under Subsection 501(c)(3) or (4) of the IRC and that is affiliated with or controlled by that person or the person's family members or by that organization;

(9) a corporation and a partnership or joint venture if the same persons own more than:

(A) 50% in value of the outstanding stock of the corporation; and

(B) 50% of the capital interest, or the profits' interest, in the partnership or joint venture;

(10) one S corporation or limited liability corporation and another S corporation or limited liability corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;

(11) an S corporation or limited liability corporation and a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation;

(12) a partnership and a person or organization owning more than 50% of the capital interest, or the profits' interest, in that partnership; or

(13) two partnerships where the same person or organization owns more than 50% of the capital interests or profits' interests.

The constructive ownership provisions of IRC Section 267 also apply to subsections 1 through 13 above. The more stringent of regulations shall apply as to the ownership provisions of this section.

~~hh~~jj) Rent-Restricted Units. Units meeting the requirements of IRC Section 42(g)(2).

~~ii~~kk) Reservation. As provided for in H & S Code Section 50199.10(e) the initial award of Tax Credits to an Eligible project. Reservations may be conditional.

~~jj~~ll) Rural. An area defined in H & S Code Section 50199.21.

~~kk~~mm) 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~~ one 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.

nn) 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.

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

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

(qq) "Transfer Event" shall mean (i) a transfer of the ownership of a project, (ii) the sale or assignment of a partnership interest in a project owner and/or (iii) the refinancing of secured debt on a project. The following shall not be deemed a Transfer Event: (i) the transfer of the project or a partnership or membership interest in a project owner in which the debt encumbering the project is not increased, refinanced or otherwise modified, (ii) the refinancing of project debt which does not increase the outstanding principal balance of the debt other than in the amount of the closing costs and fees paid to the project lender and third parties as transaction costs, (iii) the replacement of a general partner by a limited partner upon the occurrence of a default by a general partner in accordance with partnership agreement of the project owner, (iv) a transfer pursuant to a foreclosure or deed in lieu of foreclosure to a non-related party, or (v) a "Subsequent Transfer" pursuant to Section 10320(b)(4)(B) hereof, (vi) a transfer of the ownership of a project subject to an existing tax credit regulatory agreement with a remaining term of five (5) or less years if the transfer is made in connection with a new reservation of 9% or 4% tax credits, or (vii) the sale of a project to an unrelated party for which the parties entered into a purchase agreement prior to October 9, 2015. Notwithstanding the foregoing, the term "Transfer Event" shall be applicable only to projects in which at least 50% of the units are Tax Credit Units.

nnrr) 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.

ooss) 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.

pptt) 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~~uu) 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.

Section 10315(b)

Initial Proposed Change:

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. Require commitment of Mental Health Services Act funds at time of application.

Comments Received:

Two commenters supported the minimum contribution requirements.

Two commenters suggested eliminating the first priority within the homeless assistance priority altogether. One stated that most of the mentioned programs are obsolete, and their prioritization does little to prioritize special needs projects. The other stated that the first priority has created unintended disincentives and consequences and recommended a priority for projects serving highly vulnerable homeless populations.

Two commenters, including one organizational commenter, supported the addition of minimum contribution amounts but requested that the first and second priorities be merged. The current first priority only benefits veteran projects. Two commenters stated that in the past there was a $400,000 limit on McKinney Vento capital fund contributions, below the proposed minimum of $500,000.

Three commenters, including one organizational commenter, recommended that the first and second priorities be merged, that rental and operating subsidies have minimum contracts of 15 years (except for Continuum of Care subsidies), and that specified San Francisco and Los Angeles operating and rental subsidies be added explicitly to the list.

One commenter urged the elimination of preferential treatment for certain funding sources. As an alternative, the commenter requested a City of Los Angeles homeless set-aside within the special needs and non-profit set-asides or a delay of the minimum contribution amounts until 2017.

Two commenters supported the minimum capital contributions but urged inclusion of operating subsidies in the first priority.

One commenter found it unnecessary to spread the homeless assistance funding over all units and that this discourages mixed population projects. The commenter also expressed concern about disallowing "anticipated" funds from CalHFA as their process for Mental Health Services Act funding is longer and may not be ready in time for an application deadline.

Response to Comments:

The comments relating to merging the first and second priorities are well taken but do not relate to the specific regulation changes proposed. Staff remains interested in providing some priority to homeless assistance projects funded by its sister state agencies. Nonetheless, as state programs change over time, staff is willing to revisit this issue at a later date.

Staff contacted the one jurisdiction that has made McKinney-Vento awards to projects in the last few rounds and is unaware of any restriction on the size of awards that a project may receive.

Within the second priority, staff has accepted operating and rental subsidies from Los Angeles and San Francisco but is reluctant to start explicitly naming subsidies from individual cities.

Staff wishes to clarify that the "$10,000 per unit for all units" is not intended to require the homeless assistance subsidy to restrict all units in a project for homeless individuals. The subsidy may apply to any number of units, but in order to obtain the priority, the total value of the subsidy when divided by the total number of units in the project must be at least $10,000 per unit. This is intended to prevent a contribution of $10,000 to the project just for one unit or similar manipulations. Staff proposed to add language to further clarify this intent.

Final 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 (irrespective of the number of units assisted by the referenced programs), 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.

Section 10315(b)(1)(C)

Initial Proposed Change:

Alter the homeless definition to eliminate the 90 day residency limit for persons coming out of an institution.

Comments Received:

Five commenters, including an organizational commenter, supported eliminating the 90-day residency limit. This removes a barrier to getting homeless individuals into housing.

Response to Comments:

Proceed with changes as initially proposed.

Final 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.

Section 10315(c)

Initial Proposed Change:

Apply the housing type goal for rural acquisition and/or rehabilitation projects proposed in Section 10315(g) within the rural set-aside.

Comments received:

No comments received, but see related comments to Section 10315(g) relating to the acquisition and rehabilitation housing goal.

Response to comments:

Proceed with changes as initially proposed.

Final 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.

Section 10315(c)(2)

Initial Proposed Change:

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), removing the requirement for these communities to contract with LIHTC developers, and require applications to score the minimum points in these categories, as opposed to the maximum.

Comments Received:

One commenter supported all the changes to the Native American apportionment.

One commenter supported extension of the Native American apportionment.

One commenter supported this change but requested further clarify that the project must be rural.

One commenter supported extension of the apportionment, the allowance for off-reservation sites, and the change to the experience requirements but recommended that the off-reservation sites be limited to those falling under the definition of Tribal Trust Lands.

Two commenters supported allowing off-reservation projects but asked that all tribal projects be considered rural, regardless of location. The commenter represents a tribe that has no developable land on its reservation, and the sites under consideration for tribal housing fall outside the definition of rural, making them ineligible for the Native American apportionment, which is part of the rural set-aside.

One commenter questioned why TCAC is willing to make all awards in the first round within this apportionment but not in other set-asides. The commenter also opposed only requiring applicants to meet minimum scoring criteria.

Response to Comments:

Because the Native American apportionment in within the Rural Set-Aside, all projects receiving tax credits from the apportionment must be rural, as defined by state statute. TCAC does not have authority to expand the definition of rural.

Staff believes there is no reason for holding Native American apportionment applicants to a higher experience requirement than other projects. They will likely still need more than minimum points to be competitive.

Staff understands that tribes own property that does not meet the fairly narrow definition of Tribal Trust Land. Provided that the land will be owned by the tribe and limited to tribal households, staff sees no concern with making a broader universe of tribal properties eligible for the apportionment.

To date, the Native American apportionment has not been oversubscribed on an annual basis like the other set-asides. As a result, funding projects over two rounds has not provided opportunities for second round projects but simply resulted in delay of first round projects. If demand increases significantly, TCAC will relook at this decision.

Staff proposes to proceed with changes as originally proposed.

Final 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.

Section 10315(g)

Initial Proposed Change:

Establish a 15% housing type goal for acquisition and/or rehabilitation (20% in rural areas) solely for purposes of the tiebreaker.

Increase the special needs housing type goal to 25%.

Comments Received:

Acquisition and Rehabilitation housing type

Four commenters supported the acquisition and rehabilitation housing type goal.

Four commenters, including one organizational commenter, stated that the housing type goal for acquisition and rehabilitation should be 15% in rural areas as is proposed for the rest of the state. Three of these commenters believe there is great number of rural markets where demand for new construction exists, and scarce 9% tax credits should be reserved for new construction. The

organizational commenter also suggested that at-risk set-aside projects be excluded from this housing goal or there may not be enough credits remaining for rehabilitation applicants in the geographic regions.

One commenter supported prioritization of new construction in general but stated that the balance between new construction and rehabilitation is a dynamic one. The commenter recommended that TCAC delay implementation of this change for a year to assess the impact of other changes or set the goal at 20%.

Six commenters, including two organizational commenters, supported the concept of prioritizing new construction but recommended a 20% goal or excluding the at-risk and rural set-aside projects from the goal. Three suggested adding a boost to the tiebreaker for new construction as an alternative.

Two commenters thought a 15% goal will not fairly distribute rehabilitation projects outside of the set-asides and suggested a small tiebreaker boost for new construction as an alternative. One of these commenters also suggested the 4% infeasibility requirement and disallowing housing authority seller carrybacks were better approaches. The other commenter also suggested discerning between existing affordable projects and the conversion of market rate housing to affordable.

One commenter suggested identical percentages for the rural region and statewide so as not to skew downwards the rehabilitation projects that may be funded in non-rural areas. The commenter also suggested a uniform 20% goal.

One commenter believes the housing goals for acquisition and rehabilitation projects are overly restrictive and, absent passage of the pending AB 35, should be increased given the 520 USDA and 300 HCD projects in need of restructuring and rehabilitation.

One commenter stated that the 15% housing goal for acquisition and rehabilitation projects is too low because many such projects are not viable as 4% tax credit projects and cost less per unit than new construction. The commenter suggested a goal of no less than 30%.

Two commenters believe it is bad public policy to establish a 15% housing type goal for acquisition and rehabilitation projects as many of these developments do not work as bond-financed projects and are less expensive than new construction. The commenters also stated that owners who “re-purchase” their properties and assume existing debt are unfairly advantaged in the current tiebreaker and suggested that, in the event the 15% housing type goal is adopted, TCAC impose an initial tie-breaker on rural acquisition and/or rehabilitation properties that would favor projects that have never received a prior tax credit allocation.

One commenter opposed the 20% housing goal for acquisition and rehabilitation projects in rural areas because many existing projects are old, have insufficient cash flow to support rehabilitation debt, lack or have expiring rental assistance, and are in rural markets that are unable to support bond financing. The commenter believes existing Section 10322(k) exacerbates this problem by allowing current tax credits projects to resyndicate with high tiebreaker scores for assumed debt.

Three commenters say the 15% acquisition and rehabilitation housing type goal will be detrimental and urge staff to work with the Non-Profit Housing Association of Northern California to find another way to balance out rehabilitation needs.

One commenter suggested deleting this proposal or utilizing a percentage similar to the percentage of acquisition and rehabilitation projects funded in recent years.

One commenter suggested filling the 15% goal for acquisition and rehabilitation before applying the housing type goal.

One commenter stated new construction is not favorable for any target market in rural Northern California and that allocating tax credits disproportionately to new construction will reduce affordable housing in the region.

One commenter urged that the acquisition and rehabilitation goal only apply to existing tax credit projects and not to unrestricted projects being converted to affordable housing as conversion is equally important as new construction.

One commenter expressed concern that including at-risk projects in the acquisition and rehabilitation housing type goal may put at-risk projects at jeopardy. The commenter also suggested exempting adaptive reuse projects, which she would define as projects with more than $100,000 per unit in rehabilitation expenses.

Three commenters requested further definition of how adaptive reuse or mixed rehabilitation-new constructions projects will be counted towards the goal.

One commenter requested further clarification of the distinction between housing types used for general application purposes and the acquisition and rehabilitation housing type only used for the tiebreaker.

Special Needs housing type

Sixteen commenters, including three organizational commenters, strongly supported the increase in the special needs housing goal as desperately needed. One commenter urged a set-aside within this goal for highly-vulnerable populations.

One commenter supported increasing the goal for special needs projects to 20%.

Four commenters, including one organizational commenter, expressed concern about increasing the housing type goal for special needs projects when no review of other housing needs has taken place. In addition, the commenter stated that there may not be enough initial and on-going operational subsidies to support the higher special needs goal.

Two commenters did not believe the increase in the special needs goal is justified. One of these commenters is also concerned that this change will come at the expense of senior projects.

One commenter opposed the increase in the special needs housing type goal because special needs projects already have two dedicated set-asides and the vast majority of housing need in the state is family housing. Because non-family projects have more public subsidy, this increase will come at the expense of family housing. Moreover, this will result in fewer overall units as large family projects are more cost effective. The commenter suggested reducing the special needs housing type goal back to 5%, where it once was.

One commenter is interested in more senior housing instead of more special needs housing. The commenter urged staff to be strategic about demographic needs.

Two commenters stated that increasing the special needs goal is premature and asked if the senior housing goal should also be increased.

Four commenters opposed the increase, saying any increase should be based on analysis and not arbitrary. One commenter urged a comprehensive analysis of demographic changes in relation to all the housing type goals. One stated that there would be more support for this change if the senior housing goal was increased equally.

Response to Comments:

Acquisition and/or Rehabilitation Housing Type Goal

Staff continues to believe that the focus of the 9% tax credit program should be new construction projects and that therefore a housing goal for acquisition and rehabilitation projects is appropriate. Staff concurs, however, that clarification is required on how projects combining new construction and rehabilitation or even adaptive reuse will be classified. Staff proposes to amend the language to count as acquisition and/or rehabilitation any project in which at least 50% of the units were previously residential dwelling units.

Staff further finds it convincing that applying the same acquisition and/or rehabilitation housing type goal both within the rural set-aside and at the statewide level, as well as increasing the statewide goal to 20%, will make it more likely that tax credits for rehabilitation projects will be available in each of the geographic regions. Staff has amended the language to apply a 20% goal to acquisition and/or rehabilitation projects both statewide and within the rural set-aside.

Because at-risk projects are funded at the beginning of the sort, staff does not believe than an acquisition and/or rehabilitation housing type goal will jeopardize at-risk projects in any way.

Special Needs Housing Type Goal

With respect to the special needs housing goal, staff continues to believe that special needs housing should receive a higher priority within the 9% program. Special needs projects, especially those serving homeless households, house the most vulnerable members of society. While persons with special needs may not reflect a high percentage of California's overall housing need, their housing needs are among the most dire. In any event, the housing type goals were never intended to track precisely with population percentages. As a result, staff continues to propose a 25% housing type goal for special needs projects.

Final 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%

For purposes of the Acquisition and/or Rehabilitation Housing Type Goal, a project will be considered an acquisition and/or rehabilitation project if at least 50% of the units were previously residential dwelling units.

Section 10317(g)(4)

Initial Proposed Change:

Require 4% tax credit projects requesting state tax credits to apply to CDLAC within 10 days after a TCAC reservation, as opposed to by the TCAC application deadline.

Comments Received:

Four commenters supported the proposal to allow an applicant to submit to CDLAC within 10 days of receiving a state credit award stating that it will save time and money.

One commenter requested a 30-day window. Another stated that 10 days is not enough time to prepare a CDLAC application and suggested a 60-day timeframe.

Response to Comments:

With this proposed change, TCAC is trying to balance the saving of applicant resources on applications that will not receive an award with ensuring that projects do not later fall behind development deadlines. Staff is concerned that lengthening the allowance in a significant way risks putting projects at jeopardy of missing deadlines. Staff also notes that TCAC posts a preliminary list of reservation recommendations ten days prior to an award meeting, which is a good indicator that a project will be funded.

Proceed with the change as originally proposed.

Final 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~~.

Section 10317(h)

Initial Proposed Change:

Accept applications for State Farmworker Credits to be used with 4% federal credits over the counter. Clarify that State Farmworker Credits may be awarded during competitive rounds to 9% tax credit projects based on the highest scoring Farmworker Housing applications that will receive a reservation of federal credits.

Comments Received:

Four commenters, including an organizational commenter, supported this change, stating it will make it easier to use the farmworker state credit.

Response to Comments:

Proceed with changes as originally proposed.

Final 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.

Section 10317(i)(1)

Initial Proposed Change:

Make all state credits in 4% set-aside available during the first round to maximum score projects and hold any remainder until the second round.

Comments Received:

Seven commenters, including one organizational commenter, supported the proposal.

Four commenters asked TCAC, in the event that AB 35 passes, to reserve state credits for the second round as this can save an applicant, particularly state HOME applicants who don't receive awards in time for the first round, a whole year.

One commenter urged allocating state credits equally between two rounds to ensure predictability and efficient planning.

Response to Comments:

While dividing credits equally between two rounds would give predictability in the amount of credits available in the second round, it would not increase the predictability of any particular project receiving an award. Given the relatively small amount of state credits available for 4% projects and the high number of maximum score applications, staff sees no benefit to making some of these projects reapply in the second round. In the event that the Legislature approves a large increase in state tax credits, TCAC will likely revert to dividing credits between two rounds and will likely need to make other changes to the allocation process.

Proceed with the change as initially proposed.

Final 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;

Section 10320(b)

Revised Proposed Change:

Require written approval of the Executive Director for a Transfer Event related to an existing or new tax credit project. Condition approval on the submission of a Qualified Capital Needs Assessment and the post-Transfer Event owner's entrance into a covenant with TCAC to set aside at closing adequate funds to perform short term work identified as needed within two years and to make deposits to reserves as are necessary to fund remaining work identified as needed within 15 years. Subordinate the covenant to any third party lender. Require the owner to certify compliance with the covenant annually.

Require resyndication projects subject to a covenant to include a capitalized replacement reserve equal to the cost of any uncompleted 2-year short term work from the covenant. Require that any increase in the acquisition price which is attributable to a reduction in the amount of annual deposits into the replacement reserve account to remain in the project as a seller carryback note or a general partner equity contribution.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Three commenters strongly supported the requirement to ensure that property maintenance and rehabilitation needs are met before equity is distributed. The proposal is necessary and reasonable in light of the public investment and the need to keep projects in good condition for the entire regulatory period. One of these commenters also urged TCAC to monitor implementation and be open to modifications to address unintended consequences.

One commenter supported the capital needs provisions.

One commenter generally supported the proposal but opposed the provision requiring a capitalized replacement reserve for uncompleted short term work at resyndication as this will reduce basis for already challenged 4% projects. The commenter argued that tax credits can and should cover these costs. Alternatively, TCAC could require that the rehabilitation budget equal 135% of the short term work and 100% of the long term work to ensure that additional tax credits from the short term work are spent on additional enhancements. The commenter also requested that the exemption for projects within 5 years of the end of the regulatory agreement be extended to 10 years.

One commenter generally supported the proposal but recommended removing the requirement for short term work to be funded with a capitalized replacement reserve at resyndication.

One commenter requested clarification that the waiver provision be available if the transfer event produces insufficient net equity to fund "all or any portion" of the work.

One commenter requested clarification of the exemption language in (b)(4) for projects subject to a covenant that have a remaining term of five (5) or less years.

One commenter would support the proposal if TCAC had a 60-day deadline to provide approval. The commenter further requested clarification as to whether TCAC staff or an outside consultant would review the capital needs assessment.

One commenter argued that the proposal is redundant because buyers and lenders have strong incentives to ensure that the current and on-going capital needs of a property are adequately addressed. The commenter is concerned that TCAC will have insufficient staff capacity to carry out significant new administrative burdens and that delays could cause great financial harm to the viability of sales and refinancings. The commenter also stated that the requirements should not apply to a refinancing in the first five years after placed in service as the refinancing is simply seeking a better interest rate. Lastly, the commenter sought clarification as to what costs are considered when calculating the debt service ratio, particularly residual receipt payments, tenant services, and asset management and partnership management fees.

One commenter suggested that the requirements of paragraph (2) should not apply to mixed-income projects with 50% or less tax credit units. At most, the short term work requirement should apply but not the increased contributions to replacement reserves for long term work. The commenter also suggested suspending these contributions if the debt service ratio falls below 1.05 as some cushion is needed.

One commenter urged that paragraph (2) only apply to new reservations of tax credits in 2016 or later and that mixed-income projects with 50% or less tax credit units should be exempt.

One commenter opposed the requirement for a capital needs assessment and related covenant at the time of a transfer event as this requirement is not needed. The market efficiently and effectively regulates the sale of tax credit properties. Adding an additional layer of review is burdensome and time consuming and will reduce prices and capital flows.

Response to Comments:

Staff concurs with the suggestion to clarify that a waiver or modification may be granted if the owner can demonstrate that the transfer event will not produce sufficient Net Project Equity to fund "all or any portion of the work", as opposed to "fully fund the work," contemplated by the Qualified Capital Needs Assessment. Staff has amended the language accordingly.

Staff concurs with the suggestion to clarify the exemption language in (b)(4) for projects subject to a covenant that have a remaining term of five (5) or less years. Staff has amended the language accordingly.

In response to a comment relating to the definition of "Transfer Event" in Section 10302, staff amends the waiver provision of this section to provide that the presumption of insufficient equity will apply even if there are distributions to limited partners to cover the limited partners' taxes related to the transfer event. As a result, a waiver of the requirements will be available even if debt on the property is increased to pay the investor's tax liabilities related to the event.

Staff concurs with the comment to exempt projects with less than 50% tax credit units from the requirements of (b)(2) but proposes to accomplish this by amending the definition of "Transfer Event" in Section 10302(qq).

Staff further proposes to clarify that the requirements of (b)(2) apply to all transfer events for which approval is requested on or after the effective date of the regulations. Likewise, staff proposes to restore language in (b)(1) clarifying that the requirements of that paragraph apply to projects requesting approvals after January 31, 2014.

Staff continues to believe that owners subject to a covenant who resyndicate should include a capitalized replacement reserve in an amount equal to the cost of any Short Term Work which will not be performed as of the date of the syndication. At the time of the transfer event, funds were set aside for that purpose. Staff does not believe that tax credits should assume those costs for which funds are already available.

The TCAC regulations generally refer to at-risk projects as those within five years of the end of a regulatory agreement. Staff does not believe it is necessary or appropriate to establish a different standard for this purpose.

While many lenders already enforce similar requirements, there are a wide variety of transactions, and staff continues to believe that the proposal will ensure uniform accommodation of rehabilitation needs when transfer events occur.

TCAC currently processes ownership transfers and refinancing stand-still agreements in a timely fashion. Provided that the capital needs assessments provide the data required in the proposed regulations, staff sees no reason why the additional conditions will cause delays. As a result, staff does not believe a 60-day processing requirement is necessary. Moreover, it is not clear

how such a requirement would work if the applicant failed to submit the required documentation or what would happen in the unlikely event that TCAC missed such a deadline.

The definition of transfer event already excludes refinancings in which the amount of debt does not increase. In the event that a refinancing within the first five years does increase debt, staff sees no reason to treat these transactions differently than others.

Given that every project financed through the tax credit program received significant public resources and is subject to a long term affordability covenant, staff continues to believe that TCAC has a significant interest in ensuring that each project remains habitable and in good repair. Moreover, sales and refinancings that increase leverage on a project subject the project's existing tax credit regulatory agreement to greater risk of termination upon foreclosure. Staff continues to believe, therefore, that if value in an existing tax credit financed project is being monetized due to a sale or refinancing event, it is appropriate that a portion of the monetized value be used to ensure that the short and long term capital needs of the project are addressed.

Final Proposed Change:

(b) ~~Tax Credits and ownership transfers.~~ Approvals required by this Section 10320(b) shall not be unreasonably withheld if all of the following requirements, as applicable, are satisfied:

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

~~(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) In addition to any applicable requirements set forth in Section 10320(b)(1), all Transfer Events shall be subject to the prior written approval of the Executive Director. 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. ~~The Executive Director shall approve a Transfer Event if each of the following conditions have been satisfied.~~ The following requirements apply to all Transfer Events for which approval is requested on or after October 21, 2015:

(A) Prior to a Transfer Event, the owner of the project shall submit to the Executive Director a Qualified Capital Needs Assessment. In the case of a Transfer Event in which a third-party lender is providing financing, the Qualified Capital Needs Assessment shall be commissioned by said third-party lender.

(B) The entity which shall own the project subsequent to the Transfer Event (the "Post Transfer Owner") shall covenant to the Committee (the "Capital Needs Covenant") that the Post Transfer Owner (and any assignee thereof) shall:

(i) set aside at the closing of the Transfer Event adequate funds to perform the Short Term Work (the "Short Term Work Reserve Amount");

(ii) perform the Short Term Work within two (2) years from the date of the Transfer Event;

(iii) make deposits to reserves as are necessary to fund the Long Term Work, taking into account any balance in replacement reserve accounts upon the conclusion of the Transfer Event beyond those required by clause (i). Notwithstanding the foregoing, the Post Transfer Owner shall have no obligation to fund any reserve amount from annual operations to the extent that the funding of the reserve causes the project to have a debt service coverage ratio of less than 1.00 to 1.00. In calculating the debt service coverage ratio for the purposes herein, the property management fee shall not exceed the greater of (a) 7% the project's effective gross income, or (b) such amount approved by HUD or USDA, as applicable. Any property management fee in excess of these limitations shall be subordinate to the funding of the required reserves and shall not be considered when calculating the debt service coverage ratio; and

(iv) complete the Long Term Work when required, or prior thereto, pursuant to the Qualified Capital Needs Assessment.

(C) The requirements of Section 10337(a)(3), if applicable, are satisfied.

The Executive Director may waive or modify the requirements of this Section 10320(b)(2)(A) and (B) if the owner can demonstrate that the Transfer Event will not produce, prior to any distributions of Net Project Equity to parties related to the sponsor, developer, limited partner(s) or general partner(s), sufficient Net Project Equity to ~~fully~~ fund all or any portion of the work contemplated by the Qualified Capital Needs Assessment. There shall be a presumption that a Transfer Event has insufficient Net Project Equity (and the requirements of this Section 10320(b)(2)(A) and (B) shall be waived) if no Net Project Equity from the Transfer Event is distributed to parties related to the sponsor, developer, general partner(s) or limited partner(s) of the owner other than a distribution or a payment to the limited partner(s) of the selling entity in the amount equal to, or less than, all federal, state, and local taxes incurred by the limited partner(s) as a result of the Transfer Event.

(3). The Capital Needs Covenant shall at all times be subordinate to any deed of trust given to any third party lender to a project. The owner of a project subject to a Capital Needs Covenant shall certify compliance with the terms of said Capital Needs Covenant to CTCAC annually for

the term of the Capital Needs Covenant on a form to be developed by the Executive Director. Failure to comply with the terms of the Capital Needs Covenant may subject the owner to negative points and/or a ban on buying or receiving future properties.

(4). If a project seeks to receive a new reservation of 9% or 4% tax credits concurrently with a Transfer Event or during the time that the project is subject to a Capital Needs Covenant, the following provisions shall apply:

(A) The underwriting for the new reservation of 9% or 4% credits shall include a capitalized replacement reserve in an amount equal to the cost of any Short Term Work which will not be performed as of the date of the syndication of the new 9% or 4% tax credits reserved for the project.

(B) After the Transfer Event giving rise to the covenant required pursuant to Section 10320(b)(2)(B) (the "Initial Transfer"), if the project will be subsequently transferred in connection with the closing of the new reservation of 9% or 4% credits (a "Subsequent Transfer"), any increase in acquisition price (if the Initial Transfer was a sale) or the project valuation (if the Initial Transfer was a refinancing) between the Initial Transfer and the Subsequent Transfer which is attributable to a reduction in the amount of annual deposits into the replacement reserve account from those required pursuant to Section 10320(b)(2)(B)(iii) because all or a portion of the Long Term Work will be performed in connection with the new reservation of 9% or 4% credits, must be evidenced in the form of (i) a seller carryback note or (ii) a general partner equity contribution.

(C) Upon the closing of the syndication of the new 9% or 4% credits reserved for the project, the Capital Needs Covenant shall automatically terminate without any further action of the project owner and/or the Committee.

The Executive Director shall have the authority to waive or modify the requirements of this Section 10320(b)(4) if the owner can demonstrate to the reasonable satisfaction of the Executive Director that the requirements of Section 10320(b)(4) would be overly burdensome or would not be in the best interest of the project. ~~This Section 10320(b)(4)~~ Sections 10320(b)(4)(A) and 10320(b)(4)(B) shall not be applicable to any project with an existing tax credit regulatory agreement with a remaining term of five (5) or less years.

Section 10320(c) and (d)

Revised Proposed Change:

Codify TCAC's current policy on subordinations and stand-still agreements and specifically allow for subordination to restructured public loans. Give the Executive Director the authority to permit other subordinations as appropriate.

Prohibit the execution of a stand-still agreement related to a Transfer Event unless the conditions of Section 10320(b) have been satisfied.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

One commenter suggested that a stand-still agreement should not trigger the proposed requirements of Section 10320(b)(2)-(4) if the project is a mixed-income project with 50% or less tax credit units because the tax credit equity is a small portion of the equity used to finance the project.

Response to Comments:

Staff concurs with the comment to exempt projects with less than 50% tax credit units from the requirements of Section 10320(b)(2)-(4) but proposes to accomplish this by amending the definition of "Transfer Event" in Section 10302(qq).

Staff proposes to clarify that the requirements of Section 10320(b)(2)-(4) apply to projects requesting a stand-still agreement on or after October 21, 2015 and to correct an incomplete cross-reference.

Final 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, FHA-insured loans, restructured public loans, or as otherwise permitted by the Executive Director. 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 that CTCAC shall not enter into a stand-still agreement related to a Transfer Event requested on or after October 21, 2015 unless the conditions of Section 10320(b)(2) have been satisfied. If CTCAC enters into a stand-still agreement related to a Transfer Event, Sections 10320(b)(2), (b)(3) and (b)(4) shall apply to the project.

(~~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).

Section 10322(h)(9)(A)

Revised Proposed Change:

Allow applicants to forego an appraisal and use as the acquisition basis the amount of debt encumbering the property.

Comments Received:

[Note: these comments were submitted in the first comment period with respect to the provisions of this section that were not removed or revised.]

Nine commenters, including two organizational commenters, supported this change as providing much needed flexibility.

One commenter strongly supported using assumed debt as the acquisition basis, particularly for rural markets where values are constrained and debt may be significant.

One commenter supported using assumed debt as the acquisition basis though he would prefer using a replacement cost valuation.

Response to Comments:

Proceed with changes as revised.

Final Proposed Change:

(A) Rehabilitation applications. An "as-is" appraisal prepared within 120 days before or after the execution of a purchase contract or the transfer of ownership by all the parties by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee, and that includes, at a minimum, the following:

(i) the highest and best use value of the proposed project as residential rental property;
(ii) the Sales Comparison Approach, and Income Approach valuation methodologies except in the case of an adaptive reuse or conversion, where the Cost Approach valuation methodology shall be used;
(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above. ;
(iv) a value for the land of the subject property "as if vacant";
(v) an on site inspection; and
(vi) a purchase contract verifying the sales price of the subject property.

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~~.

Section 10322(h)(10)

Initial Proposed Change:

Streamline the 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.

Clarify timing requirements for market study inspections and the rule regarding the award of credits in locations where other projects have or will receive an award.

Comments Received:

Four commenters agreed with the proposal.

Two commenters supported the streamlined market study requirement but recommended that the applicant, as opposed to a market analyst, certify that a project meets the criteria. One stated that the market analyst is an inappropriate person to certify to a project's current operations.

Two commenters supported the elimination of the market study for certain rehabilitation projects but opposed the elimination of the waiver as many special needs projects hold units vacant beyond the 10% allowance to reduce displacement or relocation costs or to bring in a different type of rental subsidy. Some of these projects need a waiver because they do not meet threshold requirements for the market study due to size of the units.

One commenter opposed establishing a 5% annual rent increase limitation on rehabilitation projects because it will limit income and encourage sales to yield buyers.

Response to Comments:

Section 42(m)(1)(A) of the Internal Revenue Code says that the credit for a building shall be zero unless a comprehensive market study is conducted "by a disinterested party." As a result, TCAC believes that a 3rd party market analyst must also perform the streamlined market analysis for the project to be in compliance with federal law.

With respect to the comment opposing the 5% rent increase limit, this limit does not apply to all rehabilitation projects generally. It is only a condition for using the streamlined market study. There will be no negative consequences as projects that do not meet the condition simply must prepare the full market study.

The existing waiver from the threshold requirements of the market study is only available if a project has less than a 5% vacancy rate at application. The new exemption in this section allows 10% vacancy at application for SRO and special needs projects, which is twice that allowed to obtain a waiver currently. It is inconsistent with IRS rules and TCAC policy for current tax credit units to be left vacant pending a rehabilitation. That said, staff agrees that the square foot ratio in the market study poses challenges for SRO rehabilitation projects. As a result, staff has proposed an amendment to Section 10325(f)(1)(B) below to exempt SRO rehabilitation projects from the square foot ratio requirement.

Staff proposes to proceed with the change as initially proposed with one correction in the cross-reference to the Internal Revenue Code.

Final 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)(1)(A)(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.

Section 10322(h)(21)

Initial Proposed Change:
Delete language referring to a list of CUAC quality control reviewers. Remove an erroneous reference to rehabilitation projects. Require use of the California Energy Commission's Photovoltaic Calculator to determine any solar values.

Comments Received:

None received.

Response to Comments:

Proceed with changes as initially proposed.

Final 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.

Section 10322(i)(20)

Initial Proposed Change:

Require applicants at placed in service to demonstrate site control.

Comments Received:

None received.

Response to Comments:

Proceed with changes as initially proposed.

Final 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.

Section 10322(i)(21)

Revised Proposed Change:

Require submittal of the baseline assessed valuation with the place in service package or within 30 days of receipt by the owner in order to implement the proposed changes in Section 10337(a)(3).

Comments Received:

Response to Comments:

Staff withdraws this proposal to conform with the withdrawal of Section 10337(a)(3).

Proposed Change:

No change to the current regulations.

Section 10322(k)

Initial Proposed Change:

Require resyndication projects to use all funds in reserve accounts for rehabilitation of the property.

Comments Received:

Two commenters agreed with the proposal.

Eight commenters asked that this change only apply to funds in a project's replacement reserve account and not to funds in an operating reserve. For SRO and special needs projects, it is often to the long-term benefit of the property to capitalize a sizable operating reserve due to the low income targeting.

One commenter stated that this proposal may be suitable when a developer is resyndicating its own project but will make it less likely that owners will sell a project for a resyndication transaction.

One commenter opposed this provision, stating that necessary reserves will be established on the new ownership side.

One commenter opposed this provision, stating that the seller should retain excess reserve funds as a reward for not taking the funds out as cash flow.

One commenter suggested allowing reserves to be used to meet other funder's minimum reserve requirements as well.

Response to Comments:

Staff finds the comment urging that the language be limited to replacement reserves a helpful clarification, as that was the intent. Staff likewise concurs with the suggestion to allow reserve funds to be used to capitalize another funder's minimum reserve requirement.

With respect to the comment that owners will be less likely to sell for a resyndication transaction, staff believes that the market will accommodate the proposed requirement. For example, the sales price may increase to compensate a seller for the value of the replacement reserves.

Final 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 replacement 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 or another funder's minimum reserve account requirement.

Section 10325(c)

Proposed Change:

Conform to the addition of a definition of Scattered Site Projects in Section 10302.

Comments Received:

None received.

Response to Comments:

Proceed with changes as initially proposed.

Final 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.

Section 10325(c)(1)(A)

Initial Proposed Change:

Remove a redundant reference to a minimum rehabilitation threshold.

Comments Received:

None received.

Response to Comments:

Proceed with change as initially proposed.

Final 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.

Section 10325(c)(2)

Initial Proposed Change:

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.

Comments Received:

One commenter supported the proposed changes.

One commenter supported maximum points for developers with 5 projects but opposed the change to require one of these projects to have been in service for 5 or more years, as opposed to the current 3 years. This longer time will not differentiate in any meaningful way.

One commenter supported the clarification on special needs projects and requiring longer experience with tax credit projects but opposed reducing the number of projects required to receive maximum points. The industry already has a large number of qualified developers and this will not improve the quality or caliber of projects.

One commenter supported reducing the number of projects needed for maximum points to five but stated that there are no developers or managers with experience in both tax credit projects and tribal projects and suggested that TCAC provide points for entities with at least three years of experience pairing tax credits and NAHASDA funds in at least ten projects in or outside of California. The commenter also suggested counting the number of units developed or managed by a tribal housing authority as their experience with projects under 10 units is not currently counted.

Response to Comments:

The experience points are intended to measure capacity and are not to be a barrier to entry for possible competitors. While reducing the number of projects needed for maximum points may increase competition, staff does not believe that this change will reduce project quality.

Staff continues to believe that the length of successful experience is as important as the volume of experience and that requiring five years of experience with at least one project is therefore meaningful.

Given the unique features of California's tax credit program, TCAC is reluctant to provide experience points to developers or managers for projects in other states. Staff is also concerned about the suggestion to count experience from extremely small projects because they are very

different in nature from most tax credit projects. Staff is willing to discuss this issue further at a later date, however.

Proceed with the changes as initially proposed.

Final 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.

Section 10325(c)(3)(B)

Initial Proposed Change:

Conform to the change in Section 10325(c)(8).

Comments Received:

None received.

Response to Comments:

Proceed with change as initially proposed.

Final 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;

Section 10325(c)(3)(G)

Initial Proposed Change:

Allow the imposition of negative points for serious failure to submit required compliance documentation.

Comments Received:

One commenter stated that the proposal lacks procedural safeguards and suggested adding the phrase “after notice and cure period.”

Response to Comments:

Staff agrees with the comment and has revised the language accordingly with respect to serious failures.

Final Proposed Change:

(G) serious, after a notice and cure period, or repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;

Section 10325(c)(3)(M)

Revised Proposed Change:

Allow the imposition of negative points for failure to obtain prior approval of a Transfer Event.

Comments Received:

No comments received.

Response to Comments:

Proceed with the revised proposed change.

Final Proposed Change:

(M) failure to properly notify CTCAC and obtain prior approval of Transfer Events, general or limited partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit;

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

Initial and Revised Proposed Change:

Allow the imposition of negative points for projects awarded credits in 2016 or after that exceed 140% of the most recent threshold basis limit at placed in service.

Impose negative points for projects that have negative points from CDLAC.

Allow for the imposition of negative points for failure to comply with a requirement of the TCAC regulatory agreement or a covenant related to a Transfer Event.

Comments Received:

One commenter suggested that any negative points for exceeding high-cost thresholds should be limited to one round and only to the geographic apportionment, because developers do not have control over ultimate costs and future projects would be significantly impacted by negative

points. In addition, the commenter urged that negative points be assessed in a hearing and subject to appeal.

Two other commenters questioned the proposal to issue negative points for high-cost projects that exceed 140% of threshold basis limits because any cost increase is borne by the developer and does not result in additional tax credits to the project.

Two commenters supported negative points for projects that have received negative points from CDLAC.

Five commenters supported adding the phrase "after notice and cure period" to the proposed change to (U).

Response to Comments:

While it is true that additional costs on 9% projects are not paid for with additional tax credits, staff continues to believe that it is important to maintain the integrity of the competitive process by establishing consequences for projects that exceed TCAC's high-cost threshold. Had the true costs of these projects been known at application, they would not have been recommended for approval. Moreover, the proposal gives generous leeway at placed in service by using a higher threshold and updated threshold basis limits.

The current regulations state that negative points may be given at the Executive Director's discretion and that they are subject to appeal to the Committee pursuant to Section 10330. As a result, staff believes that establishing specific penalties or limits on penalties is not necessary because the Executive Director and Committee may already take extenuating circumstances into account.

On further reflection, staff does not agree that an owner should be automatically exempt from negative points for a violation of the regulatory agreement or a covenant related to a transfer event if the owner cures the violation after being cited. Such a rule would give owners an incentive to violate the agreement or covenant until caught. All negative points are discretionary, and TCAC generally works with owners to address violations prior to assessing negative points. However, staff believes that TCAC should maintain the authority to assess negative points for willful or negligent violations, even if corrected. As a result, staff proposes to remove the "after a notice and cure period" language in (U) that was included in the proposed revisions of September 8.

Final 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~~, after a notice and cure period,~~ to comply with a requirement of the regulatory agreement or of a covenant entered into 10320(b)(2)(B) or Section 10337(a)(3)(B).

Section 10325(c)(4)

Initial Proposed Change:

Allow scattered site rehabilitation projects to meet project type requirements at each site independently.

Comments Received:

One commenter supported proportional scoring for combinations of housing types in one scattered site acquisition and rehabilitation project.

Response to Comments:

Proceed with changes as initially proposed.

Final 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

Section 10325(c)(5)

Initial Proposed Change:

Delete a redundant reference.

Comments Received:

None

Response to Comments:

Proceeds with changes as initially proposed.

Final Proposed Change:

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

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

Section 10325(c)(5)(A)

Initial Proposed Change:

Disregard site amenity points within the Native American apportionment.

Widen specified radii for site amenities.

Allow site amenity points for being in a high-quality school area, once the Academic Performance Index is updated.

Provide site amenity points for the provision of transit passes.

Comments Received:

Twenty-nine commenters, including two organizational commenters, applauded widening the site amenity radii as a way to expand eligibility and reduce price pressures on land. Two of these commenters stated that this will allow more rural communities to submit 9% tax credit applications.

One commenter supported widening the radii but suggested widening them even further.

Five commenters, including two organizational commenters, supported not scoring projects in the Native American apportionment for site amenities.

One commenter suggested providing points for PACE rides to service centers. One suggested including ferries and water taxies in the list of transit amenities.

One commenter supported widening the site amenity radii but suggested expanding the distances which qualify for maximum points to ¾ mile for parks, libraries, grocery stores, senior centers, and pharmacies.

Five commenters, including an organizational commenter, encouraged also expanding the radius for health centers. One other commenter urged a ¾ mile radius for service facilities for special needs populations. One other commenter suggested a wider radius for neighborhood markets.

One commenter urged defining the term “peak period.”

One commenter expressed concern that “light rail” may not include the Los Angeles Metro Red Line.

Three organizational commenters supported additional site amenity points for proximity to a high-performing school, though one of the commenters suggesting providing these points regardless of proximity.

Three commenters applauded the ideas to expand opportunity for tenants through the high-performing school provision. One stated that projects in such areas tend to be smaller which the proposed tiebreaker changes disadvantage. The other cautioned that this could make 9% credits more available for inclusionary housing, which would reduce the subsidy the market-rate developer may need to contribute.

Three commenters opposed the points for projects near a high-performing school. This requirement could negatively impact areas with low-income residents that are also in great need

of affordable housing. One stated that affluent areas typically do not need as much affordable housing as less affluent areas.

One commenter expressed concern with the high-performing school points as they may disadvantage large unit projects targeting extremely low-income populations and mixed special needs-large family projects. The commenter recommended allowing points for either developing in areas with low poverty rates or for high-performing schools.

One commenter expressed concern about the high-performing school points because there may be initial difficulty in gaining support to site developments in such areas and help may be needed to achieve approval.

One commenter asked TCAC to reconsider granting school proximity points only to projects with at least 25% 3-bedroom units as many 1- and 2-bedroom units also house families with children.

One commenter supported the points for transit passes.

One commenter supported the points for transit passes but recommended that points be available only where viable transit exists, that free passes score more than discounted passes, and more definition on how passes should be allocated when not given to all residents.

Three commenters, including one organizational commenter, said points should only be given for transit passes in a TOD project or if the passes are subsidized by a transit agency. One argued that requiring 15 years for transit passes represents a significant cost.

One commenter was concerned that transit pass points will disadvantage less urbanized regions where transit agencies are less familiar with such programs.

One commenter urged more specificity before allowing points for transit passes. A consistent standard is needed statewide given the wide diversity of monetary denominations and coverage.

One commenter opposed points for transit passes as it will add costs without compensation.

One commenter opposed the extension to 15 years for internet service points as it is inconsistent to liken this to resident services.

One commenter opposed widening the radii as this will allow lower quality locations to score full points. She suggested a suite approach, such as scoring points for having 10 amenities within a ½ mile radius, and expanding radii for at-risk projects, projects located in jurisdictions that have not met their housing element goals, and where no affordable housing has been built in the last three years.

One commenter urged reducing the maximum number of points in the site amenities category to 10.

Response to Comments:

Staff believes that the proposed radii strike the most appropriate balance between ensuring convenient resident access to amenities and reducing competition for maximum scoring sites. As a result, staff is not inclined to expand the radii further at this time. With respect to health centers, in particular, the proposed points for ½ mile and 1 mile proximity seem appropriate in the context of relatively small clinics, as opposed to hospitals.

Staff believes that most water ferry terminals probably qualify for maximum points now as they are also served by buses but is willing to consider this and PACE transit services at a later date.

Staff is happy to clarify that the Metro Red Line and all subway systems are considered light rail systems. Commuter rail refers to heavy trains, such as the Capitol Corridor, Metrolink, CalTrain, and the San Diego Coaster. Likewise, staff is happy to clarify that peak periods, as they refer to commuter rail are the same 7-9 am and 4-6 pm Monday to Friday times listed for light rails systems. The proposal refers to peak period only to clarify that commuter rail must have two trains during each of these periods.

Staff continues to believe that providing points for high-performing schools rewards school quality in addition to school proximity and builds on recent research regarding the benefit to children of growing up in opportunity areas. Because other projects can and do score maximum points under the current menu, staff sees no disadvantage to projects that do not qualify for these additional high-performing school points. Nonetheless, staff withdraws this high-performing school provision because the Academic Performance Index is currently suspended and the timing and nature of any future index appears to be unknown. Staff intends to reconsider this issue once the Department of Education releases a new form of the Academic Performance Index.

With respect to transit passes, the proposed language reflects that used by HCD in the TOD Housing Program. Staff thinks it best to maintain consistency across these possibly overlapping programs but will monitor and address as needed issues of concern that may arise. As for the cost, staff notes that these points are optional and that the developer can best choose whether or not the cost is worth the benefit.

While internet service may not be like tenant services, staff believes that extending the internet services to 15 years makes it much less likely that residents will see a break in internet access.

Staff proposes to proceed with the changes as initially proposed except for the deletion of the high-performing school points.

Final 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

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)

Section 10325(c)(5)(B)

Initial Proposed Change:

Require applicants to provide committed services for 15 years, as opposed to 10.

Comments Received:

Four commenters supported requiring services for 15 years.

One commenter supported the change if the requirement is on the sponsor but opposed the change if it requires sponsors to obtain third-party commitments for services funding.

One commenter could support this change if there were additional income to cover the expense.

Two commenters opposed this change because it increases costs and goes far beyond the primary intent of the tax credit program to produce affordable housing.

One commenter expressed concern that some service funders, such as the Los Angeles County Department of Health Services, only commit to 10 years of funding and that increasing the required term may create the inability to finance services for the longer term.

Response to Comments:

Staff is mindful of the increased cost of adding five additional years of services but continues to believe that services are a critical component of 9% tax credit projects and that the strong public policy benefits of maintaining such services throughout the tax credit compliance period outweighs the incremental cost.

Staff presumes that current 10-year service funding commitments from public entities are likely a function of TCAC's 10-year requirement and that such funders can and should adjust to the longer term. Staff would like to avoid a situation in which tenants with high service needs are left without services.

Neither the current nor the proposed regulations specify how the applicant shall cover the costs of the services, so applicants are free to fund them with internal revenues or seek third-party commitments.

Staff proposes to proceed with the changes as initially proposed.

Final 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.

Section 10325(c)(6)

Initial and Revised Proposed Change:

Set the maximum sustainability points at 5 points.

Allow points in rehabilitation projects 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. Extend the lookback period for recent improvements to rehabilitation projects.

Remove continual staff training requirement from the sustainable building management category and reduce points from 3 to 2.

Update the verification requirements.

Comments Received:

Eighteen commenters, including two organizational commenters, supported the reduction in maximum points in the sustainability category as a way to reduce costs while still emphasizing sustainable building methods.

One commenter supported all the changes to this section.

Two commenters supported removal of the staff training provision in the management category.

One commenter stated that the proposed sustainability changes misrepresent the costs that developers will have to build to in the future. First, there are different codes for low-rise and high-rise construction which the regulations should reflect. Second, LEED standards and building code standards will both increase in 2016. Third, the California Solar Homes Initiative and the New Solar Homes Program are dialed back with each increase in standards.

Two commenters urged TCAC not to deemphasize sustainability. It doesn't have to be expensive, and TCAC could create a menu of less expensive options.

[Note: Comments submitted on the initial proposed change relating to greywater, recycled water, and rainwater systems were summarized and responded to in the Proposed Revisions document issued on September 8. With respect to these provisions, commenters submitted the following comments with respect to the revised proposed change of September 8.]

Eleven commenters supported competitive points for the use of non-potable water systems for irrigation both for new construction and rehabilitation.

One commenter requested points for drilling a well to meet irrigation needs.

Response to Comments:

Staff continues to believe that the proposed changes 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. As building codes change in the future, TCAC will reevaluate its standards accordingly.

In response to the withdrawal of the proposed requirement in Section 10325(f)(7)(L) for new construction projects to install greywater, recycled water, or rainwater systems to meet irrigation needs, staff proposes to restore the initial proposal in this section to provide competitive points to both new construction and rehabilitation projects that include such systems.

Final 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~~9 percent	~~2~~ 3 points	~~3 points~~
~~35~~ 15 percent	~~3~~ 5 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) ~~Rehabilitation projects~~ 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)(F), 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.

Section 10325(c)(8)

Initial Proposed Change:

Stagger 180-day readiness deadline randomly (half of projects at 180 days and half at 194 days).

Clarify the readiness points building permit requirement for design-build projects and cities that do not release permits until grading is complete.

Remove separate readiness points for design review and accordingly reduce maximum readiness points to 15.

Allow TCAC to impose negative points as an alternative to credit rescission for failure to meet the readiness deadline.

Comments Received:

One commenter supported the reduction in points and clarifications in this category.

Two commenters supported elimination of the design review category.

One commenter supported eliminating design review from the readiness category but stated that not all design reviews are ministerial, which leaves unanswered whether appealable design review decisions are covered by the remaining language requiring all necessary local approvals except building permits. The regulations could clarify this point by requiring evidence of approvals that require a public hearing or are appealable. The commenter further suggested dividing the three remaining categories into construction financing, environmental review, and land use approvals.

One commenter opposed removal of the design review category because design review is an important step to avoid community backlash.

Nine commenters, including two organizational commenters, agreed with establishing a staggered readiness deadline.

One commenter suggested staggering the deadline within geographic regions and setting a 210 day deadline for the second wave.

One commenter supported a staggered readiness deadline but requested 210 days for the second wave.

One commenter stated that the staggered readiness deadline still increases costs and suggested a 270 day deadline as a project threshold.

Two commenters urged that projects in cities over 500,000 receive an extra 30 days to meet their readiness deadline because they now have to submit working drawings before submitting their tax credit application, which entails costs and big risks.

Six commenters supported clarifying the building permit requirements.

Four commenters supported allowing negative points instead of credit rescission for failure to meet a readiness deadline.

Four commenters, including an organizational commenter, asked if the sponsor has the ability to choose between rescission or negative points for failure to meet a readiness deadline. Three of these commenters also requested authority for the Executive Director to extend the deadline.

Response to Comments:

Staff concurs that the existing language in (B) leaves unanswered whether a discretionary design review process must be complete for points under that paragraph. Staff believes that projects lacking discretionary approvals remain at risk for delay. With that in mind, staff seeks to provide clarity by amending the language to state that the project must have all approvals subject to the discretion of local or tribal officials. This mirrors TCAC's current and CDLAC's proposed standard for 4% tax credits projects. To the extent that design review is ministerial, the approval need not be in place. If design review or any other approval is discretionary, then approval is required for points.

Staff believes that a 14-day staggering of closing dates will help relieve the logjam of work for consultants, attorneys, and others who are involved in closing multiple transactions, and a number of commenters supported this differential. Staff will consult next year with practitioners to ascertain whether a longer time difference would be more beneficial. Staff is mindful, however, of creating unfairness among applicants by creating too big of a differential. Staff does

not believe that placing larger cities automatically into the second wave is fair to all other applicants who would need to commit to 180-day readiness without knowing whether or not they would be in the second wave.

With respect to assessing negative points or credit rescission for missing readiness deadlines, staff envisions a consultative process between TCAC and the applicant in which TCAC would most likely honor the applicant's wishes. The proposed change, however, is intended to give TCAC the final say over recommended sanctions. Staff does not believe that extensions are appropriate given that applicants scored competitive points for the readiness commitment.

Final 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 subject to the discretion of local or tribal elected officials (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.

Section 10325(c)(9)

Initial Proposed Change:

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.

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.

Comments Received:

One commenter supported the changes to the non-smoking category and the community revitalization category.

One commenter opposed the change to the non-smoking point category. The commenter believes projects should only receive points if 100% of the units are smoke free as that is already the standard in many communities.

One commenter opposed the change to the non-smoking category because it is too arbitrary and does not address the myriad of possible building combinations and because it will be more difficult to make an entire building smoke free in a rehabilitation project with existing tenants. The commenter suggested establishing a smoke-free percentage threshold.

One commenter expressed concern about creating incentives to restrict smoking in supportive housing projects with a housing first model. The commenter suggested requiring smoke-free areas in a building as opposed to a total ban.

One commenter supported including very low-income census tracts with the QCT point category as this will help tribal applicants.

One commenter asked for clarification on what dataset must be used to demonstrate location in a census tract eligible for community revitalization points.

Response to Comments:

Staff is reluctant to encourage 100% smoke-free developments. While staff understands the primary and secondary health effects of smoking, making low-income individuals who legally smoke ineligible for affordable housing also is likely to create negative health outcomes as they remain financially strapped or risk homelessness. Staff believes it has crafted the appropriate balance of encouraging non-smoking portions of projects while continuing to allow smokers to benefit from affordable housing. Localities and owners can adopt more restrictive policies if they so choose.

Staff will provide guidance outside of the regulations on how an applicant can best identify a census tract that is eligible for community revitalization points.

Proceed with changes as initially proposed.

Final 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

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Section 10325(c)(10)

Revised Proposed Change:

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).

Multiply the leveraged soft resources factor of the tiebreaker by a size factor for projects with 50 or more new construction units.

Count operating and rental subsidies from the California Department of Health Care towards the public funding numerator increase.

Alter the credit efficiency factor in the tiebreaker by adding back leveraged soft resources that supplant eligible basis.

Allow TCAC to contract with an appraisal reviewer to establish donated land values and set parameters for the use of such reviews if TCAC contracts with a reviewer.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed changes.]

General

One organizational commenter urged a delay in adoption of any tiebreaker changes to further work on a formula that would more effectively increase production. Alternatively, the commenter requested allowing 2016 applicants with entitlements to choose the current or new tiebreaker.

One commenter requested that TCAC make no changes to the tiebreaker at this time but continue stakeholder discussions through 2016 because these changes have been overshadowed by the "back end" proposals and warrant more deliberation.

Soft Leveraged Resources

Three commenters, including an organizational commenter, supported the counting of private soft resources towards the tiebreaker and urged a strong penalty for violating the arms-length intent of the language, such as a lifetime program ban.

One commenter supported the inclusion of private soft resources but suggesting eliminating the 5-year hold requirement for the donation of private land.

One commenter supported the inclusion of private land donations, urged that donations from related parties also count, and questioned what abuse could occur with that.

One commenter would like private donations, including from board members of the non-profit developer, to count towards the tiebreaker as soft leveraged resources. The commenter objects to the requirement for private soft loan and grant providers to be unrelated to the project or receive no benefit from the donation. In the commenter's case, families of persons with development disabilities may wish to donate to a housing development for this population. Going through a community foundation rather than the development entity adds cost and complication. Moreover, the children of donors should be able to "benefit" by living in the development, provided that they receive no special selection treatment.

One commenter suggested replacing "shall not have received any benefit from a related party" to "shall not receive any benefit from a related party."

One commenter remained concerned about abuse from developer's converting deferred developer fee into soft loans.

Size Factor

One commenter welcomed the size factor but suggested applying it to the entire tiebreaker score.

Five commenters, including an organizational commenter, continued to oppose the size factor in general because it will have unintended consequences or place too great an emphasis on size. The commenters would support a 1% additive factor (as opposed to a multiplier) for projects over 70 units. Two of the commenters further urged that the implementation of any size factor be delayed to allow pipeline projects to adjust. A third commenter stated that the 4% program is the better place to incentivize economies of scale.

One commenter continues to believe that project size should not be a determinant in a project's worthiness but appreciated the deweighting of the size factor and its application only to larger projects. However, the commenter opposed lowering the benchmark from 70 to 50 units, stating that projects should only be rewarded if they are significantly above the average rather than at or below the average. The commenter suggested a benchmark of 70 or 80 units.

One commenter stated that the benefit of reduced costs of larger projects is small compared to the detrimental effect of the proposal on smaller projects that meet TOD, special needs, and deconcentration of poverty goals. Moreover, the proposed weighting could give projects of 150 units up to a 7 point advantage, which is very large. If TCAC proceeds, the commenter suggested a one percentage point increase in the tiebreaker for projects of 70 or more units.

One commenter stated that the size factor will result in a disproportionate bias towards large projects. Larger projects are not necessarily more efficient, so the proposal does not achieve the goal of improved cost efficiency but instead encourages the concentration of poverty.

Three commenters, including one organizational commenter, opposed the size factor in general. It will disadvantage infill, TOD, and special needs projects as well as projects in suburban jurisdictions or areas of opportunity where larger projects are difficult to entitle. It will incentivize the minimum number of bedrooms. It will disadvantage phased projects. Two of these commenters supported a 1% addition to an applicant's tiebreaker score for projects over 70 units with an additional 1% addition for new construction projects. All commenters said that any change should be phased in over time.

One commenter said the size factor is a blunt tool to utilize and requested withdrawal of this proposal pending more discussion.

One commenter opposed the size factor because it will disadvantage well-leveraged projects. The commenter believes cost benchmarking is a more direct way to contain costs. Nonetheless, the commenter suggested applying the size factor beginning at 40 units and giving developers the option of selecting the new or old tiebreaker for 2016.

One commenter argued that size factor will give an unfair advantage to cities with more resources that can fund larger projects, which would concentrate units to fewer areas. In addition, larger projects would not have to be as competitive on cost efficiency. The commenter suggested rewarding lower cost projects more directly. Lastly, the commenter requested that previous applicants and phased projects be grandfathered in a way that their competiveness is not reduced.

Credit Efficiency Factor

One commenter welcomed eliminating the double counting of public funds in the credit efficiency factor but recommended eliminating the division of the factor by three to put cost efficiency on a more level playing field with public funds.

One commenter suggested excluding the value of fee waivers from the add-back provision as, like land, fee waivers are not a basis eligible item.

One commenter opposed the proposed change to the credit efficiency factor because it will lessen the impact of cost efficiency. Any reduction in costs that would otherwise result in a reduction in tax credit requests and higher credit efficiency score will be ignored if the reduction is less than the amount of public funds in the project. The commenter argued that the soft leverage factor rewards higher cost projects (to the extent that public funds increase or decrease in the same amount as costs) and that rewarding cost efficiency in credit efficiency score is therefore critical.

One commenter opposed the proposal because it will disadvantage well-leveraged projects.

Appraisal Review

One commenter supported clarification of the trigger for an appraisal review.

One commenter generally supported the revised proposal but strongly urged TCAC to retain authority, in spite of the 15% threshold, to obtain a review whenever an appraisal appears based on questionable assumptions, comparables, or conclusions.

One commenter suggested amendments to the appraisal review language to clarify that it relates only to donated land and improvements, to clarify that the reviewer shall develop his or her own opinion of value if the submitted appraisal is inappropriate, misleading, or inconsistent with the data, and to clarify that the use of the reviewer's value is only for purposes of the tiebreaker.

Response to Comments:

Soft leveraged resources

The current regulations allow for negative points for "material misrepresentation of any fact or requirement in an application." Staff believes that negative points are a strong deterrent to abuse of the requirement that soft resources come from unrelated parties that receive no benefit from a development team member. Staff will closely follow the use of private soft resources and make adjustments as needed in future regulations to refine the requirements or consequences.

The current regulations provide that land donations from non-profit entities must have been held by the entity for 10 years. The proposal additionally counts land donations from other private sources and reduces the hold period to five years. Staff believes that a seasoning requirement will help avoid manipulation of the tiebreaker and that reducing the time period to five years sets an appropriate balance.

Staff continues to believe that only private land and financing commitments from unrelated parties should be included in the tiebreaker. Allowing related party resources would allow developers to obtain tiebreaker benefit in ways that would not contribute additional financing to the project. Private donations can count if contributed to the project in such a way that meets the unrelated party test. To the extent that a relative of a donor obtains housing in the project as a result of a standard lease up procedure and without special advantage, staff does not consider that to be a benefit to the donor.

Staff concurs with the recommendation to replace "shall not have received any benefit from a related party" to "shall not receive any benefit from a related party" in order to clarify that the language refers to benefits received at any time.

Size Factor

Staff considered numerous possible changes to the tiebreaker, a number of which sought to provide incentives for cost containment. Given that costs at application are simply estimates, the large range in natural costs between project types and location, and the difficulty in quantifying accurate and fair cost benchmarks, staff concluded that directly measuring cost efficiency is impractical. Staff continues to believe and the cost study supports, however, that larger projects on average are more cost efficient per unit. Staff also remains interested in prioritizing new construction for 9% tax credit awards and in offsetting the current incentive to downsize a project.

Staff is mindful that smaller projects provide many other benefits and has revised the size factor proposal to reduce the weighting of the size factor and apply it only in a positive fashion for larger new construction projects. Staff does not believe that adding 1% to a tiebreaker score for larger projects, in lieu of the proposed multiplier, will have a meaningful impact on applicants or outcomes. Staff applied the size factor only to the soft leveraged resources category because that is where the incentive to downsize projects exists. Applying it to the entire tiebreaker would simply increase its weighting, which staff does not favor. While employing the size factor beginning at 50 units is admittedly unscientific, staff believes that this threshold is appropriate to

offset the downsizing incentive for most projects and encourage larger projects. Because the formula creates a sliding scale, projects near to 50 units see relatively little benefit in any event. Staff continues to point out that public funds remain the driver of the tiebreaker, that special needs projects in particular often have high public fund commitments and often benefit from the rental assistance increase, and that special needs projects will receive guaranteed funding under the non-profit and special needs set-asides. TOD projects have exclusive access to cap and trade funds. On the whole, staff believes that the revised proposal strikes an appropriate balance between multiple program objectives.

Staff is mindful of the impacts that changes to the tiebreaker in general have on pipeline projects. In this case, the largest impacts seem to relate to the size factor. As a result, staff proposes to delay implementation of the size factor until 2017 but implement the other changes to the tiebreaker for 2016. Staff believes that withdrawal of the proposal is unwarranted as the tiebreaker changes have received significant attention from stakeholders and further discussions are unlikely to lead to consensus given the widely divergent interests. Staff does not believe that allowing applicants to choose between the old and new tiebreaker formula for 2016 or any other year is fair or workable.

Staff is aware that basing the size factor on unit count will incentivize smaller units. Staff continues to point out that the housing type goals for SRO, senior, and special needs projects are limited, such that developers moving to that project type to improve their tiebreaker score will take on a large risk that credits will be oversubscribed for these housing types. For large family projects, staff has proposed a change to Section 10325(g)(1)(A) to require an appropriate mix of 2-bedroom and larger units.

Staff proposes to clarify that the units referred to in the size factor are tax credit units only.

Credit Efficiency Factor

Staff concurs that fee waivers should be excluded from the addback provisions of the credit efficiency factor.

Staff recognizes that the change to the credit efficiency factor may lessen the impact of cost efficiency in limited scenarios but points out that a project would still improve its overall tiebreaker by reducing costs while maintaining public funds constant. Moreover, given the current tiebreaker's double counting of public funds, tremendous pressure is placed on local jurisdictions to provide funding in excess of what otherwise would be necessary for project feasibility in order for a project to have a more competitive tiebreaker score. Given the limited universe of public resources, staff believes that eliminating the double counting of public leverage will ease this pressure.

Appraisal Reviews

Staff believes that having a transparent standard on when TCAC will automatically order an appraisal review is important. That said, as is currently the case nothing in the regulations prevents TCAC from questioning other appraisals that seem inappropriate.

Staff concurs with the suggested amendments to the appraisal review language.

Final 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. 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) and that do not represent Financing available through the National Mortgage Settlement Affordable Rental Housing Consumer Relief programs. The entity providing the soft loans or grants shall not ~~have received~~ receive any benefit from a related party to the project.
(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 5 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 contract with an appraisal reviewer and, if it does so, shall commission an appraisal review for donated land and improvements if a ~~15%~~ reduction ~~in the value of land and improvements contributed to a project~~ of 15% to the submitted appraisal value would change an award outcome. If the appraisal review finds ~~that~~ the ~~conclusions of the~~ submitted appraisal ~~are~~ to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop

his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer for calculating the tiebreaker only.
(iv) For purposes of this section, a related party shall mean a member of the development team or a Related Party, as defined in Section 10302(gg), to a member of the development team.

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.

On or after January 1, 2017, the ~~The~~ numerator of projects of 50 or more newly constructed Tax Credit units shall be multiplied by a size factor equal to seventy five percent plus the total number of newly constructed Tax Credit units divided by 200 (75% + (total newly constructed units/200)).

(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, fee waivers, and the amount of private "tranche B" loans underwritten based upon rent differentials attributable to rent subsidies, committed to the project.

Section 10325(d)

Initial Proposed Change:

Require high-cost projects seeking Committee approval to come before the Committee no later than the first meeting after the application deadline. Allow negative points for projects awarded credits in 2016 or after that exceed 140% of most recent threshold basis limit at placed in service.

Comments Received:

One commenter supported the clarifications regarding the timing of requests to the Committee to approve high cost projects.

Two commenters supported permitting negative points for projects exceeding the 140% high-cost threshold at placed in service.

Two commenters supported the high-cost language as a good starting point but suggested that the threshold be the higher of the basis limits at application or placed in service and that applicants

be able to use basis limit increases for which a project qualifies at placed in service even if not used in the application.

Six commenters opposed imposing negative points for high costs at placed in service. One stated that negative points should only be for negligence. One stated that there are often factors beyond an applicant's control, and developers should not be penalized if they can fill the gap with additional non-tax credit resources. One said that the threshold basis limits lag construction market inflation and should be indexed in real time. To dissuade misrepresentation by applicants, one commenter suggested an alternative approach to issue negative points for subsequent infractions. Three suggested that the Executive Director have more discretion on a case-by-case basis and that any negative points be appealable to the Committee.

Four commenters, including an organizational commenter, asked if a high-cost project approved by the Committee at application would be exempt or given greater leeway. One suggested a threshold of 10% above the approved high-cost percentage in such cases.

Two commenters expressed general concern about the use of threshold basis limits as the basis for cost containment measures as they are a very imperfect measure of appropriate cost. The commenters urged TCAC to refine the limits or seek out better cost measures.

One commenter suggested clarifying that negative points may be assessed.

Response to Comments:

Staff concurs that the increase in costs should be measured against the higher of the threshold basis limit at application or placed in service and amends the language accordingly. Staff also concurs that the language should account for projects which the Committee may approve as high-cost projects at application and amends the language to allow for a 10% increase over the percentage approved by the Committee based also on the higher of the threshold basis limits at application or placed in service. Staff further interprets the proposed language to allow applicants to use basis limit increases for which the project qualifies at placed in service even if not used in the application.

Staff points out that the current regulations provide that all negative points are discretionary and appealable to the Committee and clarifies that this is also the case with high cost projects by changing "shall be subject to negative points" to "may be subject to negative points."

Final 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~~ may 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 (or the original total eligible threshold basis limit if higher) by 40%. A project to which the Committee has awarded credits in spite of its cost may be subject to negative points if the project's ratio of total eligible basis at placed in service to the revised total adjusted threshold basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher)exceeds the ratio of total eligible basis to the revised total adjusted threshold basis limits that the committee approved at application by 10%.

Section 10325(f)(1)(B)

Initial Proposed Change:

Conform to changes to Section 10322(h)(10) regarding the market study. Codify TCAC's current policy that comparable properties are weighted in relation to their size for purposes of the value ratio.

Comments Received:

One commenter supported this change.

Two commenters supported the elimination of the market study for certain rehabilitation projects but opposed the elimination of the waiver as many special needs projects hold units vacant beyond the 10% allowance to reduce displacement or relocation costs or to bring in a different type of rental subsidy. Some of these projects need a waiver because they do not meet threshold requirements for the market study due to size of the units.

Response to Comments:

The existing waiver from the threshold requirements of the market study is only available if a project has less than a 5% vacancy rate at application. The new exemption in Section 10322(h)(10) allows 10% vacancy at application for SRO and special needs projects, which is twice that allowed to obtain a waiver currently. It is inconsistent with IRS rules and TCAC policy for current tax credit units to be left vacant pending a rehabilitation. That said, staff agrees that the square foot ratio in the market study poses challenges for SRO rehabilitation projects. As a result, staff has proposed an amendment to exempt SRO rehabilitation projects from the square foot ratio requirement.

Final 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~~ Except for SRO rehabilitation projects, 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.

Section 10325(f)(3)

Initial Proposed Change:

Prohibit substitution of HOME or RHS funds that qualified an applicant for those apportionments.

Comments Received:

Two commenters supported this change.

One commenter requested further explanation and clarification.

Response to Comments:

It is not clear what further clarification is required. Applicants may not substitute a funding source that qualified the project for priority within a set-aside or apportionment as that would nullify the basis for prioritizing the award. Moreover, there should be no need to substitute for such funds as they must be committed at the time of application.

Proceed with the change as originally proposed.

Final 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.

Section 10325(f)(4)

Initial Proposed Change:

Correct a grammatical error.

Comments Received:

None received.

Response to Comments:

Proceed as initially proposed.

Final 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.

Section 10325(f)(7)

Initial Proposed Change:

Remove subjective language relating to neighborhood compatibility, durability, and suitability from the minimum construction standards.

Require applicants receiving CDLAC points for sustainability to provide documentation to TCAC at application and at placed in service.

Disallow waivers to the manager's unit requirement.

Allow project architects to certify compliance with specified minimum construction standards and threshold basis limit increase standards that are not sustainability related.

Comments Received:

One commenter supported allowing project architects to certify compliance with non-sustainability standards.

One commenter objected to removal of the waiver authority relating to managers' units as flexibility may still be needed.

One commenter opposed having TCAC monitor sustainability commitments for CDLAC, stating that CDLAC requirements should be monitored by CDLAC. The commenter added that this TCAC documentation will add to production time and expense.

Response to Comments:

TCAC reviews bond and 4% tax credits projects at placed in service whereas CDLAC does not. TCAC already enforces various commitments an applicant makes to CDLAC. For example, the TCAC regulatory agreement includes housing type, income targeting, and site and service amenities which the applicant committed to CDLAC. Having TCAC review compliance with sustainability commitments builds on this current process and avoids a two-agency review process and duplication of effort at placed in service, which reduces time and expense to applicants.

Staff concurs that some flexibility may still be needed with respect to managers' units and proposes to add a clearer authority for both new construction and rehabilitation projects to seek such a waiver.

Final 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)]

Except for paragraph (J), if ~~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. The Executive Director may approve a waiver to paragraph (J) for a new construction or rehabilitation project, provided that tenants will have equivalent access to management services. All ~~exemptions~~ waivers 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.

Section 10325(f)(7)(A)

Revised Proposed Change:

With respect to minimum construction standards for 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.

Require applicants to consult with the design team and a certified HERS Rater or Certified Energy Analyst early in the project design process to evaluate a building energy model analysis and identify and consider cost-effective energy efficiency or generation measures beyond those required.

Require applicants receiving CDLAC points for sustainability to provide documentation to TCAC at application and at placed in service.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

One commenter supported clarification of the requirements for the energy efficiency consultation.

One commenter suggested allowing the use of LEED and GreenPoint raters to satisfy the design meeting requirement, requiring the running of a Title 24 or CUAC analysis prior to the meeting, and requiring reporting of the model results, meeting agenda, attendees, and outcomes.

TCAC's energy efficiency consultant advised requiring applicants to consult with a Certified Energy Analyst and LEED or Green Point Rater (a single person often possesses these different qualifications). He also expressed concern about the subjectivity added by the reference to "cost-effective" strategies.

One commenter urged that the consultation be evidenced by the applicant or the architect and not by a costly third party report.

One commenter strongly opposed the consultation proposal for 9% projects, given that some will not move forward and the requirement imposes significant additional cost. In addition, the proposal is too vague and impractical.

Response to Comments:

Staff concurs with the recommendation to meet with an energy analyst and LEED or Green Point rater as these qualifications relate to different sustainability measures. Given that many analysts have more than one qualification, this should not increase the expense of the consultation requirement.

Staff also concurs with the recommendation to require the completion of an energy analysis prior to the meeting and reporting of the model results, meeting agenda, attendees, and outcomes. Staff also concurs that it is not necessary to refer to cost-effective strategies as the owner already has maximum flexibility to adopt only those measures that are most appropriate.

Staff believes that the additional cost of this consultation is minimal in the context of a development budget, is something that can provide financial benefit to the applicant if cost-effective improvements are identified, and therefore worth the investment. The applicant will certify in the application that the requirement has been met and provide the listed documentation.

Final 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~~ a ~~certified HERS rater or~~ CABEC certified 2013 Certified Energy Analyst, and a LEED Green Rater or Green Point Rater (one person may meet all of these qualifications) early in the project design process to evaluate a building energy model analysis and identify and consider ~~cost-effective~~ energy efficiency or generation measures beyond those required by this subsection. Prior to the meeting, the energy analyst shall complete an initial energy model based on either current Title 24 standards or, if the project is eligible, the California Utility Allowance Calculator using best available information on the project. The application to CTCAC shall include a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting.~~describe the measures recommended by the energy analyst and which options were incorporated into the project~~. ~~In addition,~~ All rehabilitated buildings shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols

and reported using the CTCAC Existing Multifamily Assessment Report template. 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.

Section 10325(f)(7)(B)

Initial Proposed Change:

Clarify that landscaping minimum construction standards only apply in rehabilitation projects if the landscaping is being provided or replaced.

Comments Received:

Two commenters supported this change.

Response to Comments:

Proceed with changes as originally proposed.

Final 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.

Section 10325(f)(7)(C)

Initial Proposed Change:

Clarify that roofing minimum construction standards only apply in rehabilitation projects if new roofing is being installed or if the roof has less than ten years useful remaining life.

Comments Received:

Three commenters suggested requiring roof replacement if it has less than 5 years life remaining.

One commenter stated the roof replacement should be treated as a short term or long term need as determined by the capital needs assessment.

Two commenters opposed the 10-year rule for replacement of roofs in rehabilitation projects as it does not take into account the various capital needs a project may have.

Response to comments:

Staff's primary intent behind the originally proposed change was to clarify that rehabilitation projects need not guarantee a remaining 20-year life span on the roof. Staff proposed adding a requirement, however, that roofs be replaced in a rehabilitation project if they had less than 10 years of remaining life. On further thought, staff removes this 10-year requirement for rehabilitation projects. The regulations do not set standards for when other building components should be rehabilitated, and staff is comfortable that developers and lenders will make appropriate decisions based on the capital needs assessment.

Final 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.~~

Section 10325(f)(7)(D)

Initial Proposed Change:

Clarify that exterior door minimum construction standards only apply in rehabilitation projects if exterior doors are being provided or replaced.

Comments Received:

Two commenters supported this change.

Response to comments:

Proceed with changes as initially proposed.

Final 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.

Section 10325(f)(7)(G)

Initial Proposed Change:

Alter the size requirement for water heaters and clarify that water heater minimum construction standards only apply in rehabilitation projects if water heaters are being provided or replaced.

Comments Received:

Two commenters supported this change.

One commenter requested standards for tankless water heaters.

Response to comments:

Staff is willing to consider standards for tankless water heaters at a later time but is unprepared to propose such standards at this time.

Staff proposes to proceed with the changes as initially proposed.

Final 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.

Section 10325(f)(7)(H)

Initial Proposed Change:

Simplify flooring minimum construction standards and clarify that flooring minimum construction standards only apply in rehabilitation projects if flooring is being provided or replaced.

Comments Received:

Two commenters supported this change.

Response to comments:

Proceed with changes as initially proposed.

Final 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~~.

Section 10325(f)(7)(I)

Initial Proposed Change:

Clarify that insulation minimum construction standards only apply in rehabilitation projects if the insulation is being provided or replaced.

Comments Received:

Two commenters supported this change.

Response to comments:

Proceed with changes as initially proposed.

Final Proposed Change:

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

Section 10325(f)(7)(J)

Initial Proposed Change:

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. Clarify language relating to the number of manager units required.

Comments Received:

Two commenters supported these changes and welcomed the clarifications. One said the existing language has been one of the most difficult to interpret.

Response to comments:

Proceed with changes as initially proposed.

Final 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.

Section 10325(f)(7)(K)

Revised Proposed Change:

Apply California Building Code accessibility standards to rehabilitation projects in general but require them to provide 4% communications accessible units in accordance with Chapter 11(B).

Comments Received:

Thirteen commenters, including two organizational commenters, agreed with limiting the accessibility requirements to new construction. One stated he has found the higher standards to be cost prohibitive for many rehabilitation projects. Another stated that the change improves accessibility without placing an undue burden on existing buildings with existing conditions.

One commenter strongly opposed applying the 10%/4% accessibility requirements only to new construction. A 50% reduction in accessible units has an enormous and detrimental impact on people with mobility and sensory disabilities, a population greatly at risk of homelessness. This change would have meant 310 fewer accessible units in 2014 and will mean that 95% of TCAC funded units will be completely unavailable. The commenter points out the existence of the waiver provision for cases where costs are excessive and argues that there is therefore no need to eliminate the obligation generally. Furthermore, cost concerns do not impact sensory disability accessibility requirements, which should remain at 4%.

Twelve form letter commenters opposed reducing the 10% accessibility requirement for rehabilitation projects, stating that the proposed changes will negatively impact people with disabilities and negatively impact housing opportunities for veterans.

One commenter opposed maintaining the 10%/4% standard for new construction, suggesting that all projects remain at code to reduce costs.

One commenter supported the revised proposal but asked for explicit language that 5% mobility accessible units are required.

Response to Comments:

Staff continues to believe that applying the building code standards to rehabilitation projects will best balance accessibility with project feasibility.

Staff continues to note that new construction projects will provide twice the number of accessible units as building codes require and 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.

Proceed with the revised changes.

Final Proposed Change:

(K) All new construction tax credit recipient projects shall adhere to the provisions of California Building Code Chapter 11(B) regarding accessibility to privately owned housing made available for public use. Tax credits shall be viewed as invoking those requirements as applicable, including a minimum of ten percent (10%) of the units with mobility features~~,~~ and four percent (4%) with communications features. All rehabilitation projects shall provide a minmum of 4% of the units with communications features consistent with California Building Code Chapter 11(B). ~~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.

Section 10325(f)(7)(L)

Revised Proposed Change:

Require new construction projects to include systems sufficient to irrigate only with reclaimed water, greywater, or rainwater under normal conditions. Provide the Executive Director with waiver authority.

Comments received:

One commenter expressed concern that the requirement for new construction projects to irrigate only with reclaimed water, greywater, or rainwater may cause considerable delay for pipeline projects intending to apply in 2016 that have not been designed to include such systems.

One commenter strongly opposed the requirement to install greywater systems based on her recent experiences in which there were multiple unforeseen issues. The city was not familiar with the technology, which led to significant delays in plan check and permitting approval. In addition, the number of suppliers was limited, which led to uncompetitive bids. Ultimately, it cost more than $100,000 to treat greywater from 11 washing machines. The commenter does support providing points in the sustainability category for the provision of such systems.

Seven commenters, including one organizational commenter, stated that the requirement is costly and difficult to implement. Recycled water is not widely available. Greywater technology for multifamily construction does not have a long history and raises storage, treatment, and local permitting issues. Rainwater is tricky in California due to the short rain season and the need for

massive storage tanks. The commenters suggested that the use of such systems be an optional point item.

Two commenters opposed the requirement because it will impose extraordinary cost and hardship on affordable housing projects.

Three commenters, including an organizational commenter, opposed the requirement because it will pose significant technical challenges, increase costs at a time when we are trying to be more efficient, and result in numerous waiver requests. These commenter supported competitive points instead. One of these commenters, at a minimum, urged a lower standard than 100% of irrigation needs and clarification of what amount of de minimus landscaping or drought-tolerant landscaping is required to obtain a waiver.

One commenter supported competitive points but opposed the requirement because it imposes more stringent requirements on affordable housing than market rate housing, contradicts the goal of reducing costs, and will be very difficult to implement for pipeline projects that have already been designed.

Two commenters, including one organizational commenter, opposed the requirement as an additional cost but, at a minimum, suggested exempting projects under 1 acre, projects with ornamental landscaping on less than 25% of the site, projects with 100% stormwater BMPs, projects using xeriscaping over traditional landscaping, and projects required to participate in a local water conservation strategy or stormwater management system.

One commenter opposed the requirement because rainwater capture is not an option in the desert and installing greywater systems to irrigate drought tolerant landscaping will cost thousands per unit, which far outweighs the benefits.

One commenter opposed the requirement and suggested instead that TCAC limit turf in new developments.

Response to comments:

Staff finds compelling the concerns about cost and practicality of requiring the use of reclaimed water, greywater, or rainwater to meet irrigation needs and withdraws the proposal.

Revised Proposed Change:

No change to the current regulations.

Section 10325(f)(9)(D)

Initial Proposed Change:

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.

Comments Received:

Two commenters supported this change.

One commenter supported the increase in the maximum award but believes the 100 unit threshold may be too high to have any effect. Projects in metropolitan markets hit the current cap at 65-75 units, so a threshold of 80-90 units would create more impact.

One commenter supported the increase but recommended a threshold at 70 to 80 units.

One commenter strongly supported the increase in the cap but stated that basing the increase on units create perverse incentives for smaller units. The commenter suggested a cap of $3 million in federal credits for projects with a floor area ratio of greater than 5.0 or with more than 100 units.

Two commenters pointed out that the increase in the maximum federal credit award will only affect the set-asides and largest three regions as all other regions will be constrained by the size of the regional apportionment.

One commenter stated that the 9% program simply does not have enough credits to spread around geographic areas to support larger projects without creating unhelpful distortions in the allocation system. There will be fewer awards in regions, with only one award in many. Jurisdictions preferring or limited to smaller projects will be disadvantaged. And the setasides are likely to be oversubscribed earlier. The commenter suggested encouraging larger projects through the 4% program.

Four commenters, including one organizational commenter, stated that the increase in the credit award cap should account for state credits as well. One expressed concern that this will exhaust state credits. One also proposed a threshold of 80-90 units.

Two commenters, including one organizational commenter, stated that this proposal will adversely impact developments in large urban areas and smaller organizations that cannot develop larger projects. The commenter urged TCAC to delay this change to analyze its impact and consider reducing the threshold to 70 units.

One commenter opposed this change because it could cause an over-allocation of credits through the set-asides and will disadvantage smaller projects.

One commenter opposed this change because it benefits larger projects only and may result in less credit available for second round projects.

Response to Comments:

Staff withdraws this proposal. While staff maintains the desire to facilitate larger projects, staff is concerned about how lifting the cap on federal credits will affect demand for state credits,

which have been overallocated in the past two years. Staff will reconsider this issue later as part of a larger strategy to address shortages in state credits.

Final Proposed Change:

No change to the current regulations.

Section 10325(f)(10)

Revised Proposed Change:

Require that at least $36,000 in hard construction costs per unit be for rehabilitation costs other than the costs of rehabilitation for leasing offices, parking facilities, or landscaping.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Two commenters, including one organizational commenter, opposed the discounting of any costs related to parking, office, or landscaping facilities because contractors do not track these costs separately.

Response to Comments:

Staff withdraws the proposed change.

Final Proposed Change:

No change to the current regulations.

Section 10325(f)(11)

Initial Proposed Change:

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.

Comments Received:

Two commenters, including an organizational commenter, supported the proposed flexibility to adjust rents at resyndication if the project is experiencing negative cash flow.

Two commenters, including one organizational commenter, supported the desire to preserve affordability but wanted more discretion for waivers for things like unrestricting manager's units, increasing service space, and converting SRO units to efficiency units.

One commenter stated that the exceptions are far too limited. A developer may need to increase rents to effectuate a resyndication or to respond to situations in which rents are tied to other public subsidies which may be lapsing.

Two commenters, including one organizational commenter, supported the goal of not lessening affordability but expressed concerns that this requirement could lower rents if comparable affordability levels are applied to older TCAC regulatory agreements. More analysis is needed to avoid unintended negative impacts.

Response to Comments:

Staff concurs that flexibility to reduce the number of units for specified purposes is appropriate and has added corresponding language, provided that the income and rent targeting remain proportional.

The initially proposed language provides for lapsing subsidies. Staff does not believe that raising restricted rents to effectuate a resyndication is good policy but is willing to reconsider this issue at a later date if needed.

The proposed changes to Section 10327(g)(8) allow resyndication applicants to continue using "hold harmless" rents, which resolves the concern about older TCAC regulatory agreements.

Final 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. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.

Section 10325(f)(12)

Initial Proposed Change:

Require acquisition and/or rehabilitation projects applying for 9% tax credits to demonstrate that they are not feasible as 4% tax credit projects.

Comments Received:

Four commenters supported the proposal to require that 9% acquisition and rehabilitation applicants demonstrate infeasibility as a 4% project.

One commenter strongly supported this proposal and believes that effective enforcement will eliminate the need for an acquisition and rehabilitation housing type goal.

One commenter suggested applying the infeasibility test to new construction as well as acquisition and rehabilitation projects.

One commenter suggested that TCAC create a spreadsheet to allow developers to quickly and easily determine if their projects would be considered feasible as 4% projects.

One commenter believes that there are sufficient incentives to ensure that applicants use 4% tax credits where feasible and that the proposed regulation changes make these incentives even stronger. The commenter is concerned about the viability of determining feasibility, the drain on TCAC staff time, and the risk of arbitrary determinations.

One commenter supported the goal but worried that the proposal will create a great deal of additional and unnecessary work as few projects will be eliminated from the 9% competition.

Nine commenters stated that while the concept is reasonable, the proposal is poorly defined and should be withdrawn until there is more definition.

One commenter stated that the requirement will create unnecessary additional paperwork for staff and applicants and will be easy to manipulate.

Five commenters, including two organizational commenters, supported the goal but asked for guidance on what constitutes infeasibility.

Response to Comments:

Staff withdraws this proposal. While the concept has merit, staff concurs that an objective and transparent test is needed to implement the concept and has learned from other states that creating such a test is extremely difficult. In addition, staff believes that the additional uncertainty for acquisition and rehabilitation projects due to the housing type goal proposed in Section 10315(g) and the increase in 4% developer fees will provide additional incentives for projects to access the 4% program if possible.

Final Proposed Change:

No change to the current regulations.

Section 10325(f)(13)

Initial Proposed Change:

Disqualify any applicant to TCAC who is debarred by CDLAC.

Comments Received:

Two commenters supported this change.

Response to comments:

Proceed with change as initially proposed but update paragraph number to (12) to reflect the withdrawal of the initially proposed Section 10325(f)(12).

Final Proposed Change:

(~~13~~12) CTCAC shall not accept an application from any party that is debarred from applying to CDLAC.

Section 10325(g)(1)(A)

Revised Proposed Change:

Reduce 3-bedroom requirement for large family housing to 25% and require that and at least 25% of the Tax Credit units in the project shall be two-bedroom units.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Five commenters, including one organizational commenter, suggested flexibility for an applicant to meet the 2-bedroom requirement with additional 3-bedroom or larger units. One of these commenters also urged a waiver for projects that have already received entitlements. A second commenter also suggested as alternatives eliminating the 2-bedroom requirement or reducing it to 10%.

One commenter cited the large variance in household sizes across California and suggested that TCAC require no more than 15% of units to have two bedrooms. The commenter also suggested grandfathering projects that have already received entitlements from the new two-bedroom requirement.

One commenter opposed any 2-bedroom requirement but, at a minimum, requested an exemption for already entitled projects and no more than a 5% 2-bedroom requirement.

One commenter suggested a single standard for 2-bedroom and larger units rather than separate standards for 2- and 3-bedroom units.

One organizational commenter stated that the 2-bedroom requirement is unnecessary and arbitrary.

Response to Comments:

Staff continues to believe that it is advisable to ensure that large family projects do not consist solely of one- and three-bedroom units and that requiring 50% of units to be 2-bedrooms or larger is appropriate. Staff concurs, however, that more flexibility to provide additional units larger than 2-bedrooms is appropriate. Staff proposes to revise the language to require 25% 3-bedroom units and an additional 25% of units that are 2-bedroom or larger. As a result, an applicant who chose to provide more than 25% 3-bedroom units would see the 25% 2-bedroom requirement reduced accordingly.

Staff concurs with the suggestion to grandfather projects that receive entitlements prior to January 1, 2016 from the two-bedroom requirement.

Final 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, and for projects that receive land use entitlements on or after January 1, 2016 at least an additional twenty-five percent (25%) of the Tax Credit units in the project shall be two-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;

Section 10325(g)(4)

Revised Proposed Change:

Eliminate the requirement for special needs projects to meet an additional housing type and establish unit mix and size standards for non-special needs units in projects with less than 75% special needs units.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Two commenters, including one organizational commenter, supported the revised proposal.

Three commenters, including one organizational commenter, urged that projects be able to meet an SRO or senior housing type for the non-special needs units in lieu of unit mix requirement.

One commenter suggested a single standard for 1-bedroom and larger units rather than separate standards for 1- and 2-bedroom units.

One commenter stated that the unit mix and size requirements are unclear, unnecessarily rigid, and will greatly impact existing entitled special needs projects.

One organizational commenter stated that the unit mix requirement is unnecessary and arbitrary.

Response to Comments:

Staff finds compelling the argument that special needs projects that can meet the SRO or senior housing type for non-special needs units should not be subject to new unit mix requirements. Staff continues to believe, however, that projects that previously had to meet the large family requirements for non-special needs units should be subject to less stringent requirements. As a result, staff proposes to allow projects to continue to meet SRO or senior housing type requirements for the non-special needs units or to meet an alternative unit mix requirement of 20% 1-bedroom units and 10% larger units among the non-special needs units. Staff further concurs that a waiver should be available if these unit mix requirements conflict with entitlements received prior to January 1, 2016.

Final 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 the non-special needs units must meet the senior or SRO housing type (although the project will be considered as a special needs project for purposes of Section 10325) or consist of A) at least 20% of the non-special needs units in the project shall be one-bedroom units and at least 10% of the non-special needs units in the project shall be larger than one-bedroom units. , and B) studio 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 bedroom and size requirements may be waived for rehabilitation projects or for projects that received entitlements prior to January 1, 2016 at the discretion of the Executive Director. The application shall meet the following additional threshold requirements:

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

Initial Proposed Change:

Clarify the at-risk definition.

Comments Received:

Four commenters agreed with this proposal.

Response to Comments:

Proceed with changes as originally proposed.

Final 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;

Section 10326(g)(2)

Initial Proposed Change:

Align the site control documentation standards for 4% tax credit project with those for 9% tax credit projects.

Comments Received:

None received.

Response to Comments:

Proceed with changes as originally proposed.

Final 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.~~

Section 10326(g)(3)

Initial Proposed Change:

Conform land use entitlement requirements for 4% tax credit applications to CDLAC requirements.

Comments Received:

One commenter opposed conforming to CDLAC's standard for land use entitlements and recommended that CDLAC adopt TCAC's standard. Design review and minor entitlements may take time but entail low risk, and aligning these entitlements with TCAC application deadlines can be challenging. Conforming to the 9% program requirements would reduce confusion and add needed flexibility.

Response to Comments:

In addition to design review, TCAC's current standard provides that an applicant need not have initial environmental study assessments, variances, and development agreements in place at application. Staff believes that these latter entitlements can be both time consuming and risky. Given that 4% tax credit applicants have multiple opportunities each year to apply, staff believes that it is not overly burdensome to applicants to obtain these entitlements prior to application.

Staff proposes to proceed with the changes as initially proposed.

Final 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.

Section 10326(g)(7)

Revised Proposed Change:

Require $15,000 in hard construction costs per unit in rehabilitation projects and $20,000 per unit if the project is a resyndication.

Require that at least $18,000 in hard construction costs per unit for resyndication projects and $13,000 per unit in other projects be for rehabilitation costs other than the costs of rehabilitation for leasing offices, parking facilities, or landscaping.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Two commenters, including one organizational commenter, supported the minimum rehabilitation thresholds but opposed the discounting of any costs related to parking, office, or landscaping facilities because contractors do not track these costs separately.

One commenter opposed the $20,000 threshold for resyndication projects and urged a single $15,000 threshold.

One commenter opposed different rehabilitation thresholds for resyndication projects and others. The higher standard for resyndication projects unfairly hinders resyndication and dissuades preserving the affordability of these projects.

One commenter acknowledged the partial inclusion of leasing office, parking facility, and landscaping costs but stated that the inclusion amounts are too low. The commenter proposed allowing 25% of the minimum rehabilitation threshold to be spent on common area items.

One commenter suggested defining the construction cost per unit to be in aggregate for scattered site projects.

Response to Comments:

Staff amends the proposal to establish a single $15,000 per unit minimum rehabilitation threshold for all 4% tax credit rehabilitation projects and withdraws the proposal related to the costs of leasing offices, parking facilities, or landscaping.

TCAC's current practice is to calculate compliance with the threshold based on the aggregate construction costs and aggregate number of units. There is no need to specify a standard for scattered site projects.

Final 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)

~~At least $18,000 in hard construction costs per unit for resyndications and at least $13,000 in hard construction costs per unit for all other projects shall be for rehabilitation costs other than the costs of rehabilitation for leasing offices, parking facilities, or landscaping.~~

Section 10326(g)(8)

Initial Proposed Change:

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.

Comments Received:

Two commenters, including one organizational commenter, supported the goal of not lessening affordability but expressed concerns that this requirement could lower rents if comparable affordability levels are applied to older TCAC regulatory agreements. More analysis is needed to avoid unintended negative impacts.

One commenter stated that the exceptions are far too limited. A developer may need to increase rents to effectuate a resyndication or to respond to situations in which rents are tied to other public subsidies which may be lapsing.

Response to Comments:

Staff concurs with the comments to the related Section 10325(f)(11) that flexibility to reduce the number of units for specified purposes is appropriate and has added corresponding language, provided that the income and rent targeting remain proportional.

The initially proposed language provides for lapsing subsidies. Staff does not believe that raising restricted rents to effectuate a resyndication is good policy but is willing to reconsider this issue at a later date if needed.

The proposed changes to Section 10327(g)(8) allow resyndication applicants to continue using "hold harmless" rents, which resolves the concern about older TCAC regulatory agreements.

Final 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. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increase service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.

Section 10326(h)

Initial Proposed Change:

Require applicants to submit the CDLAC bond application prior to or concurrently with the CTCAC application.

Comments Received:

One commenter supported this change.

Response to Comments:

Proceed with changes as initially proposed.

Final 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), ifIf 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 meetingprior to or concurrently with submitting an application to CTCAC, or shall have received an initial loan commitment from the California Housing Finance Agency (CalHFA).

Section 10326(j)(1)

Initial Proposed Change:

Require applicants to receive a CDLAC bond allocation within 90 days of receiving a tax credit reservation.

Comments Received:

One commenter supported this change.

Response to Comments:

Proceed with changes as initially proposed.

Final 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;

Section 10327(c)(2)(B)

Initial Proposed Change:

Increase the developer fee cap for 4% tax credit projects as follows:

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.

c. Require developer to maintain the same proportion of acquisition basis to construction basis in the fee amounts below and above $2.5 million.

Comments Received:

Eleven commenters supported the proposed increases in 4% developer fees. One added specific support for the requirement for projects with public funds to defer the increase in order to ensure that public funds will not contribute additional subsidy to fund the additional fee.

Four organizational commenters supported increasing the developer fee limit for 4% projects but urged TCAC to apply the proposed limit for non-publicly funded developments to publicly-funded developments as well. Two stated that public agencies should decide whether or not to permit a higher fee. One also expressed concern about the complexity of the proposed approach.

One commenter recommended excluding assumed public loans from public funds for this purpose and requiring deferral of the fee increase for all projects.

One commenter supported the proposal but suggested elimination of the public subsidy nuance and requested that the cap for new construction be removed.

One commenter supported the proposal to increase developer fees for 4% projects but recommended elimination of the distinction between projects with and without public funds. If the distinction remains, the commenter recommended not counting assumed public funds or rental and operating subsidies as public funds for this purpose.

One commenter urged that all projects be eligible for the non-public subsidy formula because the current formula for projects with public subsidy discriminates against projects in higher cost areas and against larger projects, both of which are more difficult but require public subsidy. If the distinction remains, the commenter also recommended eliminating the deferral threshold for projects over 100 units or increasing it to $10,000 per unit.

One commenter appreciated the proposal but recommended that the deferral threshold for projects with public subsidy be increased by $10,000 per unit for projects over 80 units or that the cash fee increase by 50% of the additional equity related to the increased developer fee. For projects without public subsidy, the commenter asked for clarification that "land value" includes a seller carryback from a local government that is based on residual receipts and that fee waivers also be excluded from public funds in this context. Lastly, the commenter opposed tying the 15% percentage for developer fees in projects without public subsidy to a higher level of affordability.

One commenter finds the developer fee proposal positive and believes it will make projects feasible. The commenter suggested further adjustments: 1) allowing the higher of the fee calculated at application or at placed in service so that already approved projects can benefit; 2) exempt 4% projects from the prohibition on increasing the developer fee from the application amount; and 3) remove the requirement to provide 20% of the units at 50% AMI to obtain the maximum developer fee.

One commenter supported this increase in developer fees for 4% projects, especially in light of the proposal to limit acquisition and rehabilitation projects in the 9% program.

One commenter asked for more clarification on how the new developer fee is calculated and suggested a graduated bonus for projects that increase affordability, as opposed to an all or nothing increase for projects that provide 20% of units affordable to households earning 50% of the area median income.

Three commenters recommended eliminating the cap and any conditions on development fees for bond/4% tax credit projects with or without public funds.

Two commenters wanted TCAC to allow the full 15% developer fee for all 4% projects. One added that, at a minimum, TCAC should apply the provisions created for projects without public subsidy to those with public subsidy as well.

Three commenters appreciated that the increased developer fee will result in more equity and make more projects feasible but stated that the application of deeper income targeting for projects without public subsidy has a negative impact on project feasibility. The additional equity gained by meeting the 20% at 50% AMI threshold is overwhelmed by the loss of rents and loan proceeds. The commenter recommended uncapping the developer fee for both projects with and without public subsidy with no additional conditions.

One commenter stated that the deferral requirement for projects with public funds unfairly disadvantages public housing authorities and incentivizes such projects to seek 9% tax credits.

Two commenters opposed requiring $30,000 per unit in rehabilitation for the developer to earn a developer fee on 15% of acquisition basis. This change undermines the benefit from the increase in the developer fee and will hinder the development of affordable housing. One suggested setting the threshold at the amount determined by a capital needs assessment or giving the Executive Director authority to approve lower amounts.

Three commenters asked for clarification that rent or operating subsidy commitments do not constitute public funds for this purpose.

One commenter suggested that the provision relating to projects with public funds should only affect projects for which the public funds exceed 10% of total costs.

One commenter suggested limiting the deferral threshold for projects with public funds as this is a very minimal incentive.

Response to Comments:

Staff concurs that the initially proposed changes are overly complex. Staff proposes to simplify the proposal by removing the distinction between projects with and without public funds, eliminate the ceiling on developer fees included in projects costs and basis for all 4% projects, and generally require the increase in fees above $2.5 million to be deferred or contributed back to the project for all projects. Staff continues to propose that the deferral threshold be increased on a per unit basis for projects over 100 units but doubles the per unit increase to $10,000 per unit. This proposal will allow all projects to increase basis and developers to earn higher fees over time. The increase in the deferral threshold for larger projects will provide a larger cushion during the development stage for projects of greater size and complexity. The deferral requirement ensures that projects are not saddled with additional upfront capital needs

The proposed amendment eliminates the need to define public subsidy, the different improvement basis percentages based on levels of affordability, and the need to allocate the developer fee proportionally based on the improvement basis percentage.

Staff concurs that the initially proposed increase in the threshold at which applicants earn a developer fee based on 15% of the acquisition basis is too high. Staff proposes to set the threshold at rehabilitation costs of $20,000 per unit instead of $30,000 per unit. This maintains the $5000 per unit differential over the minimum construction threshold in Section 10326(g)(7).

Staff does not agree that the increase in the developer fee should be retroactive. Such a change would materially alter project sources and uses and credit calculations for projects that have already received credit reservations. Nor does staff agree that eliminating the provision prohibiting an increase in the developer fee after credit reservation is appropriate. Allowing such increases encourages and rewards cost overruns.

Final 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. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $10,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project. ~~, 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. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $10,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project., 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 $20,000 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.~~

Section 10327(c)(5)(A)

Initial and Revised Proposed Change:

Decrease the threshold basis limit increase for structured parking by a percentage equal to the percentage by which the number of parking spaces exceeds proposed benchmark ratios.

Clarify that the prevailing wage threshold basis limit increase is available to projects subject to a legal requirement for the payment of federal or state prevailing wages. Allow this increase for projects financed in part by a labor-affiliated organization that requires the payment of at least prevailing wages. 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. Require an applicant requesting the increase to the threshold basis limit for payment of prevailing wages to certify that contractors and subcontractors will comply with SB 854 (Chapter 28, Statutes of 2014), if applicable.

Move the threshold basis limit increase for local development impact fees to a different subsection in order to clarify that this increase is not subject to the 39% cap on the remaining increases within this subsection.

Comments Received:

Parking

[Note: Comments submitted on the initial proposed change relating to the parking increase were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Three commenters continued to oppose the changes to the parking threshold basis increase even with the revisions because it will hurt projects that have to meet local parking requirements and which are unlikely to change. One further stated that if TCAC proceeds, the pro-ration should relate to the proportion by which *structured* parking exceeds the thresholds in order to allow design flexibility. A second further stated that 2 spaces should be allowed per manager's unit.

Three commenters, including one organizational commenter, opposed the changes with the revisions because the current increase only covers half the cost of structured parking so there is already adequate incentive to minimize structured parking. The change will force developers to reduce the number of units to accommodate surface parking. If TCAC proceeds, one of these commenters urged increasing the ratio to two spaces per 3-bedroom and larger unit and to exclude mandatory guest, commercial, and staff parking spaces.

Two commenters, including one organizational commenter, remained concerned about the proposal but, at a minimum, requested that the ratio for 3-bedroom or larger units be two spaces per unit and that the provision only apply to projects receiving entitlements after January 1, 2017.

One commenter urged that any TCAC parking thresholds align with density bonus standards.

Prevailing wages, project labor agreements, and highly skilled and trained workforce

Five commenters supported allowing the threshold basis limit increase for projects that pay prevailing wages as a result of the involvement of labor-affiliated lenders. This change will both increase the supply of, and reduce the demand for, affordable housing. The commenters also supported the additional 5% increase for project labor agreements or the use of a highly skilled and trained workforce as an incentive to expanding opportunity for local low-income residents and achieving high quality construction. Project labor agreements increase the number of local low-income residents entering a career in construction that enables them to afford non-subsidized housing, as opposed to receiving a one-time job paying prevailing wages. Using a skilled and trained workforce is vital to ensuring high-quality, safe housing and contributes to the long-term viability of developments through the 55-year regulatory period.

One commenter supported the proposal but believes documentation should be subject to 3rd party verification upon TCAC request.

One commenter strongly supported the basis increase for projects subject to a project labor agreement or meeting the skilled workforce criteria. This is important for projects that may find themselves subject to project labor agreements.

One commenter stated that this provision allows a basis boost where project labor agreements are required, which offsets the higher cost.

One commenter commended bringing TCAC into greater consistency with local labor agreements.

One commenter asked that tribal wages be included in the increase for state or federal prevailing wages and that Tribal Employment Rights Ordinances be included in the increase for project labor agreements.

One organizational commenter, endorsed by another commenter, strongly opposed the increased basis limit from projects subject to a project labor agreement because it is in direct conflict with the stated TCAC goals of increasing the supply of affordable housing and reducing project costs.

It is bad public policy to channel additional tax credits into projects subject to project labor agreements in order to offset their associated costs. Additionally, this proposal would unfairly impact projects located in more rural areas of the state where union labor is often not locally available making it less likely those projects could take advantage of the basis boost.

Three commenters, including one organizational commenter, stated that basis limit increases should be limited strictly to labor requirements under state law. To do otherwise contradicts the goals of increasing production and controlling development costs.

Two commenters stated that this provision usurps the interests of low income residents in order to benefit labor unions, which is not good public policy. One suggested limiting the provision to 4% projects where credits are not scarce.

One commenter expressed strong concerns with this proposal because it is at odds with efforts to reduce costs.

One commenter disagreed with the boosts for both labor-affiliated lenders and project labor agreements. The latter would increase costs and the demand on scarce public resources to fill the gap. At a minimum, this should be a one-year pilot.

Response to Comments:

Parking

While high structured parking costs remain a sincere concern, staff is convinced that the proposal is unlikely to impact local government zoning policies and that reducing the threshold basis increase for structured parking may penalize developers for parking ratios over which they have no control. Staff concurs that the Legislature is better positioned to influence local parking requirements. As a result, staff withdraws the proposal to pro-rate the threshold basis increase for structured parking for projects whose parking spaces exceed a certain threshold.

Prevailing wages, project labor agreements, and highly skilled and trained workforce

Staff continues to believe that the additional basis limit increase for project labor agreements and the use of a highly skilled and trained workforce recognizes the benefits of using highly skilled construction workers to help ensure high-quality construction and on-going durability for the 55-year span of the regulatory agreement. This increase is voluntary and will result in projects receiving additional tax credits only in the event that a project would have exceeded the threshold basis limits without the increase. Many projects do not need threshold basis limit increases and therefore would not receive additional tax credits.

While the ability to access the boost may be less in rural communities, providing the boost to projects that can access it does not penalize rural communities. Rural communities also rarely access the structured parking increase. Moreover, threshold basis limits are much less of a factor for less expensive rural projects.

The proposed change requires certification from the applicant that the conditions of the increase have been met. TCAC will require submission of the Project Labor Agreement for those projects that have one and will study methods to verify compliance with a commitment to use a highly skilled and trained workforce.

Staff is unfamiliar with tribal wages and Tribal Employment Rights Ordinances and therefore unprepared to consider referencing them at this time. Staff is willing to engage in further discussions for future regulation changes.

Final 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~~. Unless the project received entitlements prior to January 1, 2016, the increase shall be reduced in the proportion that the required parking exceeds 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.

Section 10327(c)(5)(B)

Initial Proposed Change:

Recalibrate the energy efficiency benchmark at which a threshold basis limit increase is available to conform with the benchmarks proposed for Section 10325(c)(6).

Allow project architects to certify compliance with specified minimum construction standards and threshold basis limit increase standards that are not sustainability related.

Comments Received:

Three commenters supported recalibrating the energy improvement thresholds.

One commenter supported allowing project architects to certify compliance with non-sustainability items.

One commenter supported allowing energy efficiency improvement across an entire site instead of building by building.

Response to Comments:

Proceed with changes as initially proposed.

Final 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.

Section 10327(c)(5)(E)

Initial Proposed Change:

Place the threshold basis limit increase for local development impact fees in this subsection in order to clarify that this increase is not subject to the 39% cap on the remaining increases within subsection (A).

Comments Received:

One commenter supported this change.

Response to Comments:

Proceed with changes as initially proposed.

Final 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.

Section 10327(c)(6)

Initial Proposed Change:

Allow applicants to forego an appraisal and use as the acquisition basis the amount of debt encumbering the property. Provide guidance for how to apportion the value of land and improvements.

Comments Received:

Five commenters, including two organizational commenters, supported this change as providing needed flexibility.

One commenter suggested specifying the way in which the reasonableness of a pro-ration of acquisition basis between land and improvements shall be established. He suggested confirming that a pro-ration from a third party appraiser shall be deemed reasonable.

Response to Comments:

Staff intends to rely on the pro-ration from a third party appraiser, but as with appraisals themselves, TCAC prefers to reserve the right to question pro-rations that are clearly inappropriate.

Proceed with the changes as initially proposed.

Final 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,

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Section 10327(c)(9)

Initial Proposed Change:

Set tax credit factor pricing at $1 for self-syndicating 9% tax credit projects or projects in which the investor is the applicant or a Related Party.

Comments Received:

One commenter supported this change.

Two commenters opposed this change, saying that the market should decide.

One commenter opposed the self-syndication pricing standard as it impedes an applicant's ability to leverage necessary funds or misrepresents the total sources of funds as insufficient.

Response to Comments:

The proposed change relates only to cases in which the applicant or a related party is the investor. Staff proposed the change precisely because the credit pricing in these cases is not determined on the open market through arms-length transactions. Staff also points out that the proposed change only sets a floor on pricing and allows an applicant to proposed higher pricing and leverage additional funds to close funding gaps.

Staff proposes to proceed with the change as initially proposed.

Final 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.

Section 10327(d)(1)

Initial Proposed Change:

Grandfather for one year the Difficult Development Area (DDA) status of any 9% tax credit project that loses DDA status.

Comments Received:

Eighteen commenters, including two organizational commenters, applauded grandfathering in a project's DDA status. Three of these recommended a permanent extension of existing county-

wide metropolitan DDAs as 2/3 of the 1500 zip codes currently located in such DDAs will no longer be DDAs, and the excessive new demand on state credits will vastly outstrip supply.

One commenter requested a two-year grandfathering.

Two commenters highlighted the severe reduction in DDA areas that HUD's change will have in San Mateo County and urged TCAC to grant permanent DDA status to the county.

One commenter suggested grandfathering in DDA status for 4% projects as well if allowed.

One commenter asked for QCT status to also be grandfathered.

Response to Comments:

Federal law does not allow TCAC to grandfather QCT status or DDA status for 4% projects. [Note: the Initial Statement of Reasons inadvertently stated that TCAC has the authority to grandfather in DDA status for 4% projects, when the intent was to say that TCAC does not have such authority.]

TCAC is committed to a one-year grandfathering at this time but will consider other possibilities at a later time.

Proceed with the changes as initially proposed.

Final 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).

Section 10327(g)(6)

Initial Proposed Change:

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.

Comments Received:

Two commenters supported this proposal to provide additional cash flow in year 15.

One commenter recommended allowing increase cash flow also when necessary to meet the true debt test.

Response to Comments:

The proposed changes alter the calculation of allowed cash flow in the context of a project breaking even in year 15. Applying this provision also to situations in which cash flow is needed to pass the true debt test expands the scope of the provision. TCAC is willing to consider that expanded scope at a later time.

Staff proposes to proceed with the changes as initially proposed.

Final 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.

Section 10327(g)(8)

Initial Proposed Change:

Allow the temporary use of hold harmless rents (for rents below 60% AMI) at resyndication.

Comments Received:

Two commenters supported the use of hold harmless rents.

One commenter supported the concept of maintaining hold harmless rents but opposed the language relating to the delayed rent adjuster as it is unnecessary and will reduce cash flow.

Response to Comments:

In the event that a project uses hold harmless rents, the rents will not inflate until the general tax credit rent limits exceed the hold harmless rents, which may be a period of years. In such a situation, inflating the rents in the pro forma starting in year two shows phantom income that will not exist and risks placing projects in deficit from the very beginning. Staff believes it is much more honest and appropriate to delay the adjuster as proposed.

Staff proposes to proceed with the changes as initially proposed.

Final Proposed Language:

(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.

Section 10328(a)(4)

Initial Proposed Change:

Prohibit rent increases on units at 50% or greater AMI from exceeding 5% per year.

Comments Received:

Four commenters, including an organizational commenter, expressed concern that the 5% limitation on rent increases is in conflict with the provisions of AB 1699, which allows increased rents up to 10% for certain tenancies as part of and HCD restructuring. One way to address the issue would be to exempt AB 1699 restructurings from the provision. One commenter also suggested applying the AB 1699 rules to any restructuring. Two commenters added that it may be appropriate to raise rents for over-income tenants.

One commenter stated that the rent increase limitation is a burden. Rents have gone down, and owners are finally catching up.

One commenter stated that it is unclear if this proposal applies to existing projects, in which case it is likely unconstitutional. The commenter also opposes the proposal on an on-going basis because it would significantly limit the ability of an owner to catch up on rent voluntarily foregone. If an owner kept rents lower for one year, it could take three years to catch up. As a result, owners will be unlikely to ever keep rents below maximum rent limits, in which case tenants will see less benefit than they do now. The proposal also fails to account for decreases in utility allowances for which net rent increases should be allowed to maintain the same gross rent.

One commenter states that if this rule were applied to project-based Section 8 units, it could put developments out of compliance with federal requirements to charge tenants 30% of their income and prevent owners from realizing mark-to-market rent increases needed for resyndication. For non-Section 8 properties, the proposal will penalize owners who chose to reduce rents, result in units being held vacant longer, and affect project feasibility for those projects seeking to resyndicate. If adopted at all, the proposal should exempt projects with Section 8 and projects within the first two years after resyndication.

One commenter suggested eliminating this provision or, at a minimum, applying it only to projects receiving tax credits in 2016 or later and excluding from the calculation rent increases related to a decline in the utility allowance. He believes a retroactive application is unconstitutional. Moreover, he states that rent increases balance out over time and that many tenants benefit from income increases and are able to afford the higher rents.

Two commenters supported protecting tenants but stated that rents may need to be increased for refinancing, rehabilitation, and resyndication. The commenter recommended exemption these restructurings and all deals with HCD funds so as not to conflict with the provisions of AB 1699.

Two commenters agreed with the intent but urged exceptions for higher tenant incomes, terminated subsidies, and project restructurings. Without these exceptions, one of these commenters suggested that a 10% limit is more appropriate. Lastly, the commenter suggested referring to net rents and to allowing the banking of increases, such that one year could be higher than 5% if a lesser increase is imposed in earlier years.

Four commenters opposed this provision as it fails to take into account the cash flow needed to make a project viable. One also asked whether the limitation applies only during a tenancy or also at move out.

Response to Comments:

Staff withdraws this proposed change.

Final Proposed Change:

No change to the current regulations.

Section 10328(c)

Initial Proposed Change:

Conform to the change in Section 10325(c)(8).

Comments Received:

None received.

Response to Comments:

Proceed with change as initially proposed.

Final 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)

Initial Proposed Change:

Authorize TCAC to audit final cost certifications for accuracy and reasonableness.

Comments Received:

One commenter understood the unfortunate need for these audits but sought assurances that they will not impact the 8609 process or otherwise pull resources from 8609 reviews.

One commenter opposed this provision because current oversight is adequate and additional oversight will create unnecessary costs.

One commenter opposed this provision because it would delay 8609 processing and grind affordable housing development to a halt.

Two commenters opposed this authority. One stated that one bad experience does not justify burdening all applicants with the costs that will be passed on to them when their projects' auditors are reviewed. The other said the audits are duplicative and not cost-effective.

One commenter opposed this provision because it could delay 8609 preparation and because there are no likely qualified firms that are unconflicted. The commenter suggested increasing qualification standards or fines or bars for firms improperly issuing cost certifications.

One commenter said the audit must be separate from the 8609 process or it will have serious implications on the ability to attract investors. It must not interfere with timely delivery, and any penalties must be applied to future projects of the applicant.

One commenter asked for clarification on when an audit would be triggered, the standards used, who pays, and the process for sponsor comment and appeal.

Response to Comments:

Staff strongly concurs that these reviews must not delay the issuance of Form 8609s more than they are already delayed. Staff will delink these reviews from the 8609 process. Staff intends initially to contract for spot reviews on ten or so cost certifications per year for two years in order to inform the Committee on the general accuracy and reasonableness of cost certifications. This information will help the Committee decide if further accountability measurers relating to cost certifications may be advisable.

Increasing penalties for improper certifications is not effective because staff currently has minimal capacity to analyze whether an accountant has improperly issued a certification.

In order to enter into a contract, staff will have to be satisfied that bidders are both qualified and unconflicted. TCAC will pay for the reviews, but there may be some costs to accountants or their clients for providing requested information and facilitating the review. Staff will share the results of the reviews with the affected parties and provide an opportunity for these parties to comment on the review.

Final 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.

Section 10337(a)

Revised Proposed Change:

Subject new 9% tax credit 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.

Include within regulatory agreements for projects receiving a reservation of 4% and 9% federal tax credits on or after January 1, 2016 a requirement that owners shall obtain written approval of the Executive Director for any Transfer Event.

For new 4% and 9% tax credit projects, require the contribution of a share of net equity from a future Transfer Event to a sponsor-held trust account to be used for affordable housing purposes.

Comments Received:

[Note: Comments submitted on the initial proposed change were summarized and responded to in the Proposed Revisions document issued on September 8. Commenters submitted the following comments with respect to the revised proposed change.]

Right of first refusal

During the initial comment period, four commenters supported the right of first refusal provisions in paragraph (1).

One commenter strongly supported the proposed right-of-first-refusal but further urged TCAC to incentivize through the scoring or tiebreaker system rights-of-first-refusal for for-profit projects and all 4% projects.

Trust Account

One commenter agreed with the magnitude and direction of the equity sharing proposal as well as the uses of the trust account.

Two commenters, including one organizational commenter, supported the interest in addressing large equity distributions but stated that the equity share formula should be more aggressive. The commenter suggested 60% of equity when equity exceeds $1 million. The commenter also asked for the ability to request exceptions to the requirement that trust account funds support projects with a regulatory term of at least 15 years remaining.

One commenter strongly supported the effort to address distributions that may undermine support for the program but stated that the current proposal is not significant enough to address the issue. The commenter urged an alternative concept that distributions in excess of a reasonable return be reinvested in the affordable housing stock via a trust fund mechanism. The commenter urged TCAC to establish a formal working group with a clear mandate to develop such a proposal within a fixed amount of time.

Three commenters, including one organizational commenter, stated that TCAC has identified a critical issue for reform and shared TCAC's policy objectives but expressed concerns that the proposal as written does not adequately or effectively address the issues as intended. The commenters suggested working on the proposal further.

One commenter believes this proposal is unnecessary and does not really affect the real concern of large equity take outs but can support it. The commenter recommended, however, that the proposal be limited to 9% projects so as not to disincentivize 4% production.

One commenter stated that the trust account provisions were a great improvement over the initially proposed regulations but urged allowance for trust funds to be lent to a new project with reasonable interest and numerous expansions to the list of allowed uses of trust account funds, including: 1) related party predevelopment expenses; 2) operating expenses for non-profits with limited general operating budgets; 3) past and future project operating losses; 4) related party management fees; and 5) administrative expenses for managing the account.

Two commenters, including one organizational commenter, remained concerned that the proposal will impede production but, if TCAC proceeds, recommend treating trust account contributions to a project as public funds for the tiebreaker and expanding the uses of trust account funds as described in the preceding paragraph.

One commenter stated that the most troubling element of this proposal is the reliance on assessed valuations, given that assessor methodologies and valuations vary so significantly across counties. The commenter suggested requiring the appraisal used at application to include an "as completed, as restricted" hypothetical valuation to be used as the baseline. The commenter also suggested that the equity share ratio for 4% projects should be reduced to 30% and that owners uninterested in creating a trust account have the additional option of donating to a non-profit affordable housing developer who is eligible for maximum experience points.

One commenter urged deferral of the proposal and further work to develop an alternative.

One commenter found the motivations understandable but questioned whether the benefits are worth the significant administrative costs. Moreover, much of the net equity proceeds subject to the requirement would likely be invested in affordable housing even without the requirement.

One commenter opposed any limitation on distributions upon sale or refinance. The hope for such distributions incentivizes the developer to maintain properties at the highest feasible standard. Restrictions on distributions, on the other hand, incentivize maximization of the cash developer fee and distributions from operations, which could result in a diminution in the quality of the product and on-going operations. More broadly, such restrictions will discourage owners from extending the affordability restrictions and producing more affordable housing.

Five commenters urged withdrawal of the proposal because it will have an adverse effect on the market for 4% projects, reduce the usage of bond allocation, and not result in more affordable housing, especially when market-rate development is more attractive. One of these commenters stated that the proposal skews the risk/reward balance to the point that projects may no longer be viable for smaller firms. A second stated that the proposal is complicated, difficult, and time-consuming for TCAC to monitor and supervise and that it is not clear how equity and the equity share shall be calculated and therefore how parties will have certainty. The third stated that the formula seems arbitrary and misguided and will lead to developers requesting higher assessed

values at placed in service. The third commenter also stated that if TCAC wants to regulate up-side potential it should also protect developers against down-side risk.

One commenter argued that projects financed in part with market rate equity deserve to earn a return on equity, which the proposal does not account for. The commenter also stated that 60% is too great of an equity share ratio. Lastly, the commenter suggested allowing trust account funds to pay off deferred developer fees and general partner loans from other tax credit properties.

Two commenters opined that the equity sharing proposal is an illegal tax. One of these commenters further stated that the proposal will curtail affordable housing production and advantage market-rate buyers of properties who will not renew restrictions. The other added that the proposal may be an illegal taking and, in any event, interferes with the fundamental bargain between the government and the private sector.

One commenter opined that the proposal does nothing to encourage private investment in affordable housing but instead creates an impediment. The mere proposal itself has caused owners to refinance conventionally rather than resyndicate, and no study of the economic impact on owners or the impact on production has occurred. The commenter urged withdrawal of the proposal.

One commenter stated that the proposal is bad policy because it discourages production and forces developers to share their hard-fought gains on all projects, even marginally profitable transactions.

One commenter opposed any sharing of equity because it will undermine incentives for developers to participate, encourage developers to default on guarantees as a result of reduced repayment potential, encourage maximization of short-term cash flow at the expense of long-term project health, and result in litigation.

One commenter, endorsed by six others, opposed the proposal because it interferes with the fundamental bargain between government and the private sector, will make affordable developers even less competitive in vying with market-rate developers, and will discourage the production of affordable housing. Moreover, the proposal lacks proportionality and affects all transactions, even marginally profitable ones. Lastly, the commenter stated that the proposal constitutes a de facto tax that will lead to legal challenges.

Response to Comments:

Staff does not believe that requiring a right of first refusal for a project with a for-profit sponsor is appropriate because it necessarily removes the for-profit sponsor from further ownership of his or her own project. Staff is willing to consider incentivizing rights of first refusal for 4% projects with non-profit sponsors at a later date.

While staff remains concerned about large distributions and the capitalization at sale or refinance of public benefits beyond tax credits, staff withdraws the proposed paragraph (3) which would have required owners to set-aside and reinvest a limited amount of equity in affordable housing developments.

Final 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 require written approval of the Executive Director for any Transfer Event.

(3) ~~For all projects that receive a reservation of 4% or 9% federal tax credits on or after January 1, 2016 and which include at least 50% Tax Credit units, the regulatory agreement shall require all of the following:~~

~~(A) If a Transfer Event, after application of Sections 10320(b)(2) through (4) and prior to any distributions to parties related to a sponsor, developer, limited partner, or general partner, produces Net Project Equity, then the Equity Share Portion of this remaining Net Project Equity shall be deposited into a trust account for the provision of rental housing units affordable to and serving households earning no more than 60% of the area median income.~~

~~The Equity Share Portion shall be 60% of this remaining Net Project Equity, but no more than 1% of the difference between the sales price or the assessed value on the date of refinancing, as applicable, and the assessed value in the year the building was placed in service, divided by the cap rate used in the appraisal conducted in conjunction with the Transfer Event.~~

~~(B) The parties shall make the required deposit into the trust account to be held by the seller or refinancer or a related entity, and the proposed holder of the trust account shall enter into a covenant with TCAC to expend funds in the account only for the following purposes related to providing rental housing units affordable to and serving households earning no more than 60% of the area median income that will be subject to a governmental regulatory agreement with a remaining term of at least 15 years:~~

~~I. New construction.~~
~~II. Rehabilitation with or without acquisition, provided that the acquisition price is not paid to a related entity.~~
~~III. Land banking, provided that construction starts on eligible units within 5 years. If construction does not start within 5 years, the property shall be sold and net proceeds returned to the trust account, unless the Executive Director approves an extension.~~

~~IV. Capital needs of existing properties.~~
~~V. Property operating losses not related to increases in fees to a related entity.~~
~~VI. Continue resident services beyond the time period committed in a CTCAC or CDLAC application.~~
~~VII. Unrelated third party predevelopment expenses.~~
~~VIII. The buydown of debt on a property that maintains the cash flow after debt service in accordance with the limitations described in Section 10327(g)(7) as shown in an audited financial statement.~~
~~IX. The capitalization of an operating reserve within a project subject to an existing project-based Section 8 or other rental assistance contract to maintain tenant rents for the longest possible time in the event of a loss of rental assistance.~~
~~X. The payment of taxes associated with the proceeds deposited into the trust account.~~
~~XI. Another use approved by the Executive Director.~~

~~The holder of the trust account annually shall report on a form prescribed by CTCAC on deposits of funds to and use of funds from the trust account and certify that such uses are in compliance with the requirements of this section.~~

~~(C) In lieu of funding the trust account required in subsection (A) above, the parties to the Transfer Event may elect to (i) reduce targeted rents in each succeeding year of the regulatory period by an amount equal to the Equity Share Portion multiplied by the cap rate used in the appraisal conducted in conjunction with the Transfer Event, in which case the post-Transfer Event owner shall agree to amend the regulatory agreement accordingly, or (ii) donate the Equity Share Portion to the California Department of Housing and Community Development for provision of rental housing units affordable to and serving households earning no more than 60% of the area median income.~~

~~(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.

Section 10337(b)(2)

Initial Proposed Change:

Clarify that the requirement to give preference for accessible units to by persons with mobility impairments or hearing, vision or other sensory impairments applies to existing as well as new tax credit projects.

Comments Received:

One commenter strongly supported the change but requested clarification that new projects include rehabilitation projects.

Response to Comments:

The term "new projects" refers to any project receiving a new reservation of tax credits. Staff does not believe that further clarification is required.

Proceed with the change as initially proposed.

Final Proposed Change:

(2) Accessible Units: Reasonable Accommodations. ~~Projects~~ <u>All new and existing Tax Credit projects</u> 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.

Section 10337(c)(1)

Initial Proposed Change:

For all scattered site projects, require files to be brought to one location for inspection upon request of TCAC.

Comments Received:

None received.

Response to Comments:

Proceed with changes as originally proposed.

Final 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.

Section 10337(c)(3)(H)

Initial Proposed Change:

Require certification of cash flow limits for projects with state credits subject to such limits.

Comments Received:

Two commenters supported this proposal.

Response to Comments:

Proceed with changes as originally proposed.

Final Proposed Change:

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

Section 10337(f)

Initial Proposed Change:

Institute fines for non-compliance during the extended use period and allow liens for non-payment.

Comments Received:

One commenter applauded the establishment of a fine structure for non-compliance issues. The commenter stated that some "yield" buyers may intend to disregard the rental restrictions as there is really no financial penalty for non-compliance.

One commenter suggested an appeal process beyond the Executive Director.

One commenter said the fines should only apply after the 15-year compliance period and suggested referring to "a reasonable amount of time" in lieu of the "the correction period."

Response to Comments:

Staff withdraws this proposed change until it can be further developed.

Final Proposed Change:

No change to the current regulations.

List of Commenters in Writing

1. Ray Pearl, California Housing Consortium
2. Kent Davis, LOMCO
3. Percival Vaz, AMCAL Multi-Housing, Inc.
4. Pat Sabelhaus, California Council for Affordable Housing
5. Stephen Ryan, Cox, Castle, and Nicholson, LLP
6. Ray DePerry, Tule River Indian Housing Authority
7. Keith Stanley, Horizon Development
8. Michael Lane, Non-Profit Housing Association of Northern California
9. Meea Kang, Domus Development
10. Michael Sapuppo, Preservation Partners
11. Denise Longo
12. Stephen Pelz, Housing Authority of the County of Kern
13. Bernard T. Deasy, Merritt Community Capital Corporation
14. Dan Wu, Charities Housing
15. Benjamin T. Lingo
16. Stephen Whyte, Vitus Group, Inc.
17. Joseph L. Sherman, The Reliant Group
18. Jeff Jaeger, Standard Property Company
19. Paul Patierno, Highland Property Development
20. Ken Reiner, Reiner Communities
21. Vanessa Luna, Clifford Beers Housing
22. Bill Pavao
23. Al R. Inouye, Berkadia Real Estate Advisors
24. Walker Wells, Global Green USA
25. Christopher Flaherty, DFA Development
26. David Beacham, DAL Development
27. Ted Chandler, AFL-CIO Housing Investment Trust
28. Anjela Ponce, Integrity Housing
29. John Polanskey, Housing Authority of the County of Santa Barbara
30. Arjun Najarkatti, AMCAL Multi-Housing, Inc.
31. Sebastian Glowacki and Lisa Gutierrez, U.S. Bancorp
32. Ron Miller, Los Angele/Orange Counties Building and Construction Trades Council
33. Kasey Burke, Meta Housing Corporation
34. Thomas Collishaw, Self-Help Enterprises
35. Doug Shoemaker, Mercy Housing California
36. Ed Holder, Mercy Housing California
37. Robert Wiener, California Coalition for Rural Housing
38. Denise B. Muha, National Leased Housing Association
39. Sarah Letts, Community Corporation of Santa Monica
40. Gary P. Downs, Down Pham and Kuei LLP
41. Geoffrey C. Brown, USA Properties
42. James Silverwood, Affirmed Housing Group
43. The Supportive Housing Alliance
44. Jason Lane, California Bankers Association

45. Michael J. Novogradac and Stacey Stewart, Novogradac and Company LLP on behalf of the LIHTC Working Group
46. Alice Talcott, MidPen Housing
47. Roxana Tynan, Los Angeles Alliance for a New Economy
48. Dara Schur, Disability Rights California
49. Carolyn Brookhart, Resources for Community Development
50. Wells Fargo Bank, N.A.
51. Manuel Bernal, City of Los Angeles Housing and Community Investment Department
52. Affordable Housing Developers of South Los Angeles
53. Mike Pallesen, Rural Communities Housing Development Corporation
54. Holly Benson, Abode Communities
55. Kevin Knudtson, Community Economics
56. Rachel Iskow, Mutual Housing California
57. Carol J. Ornelas, Visionary Home Builders of CA, Inc.
58. John Fowler, People's Self Help Housing Corporation
59. Wilfred N. Cooper, Jr., WNC
60. Amy N. Anderson, PATH Ventures
61. Olson Lee, San Francisco Mayor's Office of Housing and Community Development
62. Ken Litzinger, Housing Authority of San Luis Obispo
63. Ronne Thielen, R4 Capital LLC
64. Kathleen Rosenthal
65. Tim McDonald, Temple University Architecture
66. Frank Cardone and Bill Witte, Related California
67. Bob Alvarado, Northern California Carpenters Regional Council
68. Amie Fishman, Non-Profit Housing Association of Northern California
69. MUFG Union Bank, N.A.
70. Tara Barauskas, A Community of Friends
71. Jeanne L. Peterson, Cohn Reznick
72. Alan Greenlee, Southern California Association of Non-Profit Housing
73. Dana Trujillo, Skid Row Housing Trust
74. Neil McGuffin, Little Tokyo Service Center
75. Steven Bram, Opportune Companies
76. Karen Flock, Cabrillo Economic Development Corporation
77. Tom Lemmon, San Diego Building Trades Family Housing Corporation
78. Richard Lyon, California Building Industry Association
79. Pascal Sisich, Burbank Housing Development Corporation
80. Charles A. Cornell, Burbank Housing Development Corporation
81. Sharon L. Rapport, Corporation for Supportive Housing
82. Michael Bodaken, National Housing Trust
83. Andy Madeira, Eden Housing
84. Alan Fair, Alden Torch Financial
85. Alan Bogomilsky, Klein Financial Corporation
86. Peter Armstrong, Wakeland Housing and Development Corporation
87. Kenneth S. Robertson, Riverside Charitable Corporation
88. Richard Mandel, California Housing Partnership Corporation
89. Aaron Wooler and Brian D'Andrea, Century Housing Corporation

90. Vicky Ramirez, Jamboree Housing Corporation
91. Jan Campbell, Santa Barbara Foundation
92. Heather Peters and Raymond Hodges, San Mateo County Department of Housing
93. Nicholas Birck, Housing Authority of the City of San Buenaventura
94. Thomas E. Erickson, Mohannad H. Mohanna, and Michael A. Costa, Highridge Costa Housing Partners LLC
95. Caleb Roope, Pacific West Communities
96. Marie Allen, Travois
97. Wayne Waite, Everyday Energy
98. Rebecca Clark, LINC Housing
99. Jasmine Borrego, Affordable Housing Management Association – Pacific Southwest
100. Nick Stone, Bayside Communities
101. Steve PonTell, National Community Renaissance
102. Ashley M. Kim, Villa de Vida
103. William Lowell, County of San Mateo Department of Housing
104. Tim Fluetsch
105. Yasmin Tong, Yasmin Tong Consulting
106. HolLynn D'Lil
107. Susan Henderson, Disability Rights Education & Defense Fund
108. Sheela Gunn-Cushman
109. Christina Mills
110. Richard Skaff, Designing Accessible Communities
111. Mark Rosomer, Silicon Valley Independent Living Center
112. Helen Maggie O'Mara
113. Thomas J. Harrington
114. Kristin Jackson
115. Connie Arnold
116. Dave Gatzke, Community Housing Works
117. Arturo Nevarez, Southern California Resources for Independent Living
118. Cynde Soto, CALIF
119. Greg Gossard, Hampstead Companies
120. Chris Foster, Hampstead Companies
121. Peter H. Geremia, St. Anton Communities
122. William H. Hirsch
123. Mike Walsh, Coachella Valley Housing Coalition
124. Mark Hyatt, KDF Communities
125. Trisha Malone, Anton Development Company
126. Colin Gray, JSM Enterprises, Inc.
127. Chris Neale, Core Affordable Housing

List of Commenters at the Public Hearings

1. William Leach, Kingdom Development Services
2. Laura Nunn, San Diego Housing Federation
3. Chris Foster, Hampstead Companies
4. Dave Beacham, DAL Development

5. Jules Arthur, Logan Capital Advisors
6. Matt Grosz, Chelsea Investment Corporation
7. Peter Armstrong, Wakeland Housing and Development Corporation
8. Jeanne Blake, Affirmed Housing Group
9. Greg Gossard, Hampstead Companies
10. Jeanne Peterson, Cohn Reznick
11. Meea Kang, Domus Development
12. Peter Nichol, Pillar Finance
13. Michael Lane, Non-Profit Housing Association of Northern California
14. Heather Peters, San Mateo County Housing
15. Colin Gray, JSM Enterprises, Inc.
16. Dan Hardy, Resources for Community Development
17. Alice Talcott, MidPen Housing
18. Joel Rubenzahl, Community Economics
19. Jeff Green, Redwood Housing Partners
20. Jessica DeWitt, Palo Alto Housing Corporation
21. Caskle Collet, The Reliant Group
22. David Dologite, California Housing Partnership Corporation
23. Travis Sage, Green Dinosaur
24. Sarah Letts, Community Corporation of Santa Monica
25. Erik Johnson, National CORE
26. Doug Bigley, Urban Housing Communities
27. Ken Litzinger, Housing Authority of San Luis Obispo
28. Tara Barauskas, A Community of Friends