

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE REGULATIONS IMPLEMENTING THE  
FEDERAL AND STATE LOW INCOME HOUSING TAX CREDIT LAWS

CALIFORNIA CODE OF REGULATIONS  
TITLE 4, DIVISION 17, CHAPTER 1

October 5, 2004

Section 10300. Purpose and Scope

- (a) These regulations establish procedures for the reservation, allocation and compliance monitoring of the federal and state low-income housing tax Credit and establish policies and procedures for use of the Credit to meet the purposes contained in Section 252 of Public Law No. 99-514 (October 22, 1986), known as the federal Tax Reform Act of 1986, as amended, and Chapter 658, California Statutes of 1987, as amended, and Chapter 1138, California Statutes of 1987, as amended.
- (b) Internal Revenue Code (IRC) Section 42 provides for state administration of the federal low-income housing tax Credit program. California Health and Safety (H & S) Code Sections 50199.4 through 50199.22, and California Revenue and Taxation (R & T) Code Sections 12205.5, 12206, 17057.5, 17058, 23610.4 and 23610.5 establish the California state low-income housing tax Credit program and designate the California Tax Credit Allocation Committee as the housing Credit agency to administer both the federal and state tax Credit programs in California. These regulations set forth the policies and procedures governing the Committee's management of the Credit programs. In addition to these regulations, program participants shall comply with the rules applicable to Credit programs as set forth in IRC Section 42, and other applicable sections of the IRC. In the event that Congress, the California Legislature, or the IRS add or change any statutory or regulatory requirements concerning the use or management of the Credit, program participants shall comply with such requirements.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

Section 10302. Definitions

- (a) AHP. The Affordable Housing Program of the Federal Home Loan Bank.
- (b) Allocation. The certification by the Committee of the amount of federal, or federal and state, Credit awarded to the applicant for purposes of income tax reporting to the IRS and/or the FTB.
- (c) Applicable Credit Percentage. The monthly rate, published in IRS revenue rulings pursuant to IRC Section 42(b)(2)(A), applicable to the federal Credit program for purposes of calculating annual Credit.
- (d) Chairperson. The Chairperson of the California Tax Credit Allocation Committee.
- (e) Committee. The California Tax Credit Allocation Committee or its successor.
- (f) Community Foundation. A local foundation organized as a public charity under section 509(a)(1) of the Internal Revenue Code.
- (g) Compliance Period. That period defined by IRC Section 42(i)(1) and modified by R & T Code Section 12206(h), and further modified by the provisions of these regulations.
- (h) Credit. Low-Income Housing Tax Credit.

- (i) **Developer Fee.** Amount of identified uses of project funds paid as compensation for developing the proposed project to include, all Credit consultant fees, broker fees other than real estate brokerage fees paid to an unrelated party and loan brokerage fees paid to an unrelated party, processing agent fees, developer overhead and profit, compensation for any construction management oversight provided by the developer, the cost of any personal guarantees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.
- (j) **Executive Director.** The executive director of the California Tax Credit Allocation Committee.
- (k) **Federal Housing Credit ceiling.** The amount specified in Title 26, IRC Section 42(h)(3)(C).
- (l) **Federally Subsidized.** As defined by IRC Section 42(i)(2).
- (m) **Federal Credit.** The tax Credit for low-income rental housing provided under IRC Section 42 and implemented in California by the Committee.
- (n) **Financial Feasibility.** As required by Title 26, IRC Section 42(m)(2)(A), and further defined by these regulations in Section 10327.
- (o) **FTB.** State of California Franchise Tax Board.
- (p) **Hard construction costs.** The amount of the construction contract, excluding contractor profit, general requirements and contractor overhead.
- (q) **Housing And Community Development Funds.** As used in these regulations, commitment of funds shall mean, in the case of federal HOME and/or CDBG funds administered by the state Department of Housing and Community Development, funds for which the Department has made a funding reservation
- (r) **IRS.** United States Internal Revenue Service.
- (s) **Local Development Impact Fees.** The amount of impact fees, mitigation fees, or capital facilities fees imposed by municipalities, county agencies, or other jurisdictions such as public utility districts, school districts, water agencies, resource conservation districts, etc.
- (t) **Local Reviewing Agency.** An agency, so designated by the local government having jurisdiction, that will perform evaluations of proposed projects in its locale according to criteria set forth by the Committee.
- (u) **Low-Income Unit.** As defined by IRC Section 42(i)(3).
- (v) **Market-Rate Unit.** A unit other than a low-income unit as defined by these regulations.
- (w) **MHP.** Multifamily Housing Program of California's Department of Housing and Community Development.
- (x) **Neighborhood Revitalization Area.** An area, other than one in the Rural set-aside, that is part of a neighborhood revitalization strategy area designated by the U.S. Department of Housing and Urban Development, an Empowerment Zone, Enterprise Community, Renewal Community, or an area that has been designated by a local agency to be the focus of revitalization or similar efforts.
- (y) **Net tax credit factor.** The quotient of the estimated or actual equity amount raised or to be raised from a credit syndication or other instrument, not including syndication related expenses, divided by the total amount of federal and state credit reserved or allocated to a project. The calculation must include the full ten-year amount of federal credit and the total amount of state credit.

- (z) QAP. The “Low Income Housing Tax Credit Programs Qualified Allocation Plan,” adopted by the Committee on December 11, 1997 in accordance with the standards and procedures of IRC Section 42(m).
- (aa) Qualified Nonprofit Organization. An organization that has been designated as a tax-exempt organization under IRC Section 501(c)(3) or 501(c)(4), and whose exempt purposes include the development of low-income housing as described in IRC Section 42, and, if a state Credit is requested, also qualifies under H & S Code Section 50091.
- (bb) RHS. United States Rural Housing Service, formerly Rural Housing and Community Development Service or RHCDS, formerly Farmers Home Administration or FmHA
- (cc) Related Party. Means
  - (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 that are connected through stock ownership with a common parent with stock possessing
    - (A) at least 50% of the total combined voting power of all classes that can vote, or
    - (B) at least 50% of the total value of shares of all classes of stock of each of the corporations or
    - (C) 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;
  - (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(a) 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 and another S corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;
  - (11) an S 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.

For purposes of the previous, the constructive ownership provisions of IRC Subsection 267 apply.

- (dd) Rent-Restricted Units. Units meeting the requirements of IRC Section 42(g)(2).
- (ee) Reservation. As provided for in H & S Code Section 50199.10(e)(2), the initial award of Credit to an eligible project. Reservations may be preliminary or final. Reservations may be conditional.
- (ff) Rural. An area defined in H & S Code Section 50199.21.

- (gg) State Housing Credit Ceiling. The aggregate state housing Credit dollar amount available for annual allocation by the Committee under R & T Code, Sections 12206(g), 17058(g), and 23610.5(g).
- (hh) State Credit. The tax Credit for low-income rental housing provided by R & T Code, Sections 12206, 17058, and 23610.5.
- (ii) Tax-Exempt Bond Project. A project that meets the definition provided in IRC Section 42(h)(4).
- (jj) Tax forms. Income tax forms for claiming Credit: for federal Credit, IRS Form 8609; and, for state Credit, FTB Form 3521A.
- (kk) Threshold Basis Limit. The aggregate limit for all proposed project units on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Credit, published by the Committee in its Application Supplement by unit size and project location, based upon mortgage limits published by the U. S. Department of Housing and Urban Development for the 221(d)(3) Nonprofit program. However, local development impact fees as defined in section 10302(s) of these regulations shall be excluded from this calculation to the extent that they are documented in the application submission by the entities charging such fees.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

#### Section 10305. General Provisions

- (a) Meetings. The Committee shall meet on the call of the Chairperson.
- (b) Report. At each meeting of the Committee at which Credit reservations from the housing Credit ceiling are made, the Executive Director shall make a report to the Committee on the status of the federal and state Credit reserved and allocated.
- (c) Forms. The Executive Director shall develop such forms as are necessary to administer the programs and is authorized to request such additional information from applicants as is appropriate to further the purposes of the programs. Failure to provide such additional information may cause an application to be disqualified or render a reservation null and void.
- (d) Limitations. No applicant shall be eligible to receive a Credit if, together with the amount of federal or state Credit being requested, the applicant would have, in the capacity of individual owner, corporate shareholder, general partner, sponsor, developer or housing consultant, received a reservation or allocation greater than fifteen percent (15%) of the total federal Credit ceiling for any calendar year. Further, no one project applying for 9% competitive credit may be reserved more than Two Million (\$2,000,000) Dollars in annual federal credit in any one funding round, except for projects receiving a waiver of unit size under Section 10325(f)(9)(A)(ii) of these regulations, in which case the maximum annual federal credit reserved to any one project in any one funding round shall not exceed Two Million Five Hundred Thousand (\$2,500,000) Dollars
- (e) Notification. The Committee shall notify the Chief Executive Officer (e.g., city manager, county administrative officer) of the local jurisdiction within which the proposed project is located and provide such individual an opportunity to comment on the proposed project (IRC Section 42(m)(1)(ii)).
- (f) Conflicting provisions. These regulations shall take precedence with respect to any and all conflicts with provisions of the QAP or other guidance provided by the Committee. This subsection shall not be construed to limit the effect of the QAP and other guidance in cases where said documents seek to fulfill, without conflict, the requirements of federal and state statutes pertaining to the Credit programs.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10310. Reservations of Tax Credit

- (a) Reservation cycles. The Committee shall reserve Credit on a regular basis in accordance with H. & S Code Section 50199.14(a), pursuant to these regulations and the QAP, incorporated by reference in full.
- (b) Credit amounts available. The approximate amount of Credit available in each reservation cycle shall be established by the Committee at a public meeting designated for that purpose, in accordance with the following provisions:
  - (1) Amount of federal Credit. The amount of federal Credit available for reservation in a reservation cycle shall be equal to the sum of:
    - (A) the per capita amount authorized by law for the year, plus or minus the unused, or deficit, federal Credit ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
    - (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;
    - (C) the amount of federal Credit ceiling returned, and available, as of the date that is thirty days following the application deadline for said cycle; and,
    - (D) additional amounts of federal Credit ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations.
  - (2) Amount of state Credit. The amount of state Credit available for reservation in a reservation cycle shall be equal to:
    - (A) the amount authorized by law for the year, less any amount set-aside for use with certain tax-exempt bond financed projects, plus the unused, or deficit, state Credit ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
    - (B) the amount of state Credit ceiling returned, and available, by the date that is thirty days following the application deadline for said cycle; plus,
    - (C) additional amounts of state Credit ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations.
  - (3) Waiting list Credit. Credit returned and Credit allocated under IRC Section 42(h)(3)(D) during any calendar year, and not made available in a reservation cycle, shall be made available to applications on Committee waiting lists, pursuant to subsection 10325(h).

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

#### Section 10315. Set-asides and Apportionments

- (a) Nonprofit set-aside. Ten percent (10%) of the federal Credit ceiling for any calendar year shall be set-aside for projects involving, over the entire restricted use period, qualified non-profit organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).

- (1) Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available to projects assisted, under U.S. Code Title 42 Chapter 119 Subchapter IV Part E -- Miscellaneous Provisions, Assistance for Single Room Occupancy Dwellings or U.S. Code Title 42 Chapter 119 Subchapter IV Part F-- Shelter Plus Care Program or U.S. Code Title 42 Chapter 131--Housing Opportunities for Persons With AIDS -- or the Stewart B. McKinney Homeless Assistance Act. If rental assistance is the type of assistance provided by the above named programs, 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 five (5) years and shall apply to no less than thirty percent (30%) of the units in the proposed project. Any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Non-profit set-side.
- (b) Rural set-aside. Twenty percent (20%) of the federal Credit ceiling for any calendar year shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21. All Projects located in rural areas must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless they qualify and choose to compete in the At-risk or Small Development set-aside, in which case they will be no longer be considered rural and will be evaluated as non-rural projects for purposes of these regulations.
  - (1) RHS program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available first to projects financed by the RHS Section 514, 515, or 538 Programs that have received an obligation of RHS funds (as that term is used by the RHS) of at least \$1,000,000, and where that obligation is equal to or greater than ten percent (10%) of the project's total cost, or for projects that have received an obligation of RHS Section 521 Rental Assistance for at least 50% of the units and an RHS loan obligation for at least 10% of the project's total development cost. RHS applications with funds already obligated by the RHS shall be reserved prior to those that have not yet received an RHS obligation of funds, irrespective of the relative scores of such-projects. To the extent that there are funds remaining in this RHS apportionment, the next priority shall be those projects with at least \$1,000,000 in funds already set-aside (as that term is used by the RHS) from either the RHS Section 514, 515, or 538 Programs and where that set-aside is equal to or greater than ten percent (10%) of the project's total cost, or for projects that have Section 521 Rental Assistance already set aside for at least 50% of the units and an RHS financing already set aside for at least 10% of the project's total development cost. Any amount reserved under this subsection for which RHS funding does not become available in the calendar year in which the reservation is made, or any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.
- (c) Small development set-aside. Two percent (2%) of the federal Credit ceiling for any calendar year shall be set aside for projects of twenty (20) or fewer units.
- (d) "At risk" set-aside. Five percent (5%) of the federal Credit ceiling for any calendar year shall be set aside for projects that qualify as "At risk" pursuant to these regulations.
- (e) Special needs/SRO set-aside. In addition to the homeless assistance apportionment in subsection (a)(1) above, two percent (2%) of the federal Credit ceiling for any calendar year shall be set-aside for projects that qualify as Special Needs or Single Room Occupancy projects pursuant to these regulations. Any project that applies and is eligible under the homeless assistance apportionment but is not funded, will be eligible to be considered under this special needs/SRO set-aside.
- (f) An amount equal to one and one-half percent (1.5%) of the federal Credit ceiling for any calendar year shall be held back to be applied in the case of any overages that occur in the second funding round set-asides, and/or in the geographic areas because of funding projects in excess of the amounts available to those areas, or the funding of large projects, such as HOPE VI projects

- (g) Housing types. To be considered eligible for Credit all proposals must select and compete in only one of the housing types listed below and must meet the “additional threshold requirements” of Section 10325(g). The Committee will attempt to achieve funding of Federal and State Credit awards in each year (as gauged in each funding round) in the approximate following percentages to the housing types below:

<u>Housing Type</u>	<u>Goal</u>
Large Family	65%
Single Room Occupancy	10%
“At Risk”	5%
Special Needs	5%
Seniors	15%

- (h) Geographic apportionments. Annual apportionments of the federal Credit ceiling shall be made in approximately the amounts shown below to geographic areas of the state.

<u>Geographic Area</u>	<u>Apportionment</u>
Los Angeles County	33%
Central (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	10%
Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties	10%
San Diego County	10%
Inland Empire (San Bernardino, Riverside Counties)	8%
Orange County	8%
San Mateo and Santa Clara Counties	6%
Capital/Northern Area (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)	6%
Coastal California (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5%
San Francisco County	4%

- (i) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be made available during each reservation cycle in approximately the percentage amounts of the total federal and state Credit amount made available pursuant to Subsection 10310(b) after the holdback has been deducted from the annual credit ceiling and the set-aside reservations for non-profit homeless assistance, rural, and special needs/SRO have been made.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

Section 10317. State Tax Credit Eligibility Requirements

- (a) General. In accordance with R & T Code Sections 12205.5, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the "tax" (as defined by R & T Code Section 12201) a state Credit in an amount equal to the amount determined in R & T Code Section 12206(c), computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.
- (b) Allocation of federal Credit required. State Credit recipients shall have first been awarded federal Credit, or shall qualify for Credit under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and R & T Code Section 12206(b)(1)(A).
- (c) Limit on Credit amount. The combined amount of federal Credit and state Credit allocated to a building shall be limited to the lesser of the amount of state Credit pursuant to R & T Code Section 12206(c) plus the amount of federal Credit allocated under Section 42 computed on one hundred percent (100%) of the qualified basis of the building, or the amount sufficient for financial feasibility.
- (d) Allocation Priorities. The Committee shall give equal priority when allocating state Credit to applications proposing projects with one or more of the following characteristics:
  - (1) not eligible for the 130% basis adjustment, pursuant to IRC Section 42(d)(5)(C);
  - (2) HUD HOME program funds are a source of funds and eligible basis is limited to the amount of unadjusted basis; or,
  - (3) HUD HOME program funds are a source of funds and state Credit is needed to satisfy HOME program fund match requirements. The local jurisdiction or Community Housing Development Organization shall provide an explanation why other sources are not available to provide matching funds.
- (e) State Credit exchange. Applications for projects not possessing one of the allocation priorities described in the previous subsection may also include a request for state Credit. During any reservation cycle and/or following any reservation or allocation of state Credit to all applications meeting the above allocation priorities, remaining balances of state Credit may be awarded to applicants having received a reservation of federal Credit during same year, in exchange for the "equivalent" amount of federal Credit. Said exchanges shall be offered at the discretion of the Executive Director, and shall be offered to applications following the order of their selection in the Credit competitions.
- (f) Acquisition Credit. State Credit for acquisition basis is allowed only for projects meeting the definition of a project "at risk of conversion," pursuant to Section 42 and R & T Code Section 17058(c)(4).
- (g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, and Section 10326 of these regulations that are comprised of 100% tax credit eligible units, and are not eligible for the 130% basis adjustment shall be eligible for a reservation of state credit. To be eligible for a state credit reservation, such projects must be new tax-exempt bond applications; that is, state tax credit will not be available to projects that have already received a reservation of 4% credit. An amount equal to fifteen percent (15%) of the annual state tax credit authority will be available for such projects, which can apply during the second competitive funding round and will be competitively scored. The competitive scoring system used shall be that delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the third tie-breaker enumerated at Section 10325(c)(12) of these regulations. The highest scoring applications under this scoring system will be recommended for receipt of state tax credit, without regard to any set-asides or geographic areas,



provided that they meet the threshold requirements of Section 10326. Such projects should already have received a tax-exempt bond allocation or, at a minimum, have applied for such an allocation prior to submitting under this subsection for state tax credit. To the extent that not all of the set-aside has been reserved by October 1, it may be used in a state credit exchange for projects that have had 9% credit reserved to them during the year. The Committee may allocate an amount in excess of the 15% set-aside of state credit for tax-exempt bond financed projects to the extent that there is still available state credit after funding competitive projects in the second funding round.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10320. Actions by the Committee

- (a) Meetings. Except for Reservations made pursuant to Section 10325(h) of these Regulations, Reservations of Credit shall occur only at scheduled meetings of the Committee, which shall announce application filing deadlines and the approximate dates of reservation meetings as early in the year as possible.
- (b) Credit and ownership transfers. No allocation of the federal or state housing Credit ceilings, or ownership of a Credit project, may be transferred by a housing Credit applicant unless written approval of the Executive Director is obtained prior to the proposed transfer. Said approvals shall not be unreasonably withheld.
  - (1) Any transfer of project ownership or allocation of Credit shall be evidenced by written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.
  - (2) The entity acquiring ownership or Credit 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 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 upon request.
- (c) False information. Upon being informed, or finding, that information supplied by a Credit applicant, or any person acting on behalf of a Credit applicant, pursuant to these regulations, is false or no longer true, 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.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10322. Application Requirements

- (a) Separate Application. A separate application is required for each project.
- (b) Application forms. Applications shall be submitted on forms provided by the Committee. Applicants shall submit the most current Committee forms and supplementary materials in a manner and number prescribed by the Committee.
- (c) Late application. Applications received after an application filing deadline shall not be accepted.

- (d) Incomplete application. Applications not meeting all basic threshold requirements and application submission requirements shall be considered incomplete, and shall be disqualified from receiving a reservation of Credit during the cycle in which the application was determined incomplete. An applicant shall be notified by the Committee should its application be deemed incomplete and the application will not be scored.
- (e) Complete application. Determination of completeness, compliance with all basic thresholds, and the point total of the application, shall be based entirely on the documents contained in the application as of the final filing deadline. No additional documents in support of the basic thresholds or point selection categories shall be accepted beyond the application filing deadline, except that the Executive Director may request additional clarifying information from third party sources, such as local government entities. Notwithstanding the previous paragraphs of this Section, applicants submitting applications with missing documents not related to basic thresholds or point selection criteria described in Section 10325(c) shall be given five (5) business days, from the date of receipt of Committee notification, to submit said documents to complete the application. The applicant shall be required to confirm that all evidentiary documents deemed to be missing from the application were executed on, or prior to, the application filing deadline. If required documents are not submitted within the time provided, the application shall be considered incomplete.
- (f) Application changes. An application may not be changed subsequent to the application filing deadline nor may any supplemental information related to the awarding of points or meeting of basic thresholds be submitted.
- (g) Applications not fully evaluated. Applications not expected to receive a reservation of Credit, due to a relatively low point ranking, may or may not be fully evaluated by the Committee.
- (h) Standard application documents. The following documentation relevant to the proposed project is required to be submitted with all applications:
  - (1) Applicant's Statement. A signed, notarized statement signifying the responsibility of the applicant to:
    - (A) provide application related documentation to the Committee upon request;
    - (B) be familiar with and comply with Credit program statutes and regulations;
    - (C) hold the Committee and its employees harmless from program-related matters;
    - (D) acknowledge the potential for program modifications resulting from statutory or regulatory actions;
    - (E) acknowledge that Credit amounts reserved or allocated may be reduced in some cases when the terms and amounts of project sources and uses of funds are modified;
    - (F) agree to comply with laws outlawing discrimination;
    - (G) acknowledge that the Committee has recommended the applicant seek tax advice;
    - (H) acknowledge that the application will be evaluated according to Committee regulations, and that Credit is not an entitlement;
    - (I) acknowledge that continued compliance with program requirements is the responsibility of the applicant;
    - (J) acknowledge that information submitted to the Committee is subject to the Public Records Act;
    - (K) agree to enter with the Committee into a regulatory contract if Credit is allocated; and,
    - (L) acknowledge, under penalty of perjury, that all information provided to the Committee is true and correct, and that applicant has an affirmative duty to notify the Committee of changes causing information in the application or other submittals to become false.
  - (2) The Application form. Completion of all applicable parts of Committee-provided application forms which shall include, but not be limited to:
    - (A) General Application Information

- (i) Credit amounts requested
  - (ii) minimum set-aside election
  - (iii) application stage selection
  - (iv) set-aside selection
  - (v) housing type
  - (B) Applicant Information
    - (i) applicant role in ownership
    - (ii) applicant legal status
    - (iii) developer type
    - (iv) contact person
  - (C) Development Team Information
  - (D) Subject Property Information
  - (E) Proposed Project Information
    - (i) project type
    - (ii) Credit type
    - (iii) building and unit types
  - (F) Land Use Approvals
  - (G) Development Timetable
  - (H) Identification and Commitment Status of Fund Sources
  - (I) Identification of Fund Uses
  - (J) Calculation of Eligible, Qualified and Requested Basis
  - (K) Syndication Cost Description
  - (L) Syndicator Contacts
  - (M) Determination of Credit Need and Maximum Credit Allowable
  - (N) Project Income Determination
  - (O) Restricted Residential Rent and Income Proposal
  - (P) Subsidy Information
  - (Q) Operating Expense Information
  - (R) Projected Cash Flow Calculation
  - (S) Basic Threshold Compliance Summary
  - (T) Additional Threshold Selection
  - (U) Tax-exempt Financing Information
  - (V) Market Study
- (3) Organizational documents. All applicable proposed or executed organizational documents of the applicant entity, including a detailed plan describing the ownership role of the applicant throughout the low-income use period of the proposed project.
- (4) Designated contact person. A contract between the applicant and the designated contact person for the applicant signifying the contact person's authority to represent and act on behalf of the applicant with respect to the Application. The Committee reserves its right to contact the applicant directly.
- (5) Identification of project participants. For all of the following project participants, if applicable, the company name and contact person, address, telephone number, and fax number:
- (A) developer
  - (B) architect
  - (C) attorney
  - (D) tax professional
  - (E) property management company
  - (F) consultant
  - (G) market analyst
- (6) Identities of interest. Identification of any persons or entities (including affiliated entities) that plan to provide development or operational services to the proposed project in more than one capacity, and full disclosure of Related Parties, as defined.

- (7) Legal description. A legal description of the subject property.
- (8) Site and surrounding area description. A narrative description of the current use of the subject property, all adjacent property land uses, the surrounding neighborhood, and identification and proximity of services available to the subject property, including transportation. Provide labeled photographs or color copies of the subject property and all adjacent properties.
- (9) Site layout. A layout of the subject property, including the location and dimensions of existing buildings, utilities, and other pertinent features.
- (10) Market Studies. A full market study prepared within 180 days of the application filing deadline, by an independent 3<sup>rd</sup> party having no identity of interest with the development's partners, intended partners, or general contractor. The study must comport with the market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. Should the market study not comport with the guidelines or not support sufficient need and demand for the project, the application may be considered ineligible to receive credit. For market studies undertaken subsequent to March 31, 2004, the market study guidelines dated February 2004 shall apply.
- (11) Site location. A site or parcel map indicating the location of the subject property and showing exactly where the building(s) comprising the tax credit development will be situated. (In the case where a lot split is anticipated, the size of the parcel to be utilized for the development and the exact location of the proposed buildings must be identified in the application.)
- (12) Unique site features. A description of unique features of the subject property, estimated to result in either increased project costs or environmental mitigation.
- (13) Construction and design description. A detailed narrative description of the proposed project construction and design, including how the design will serve the targeted population.
- (14) Architectural drawings. Preliminary drawings of the proposed project, including a site plan, building elevations, and unit floor plans (designate square footage). The project architect must certify that the development will comply with the physical building requirements of all applicable fair housing laws. The site plan shall identify all areas or features proposed as project amenities, laundry facilities, recreation facilities and community space. Drawings shall be to a scale that clearly shows all requested information. Blueprints need not be submitted.
- (15) Placed-in-service schedule. A schedule of the projected placed-in-service date for each building.
- (16) Identification of local jurisdiction. The following information related to the local jurisdiction within which the proposed project is located:
  - (A) jurisdiction (e.g., City of Sacramento)
  - (B) chief executive officer and title (e.g., Susan Smith, City Manager)
  - (C) mailing address
  - (D) telephone number
  - (E) fax number
- (17) Sources and uses of funds. The sources and uses of funds description shall separately detail apportioned amounts for residential space and commercial space.
- (18) Financing plan. A detailed description of the financing plan, and proposed sources and uses of funds, to include construction, permanent, and bridge loan sources, and other fund sources, including rent or operating subsidies and reserves. The commitment status of all

fund sources shall be described, and non-traditional financing arrangements shall be explained.

- (19) Eligible basis certification. A certification from a certified public accountant or tax attorney that project costs included in eligible basis are allowed by IRC Section 42, as amended, and are presented in accordance with standard accounting procedures.
  - (20) Use of tax benefits description. If the Credit is not to be offered to investors, a detailed explanation of how the tax benefits will be used by the applicant.
  - (21) Justification of syndication costs in basis. If including syndication costs in eligible basis, a justification from a tax attorney or tax accountant for each cost category.
  - (22) Terms of syndication agreement. Written estimate(s) from syndicator(s) or financial consultant of equity dollars expected to be raised for the proposed project from the amount of Credit requested, including pay-in schedules, syndication costs (including syndicator consulting fees), and an estimated net tax Credit factor.
  - (23) Tax Credit factor certification. If the Credit is not to be syndicated, a letter from a certified public accountant establishing the tax Credit factor.
  - (24) Utility allowance estimates. Current utility allowance estimates from the local housing authority, in the form of a letter from the local public housing authority signifying that the proposed project is located in their jurisdiction and that the utility allowance schedule provided is current (ref: IRS Final Regulations T.D. 8520). The applicant must indicate which components of the utility allowance schedule apply to the project.
  - (25) Description of subsidies. If rental assistance, operating subsidies or annuities are proposed, all related contracts and agreements that secure said funds. Identify the source, annual amount, term, number of units receiving assistance, and expiration date of contracts and agreements.
  - (26) Certification of subsidies. Certification by the applicant as to the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the proposed project. (IRC Section 42(m)(2)(C)(ii))
  - (27) Cash flow projection. A 15-year projection of project cash flow. Separate cash flow projections shall be provided for residential and commercial space. If a capitalized rent reserve is proposed to meet the underwriting requirements of Section 10327, any such capitalized rent reserve must include such annual reserve payment in its cash flow projections. Use of a capitalized rent reserve is limited to Special Needs projects, SRO projects, projects applying under the Non-profit Homeless Assistance set-aside, HOPE VI projects, and Section 8 project based projects.
  - (28) Self-scoring sheet as provided in the application.
- (i) Additional application documents. In addition to all above requirements of this Section, the following documentation relevant to the proposed project is required to be submitted with applications having certain characteristics, as described below:
- (1) Final Reservation application. Applicants proposing a final reservation application shall provide the following:
    - (A) the company name and contact person, address, telephone number, and fax number of the:
      - (i) general contractor, and
      - (ii) syndication firm or investor;
    - (B) an executed construction contract;
    - (C) recorded deeds of trust for all construction loan financing;

- (D) a current title report (dated no later than 30 days before the application deadline or no earlier than January 1st of the year in which the building must be placed-in-service as provided in section 10328(c), whichever applies);
- (E) binding commitments for permanent financing;
- (F) binding commitments for any other financing required to complete project construction;
- (G) a construction lender trade payment breakdown of approved construction costs; and,
- (H) an executed partnership agreement, or if not yet executed, a commitment letter between the applicant and investor verifying the expected equity raise, pay-in schedule and costs of syndication;
- (I) building permits;
- (J) completed Final Reservation Status Report Form provided by the Committee;
- (K) a detailed explanation of any changes from the initial application.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

- (2) Placed-in-service application. Applicants proposing a placed-in-service application shall provide, in addition to the aforementioned submission requirements of a Final Reservation Application:
  - (A) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Credit is requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;
  - (B) a third party audited certification, on a Committee-provided form, of actual total project costs incurred;
  - (C) detailed breakdown of incurred costs and placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in-service date(s) denoted are different from the date on the certificate of occupancy, a detailed explanation is required;
  - (D) photographs of the completed building(s);
  - (E) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
  - (F) a certification from the syndicator of equity raised and syndication costs in a Committee-provided format;
  - (G) a project ownership profile on a Committee-provided form;
  - (H) a copy of any cost certification submitted to and approved by RHS or other lender;
  - (I) a list of all amenities provided at the project site. If the list differs from that submitted at application, an explanation must be provided;
  - (J) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;
  - (K) a certification from a tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received credits under the provisions of Section 10326 of these regulations;
  - (L) a certification from the owner that all of the minimum construction standards of Sections 10325(f)(7) and 10326(g)(6) have either been met or waived pursuant to these regulations;
  - (M) if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;
  - (N) a certification from the project architect that the physical buildings are in compliance with all applicable fair housing laws;
  - (O) a certification from the project architect that the sustainable building methods of section 10325 (c) (8) have been incorporated into the project, if applicable;
  - (P) a certification from the project architect that the project is eligible for the adjusted eligible basis pursuant to section 10327(c)(5), if applicable.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

- (3) Acquisition Credit application. Applicants requesting acquisition Credit shall provide:
  - (A) a chain of title report and tax professional's opinion documenting the acquisition meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
  - (B) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).
  
- (4) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:
  - (A) an "as-is" appraisal prepared within 120 days before or after the execution of a purchase contract or the transfer of ownership for the property by all the parties by a California certified 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) land value of the subject property; and,
    - (v) an on site inspection.
  - (B) A purchase contract verifying the sales price of the subject property.
  - (C) A capital needs assessment performed within 180 days prior to the application filing deadline of the funding round by the project contractor, engineer, or architect, or, if there is an identity of interest between the general partner and the contractor, engineer, or architect, by an independent 3rd party with no identity of interest with the general partner or intended partner, that details all necessary work to be undertaken, the associated costs, levels of reserves and the condition and remaining useful life of the building's major structural components. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary, financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end project. Subsections (A) and (C) above shall not apply if the project previously received an allocation of credit and these requirements were met in the original application.
  
- (5) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide income, rent and family size information for the current tenant population.
  
- (6) Tenant relocation plan. Applicants proposing rehabilitation of occupied housing shall provide an explanation of the relocation requirements, a detailed relocation plan including a budget with an identified funding source, and, where applicable, evidence that the relocation plan has been submitted to the appropriate local agency.
  
- (7) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).

- (8) Nonprofit set-aside application. Applicants requesting Credit from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:
    - (A) IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;
    - (B) proof of designation as a nonprofit corporation under Health and Safety Code Section 50091;
    - (C) proof that one of the exempt purposes of the corporation is to provide low-income housing;
    - (D) a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project;
    - (E) a third party legal opinion that the nonprofit organization is not affiliated with or controlled by a for-profit organization, and the basis for said determination; and,
    - (F) a third party legal opinion stating that the applicant is eligible for the Nonprofit set-aside pursuant to IRC Section 42(h)(5).
  - (9) Rural set-aside application. Applicants requesting Credit from the Rural set-aside, as defined by H & S Code Section 50199.21, shall provide verification that the proposed project is located in an eligible rural area. (Evidence that project is located in an area eligible for financing from RHS shall be a letter from RHS.)
  - (10) RHS Section 514, 515 or 538 program applications. Rural housing applicants requesting Credit from amounts made available for projects financed by the RHS Section 514, 515 or 538 program shall submit evidence from RHS that such funding has been requested.
  - (11) HOME funds match. Applicants requesting state Credit to match HOME funds shall provide a letter from the local jurisdiction stating why matching funds are not being provided.
- (j) Re-application. Re-applications submitted under Section 10326 of these regulations will no longer be required unless there have been substantial changes to the project. Committee staff will adjust the Credit amount for projects requesting credit under Section 10326 at the time the placed-in-service package is received and reviewed by Committee staff unless the Executive Director deems it necessary to have the Committee take formal action because there have been substantial changes or because there has been an extraordinary increase in credit requested. Reapplications at placed-in-service that are requesting additional credit will be required to submit a fee equal to one percent (1%) of the first year's credit amount. For all other projects, except in unusual, extreme cases such as fire, or act of God, where a waiver of this subsection is permitted by the Executive Director, a re-application for a development that has already received a tax credit reservation or allocation shall be evaluated as an entirely new application, and shall be required to return its previously reserved or allocated credit prior to or simultaneously with its new application. All re-applications shall be subject to negative points under Section 10325(c)(3) if applicable (for example, a project that does not meet the original placed-in-service deadline would receive negative points hereunder). Re-applications shall be subject to the regulations in effect at the time the re-application is submitted. For projects submitted under Section 10326 of these regulations that are requesting additional credit, the basis limits to be used in the final underwriting shall be those in effect during the year the development is placed-in-service.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code

#### Section 10325. Application Selection Criteria - Credit Ceiling Applications

- (a) General. All applications not requesting federal Credit under the requirements of IRC Section 42(h)(4) and Section 10326 of these Regulations for buildings financed by tax-exempt bonds shall compete for reservations of Credit ceiling amounts during designated reservation cycles. Further, no project that has a pending application for a private activity bond allocation or that has



previously received a private activity bond allocation will be eligible to compete under the credit ceiling competition for federal credit unless it receives a waiver from the Executive Director.

(b) Authority. Selection criteria shall include those required by IRC Section 42(m), H & S Code Section 50199.14, and R & T Code Sections 12206, 17058 and 23610.5.

(c) Credit ceiling application competitions. Applications received in a reservation cycle, and competing for federal and/or state Credit, 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 credit. Further, in the event that the next ranking project to which credit may be reserved pursuant to these regulations has scored substantially lower than the highest scoring unfunded project in the same category, the Committee may either borrow from the subsequent year's state and/or federal credit as necessary to fund the highest scoring project or may move to the next category without making further allocations. 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, with no ability on the applicant's part to provide additional information. Further, 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.

## **SCORING**

### **(1) Leveraging**

- (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, including permitted adjustments, shall receive 1 point for each percent its basis is below the maximum permitted adjusted threshold basis limit.
- (B) Credit reduction. A project that reduces the amount of credit it is requesting shall receive 1 point for each percent that its qualified basis is reduced. In order to receive points in this category, committed funds must be part of the permanent sources for the development.
- (C) Public funds. Projects that utilize public funds, including federal, state, or local funds, or funds from a local community foundation, funds already awarded under the affordable housing program of the Federal Home Loan Bank (AHP), waivers not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline, when supported by an independent, third party appraisal, shall receive 1 point for each 1 percent of the total development cost including the value of any donations or fee waivers. To receive points for loans made under this subsection, loans must be "soft", or residual receipts loans for at least the first fifteen years of their terms. Points for donated or leased land shall be calculated based on the lesser of the purchase price or appraised value, except that points for land owned by the public entity for more than three years prior to the application filing deadline shall be calculated based on its appraised value. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that the public funds are available, and that there has been no consideration, other than the proposed housing, given by anyone connected to the project, for the funds or the donated or leased land.

A maximum of 20 points shall be available in combining the cost efficiency, credit reduction, and public funds categories. However, in order to score the full 20 points, at least 2 points must be achieved by each applicant in the credit reduction category.

(2) General Partner/Management Company Characteristics.

No one general partner, party having any fiduciary responsibilities, or related parties will be awarded more than 15% of the combined federal and state Credit ceiling during any calendar year unless imposing this requirement would result in non-allocation of Credit.

(A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, the applicant must submit a certification from a 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. This certification must list the specific projects for which the points are being requested. The certification of the 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.

1-2 projects in service under 3 years	1 point/over 3 years	2 points
3-6 projects in service under 3 years	3 points/over 3 years	4 points
7 or more projects in service under 3 years	5 points/over 3 years	6 points

(B) Management Company experience

2-5 projects in service under 3 years	.5 point/over 3 years	1 point
6-10 projects in service under 3 years	1.5 points/over 3 years	2 points
11 or more projects in service under 3 years	2.5 points/over 3 years	3 points

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. In order to be eligible for maximum points in either subsection (A) or (B) above, a completed previous participation form must be present in the application. 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. 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 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.

- (3) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the development team for items including, but not limited to:

failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control

failure to utilize Credit within program time guidelines, including failure to meet the 150 day 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

for projects receiving an allocation of credit after 1998, failure to request Forms 8609 within 1 year from the date the last building in the project is placed-in-service

removal or withdrawal under threat of removal as general partner from a housing tax credit partnership

failure to provide physical amenities or services or any other item for which points were obtained (unless funding for a specific services program promised is no longer available)

material misrepresentation of any fact or requirement in an application

failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California

repeated failure to submit required compliance documentation for a housing tax credit project located anywhere

failure of a building to continuously meet the terms, conditions, and requirements the building received at its certification as being suitable for occupancy in compliance with state or local law, unless it is demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside the control of the owner

except for tax-exempt bond projects, failure to submit a copy of the owner's completed 8609 showing the first year filing

Negative points given to general partners, co-developers, management agents, consultants, or any other member or agent of the development team may remain in effect for up to 2 calendar years, but in no event shall be in effect for less than one funding round. Additionally, any violation as described above may result in the Executive Director finding the offending party or parties ineligible to participate in the competitive program for a period of up to two calendar years. Such a finding by the Executive Director may be appealed to the Committee.

- (4) Housing Needs. (Points will be awarded only in 1 category listed below) The category selected hereunder shall also be the project category for purposes of the tie-breaker described in subsection 10325(c)(12) 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

- (5) Amenities beyond those required as additional thresholds Maximum 15 points

(A) Site Amenities: must be appropriate to the population to be served. Distances must be measured using a standardized radius determined by the Committee from the development site but must not include physical barriers. No more than 15 points will be awarded 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, 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 (1-7) listed below. Amenities may include:

1. being part of a transit-oriented development strategy where there is a transit station, rail station, commuter rail station, or bus station, or bus stop within 1/4 mile from the project site with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m., and the project's density will exceed 25 units per acre 7 points

where the project site is within 1/4 mile of a transit station, rail station, commuter rail station or bus station, or bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m. 6 points

where the project site is within 1/3 mile of a bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m. 5 points

located within 500 feet of a regular 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

being located within 1,500 feet of a regular bus stop or rapid transit system stop 3 points

Multiple bus lines may not be aggregated for the above points.

2. the site is within 1/4 mile of a public park (1/2 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 providing availability to the general public of the school grounds and/or facilities) or a community center accessible to the general public 3 points  
within 1/2 mile (1 mile for Rural set-aside projects) 2 points

3. the site is within 1/4 mile of a public library (1/2 mile for Rural set-aside projects) 3 points  
within 1/2 mile (1 mile for Rural set-aside projects) 2 points

4. the site is within 1/4 mile of a full scale grocery store/supermarket where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural set-aside projects or projects located in inner cities) 4 points  
within 1/2 mile (1 mile for Rural set-aside projects or projects located in inner cities) 3 points  
the site is within 1/4 mile of a convenience market where staples are sold 2 points

- 5. for a Large Family development, the site is within 1/4 mile of public elementary, middle, or high school that children living in the development may attend (1/2 mile for Rural set-aside projects) 3 points  
within 1/2 mile (1 mile for Rural set-aside projects) 2 points
- 6. for a Senior Development, the site is within 1/4 mile of a daily operated senior center or a facility offering daily services specifically designed for seniors (not on the development site) (1/2 mile for Rural set-aside projects) 3 points  
within 1/2 mile ( 1 mile 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  
within 1 mile 2 points
- 8. the site is within 1/2 mile (for Rural set-aside projects, 1 mile) of a medical clinic, or hospital (not merely a private doctor's office) 3 points  
the site is within 1 mile (for Rural set-aside projects 1.5 miles) of a medical clinic or hospital 2 points
- 9. the site is within 1/4 mile of a pharmacy (for Rural projects, 1/2 mile). 2 points  
within 1/2 mile (1 mile for Rural projects) 1 point

To receive points in this category, the amenity must be already existing, except in the case of a project receiving points under the Balanced Communities subsection, where the funds for the amenity are committed, and the amenity is planned, or, in the case of a bus stop, where it is shown that the bus provider and municipality have agreed on and approved the site for the stop and it will be in existence no later than 2 years after the development is placed-in-service. A scaled for distance map showing the location of the project and the site amenities must be provided in the application.

- (B) Service Amenities: must be appropriate to the population to be served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the projects placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenant free of charge, except for day care services. Services must be provided on-site except that projects applying as Small Developments, or other projects may use off-site services within 1/2 mile of the development 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. Referral services will not be eligible for points. Contracts with service providers, service provider experience, evidence that physical space will be provided, and a budget reflecting how the services will be paid for must be included in the application. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:

- 1. High speed internet service provided in each unit (as stated above, free of charge to the tenants) 5 points

2. After school programs of an ongoing nature for school age children  
5 points
3. Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above.  
5 points
4. Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development  
5 points
5. Contracts for services, such as assistance with activities of daily living, or provision of senior counseling services, where a contract is in place at the time of application  
5 points

- (6) Neighborhood Revitalization. These points will not be available to projects applying under the Rural set-aside.

A development must be located in a Neighborhood Revitalization area, as defined in Section 10302(x) of these regulations where demonstrable evidence, satisfactory to the Executive Director, is submitted showing that a neighborhood revitalization plan has been adopted and specific efforts towards achieving the plan's goals have occurred. Plans should be specific to the neighborhood, and efforts undertaken may include, but are not limited to, existing partnership coalitions with public entities, private sector enterprises, nonprofit community organization; financing commitments for work to be done in the neighborhood; commencement of a specific neighborhood project. Each application for neighborhood revitalization points must include a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. Applications that have received HOPE awards from the U.S. Department of Housing and Urban Development, are located in federally designated Renewal Communities, Empowerment Zones, or Enterprise Communities, or are planned base re-use projects, or are for projects located on tribal lands, will automatically be granted the full maximum points in this category. Base re-use, as used in this subsection, refers to projects that are located on a military base. Generally, such projects will involve, at least in part, the rehabilitation of already existing buildings on such a base. A project requesting neighborhood revitalization points will not be eligible to receive points in the balanced communities section below.

Points for neighborhood revitalization will be awarded as follows, to a maximum of  
9 points:

Location in a locally designated revitalization area as evidenced by submission of a plan adopted by the jurisdiction, including evidence that the plan for neighborhood revitalization is still in effect. The plan should include findings of need or identification of problems requiring revitalization efforts.  
2 points

for 3rd party letters from governmental entities or non-profit organizations, documenting and substantiating funds committed or expended within the past five years in the neighborhood, as they specifically relate to the revitalization of the neighborhood where the project will be located.  
Up to 2 points

A narrative explaining precisely the nature and extent of the neighborhood's revitalization efforts, how the applicant's project will fit into that framework, and how the proposed project is critical to the neighborhood's revitalization.  
2 points

A letter from an official in the jurisdiction that delineates the various neighborhood revitalization efforts in the immediate vicinity of the proposed development, both already undertaken and planned, and the funds that have been committed and expended for projects within that immediate neighborhood.  
Up to 3 points

- (7) Balanced communities. These points will not be available to projects applying under the Rural set-aside.

To the extent that a development does not request neighborhood revitalization points, and meets the requirement of this subsection, it may request points for balanced communities to the extent that the local government is providing funds equal to at least 5% of total project costs for the project. Points will be awarded, to a maximum of 9, as follows:

Submission of evidence from the local government that it has formally adopted initiatives to encourage the creation of affordable rental housing in new growth and/or high income areas and that the project is consistent with those locally adopted initiatives. Such initiatives may include inclusionary zoning ordinances, fair share requirements, as examples, but must include more than adoption of a housing element. 3 points

Evidence that the project will actually be built adjacent to housing owned and occupied by upper income families, to be shown by either the specific plan demonstrating the proximity of land uses and comparable sales data within 1/2 mile radius demonstrating that average sales prices are above 100% of area sales prices, or census data demonstrating that the average income of that census tract is at or above 100% of area median.

Up to 2 points

The project will reserve at least 10% of its units for tenants with incomes not exceeding 30% of area median income. 2 points

The project will reserve at least 20% of its units for tenants with incomes not exceeding 30% of area median income 3 points

The project will reserve at least 30% of its units for tenants with incomes not exceeding 30% of area median 4 points

- (8) Sustainable building methods. Maximum 8 points

A project application that utilizes materials that will increase energy efficiency by at least 15% above the Title 24 energy standards, or a rehabilitation project that will increase its existing energy efficiency by at least 25% will receive 5 points.

A certification at project completion that this standard has been met or exceeded shall be required of the project's architect or mechanical engineer. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3)(C) above.

Projects that incorporate items from the following list may receive an additional 1 point for each, to a maximum of 3 points:

Use of energy efficient appliances with the energy star rating (or equivalent) for all appliances, including refrigerators, dishwashers, washers and dryers (whether in units or in community laundry facilities), and for all heating and cooling systems, including furnaces, and air conditioners that will be used in the development;

Use of natural gas for space heating;

Use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period;

Use of either of the following water conserving technologies: a) flow restrictors on kitchen (2 gallons per minute) and bathroom faucets (1.5 gallons per minute) or b) dual flush toilets;

Use of formaldehyde free or fully sealed particleboard or fiberboard for all cabinets, countertops and shelving;

Use of either a) or b) as follows: a) no VOC interior paint, low-VOC carpeting and pad and low-VOC adhesives (less than 25 grams per liter), or b) humidistat fans in all bathrooms.

To receive these points, the applicant and the project architect must certify, in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included.

(9) Lowest Income in accordance with the table below Maximum 52 points

(a) The "Percent of Area-Median Income" category may be used only once. For instance, 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income cannot be used twice for 100% at 50% and receive 50 points, nor can 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income for 25 points and 40% of Income Targeted Units to Total Units at 50% of Area Median Income be used for an additional 20 points. However, the "Percent of Income Targeted Units" may be used multiple times. For example, 50% of Targeted Units at 50% of Area-Median Income for 25 points may be combined with another 50% of Targeted Units at 45% of Area Median Income to achieve the maximum points. All projects must score at least 45 points in this category to be eligible for 9% tax credit.

Only projects competing in the Rural set aside may use the 55% of Area median income column

	Percent of Area Median Income							
	<b>55</b>	<b>50</b>	<b>45</b>	<b>40</b>	<b>35</b>	<b>30</b>		
<b>50</b>	22.5	25	27.5	30	32.5	35	points	
<b>45</b>	20	22.5	25	27.5	30	32.5	points	
<b>40</b>	17.5	20	22.5	25	27.5	30	points	
<b>35</b>	15	17.5	20	22.5	25	27.5	points	
<b>30</b>	12.5	15	17.5	20	22.5	25	points	
<b>25</b>	10	12.5	15	17.5	20	22.5	points	
<b>20</b>	7.5	10	12.5	15	17.5	20	points	
<b>15</b>	5	7.5	10	12.5	15	17.5	points	
<b>10</b>	2.5	5	7.5	10	12.5	15	points	

(b) A project that agrees to have at least ten percent (10%) of its units available for tenants with incomes no greater than thirty percent (30%) of area median, and to restrict the rents on those units accordingly, will receive two points in addition to other points received under this subsection. The 30% units must be spread across bedroom size, and measurement will begin using 10% of the largest bedroom size; however, the requirement will not exceed a minimum of 10% of the total number of units in the development. (These points may be obtained by using the 30% section of the matrix.)

All projects, except those applying under section 10326 of these regulations, will be subject to the minimum low income percentages chosen for a period of 55 years, unless they receive federal housing tax credit only and are intended for eventual tenant homeownership, in which case they must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

(10) Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 150 days of the Credit Reservation, as evidenced by



submission, within that time of, recorded deeds of trust for all construction financing, except for AHP and MHP funds, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 150 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. Failure to meet this timeline will result in rescission of the Credit Reservation.

- (A) enforceable commitment for all construction financing, as evidenced by executed commitment and payment of commitment fee;
- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearance (CEQA and NEPA) necessary to begin construction are either finally approved or unnecessary;
- (C) all necessary public approvals except building permits;
- (D) design review approval

In the event that less than all of the above criteria have been met, 5 points may be awarded for each of the above, to a maximum of 15 points. In such cases, the 150-day requirements shall not apply.

- (11) State credit substitution. For applicants that agree that the Committee may exchange federal credit for state credit in an amount that will yield an equivalent of equity as if only federal credit were awarded 2 points
- (12) Tie Breakers

Should multiple applications receive the same score, the following tie breakers shall be employed: first, to the extent that the housing type goals have not been met in any funding round, to meet those housing type goals in the order in which they are listed in section 10315 (g); second, an application for a project located in a qualified census tract or a federally designated Renewal Community, Empowerment Zone, Enterprise Community that has demonstrated that it will contribute to a concerted neighborhood revitalization plan, as evidenced by a score of at least eight (8) points, or a project not located in such an area that has received nine (9) points under section 10325(c)(6) or (7) of these regulations, or, in the case of a project in the Rural set-aside, one which is located in a qualified census tract, federally designated Renewal Community, Empowerment Zone, Enterprise Community, or Champion Community shall be selected over an application not meeting this criterion; third, the application with the lowest ratio of requested unadjusted eligible basis to total residential project costs, excluding developer fee, total land cost and general partner equity and/or loans from the general partner or equity provider, unless the loan is the permanent loan for the development. This ratio must not have increased when the project is placed-in-service or negative points will be awarded, and the credit award may be reduced.

- (d) Application selection for evaluation. Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Credit shall be made for those applications of highest rank in the following manner.
  - (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside (including the homeless assistance apportionment), followed by the Rural set-aside (including the RHS program apportionment), the Small Development set-aside, the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Credit reserved. No more than one project in a market area as determined by the Committee will be funded in the Rural set-aside during any funding round. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. To the extent that there is more credit reserved to

the last project in a set-aside than has been established for that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. To the extent that more credit is reserved to the last project in a set-aside than is available in that set-aside during the second funding round, the overage will be taken from the one and one-half percent (1.5%) holdback to the extent there are sufficient funds in the holdback, or, to the extent there are no such funds remaining, will be counted against the amounts available from the geographic area in which the project is located. Credit reserved in the general non-profit set-aside (but not in the non-profit homeless assistance portion of that set-aside), in the small development set-aside, and in the at-risk set-aside shall count within the geographic areas in which the projects funded therein are located. Credit reserved in all set-asides shall be counted within the housing type goals.

- (A) For an application to receive a reservation within a statutory set-aside, there shall be at least one dollar of Credit not yet reserved in the set-aside.
  - (B) If there is a zero or negative amount of Credit in either the federal or state credit categories requested by the applicant, the application shall be by-passed in favor of the next highest-ranking application.
  - (C) Except for projects competing in the rural set-aside, which shall not be eligible to compete in geographic areas, after a set-aside is fully reserved, all remaining applications competing within the set-aside shall compete in the geographic areas.
- (2) Geographic Areas selection. Credit remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round, filling each geographic area's apportionment and assuring that each geographic area receives funding for at least one project in each funding round to the extent that by funding a project in a geographic area, that area will not have exceeded 125% of the amount available in that funding round for the geographic area. Subsequent projects will be funded in order of their rank so long as at least 50% of the credit requested is available in the geographic area in the first funding round, and 75% of the credit requested is available in the second funding round (or, to the extent there is only one funding round in a year, in the only funding round).

The Committee may determine that, under the unique circumstances of the funding round and in consideration of the relative scores and ranking of the proposed projects, all applicants scores are too low to warrant a reservation of credit pursuant to section 10325(c) of these regulations.

- (A) To the extent that there is a positive balance remaining in a geographic area after a funding round, such amount will be added to the amount available in that geographic area in the subsequent funding round. Similarly, to the extent that there is a deficit in a geographic area after a funding round, such amount will be subtracted from the funds available for reservation in the next funding round.
- (e) Application evaluation. To receive a reservation of Credit, applications selected pursuant to subsection (d) of this Section, shall be evaluated, pursuant to IRC Section 42, H & S Code Sections 50199.4 through 50199.22, R & T Code Sections 12206, 17058, and 23610.5, and these regulations to determine if; eligible, by meeting all program eligibility requirements; complete, which includes meeting all basic threshold and additional threshold requirements; and financially feasible. In scoring and evaluating project applications, the Executive Director shall have the discretion to interpret the intent of these regulations and to score and evaluate applications accordingly. Applicants understand that there is no "right" to receive credit under these regulations. The Committee shall make available to the general public a written explanation for any allocation of credit that is not made in accordance with the established priorities and selection criteria of these Regulations.

- (f) Basic thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements. All basic thresholds shall be met at the time the application is filed through a presentation of conclusive, documented evidence to the Executive Director's satisfaction.
- (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. Evidence shall be conclusive, and include the most recent documentation available (prepared within 1 year and updated, if necessary). Evidence of housing need and demand shall include:
    - (A) evidence of public housing waiting lists, by bedroom size and tenant type, if available, from the local housing authority; and
    - (B) a market study as described in Section 10322(h)(10) of these regulations.
  - (2) Demonstrated site control. Applicants shall provide evidence that the subject property is within the control of the applicant.
    - (A) Site control may be evidenced by:
      - (i) a current title report (within 90 days of application) showing the applicant holds fee title;
      - (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 the agreement current through the application filing deadline have been executed and must be included in the application.
    - (B) A current title report (within 90 days of application) shall be submitted with all applications for purposes of this threshold requirement.
    - (C) The Executive Director may determine, in her/his sole discretion, that site control has been demonstrated where a local agency has demonstrated its intention to acquire the site, or portion of the site, through eminent domain proceedings.
  - (3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total construction or total permanent financing requirements. An "enforceable financing commitment" shall meet the following conditions, except that the submission of a multifamily accelerated processing invitation letter from the U.S. Department of Housing and Urban Development, together with the submission of a multifamily accelerated processing firm commitment application will suffice to satisfy the requirements of this enforceable financing commitment requirement:
    - (A) be in writing, state the rate and terms, and may be in the form of a loan or grant;
    - (B) subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Credit;
    - (C) if permanent financing, shall have a term of at least fifteen (15) years;
    - (D) if a variable or adjustable interest rate permanent loan is proposed, shall demonstrate feasibility for fifteen (15) years at the ceiling interest rate; and,
    - (E) shall be from a lender other than a mortgage broker, the applicant, or an identity of interest of the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending.
    - (F) Substitution of such funds may be permitted only when the source of funding is similar to the original funding, for example, bank loan to substitute for bank loan, public funds for public funds.
    - (G) be accepted in writing by the proposed mortgagor or grantee, if private financing.

- (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, 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.
- (5) Financial feasibility. Applicants shall provide the financing plan for the proposed project, and shall demonstrate the proposed project is financially feasible and viable as a qualified low income housing project throughout the extended use period. A fifteen-year pro forma of all revenue and expense projections is required. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327 of these regulations.
- (6) Sponsor characteristics. Applicants shall provide evidence that as a team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee may conduct an investigation into an applicant's background that it deems necessary, in its sole discretion, and may determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional team members need be added to appropriately perform all program requirements. The following documentation is required to be submitted at the time of application:
  - (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
  - (B) for all participants, a description of other Credit and all other affordable, multifamily rental project involvement in California or other states, on forms provided by the Committee together with a release form permitting inquiry into the status of such developments;
  - (C) for each of the following participants, a copy of a contract to provide services related to the proposed project:
    - (i) Attorney(s) and or Tax Professional(s)
    - (ii) Architect
    - (iii) Property Management Agent
    - (iv) Consultant
    - (v) Market Analyst
  - (D) for the applicant and all general partners of the project, a description of any circumstances that would require negative points to be assessed by the Committee and any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.
- (7) Minimum construction standards. Applicants shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, 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 projects:
  - (A) Landscaping. 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.
  - (B) Roofs. Shingle roofing shall carry a three-year subcontractor guarantee and a 20-year manufacturer's warranty.
  - (C) Exterior doors. Solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one-year guarantee and all six sides factory primed.

- (D) Appliances. Energy efficient appliances, including frost-free refrigerators shall be provided unless waived by the Executive Director.
- (E) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.
- (F) Water heater. For units with individual water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger. All individual water heaters shall be gas fired and equipped with pressure and temperature relief valves unless waived by the Executive Director.
- (G) Floor coverings. For light and medium traffic areas vinyl or linoleum shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick. A hard, waterproof, cleanable surface shall be required for all kitchen and bath areas. Carpet complying with U.S. Department of Housing and Urban Development/Federal Housing Administration UM 44C, 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.
- (H) Use of Low VOC paints and stains for all interior surfaces where paints and stains are applied.

A project proposing rehabilitation of existing structures shall be exempt from the provisions of subsection (D) and (F) above. To the extent it does not propose to meet the other requirements of this subsection, its capital needs assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive.

- (8) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies shown in the application are "committed" at the time of application, except as permitted in subsection (E) and (F) below.
  - (A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant's acceptance in the case of privately committed loans.
  - (B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Credit.
  - (C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.
  - (D) Substantiating evidence of the value of local fee waivers, exemptions or land write-downs is required.
  - (E) Substitution or an increase of such funds may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. Funds may be increased only in an amount necessary to achieve project feasibility. This provision shall include projects that have already received a reservation or allocation of credit in prior years.
  - (F) Funds anticipated but not yet awarded under the following programs shall be exempt from the provisions of this subsection: the Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; RHS Section 514, 515 or 538 programs; California Housing Finance Agency's Proposition 1A school facility fee reimbursement program; the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's Supportive Housing Initiative Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction, or to projects receiving housing tax credit in 1999 and thereafter and funding under the Department of Housing and Community Development's Multifamily Housing Program.

- (9) Project size and credit amount limitations. Project size limitations shall apply to all applications filed, pursuant to this Section.
    - (A) Unit number limits are as follows:
      - i. Rural set-aside applications - Eighty (80) units maximum
      - ii. Other than rural set-aside applications – One hundred fifty (150) units maximum, except for rehabilitation proposals, HOPE VI or large neighborhood redevelopment proposals pursuant to a specific neighborhood plan where the size limitation is waived by the Executive Director, after making a determination that the project cannot feasibly be phased or completed as a tax-exempt project.
    - (B) Units, for purposes of this subsection, shall:
      - i. include low-income units;
      - ii. not include market rate units or manager’s units.
    - (C) The total “units” in one or more separate applications, filed by Related Parties, proposing projects within one-fourth (1/4) mile of one another, filed at any time within a twelve (12) month period, shall, for purposes of this subsection be subject to the above project size limitations, except when specifically waived by the Executive Director in unusual circumstances such as HOPE VI or large neighborhood redevelopment proposals pursuant to a specific neighborhood plan. HOPE VI and other large projects will generally be directed towards the tax-exempt bond program.
    - (D) The maximum annual federal credit available for award to any one project in any funding round shall not exceed Two Million (\$2,000,000) Dollars, except for projects receiving a waiver of unit size under subsection (C) above, in which case the maximum annual federal credit reserved to any one project in any one funding round shall not exceed Two Million Five Hundred Thousand (\$2,500,000) Dollars.
  - (10) Projects applying for competitive credit and involving rehabilitation of existing buildings shall be required to complete a minimum of \$15,000 hard construction costs per unit (except for those projects defined as “at risk” pursuant to these regulations, which must complete a minimum of \$7,500 in hard construction costs per unit.
- (g) Additional threshold requirements. To qualify for Credit as a housing type, as described in Section 10315(e), or to receive points as a housing type, the application shall meet the following additional threshold requirements:
- (1) Large Family projects. To be considered large family housing, the application shall meet the following additional threshold requirements.
    - (A) At least thirty percent (30%) of the tax Credit units in the project shall be three-bedroom or larger units, with the remaining units configured based on the demand established in the basic threshold requirements except that for projects qualifying for and applying under the At-risk set-aside, the Executive Director may grant a waiver from this requirement if the applicant shows that it would be cost prohibitive to comply.
    - (B) Three-bedroom units shall include at least 1,000 square feet of living space and four-bedroom units shall include at least 1,200 square feet of living space, unless these restrictions conflict with the requirements of another governmental agency to which the project is subject to approval (bedrooms shall be large enough to accommodate two persons each and living areas shall be adequately sized to accommodate families based on two persons per bedroom);
    - (C) Four-bedroom and larger units shall have a minimum of two full bathrooms;
    - (D) The project shall provide outdoor play/recreational facilities suitable and available to all tenants, for children of all ages, except for small developments as defined in Section 10315(c). The Executive Director, in her/his sole discretion may waive this requirement upon demonstration of nearby, readily accessible, recreational facilities.

- (E) The project shall provide an appropriately sized common area(s). For purposes of this part, common areas shall include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1000 square feet; projects from 61 to 100 total units, at least 1400 square feet; projects over 100 total units, at least 1800 square feet. Small developments, defined in Section 10315(d), are exempt from this requirement;
  - (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
  - (G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 10 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each unit, subject to the further provision that gas connections for dryers shall be provided where gas is otherwise available at the property. Dishwashers shall be provided in all units unless a waiver is granted by the Executive Director because of planning or financial impracticality.
  - (H) Projects are subject to a minimum low-income use period of 55 years.
- (2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements:
- (A) All units shall be restricted to households eligible under the provisions of California Civil Code 51.3 (except for projects utilizing federal funds whose programs have differing definitions for senior projects), and further be subject to state and federal fair housing laws with respect to senior housing;
  - (B) The project shall be on a suitable site. Access to basic services shall be available by other than resident-owned transportation;
  - (C) Projects over two stories shall have an elevator;
  - (D) No more than twenty percent (20%) of the low-income units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study. One larger unit may be included for use as a manager's unit without a waiver.
  - (E) For projects receiving credit after 2000, emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring systems is approved by the Executive Director;
  - (F) Common area(s) shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall be allowed to include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments, defined in Section 10315(c) are exempt from this requirement;
  - (G) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
  - (H) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units subject to the further

provision that gas connections for dryers shall be provided where gas is otherwise available at the property.

- (I) Projects are subject to a minimum low-income use period of 55 years.
- (3) SRO projects. To be considered Single Room Occupancy (SRO) housing, the application shall meet the following additional threshold requirements:
- (A) Average income is no more than forty percent (40%) of the area median income;
  - (B) SRO units are efficiency units that may include a complete private bath and kitchen but generally do not have a separate bedroom, unless the configuration of an already existing building being proposed to be used for an SRO dictates otherwise. The maximum size for an SRO unit shall be 500 square feet. At least 90% of the units in the project must meet these requirements;
  - (C) At least one bath shall be provided for every eight units;
  - (D) If the project does not have a rental subsidy committed, the applicant shall demonstrate that the target population can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that those receiving General Assistance are willing to pay rent at the level proposed;
  - (E) The project configuration, including community space and kitchen facilities, shall meet the needs of the population;
  - (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost;
  - (G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;
  - (H) Projects are subject to a minimum low-income use period of 55 years;
  - (I) A ten percent (10%) vacancy rate shall be used unless otherwise approved by the Executive Director. Justification of a lower rate shall be included;
  - (J) A signed contract or memorandum of understanding between the developer and the service provider, together with the resolution of the service provider, must accompany the tax credit application;
  - (K) A summary of the experience of the developer and the service provider in providing for the population to be service must accompany the tax credit application; and,
  - (L) New construction projects for seniors shall not qualify as Single Room Occupancy housing.
- (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 developmentally disabled, are survivors of physical abuse, are homeless, have chronic illness, including HIV and mental illness, are displaced teenage parents (or expectant teenage parents) 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 application shall meet the following additional threshold requirements:
- (A) Average income for the special needs units is no more than forty percent (40%) of the area median income;
  - (B) Third party verification from a federal, state or local agency of the availability of services appropriate to the targeted population;
  - (C) The units/building configurations (including community space) shall meet the specific needs of the population;
  - (D) If the project does not have a rental subsidy committed, the applicant shall demonstrate that the target population can pay the proposed rents. For instance,



if the target population will rely on General Assistance, the applicant shall show that those receiving such assistance are willing to pay rent at the level proposed;

- (E) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
  - (F) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;
  - (G) Projects are subject to a minimum low-income use period of 55 years;
  - (H) A ten percent (10%) vacancy rate shall be used for pro-forma purposes unless otherwise approved by the Executive Director. Justification of a lower rate shall be included;
  - (I) Where services are required as a condition of occupancy, special attention shall be paid to the assessment of service costs as related to maximum allowable Credit rents. A tax professional's opinion as to compliance with IRC Section 42 may be required by the Executive Director;
  - (J) A signed contract or memorandum of understanding between the developer and the service provider, together with the resolution of the service provider, must accompany the tax credit application;
  - (K) A summary of the experience of the developer and the service provider in providing for special needs populations must accompany the tax credit application; and,
  - (L) A preliminary service plan that specifically identifies the services to be provided to the special needs population. The Executive Director shall, in his/her sole discretion, determine whether the plan is adequate to qualify the project as a special needs project.
- (5) At-risk projects. To be considered At-risk housing, the application shall meet the requirements of R & T Code subsection 17058(c)(4), except as further defined in subsection (B)(i) below, as well as the following additional threshold requirements, and other requirements as outlined in this subsection:
- (A) Projects are subject to a minimum low-income use period of 55 years; and,
  - (B) Project application eligibility criteria include:
    - (i) before applying for Credit, 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 two 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 converting due to market or other conditions;
    - (ii) the project must currently possess or have had within the past two years from the date of application, either federal mortgage insurance, a federal loan guarantee, federal project-based rental assistance, or, have its mortgage held by a federal agency, or be owned by a federal agency or be currently subject to, or have been subject to, within 2 years preceding the application deadline, federal low income housing tax Credit restrictions whose compliance period is expiring and at least 50% of whose units are not subject to any other rental restrictions beyond the term of the tax Credit restrictions;
    - (iii) as of the date of application filing, the applicant shall have sought available federal incentives to continue the project as low-income housing, including, direct loans, loan forgiveness, grants, rental subsidies, renewal of existing rental subsidy contracts, etc.;

- (iv) subsidy contract expiration, mortgage prepayment eligibility, or the expiration of housing tax credit restrictions shall occur no later than two calendar years after the year in which the application is filed;
  - (v) the applicant agrees to renew all Section 8 HAP contracts or equivalent project based subsidies for their full term and shall seek additional renewals throughout the project's useful life, if applicable;
  - (vi) at least seventy percent (70%) of project tenants shall, at the time of application, have incomes at or below sixty percent (60%) of area median income;
  - (vii) the gap between total development costs (excluding developer fee), and all loans and grants to the project (excluding Credit) is greater than fifteen percent (15%) of total development costs; and,
  - (viii) a public agency shall provide direct or indirect long-term financial support of at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost.
- (h) Waiting list. At the conclusion of the last reservation cycle of any calendar year, and at no other time, the Committee may establish a waiting list of pending applications already scored, ranked and evaluated in anticipation of utilizing any Credit that may be returned to the Committee. The waiting list shall expire on the date specified in the Committee's resolution establishing the waiting list. If no date is specified, the waiting list shall expire at midnight on December 31 of the year the list is established.
- (1) To the extent that the set-asides or geographic areas have a reservation or allocation of credit returned and that therefore credit becomes available in a set-aside or geographic area, applications qualifying hereunder shall be placed on the waiting list in their order of ranking and in the applicable set-aside and/or geographic area in which they are located. In order to receive a reservation from a waiting list, there must be a positive amount of credit in the set-aside or the geographic area remaining for the year.
  - (2) In the event federal Credit becomes available for a waiting list application requesting both federal and state Credit, and state Credit is not at that time available, the Committee shall allow said applicants to substitute other funds from any source in an amount equivalent to the amount of funds anticipated from the sale of requested state Credit. In no case shall the tax Credit factor, loan and grant interest rates and terms, or the total project development cost in any way be altered from that in the application for purposes of achieving project feasibility through the option to substitute state Credit

At the earlier of the date upon which a request is made for a carryover allocation or tax forms, the applicant shall evidence the availability of said funds according to application requirements of these regulations pertaining to the type of fund source.

The option to substitute state Credit with other funds shall be limited to applications receiving an offer of federal Credit that are returned to the Committee on or before November 1 of the year of the applicable waiting list. For purposes of this subsection, federal credit returned prior to November 1, and offered to, but not accepted by, an applicant may be offered to the next eligible waiting list project after November 1. Any such offer after November 1 shall be limited to only the next eligible waiting list project and the federal credit shall not be available thereafter to other waiting list projects under the option to substitute state credit with other funds. After being offered a reservation of federal Credit, the applicant shall be allowed ten (10) days to provide the Committee with evidence of the availability and willingness of a financing source, that shall not be substituted at a later date with another source, to cover the financing gap remaining due to the absence of state Credit (e.g. a letter of interest). At such time as is required for filing of a carryover allocation, the availability of funds to cover said financing gap shall be evidenced in accordance with subsection 10325(f)(8). Once a reservation of federal Credit has been accepted for an application pursuant to this subsection, the application shall not be eligible for state Credit should additional state Credit become available for waiting list applications.

- (3) Should there not be sufficient returned Credit to fully fund the next ranked application on the waiting list, a reservation of all remaining Credit may be made to that application, and any first recaptured or otherwise available Credit in the following year may be reserved for that application up to the maximum amount previously approved by the Committee.
- (i) Carry forward of Credit. Pursuant to federal and state statutes, the Committee may carry forward any unused Credit or Credit returned to the Committee for allocation in the next calendar year.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10326. Application Selection Criteria - Tax-exempt bond applications

- (a) General. All applications (including reapplications) requesting federal Credit under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of federal Credit. However, those projects requesting state credit will be competitively scored. The competitive scoring system used shall be that delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the lowest requested eligible basis per bedroom. The highest scoring applications under this scoring system will be recommended for receipt of state tax credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of Section 10326.
- (b) Applicable criteria. Selection criteria for applications reviewed under this Section shall include those required by IRC Section 42(m), this Section, and Sections 10300, 10302, 10305, 10320, 10322, 10327, 10328(e), 10330, 10335, and 10337 of these regulations. Other sections of these regulations shall not apply.
- (c) Application review period. The Committee may require up to forty-five (45) days to review an application, and an additional fifteen (15) days to consider the application for a reservation of Credit.
- (d) Issuer determination of Credit. The issuer of the bonds may determine the federal Credit amount, with said determination verified by the Committee and submitted with the application. The issuer may request the Committee determine the Credit amount by including such request in the application.
- (e) Additional application requirements. Applications submitted pursuant to this Section shall provide the following additional information:
  - (1) the name, phone number and contact person of the bond issuer; and,
  - (2) verification provided by the bond issuer of the availability of the bond financing, the actual or estimated bond issuance date, and the actual or estimated percentage of aggregate basis (including land) financed or to be financed by the bonds, and a certification provided by a tax professional as to the expected or actual aggregate basis (including land) financed by the proceeds of tax exempt bonds;

- (3) the name, phone number and contact person of any entity providing credit enhancement and the type of enhancement provided.
  
- (f) Application evaluation. To receive a reservation of Credit, applications submitted under this Section shall be evaluated, pursuant to IRC Section 42, H & S Code Sections 50199.4 through 50199.22, R & T Code Sections 12206, 17058, and 23610.5, and these regulations to determine if: eligible, by meeting all program eligibility requirements; complete, which includes meeting all basic threshold requirements; and financially feasible.
  
- (g) Basic thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements. All basic thresholds shall be met at the time the application is filed through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. Further, in order to be eligible to be considered for credit under these regulations, the general partner(s) and management companies must not have any significant outstanding noncompliance matters relating to the tenant files or physical conditions at any tax credit properties in California, and any application submitted by an applicant with significant outstanding compliance matters will not be considered until the Committee has received evidence satisfactory to it that those matters have been resolved.
  - (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. Evidence shall be conclusive, and include the most recent documentation available (prepared within 1 year). Evidence of housing need and demand shall include;
    - (A) evidence of public housing waiting lists by bedroom size and tenant type, if available, from the local housing authority; and,
    - (B) a market study as described in Section 10322(h)(10) of these regulations.
  
  - (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.
    - (A) Site control may be evidenced by:
      - (i) a current title report (within 90 days of application) showing the applicant holds fee title;
      - (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) shall be submitted with all applications for purposes of this threshold requirement.
  
  - (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 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.

- (4) Financial feasibility. Applicants shall provide the financing plan for the proposed project, and shall demonstrate the project's financial feasibility and viability as a qualified low income housing project throughout the extended use period. A 15-year pro forma of all revenue and expense projections is required, along with a comparable operating budget from a similar existing occupied project, with detailed information as requested on Committee forms. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327 below.
- (5) Sponsor characteristics. Applicants shall provide evidence that as a team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional team members need be added to appropriately perform all program requirements. The following documentation is required to be submitted at the time of application:
  - (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
  - (B) for all participants, a description of other Credit project involvement in California or other states, on forms provided by the Committee or by providing a firm resume;
  - (C) for each of the following participants, a copy of a contract to provide services related to the proposed project:
    - (i) Attorney(s) and or Tax Professional(s)
    - (ii) Architect
    - (iii) Property Management Agent
    - (iv) Consultant
    - (v) Market Analyst
  - (D) for the applicant and all general partners of the project, a description of any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.
- (6) Minimum construction standards. Applicants shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, 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 of new construction projects:
  - (A) Landscaping. 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.
  - (B) Roofs. Shingle roofing shall carry a three-year subcontractor guarantee and a 20-year manufacturer's warranty.
  - (C) Exterior doors. Solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one year guarantee and all six sides factory primed.
  - (D) Appliances. Energy efficient appliances, including frost-free refrigerators shall be provided unless waived by the Executive Director.
  - (E) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.
  - (F) Water heater. For units with individual water heaters, minimum capacities are to be 30 gallons for 1 and 2 bedroom units and 40 gallons for 3 bedroom units or larger. All individual water heaters shall be gas fired and equipped with pressure and temperature relief valve unless waived by the Executive Director.
  - (G) Floor coverings. For light and medium traffic areas vinyl or linoleum shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick. A hard, waterproof, cleanable surface is required for all kitchen and bath areas. Carpet complying with U.S. Department of Housing and Urban Development/Federal Housing Administration UM 44C, 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.

- (H) Use of Low VOC paints and stains for all interior surfaces where paints and stains are applied.
- (I) Projects involving rehabilitation of existing buildings shall be required to complete a minimum of \$7,500 hard construction costs per unit.

A project proposing rehabilitation of existing structures shall be exempt from the provisions of subsections (D) and (F) above, and to the extent it does not propose to meet the other requirements of this subsection, except for subsection (H), which cannot be waived, its capital needs assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive.

- (h) Additional condition on applications. The following additional condition shall apply to applications for Credit pursuant to this Section: If not currently possessing a bond allocation for the proposed project, at the time the application is considered by the Committee, the applicant shall have either applied for a bond allocation at the California Debt Limit Allocation Committee's (CDLAC) next scheduled meeting, or shall have received an initial loan commitment from the California Housing Finance Agency (CalHFA).
- (i) Tax-exempt bond reservations. Reservations of Credit shall be subject to conditions as described in this Section and applicable statutes. Reservations of Credit shall be conditioned upon the Committee's receipt of the reservation fee described in Section 10335 and an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant of the reservation.
- (j) Additional conditions on reservations. The following additional conditions shall apply to reservations of Credit pursuant to this Section:
  - (1) CDLAC allocation. The applicant shall have received a bond allocation from CDLAC for the proposed project;
  - (2) Bonds issued. Bonds shall be issued within the time limit specified by CDLAC, if applicable; and,
  - (3) Projects receiving an allocation of private activity bonds after 1999 shall maintain at least 10% of the total units at rents affordable to tenants earning 50% or less of the Area Median Income, and shall maintain a minimum 30 year affordability period.
  - (4) Other conditions, including cancellation, disqualification and other sanctions imposed by the Committee in furtherance of the purposes of the Credit programs.
- (k) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by the conditions of the tax-exempt bond reservation including an executed regulatory agreement, provided by the Committee, and the compliance monitoring fee required by Section 10335, as well as certification as to the percentage of the project's aggregate basis (including land) financed by tax exempt bonds, provided by a tax professional. The owner may certify that the project has not undergone any material changes from the time of the original application, except for experiencing additional costs as explained in the placed-in-service application. The Executive Director shall determine if all conditions of the reservation have been satisfied. Changes to the approved application, 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. If all conditions have been satisfied, tax forms shall be issued reflecting an amount of Credit not to exceed the maximum amount of Credit permitted by these regulations.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

### Section 10327. Financial Feasibility and Determination of Credit Amounts

- (a) General. Applicants shall demonstrate that the proposed project is financially feasible as a qualified low income housing project. Development and operational costs shall be reasonable and within limits established by the Committee, and may be adjusted by the Committee, at any time prior to issuance of tax forms. Approved sources of funds shall be sufficient to cover approved uses of funds. If it is determined that sources of funds are insufficient, an application shall be deemed not to have met basic threshold requirements and shall be considered incomplete. Following its initial and subsequent feasibility determinations, the Committee may determine a lesser amount of Credit for which the proposed project is eligible, pursuant to the requirements herein, and may rescind a reservation or allocation of Credit in the event that the maximum amount of Credit achievable is insufficient for financial feasibility.
- (b) Limitation on determination. A Committee determination of financial feasibility in no way warrants to any applicant, investor, lender or others that the proposed project is, in fact, feasible.
- (c) Reasonable cost determination. IRC Section 42(m) requires that the housing Credit dollar amount allocated to a project not exceed the amount the housing Credit agency determines is necessary for the financial feasibility of the project. The following standards shall apply:
  - (1) Builder overhead, profit and general requirements. An overall cost limitation of fourteen percent (14%) of the cost of construction (site work and structures) shall apply to builder overhead, profit and general requirements, excluding builder's general liability insurance.
  - (2) Developer fee. The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis or two million (\$2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:
    - (A) For 9% competitive applications applying under section 10325 of these regulations, and for applications applying under 10326 of these regulations that also apply for state tax credit, the following limitations shall apply:
      - (i) the maximum developer fee that may be included in total project costs is the lesser of 15% of the project's eligible basis, or two million (\$2,000,000) dollars:
      - (ii) the maximum developer fee that may be included in eligible basis is the lesser of fifteen (15%) percent of unadjusted eligible construction related basis and five (5%) percent of eligible acquisition basis (notwithstanding the project accountant's final determinations according to generally accepted accounting principles), or one million four hundred thousand (\$1,400,000) dollars, except for projects receiving a waiver of project size limitations under section 10325(f)(9)(C) of these regulations, in which case the following amounts shall be substituted for the \$1,400,000 amount listed above: \$1,680,000 for projects having between 201 and 250 units, \$1,750,000 for projects having between 251 and 300 units, and \$1,820,000 for projects having more than 300 units.
    - (B) For projects applying under Section 10326 of these regulations that have received a bond allocation and/or a tax credit reservation prior to March 1, 2004, the limitations enumerated in subsection (A) above shall apply. For projects applying under Section 10326 of these regulations that are not applying for state tax credit and that are awarded tax exempt bond allocation by the California Debt Limit

Allocation Committee and/or a reservation of tax credit by the California Tax Credit Allocation Committee for the first time after February 2004, the limitation on developer fee that may be included in eligible basis shall be the lesser of fifteen (15%) percent or two million five hundred thousand (\$2,500,000) dollars, except for acquisition/rehabilitation projects, in which case the limitation shall be the lesser of fifteen (15%) percent of eligible rehabilitation related basis and five (5%) percent of eligible acquisition basis or two million five hundred thousand (\$2,500,000) dollars. A 15% developer fee on the acquisition portion will be permitted for At-risk developments and for other developments whose hard costs per unit in rehabilitation expenditures is at least \$15,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly. For projects applying under Section 10326 of these regulations, any developer fee greater than the amount limited in qualified basis cannot be paid from permanent sources nor paid prior to permanent closing.

- (C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis.
- (3) Syndication expenses. A cost limitation on syndication expenses, excluding bridge loan costs, shall be twenty percent (20%) of the gross syndication proceeds, if the sale of Credit is through a public offering or private Securities and Commission Regulation D offering, and ten percent (10%) of the gross syndication proceeds, if the sale is through a private offering. The Executive Director may allow exceptions to the above limitation, in amounts not to exceed twenty-four percent (24%) for public offerings and private Securities and Exchange Commission Regulation D offerings, and fifteen percent (15%) for private offerings, should the following circumstances be present: smaller than average project size; complex financing structure due to multiple sources; complex land lease or ownership structure; higher than average investor yield requirements, due to higher than average investor risk; and, little or no anticipated project cash allowing lower-than-market investor returns.
- (4) Net syndication proceeds. The Executive Director shall evaluate the net syndication proceeds to ensure that project sources do not exceed uses and that the sale of Credit generates proceeds equivalent to amounts paid in comparable syndication raises. The Executive Director shall determine the minimum tax credit factor to be used in all applications prior to the beginning of a funding cycle for projects applying under Section 10325. The minimum tax credit factor for applications made under Section 10326 shall be .65.
- (5) Threshold Basis Limits. The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Credit to amounts published in its Application Supplement in effect at the time of application, and in accordance with the definition in Section 10302 of these regulations. This limitation shall not apply for purposes of calculating the final Credit amount upon issuance of tax forms, including projects that have already received Reservation or allocations of Credit.

Exceptions to limits.

(A). Increases in the Threshold basis limits shall be permitted as follows for both projects applying under Sections 10325 and 10326 of these regulations.

A twenty percent (20%) increase to the unadjusted eligible basis for a development that is required to pay state or federal prevailing wages;



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);

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

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

The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed twenty-nine (29%) percent.

(B) A further four percent (4%) increase in the Threshold Basis Limits will be permitted for both projects applying under Section 10325 and Section 10326 of these regulations that include three of the following energy efficiency/resource conservation/indoor air quality items:

- (1) exceed Title 24 standards by at least 20%
- (2) use Energy Star rated refrigerators, dishwashers, clothes washers, furnaces, and air conditioners
- (3) use tankless water heaters
- (4) use linoleum or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used)
- (5) use natural fiber woven carpet, recycled-content carpet, recycled carpet tiles, cork, bamboo, linoleum, or hardwood floors in living rooms and bathrooms (where no VOC adhesives or backing is also used.)
- (6) use Energy Star rated roof(s)
- (7) provide hard wiring for computers in each unit with each unit wired for telephones using CAT5e or better and a second network for television services using coax cable, as certified by the project architect and owner at application and at placed in service
- (8) vent kitchen range hoods to the exterior of the building in at least 80% of units.

(C) Additionally, for projects applying under Section 10326 of these regulations, an increase in the threshold basis limits of up to 40% for projects located in federally designated difficult to develop areas or qualified census tracts and up to 60% for projects not located in federally designated difficult to develop areas or qualified census tracts, in addition to all other adjustments permitted under these regulations, will be permitted, and where more than 50% of the units will be income and rent restricted to tax credit levels, the basis limits can be exceeded by 60% for projects located in federally designated difficult to develop areas or qualified census tracts, and up to 80% for projects not located in federally designated census tracts, in addition to all other adjustments permitted under these regulations. In order to qualify for either of the aforementioned adjustments to the threshold basis limits, the applicant must agree to maintain the affordability period of the project for 55 years.

(D) Projects requiring seismic upgrading of existing structures, and/or projects requiring toxic or other environmental mitigation will be permitted an increase in basis equal to the lesser of the amount of costs associated with the seismic upgrading or environmental mitigation or 15% of the project's unadjusted eligible basis to the extent that the project architect certifies in the application to the costs associated with such work.

(E) Further, the Executive Director, in his/her sole discretion, may permit a further increase in basis limits to a maximum of 5%, where distributive energy technologies such as microturbines and/or renewable energy sources such as solar will be implemented. To obtain this increase, an applicant must submit evidence of the savings to be created through the use of the technology.

- (6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.10 to 1 is required, except for RHS projects or projects financed by the California Housing Finance Agency. Additionally, this minimum debt service coverage ratio may not apply to SRO and Special Needs projects without conventional debt.
  - (7) 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 and its existing improvements without consideration of the future use of the property as rent restricted housing except to the extent that the property already has existing long term rent restrictions that affect the as-is value of the property. The land value shall be determined by the appraisal methodology described in Section 10322(i)(4) of these regulations. If the purchase price is less than the appraised value, the savings shall be proportionally distributed between the land and improvements based on their 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.
  - (8) Reserve accounts. All unexpended funds in project reserve accounts shall remain with the project to be used for the benefit of the property and/or its residents, except for amounts designated to be used to pay deferred developer fees, which may be released when available. The Committee shall allow operating reserve amounts in excess of industry norms to be considered "reasonable costs," for purposes of this subsection, only for applications receiving a reservation of Credit from the Nonprofit set-aside homeless assistance apportionment, as described in Section 10315(a)(1), SRO, Special Needs, HOPE VI, or project based Section 8 projects.
  - (9) Applicant resources. If the applicant intends to finance part or all of the project from its own resources (other than deferred fees), the applicant shall be required to prove, to the Executive Director's satisfaction, that such resources are available and committed solely for this purpose, including an audited certification from a certified public accountant that applicant has sufficient unencumbered funds to successfully accomplish the financing.
- (d) Determination of eligible and qualified basis. Eligible and qualified basis shall be as defined by the IRC and these regulations. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.
- (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), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.
  - (2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Tax-exempt bond projects shall not be subject to this limitation.
- (e) Determination of Credit amounts. The applicant shall determine, and the Committee shall verify, the maximum allowable Credit and the minimum Credit necessary for financial feasibility, subject to all conditions of this Section. For purposes of determining the reservation amount of Credit, the projects qualified basis shall be multiplied by an applicable Credit percentage established by the Executive Director, prior to each funding cycle. The percentage shall be determined taking into account recently published monthly Credit percentages.
- (f) Determination of feasibility. To be considered feasible, a proposed project shall exhibit positive cash flow after debt service for a 15-year minimum term. "Cash flow after debt service" is gross

income minus vacancy and collection loss, operating expenses, property taxes, replacement reserves and debt service. For applications that qualify for a reservation of Credit from the Nonprofit set-aside homeless assistance apportionment, as described in subsection 10315(a)(1), operating reserves may be added to gross income for purposes of determining “cash flow after debt service.”

(g) Underwriting criteria. The following underwriting criteria shall be employed by the Committee in a proforma analysis of proposed project cash flow to determine the minimum Credit necessary for financial feasibility and the maximum allowable Credit:

(1) Minimum operating expenses shall include all manager units and market rate units and equal at least the following operating expense minimums pertaining to the proposed project, except that at the Committee’s final underwriting, and to the extent that the permanent lender(s) and equity investor are in place and present evidence to the Committee that they have agreed to lesser operating expenses, the operating expenses required by this subsection may be reduced by up to 15%. This subsection shall be retroactively effective to credit awards made prior to 2000. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting applications submitted under Section 10326 of these regulations, when the credit enhancer and the permanent lender provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses may not include property taxes, replacement reserves, or the costs of any service amenities.

	SRO/SPN	FAMILY	SENIOR	AT RISK
High Density Projects				
50 or Less Units	\$3,500	\$3,400	\$3,000	\$3,200
51 to 100 Units	\$3,500	\$3,200	\$2,800	\$3,000
More Than 100 Units	\$3,400	\$3,000	\$2,600	\$2,800
Other Projects				
50 or Less Units	\$3,400	\$3,000	\$2,600	\$2,800
51 to 100 Units	\$3,400	\$2,800	\$2,400	\$2,600
More Than 100 Units	\$3,300	\$2,600	\$2,200	\$2,400
Rural Projects				
50 or Less Units	\$3,400	\$2,500	\$2,100	\$2,300
51 to 100 Units	\$3,400	\$2,400	\$2,000	\$2,200
More Than 100 Units	\$3,300	\$2,300	\$1,900	\$2,100

- (A) High density projects. For purposes of this subsection, “high density projects” shall be those:
  - (i) located in census tracts wherein fifteen (15) or more persons per acre reside, as determined by the most recent U.S. Census; or,
  - (ii) projects designed primarily for families that propose twenty-five (25) or more units per acre, projects designed exclusively for seniors that propose thirty-five (35) or more units per acre, and projects designed primarily for special needs or other populations that propose thirty (30) or more units per acre.
- (B) Rural projects. For purposes of this subsection, “rural projects” shall be projects located in rural areas as defined in H & S Code Section 50199.21.
- (C) At risk projects that do not meet the criteria of being either family or senior projects shall use the at risk column for operating expenses.
- (D) Special needs projects that are less than 100% special needs shall prorate the operating expense minimums, using the special needs operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units.

- (2) Replacement reserve minimums for all projects, with the exception of new construction senior projects shall be three hundred dollars (\$300) per unit per year, and for new construction senior projects, two hundred fifty dollars (\$250) per unit per year unless a smaller amount is approved by the Executive Director for good cause shown. However, in no event shall the required amount be less than \$200 per unit per year.
- (3) Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (not including taxes and replacement reserves), and a two percent (2%) increase in property taxes.
- (4) Property tax expense minimums shall be one percent (1%) of total replacement cost, unless:
  - (A) the verified tax rate is higher or lower; or,
  - (B) the proposed sponsorship of the applicant includes an identified 501(c)(3) corporate general partner which will pursue a property tax exemption.
- (5) Vacancy and collection loss minimums shall be five percent (5%) for family, seniors, and at-risk proposals, and ten percent (10%) for special needs and SRO proposals, unless waived by the Executive Director based on vacancy data in the market area for the population to be served.
- (6) Loan terms, including interest rate, length of term, and debt service coverage, shall be evidenced as achievable and supported in the application, or applicant shall be subject to the prevailing loan terms of a lender selected by the Committee.
- (7) Variable interest rate permanent loans shall be considered at the ceiling interest rate, or, alternatively, at the permanent lender's underwriting rate upon submission of a letter from the lender indicating the rate used by it to underwrite the loan.
- (8) "Cash flow after debt service," shall be limited to the higher of twenty-five percent (25%) of the anticipated annual debt service payment or eight percent (8%) of gross income, during any one of the first three years of project operation, subject to reduction in Credit amounts commensurate with said limit.
- (9) The income from the residential portion of a project shall not be used to support any negative cash flow of a commercial portion. Alternatively, the commercial income shall not support the residential portion, without evidence that adequate security will be provided to substitute for commercial income deficits that may arise.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10328. Conditions on Credit Reservations

- (a) General. All reservations of Credit shall be conditioned upon:
  - (1) timely project completion;
  - (2) receipt of amounts of Credit no greater than necessary for financial feasibility and viability as a qualified low-income housing project throughout the extended use period;
  - (3) income targets as proposed in the application; and,

- (b) Preliminary reservations. Preliminary reservations of Credit shall be subject to conditions as described in this subsection and applicable statutes. Reservations of Credit shall be conditioned upon the Committee's receipt of the performance deposit described in Section 10335 and an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant of the preliminary reservation. However, should the 20-day period for returning the executed reservation letter continue past December 15 of any year, an applicant may be required to execute and return the reservation letter in less than twenty (20) days in order that the reservation be effective. Failure to comply with any shortened period would invalidate the reservation offer and permit the Committee to offer a reservation to the next eligible project.
- (c) Final Reservations. No later than February 1 of the year that the building(s) must be placed-in-service pursuant to Section 42(h)(E)(i) of the Internal Revenue Code of 1986, as amended, the applicant shall provide the Committee a Final Reservation application providing the documentation for the project set forth in Section 10322(i)(1) of these regulations. Failure to provide the documentation at the time required may result in rescission of the Credit reservation and cancellation of a carryover allocation.

Upon receipt of the Final Reservation application and supporting documentation, 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, 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. If all conditions have been satisfied, a final reservation of Credit shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation. The Committee shall detail in the final reservation letter additional submission requirements necessary to receive tax forms for claiming Credit.

- (d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i)(2) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted by October 31 of the year of the reservation, together with the applicable allocation fee, and all required documentation, except that the time for meeting the "10%" test and submitting related documentation, and owning the land, will be no later than six (6) months after the date of the carryover allocation.
  - (1) Additional documentation and analysis. The Executive Director may request, and the holder of a Credit reservation shall provide, additional documentation required for processing a carryover allocation. Following submission of carryover allocation documents, the Executive Director shall conduct a financial feasibility and cost reasonableness analysis. Substantive changes to the approved application, in particular, changes to the financing plan or costs must be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. Once the analysis is satisfactorily concluded, a carryover allocation of Credit shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation.
  - (2) In addition to the requirements of the IRC, to receive a carryover allocation an applicant shall provide evidence that applicant has maintained site control from the time of application and, if the land is not already owned, will continue to maintain site control until the time for submitting evidence of the land's purchase.
  - (3) Certification. The Committee shall require a certification from an applicant that has received a reservation, that the facts in the application continue to be true before an allocation is made.
- (e) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by the conditions of the final reservation and carryover allocation,

if applicable, including an executed regulatory agreement, provided by the Committee, and the compliance monitoring fee required by Section 10335. Additionally, the applicant shall provide a signed certification that all applicable minimum construction standards of Section 10325(f)(7) or 10326(g)(6) have been incorporated into the project or that a waiver has been granted. The Executive Director shall determine if all conditions of the final reservation and carryover allocation have been satisfied. Substantive changes to the approved application, 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. If all conditions have been satisfied, tax forms shall be issued reflecting an amount of Credit not to exceed the maximum amount of Credit stated in the Preliminary Reservation.

- (f) Additional Conditions to Reservations and Allocations of Credit. Additional conditions, including cancellation, disqualification and other sanctions may be imposed by the Committee in furtherance of the purposes of the Credit programs.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10330. Appeals

- (a) Availability. An applicant may file an appeal of a Committee staff evaluation, limited to: determination of the application score; or disqualification from participation in the program pursuant to subsection 10325(c); qualification for "additional threshold requirements," pursuant to subsection 10325(g); and, determination of the Credit amount, pursuant to Section 10327. No applicant may appeal the Committee staff evaluation of another applicant's application.
- (b) Timing. The appeal shall be submitted in writing and be received by the Committee not later than seven (7) calendar days following the transmittal date of the Committee staff 's point report. The appeal shall identify specifically, based upon existing documentation, the applicant's grounds for the appeal.
- (c) Review. The Executive Director shall respond in writing to the appeal letter, and, if the applicant is not satisfied with that response, the applicant shall be permitted to appeal in writing to the Committee, provided that the appeal is received at least seven (7) calendar days before the Committee meeting at which funding decisions are expected to be made, or, if the determination of the appeal to the Executive Director is made less than seven (7) days prior to the Committee meeting, at least three (3) calendar days before the Committee meeting. The appeal review shall be based upon the existing documentation submitted by the applicant when the application was filed. The Committee staff shall prepare a brief statement of findings as a result of the appeal review. The statement will either uphold the original Committee staff report or will explain the modification recommended. The statement will be made available to the applicant at or before the Committee meeting.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10335. Fees and Performance Deposit

- (a) Application fee. Every applicant, including tax-exempt bond project applicants, shall be required to pay an application filing fee of \$2,000. This fee shall be paid in a cashier's check payable to the Committee and shall be submitted with the application. This fee is not refundable. Applicants reapplying in the same calendar year for an essentially similar project on the same project site,

shall be required to pay an additional \$1,000 filing fee to be considered in a subsequent funding round, regardless of whether any amendments are made to the re-filed application. At the request of the applicant and upon payment of the applicable fee by the application filing deadline, applications remaining on file will be considered as is, or as amended, as of the date of a reservation cycle deadline. It is the sole responsibility of the applicant to amend its application prior to the reservation cycle deadline to meet all application requirements of these regulations, and to submit a "complete" application in accordance with Section 10322.

- (1) Local Reviewing Agency. One-half of the initial application filing fee shall be provided to an official Local Reviewing Agency (LRA) which completes a project evaluation for the Committee. The Local Reviewing Agency may waive its portion of the application filing fee. Such waiver shall be evidenced by written confirmation from the LRA, included with the application. An application that includes such written confirmation from an LRA may remit an application filing fee of \$1,000
- (b) Allocation fee. Every applicant who receives a reservation of Credit, except tax-exempt bond project applicants, shall be required to pay an allocation fee equal to four percent (4%) of the dollar amount of the first year's federal Credit amount reserved. Reservations of Credit shall be conditioned upon the Committee's receipt of the required fee paid by cashier's check made payable to the Committee prior to execution of a carryover allocation or issuance of tax forms, whichever comes first. This fee is not refundable.
- (c) Reservation fee. Tax-exempt bond project applicants receiving Credit reservations shall be required to pay a reservation fee equal to one percent (1%) of the annual federal Credit amount reserved. Reservations of Credit shall be conditioned upon the Committee's receipt of the required fee within twenty (20) days of issuance of a tax-exempt bond reservation or prior to the issuance of tax forms, whichever is first.
- (d) Performance deposit. Each applicant receiving a preliminary reservation of federal, or federal and state, Credit shall submit a performance deposit equal to four percent (4%) of the first year's federal Credit amount reserved. Notwithstanding the other provisions of this subsection, an applicant requesting federal Credit not subject to the federal housing Credit ceiling and requesting state Credit, shall be required to submit a performance deposit in an amount equal to four percent (4%) of the first year's state Credit amount reserved for the project. Notwithstanding the other provisions of this Section, an applicant requesting only federal Credit not subject to the federal housing Credit ceiling, shall not be required to submit a performance deposit.
  - (1) Timing and form of payment. The performance deposit shall be submitted in a cashier's check payable to the Committee within twenty (20) calendar days of the Committee's notice to the applicant of a preliminary reservation.
  - (2) Returned Credit. If Credit is returned after a reservation has been accepted, the performance deposit is not refundable, with the following exceptions. Projects unable to proceed due to a natural disaster, a law suit, or similar extraordinary circumstance that prohibits project development may be eligible for a refund. Requests to refund a deposit shall be submitted in writing for Committee consideration. Amounts not refunded are forfeited to the Committee. All forfeited funds shall be deposited in the occupancy compliance monitoring account to be used to help cover the costs of performing the responsibilities described in Section 10337.
  - (3) Refund or forfeiture. To receive a full refund of the performance deposit, the applicant shall do all of the following: place the project in service under the time limits permitted by law; qualify the project as a low-income housing project as described in Section 42; meet all the conditions under which the reservation of Credit was made; certify to the Committee that the Credit allocated will be claimed; and, execute a regulatory agreement for the project.

If the Committee cancels a Credit because of misrepresentation by the applicant either before or after an allocation is made, the performance deposit is not refundable. If the project is completed, but does not become a qualified low-income housing project, the performance deposit is not refundable.

- (4) Appeals. An applicant may appeal the forfeiture of a performance deposit, by submitting in writing, a statement as to why the deposit should be refunded. The appeal shall be received by the Committee not later than seven (7) calendar days after the date of mailing by the Committee of the action from which the appeal is to be taken. The Executive Director shall review the appeal, make a recommendation to the Committee, and submit the appeal to the Committee for a decision.
- (e) Compliance monitoring fee. The Committee shall charge a \$410 per low-income unit fee to cover the costs associated with compliance monitoring throughout the extended-use period. Generally, payment of the fee shall be made prior to the issuance of federal and/or state tax forms. Assessment of a lesser fee, and any alternative timing for payment of the fee, may be approved at the sole discretion of the Executive Director and shall only be considered where convincing proof of financial hardship to the owner is provided. Nothing in this subsection shall preclude the Committee from charging an additional fee to cover the costs of any compliance monitoring required, but an additional fee shall not be required prior to the end of the initial 15 year compliance period.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.

#### Section 10337. Compliance

- (a) Regulatory Agreement. All recipients of Credit, 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 Credit is allocated, and, if applicable, will reflect all scoring criteria proposed by the applicant in the competition for federal and/or state housing Credit ceiling.
  - (b) Responsibility of owner. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.
  - (c) Compliance monitoring procedure. As required by Section 42(m), allocating agencies are to follow a compliance monitoring procedure to monitor all Credit projects for compliance with provisions of Section 42. Compliance with Section 42 is the sole responsibility of the owner of the building for which the Credit is allowable. The Committee's obligation to monitor projects for compliance with the requirements of Section 42 does not place liability on the Committee for any owner's noncompliance, nor does it relieve the owner of its responsibility to comply with Section 42.
- (1) Record keeping. The owner of a Credit project is required to retain 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 (including utility allowance); 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.

- (2) Record Retention. For each qualified low-income building in the project, and for each year of the compliance period, owners and the Committee are required to retain records of the information described above in "record keeping requirements."
  - (A) Owners shall retain documents according to the following schedule:
    - (i) for at least six years following the due date (with extensions) for filing the federal income tax return for that year (for each year except the first year of the Credit period); and,
    - (ii) for the first year of the Credit period, at least six years following the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
    - (iii) for local health, safety, or building code violation reports or notices issued by a state or local governmental entity, until the Committee has inspected the reports or notices and completes the tenant file and unit inspections and the violation has been corrected. This subsection shall take effect beginning January 1, 2001.
  - (B) The Committee shall retain records of noncompliance, or failure to certify, for at least six years beyond the Committee's filing of the respective IRS noncompliance Form 8823. Should the Committee require submission of copies of tenant certifications and records, it shall retain them for three years from the end of the calendar year it receives them. Should it instead review tenant files at the management office of the subject project, it shall retain its review notes and any other pertinent information for the same three-year period. The Committee shall retain all other project documentation for the same three-year period.
- (3) Certification requirements. Under penalty of perjury, a Credit project owner is required to annually, during each year of the compliance period, meet the certification requirements of U.S. Treasury Regulations 26 CFR 1.42-5(c), (which beginning January 1, 2001, includes certifications that no finding of discrimination under the Fair Housing Act, 42 USC 3601 occurred for the project), that the buildings and low income units in the project were suitable for occupancy taking into account local health, safety, and building codes, that no violation reports were issued for any building or low income unit in the property by the responsible state or local government unit, that the owner did not refuse to lease a unit to an applicant because the applicant had a section 8 voucher or certificate, and that except for transitional or single room occupancy housing, all low income units in the project were used on a nontransient basis. The following must also be certified to by the owner:
  - (A) the project met all terms and conditions recorded in its Regulatory Agreement, if applicable;
  - (B) the applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the Credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification.);
  - (C) no change in ownership of the project has occurred during the reporting period;
  - (D) the project has not been notified by the IRS that it is no longer a "qualified low-income housing project" within the meaning of Section 42 of the IRC;
  - (E) no additional tax-exempt bond funds or other Federal grants or loans with interest rates below the applicable federal rate have been used in the Project since it was placed-in-service; and,
  - (F) report the number of units that were occupied by Credit eligible households during the reporting period.
- (4) Status report, file and on site physical inspection. Beginning in 2001, the Committee or its agent will conduct file and on site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is placed-in-

service, and once every three years thereafter. These physical inspections will be conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews will also be for at least 20% of the low-income units in each project, but may be conducted on site or off site. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose, while the units and tenant records to be inspected shall be randomly selected. Advance notice shall not be given of the Committee's selection process, or of which tenant records will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection.

- (A) A Notice of Intent to Conduct Compliance Inspection and a Project Status Report (PSR) form will be delivered to the project owner within a reasonable period before an inspection is scheduled to occur. The completed PSR form shall be submitted to the Committee by the owner prior to the compliance inspection. The Committee will review the information submitted on the PSR for compliance with income, rent and other requirements prior to performing the tenant file inspection.
  - (B) Each project undergoing a file inspection will be subject to a physical inspection to assure compliance with local health, safety, and building codes or with HUD's uniform physical condition standards. Owners shall be notified of the inspection results.
  - (C) The Committee may perform its status report, file inspection procedures and physical inspection on Credit projects even if other governmental agencies also monitor those projects. The Committee's reliance on other review findings may alter the extent of the review, solely at the Committee's discretion and as allowed by IRS regulations. The Committee may rely on reports of site visits prepared by lenders or other governmental agencies, at its sole discretion. The Committee shall, whenever possible, coordinate its procedures with those of other agencies, lenders and investors.
- (5) Notification of noncompliance. The Committee shall notify owners in writing if the owner is required to submit documents/information related to either the physical or tenant file inspection. If the Committee does not receive the information requested, is not permitted or otherwise is unable to conduct the inspections or discovers noncompliance with Section 42 as a result of its review, the owner shall be notified in writing before any notice is sent to the IRS.
  - (6) Correction period. It is the intention of the Committee that owners be given every reasonable opportunity to correct any noncompliance. Owners shall be allowed an opportunity to supply missing tenant file documents or to correct other noncompliance within a correction period no longer than ninety (90) days from the date of written notice by the Committee to the owner, unless the violation constitutes an immediate health or safety issue, in which case, the correction should be made immediately. With good cause, the Committee may grant up to a six-month extension of the correction period upon receipt of a written justification from the owner.
  - (7) IRS and FTB notification. All instances of noncompliance, whether corrected or not, shall be reported by the Committee to the IRS. This shall be done within forty-five (45) days following the termination of a correction period allowed by the Committee, pertaining to IRS Form 8823.
- (d) Change in ownership. It is the project owner's responsibility to inform the Committee of any change in the ownership of the project and the owner's mailing address.
  - (e) First year's 8609. Project owners shall be required to submit a copy of the executed first year's filing of IRS Form 8609 (Low-Income Housing Credit Allocation Certification) for inclusion in the Committee's permanent project records.

October 5, 2004

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4-50199.22, Health & Safety Code.