

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

February 17, 2010

Section 10300. Purpose and Scope

These regulations establish procedures for the reservation, allocation and compliance monitoring of the Federal and State Low-Income Housing Tax Credit Programs ("Housing Tax Credit Programs", "Programs", or individually, "Federal Program" or "State Program") and establish policies and procedures for use of the Tax Credits 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.

Internal Revenue Code ("IRC") Section 42 provides for state administration of the Federal Program. California Health and Safety (H & S) Code Sections 50199.4 through 50199.22, and California Revenue and Taxation (R & T) Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5 establish the California State Program and designate the California Tax Credit Allocation Committee ("CTCAC") as the Housing Credit Agency to administer both the Federal and State Housing Tax Credit programs in California. These regulations set forth the policies and procedures governing the Committee's management of the Programs. In addition to these regulations, program participants shall comply with the rules applicable to the Federal Program as set forth in Section 42 and other applicable sections of the Internal Revenue Code. 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 Programs, 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, Credits awarded to the applicant for purposes of income tax reporting to the IRS and/or the California Franchise Tax Board ("FTB").
- c) Applicable Credit Percentage. The monthly rate, published in IRS revenue rulings pursuant to IRC Section 42(b)(1), applicable to the Federal Program for purposes of calculating annual Tax Credit amounts.
- d) Capital Needs Assessment or CNA. The physical needs assessment report required for all rehabilitation projects, described in Section 10322(i)(4)(B).
- e) Chairperson. The Chairperson of the California Tax Credit Allocation Committee.
- f) Committee. The California Tax Credit Allocation Committee ("CTCAC") or its successor.

- g) Community Foundation. A local foundation organized as a public charity under section 509(a)(1) of the Internal Revenue Code.
- h) 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.
- i) Credit(s). Housing Tax Credit(s), or Tax Credit(s).
- j) Credit Ceiling. The amount specified in IRC Section 42(h)(3)(C) for Federal Program purposes (including the unused credits from the preceding calendar year, the current year's population based credits, returned credits and national pool credits), and in R & T Code Section 17058(g) for State Program purposes.
- k) CTCAC. California Tax Credit Allocation Committee.
- l) Developer Fee. All Funds paid at any time as compensation for developing the proposed project, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.
- m) Development Team. The group of professionals identified by the applicant to carry out the development of a Tax Credit project, as identified in the application pursuant to subsection 10322(h)(5).
- n) Eligible Project. A proposed 9% Tax Credit project that has met all of the Basic Threshold Requirements and Additional Threshold Requirements described in Sections 10325(f) and (g) below.
- o) Executive Director. The executive director of the California Tax Credit Allocation Committee.
- p) Farmworker Housing. A development of permanent housing exclusively for agricultural workers (as defined by California Labor Code Section 1140.4(b)) that is available to, and occupied by, only farmworkers and their households.
- q) Federally Subsidized. As defined by IRC Section 42(i)(2).
- r) Federal Credit. The Tax Credit for low-income rental housing provided under IRC Section 42 and implemented in California by the Committee.
- s) Financial Feasibility. As required by, IRC Section 42(m)(2), and further defined by these regulations in Section 10327.
- t) FTB. State of California Franchise Tax Board.
- u) Hard construction costs. The amount of the construction contract, excluding contractor profit, general requirements and contractor overhead.
- v) Housing And Community Development Funds. Federal HOME and/or CDBG funds administered by the state Department of Housing and Community Development, for which the Department has made a funding reservation.
- w) IRS. United States Internal Revenue Service.
- x) 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.

- y) Local Reviewing Agency. An agency 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.
- z) Low-Income Unit. As defined by IRC Section 42(i)(3).
- aa) Market-Rate Unit. A unit other than a Low-Income Unit as defined by these regulations.
- bb) MHP. Multifamily Housing Program of California's Department of Housing and Community Development.
- cc) Net Tax Credit Factor. The estimated or actual equity amount raised or to be raised from a tax credit syndication or other instrument, not including syndication related expenses, divided by the total amount of Federal and State Tax Credits reserved or allocated to a project. The calculation must include the full ten-year amount of Federal Tax Credits and the total amount of State Tax Credits.
- dd) QAP. The "Low Income Housing Tax Credit Program Qualified Allocation Plan," adopted by the Committee on December 11, 1997 in accordance with the standards and procedures of IRC Section 42(m)(1)(B).
- ee) Qualified Nonprofit Organization. An organization that meets the requirements of IRC Section 42(h)(5), whose exempt purposes include the development of low-income housing as described in IRC Section 42, and which, if a State Tax Credit is requested, also qualifies under H & S Code Section 50091.
- ff) RHS. United States Rural Housing Service, formerly Rural Housing and Community Development Service or RHCDS, formerly Farmers Home Administration or FmHA
- gg) Related Party.
  - (1) the brothers, sisters, spouse, ancestors, and direct descendants of a person;
  - (2) a person and corporation where that person owns more than 50% in value of the outstanding stock of that corporation;
  - (3) two or more corporations, general partnership(s), limited partnership(s) or limited liability corporations connected through debt or equity ownership, in which
    - (A) stock is held by the same persons or entities for
      - 1. at least 50% of the total combined voting power of all classes that can vote, or
      - 2. at least 50% of the total value of shares of all classes of stock of each of the corporations or
      - 3. at least 50% of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing that voting power or value, stock owned directly by that other corporation;
    - (B) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, or a separate entity from which income is derived;
    - (C) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, or a separate entity where a sale-leaseback transaction provides the parent or related entity with income from the property leased or that creates an undue influence on the separate entity as a result of the sale-leaseback transaction;
    - (D) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, of a separate entity where an interlocking directorate exists between the parent or related entity and the separate entity.
  - (4) a grantor and fiduciary of any trust;
  - (5) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
  - (6) a fiduciary of a trust and a beneficiary of that trust;

- (7) a fiduciary of a trust and a corporation where more than 50% in value of the outstanding stock is owned by or for the trust or by or for a person who is a grantor of the trust;
- (8) a person or organization and an organization that is tax-exempt under Subsection 501(c)(3) or (4) of the IRC and that is affiliated with or controlled by that person or the person's family members or by that organization;
- (9) a corporation and a partnership or joint venture if the same persons own more than:
  - (A) 50% in value of the outstanding stock of the corporation; and
  - (B) 50% of the capital interest, or the profits' interest, in the partnership or joint venture;
- (10) one S corporation or limited liability corporation and another S corporation or limited liability corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;
- (11) an S corporation or limited liability corporation and a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation;
- (12) a partnership and a person or organization owning more than 50% of the capital interest, or the profits' interest, in that partnership; or
- (13) two partnerships where the same person or organization owns more than 50% of the capital interests or profits' interests.

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

- hh) Rent-Restricted Units. Units meeting the requirements of IRC Section 42(g)(2).
- ii) Reservation. As provided for in H & S Code Section 50199.10(e) the initial award of Tax Credits to an Eligible project. Reservations may be preliminary or final. Reservations may be conditional.
- jj) Rural. An area defined in H & S Code Section 50199.21.
- kk) State Credit. The Tax Credit for low-income rental housing provided by the Revenue and Taxation Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, including the State Farmworker Credit, formerly the Farmworker Housing Assistance Program provided by the Revenue and Taxation Code Sections 12206, 17058, and 23610.5 and by the Health and Safety Code Sections 50199.2 and 50199.7.
- ll) Tax-Exempt Bond Project. A project that meets the definition provided in IRC Section 42(h)(4).
- mm) Tax forms. Income tax forms for claiming Tax Credits: for Federal Tax Credits, IRS Form 8609; and, for State Tax Credits, FTB Form 3521A.
- nn) Threshold Basis Limit. The aggregate limit on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Tax Credit amounts. These limits are published by CTCAC on its website, by unit size and project location, and are based upon average development costs reported within CTCAC applications and certified development cost reports. CTCAC staff shall use new construction cost data from both 9 percent and 4 percent funded projects, and shall eliminate extreme outliers from the calculation of averages. Staff shall publicly disclose the standard deviation percentage used in establishing the limits, and shall provide a worksheet for applicant use. CTCAC staff shall establish the limits in a manner that seeks to avoid a precipitous reduction in the volume of 9 percent projects awarded credits from year to year. Local Development Impact Fees as defined in section 10302 of these regulations shall be excluded from this calculation if the fees are documented in the application submission by the entities charging such fee.
- oo) Waiting List. A list of Eligible Projects approved by CTCAC following the last application cycle of any calendar year, pursuant to Section 10325(h) below.

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 Tax Credit reservations from the Credit Ceiling are made, the Executive Director shall make a report to the Committee on the status of the Federal and State Tax Credits reserved and allocated.
- (c) Forms. CTCAC 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) Tax Credit Limitations. No applicant shall be eligible to receive Tax Credits if, together with the amount of Federal or State Tax Credits 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, calculated as of February first of the calendar year.
- (e) Allocation Limit. No one project applying for 9% Tax Credits may receive an allocation of more than Two Million Five Hundred Thousand (\$2,500,000) Dollars.
- (f) Notification. Upon receipt of an application, CTCAC 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)).
- (g) 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 Tax Credit Programs.
- (h) The Committee may, at its sole discretion, reject an application if the proposed project fails to meet the minimum point requirements established by the Committee prior to that funding round. The Committee may establish a minimum point requirement for competitive rounds under either Section 10325 or 10326.

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 Credits

- (a) Reservation cycles. The Committee shall reserve Tax Credits 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 Ceiling available. The approximate amount of Tax Credits 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 Tax Credits. The amount of Federal Tax Credits 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, 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 Tax Credits. The amount of State Tax Credits 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 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 and,
    - (D) five hundred thousand dollars (\$500,000) per calendar year in State Farmworker Credits to provide Farmworker Housing, plus any returned and unused State Farmworker Credit balance from the preceding calendar year.
  - (3) Waiting List Tax Credits. Tax Credits returned and Tax Credits 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, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).

- (b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:
- First, projects with McKinney Act, State Supportive Housing Program funding committed, or Mental Health Services Act (MHSA) funding committed or anticipated.
  - Second, projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
  - Other qualified homeless assistance projects.

To compete as a homeless assistance project, at least fifty percent (50%) of the units within the project must house households:

- (1) Moving from an emergency shelter; or
- (2) Moving from transitional housing; or
- (3) Currently homeless which means:
  - (A) An individual who lacks a fixed, regular, and adequate nighttime residence; or
  - (B) An individual who has a primary nighttime residence that is:
    - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or
    - (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or
    - (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Any amount of Tax Credits not reserved for homeless assistance projects during a reservation cycle shall be available for other applications qualified under the Non-profit set-side.

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless:
- (1) They qualify and choose to compete in the At-risk or Small Development set-aside, in which case they will no longer be considered rural and will be evaluated as non-rural projects for purposes of these regulations; or
  - (2) The Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year, in which case the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.
- (d) RHS program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available for new construction projects which have a funding commitment from RHS of at least \$1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, or RHS's Section 515 Rural Rental Housing Loan Program, in the following priority order:
- First, to projects with RHS funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance for at least 50% of the project units (excluding non-restricted management units);

- Second, to projects for which the Section 514, or 515, funding commitment is an “obligation” (as that term is used by RHS);
- Third, to projects for which the Section 514, or 515, funding commitment is a “NOFA selection for further processing” but not an “obligation” (as those terms are used by RHS.)

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.

- (e) Small Development set-aside. Two percent (2%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects of twenty (20) or fewer units.
- (f) “At-Risk” set-aside. Five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify as “At risk” pursuant to these regulations.
- (g) Special Needs/SRO set-aside. Two percent (2%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify as Special Needs or Single Room Occupancy projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the Nonprofit Set Aside but is not funded, will be eligible to be considered under this Special Needs/SRO set-aside.
- (h) Supplemental Set-Aside. An amount equal to three percent (3%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be held back to fund overages that occur in the second funding round set-asides and/or in the Geographic Apportionments because of funding projects in excess of the amounts available to those Set Asides or Geographic Apportionments, the funding of large projects, such as HOPE VI projects, or other Waiting List or priority projects. In addition to this initial funding, returned Tax Credits and unused Tax Credits from Set Asides and Geographic Apportionments will be added to this Supplemental Set Aside, and used to fund projects at year end so as to avoid loss of access to National Pool credits.
- (i) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(10) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

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



- (j) Geographic Apportionments. Annual apportionments of Federal and State Credit Ceiling shall be made in approximately the amounts shown below:

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

- (k) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

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 the R & T Code Sections 12205, 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 Tax Credit in an amount equal to the amount determined in the Revenue and Taxation Code, computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.
- (b) Allocation of Federal Tax Credits required. State Tax Credit recipients shall have first been awarded Federal Tax Credits, or shall qualify for Tax Credits under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and the R & T Code Section 12206(b)(1)(A). State Farmworker Credits are exempt from this requirement.

- (c) Limit on Credit amount. The combined amount of Federal and State Tax Credits allocated to a building shall be limited to the lesser of the amount of State Credits pursuant to R & T Code Section 12206(c) plus the amount of Federal Tax Credits 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) Credit Ceiling Applications: Applicants not eligible for the 130% basis adjustment may apply for an allocation of State credits in addition to federal Credit Ceiling credits. In addition, applicant projects eligible for the federal basis adjustment may elect to forgo the federal adjustment and apply for State credits in addition to the requested federal credits.

DDA Status of Specified Counties for 2010: Under authority contained in IRC Section 42(d)(5)(B)(v), for 2010 CTCAC additionally designates projects applying for Credit Ceiling credits in the following counties as requiring an increase in credit ceiling credits and therefore considers such projects as being within a difficult to develop area (DDA) as that term is used in IRC Section 42(d)(5)(B)(iii): Alameda, Contra Costa, El Dorado, Placer, Sacramento, and San Joaquin.

- (e) State Tax Credit exchange. Applications for projects not possessing one of the allocation priorities described in subsection (d) may also include a request for State Tax Credits. During any reservation cycle and/or following any reservation or allocation of State Tax Credits to all applications meeting the above allocation priorities, remaining balances of State Tax Credits may be awarded to applicants having received a reservation of Federal Tax Credits during the same year, in exchange for the “equivalent” amount of Federal Tax Credits. Said exchanges shall be offered at the discretion of the Executive Director, who may consider and account for any fiscal or administrative impacts on the project or applicant pool when deciding to whom he/she will offer State Tax Credits.
- (f) Acquisition Tax Credits. State Tax Credits for acquisition basis are 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 may apply for State Tax Credits if the following conditions are met:
  - (1) the project is comprised of 100% tax credit eligible units, excluding managers’ units;
  - (2) the project is not eligible for the 130% basis adjustment;
  - (3) the project has or will have a current year’s tax-exempt bond allocation: That is, that State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and
  - (4) the applicant must demonstrate, by no later than the application-filing deadline, that a tax-exempt bond allocation has been received or applied for prior to submitting under this subsection for State Tax Credits.
- (h) State Farmworker Credit. Applicants may request State Tax Credits for eligible Farmworker Housing in combination with federal credits, or they may request State Farmworker Credits only. Applicants may apply only during competitive rounds as announced by CTCAC. If seeking a federal Credit Ceiling reservation along with State Tax Credits for eligible Farmworker Housing, applicants shall compete under the provisions of Section 10325(c) et. seq. if requesting State Tax Credits and federal credits for use with tax exempt bond financing, or State Farmworker Credits only, applicants shall compete under the provisions of Section 10317(i)(2). State Farmworker Credits shall be awarded as follows:

- (1) CTCAC shall award State Farmworker Credits to the highest scoring successful Farmworker Housing application requesting either (a) four percent (4%) federal credits in combination with State Tax Credits, or (b) State Farmworker Credits only.
  - (2) If State Farmworker Credits remain after awards made under paragraph (h)(1) above, then CTCAC shall award State Farmworker Credits to the highest scoring Farmworker Housing application requesting nine percent (9%) federal credits in combination with State Tax Credits.
  - (3) If available State Farmworker Credits are inadequate to fully fund a pending request for eligible Farmworker Housing, CTCAC may reserve a forward commitment of subsequent year's State Farmworker Credits for that project alone.
- (i) Allocations. The following parameters apply:
- (1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects;
  - (2) The project will be competitively scored under the system delineated in Section 10325(c)(2) through (8) and (10), except that the only tie breaker shall be the final tie-breaker enumerated at Section 10325(c)(10) of these regulations;
  - (3) The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credits, without regard to any set-asides or geographic areas, provided they meet the threshold requirements of Section 10326;
  - (4) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;
  - (5) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for tax-exempt bond financed projects if State Credits remain available after funding of 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 Tax Credits 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) Tax Credits and ownership transfers. No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. Said approvals shall not be unreasonably withheld. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(L), in addition to other remedies.
  - (1) Any transfer of project ownership or allocation of Tax Credits shall be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.
  - (2) The entity acquiring ownership or Tax Credits shall be subject to a "qualifications review" by the Committee to determine if sufficient project development and management

experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee upon request.

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

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, format, 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 or relevant Additional Threshold (Housing Type) Requirements shown in Sections 10325(f) and (g) or any other application submission requirements described in these Regulations, shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits 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 and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline. No additional documents pertaining to the Basic or Additional Threshold Requirements or scoring categories shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is a clear reproduction or application assembly error, or an obviously transposed number. In such cases, applicants shall be given up to five (5) business days from the date of receipt of staff notification, to submit said documents to complete the application. For threshold omissions other than reproduction or assembly errors, the Executive Director may request additional clarifying information from third party sources, such as local government entities, but this is entirely at The Executive Director's discretion. Applicants submitting applications with missing, incomplete or inconsistent documents not related to Basic or Additional Thresholds or scoring criteria described in Section 10325(c), shall be given up to five (5) business days, from the date of receipt of staff notification, to submit said documents to complete the application. The applicant may be required to certify that all evidentiary documents deemed to be missing from the application had been 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 and no appeal will be entertained.
- (f) Application changes. An application may not be changed, nor may any additional information with respect to scoring or meeting the Basic or Additional Threshold Requirements be submitted subsequent to the application filing deadline, except as permitted by Section 10327(a). Any

changes made by the Committee pursuant to Section 10327(a) shall never improve the score of the application as submitted, and may reduce the application's score and/or credit amount.

- (g) Applications not fully evaluated. Incomplete applications or others not expected to receive a reservation of Tax Credits due to relatively low scores, 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) Determination of Credit Need and Maximum Credit Allowable
  - (M) Project Income Determination
  - (N) Restricted Residential Rent and Income Proposal
  - (O) Subsidy Information
  - (P) Operating Expense Information
  - (Q) Projected Cash Flow Calculation
  - (R) Basic Threshold Compliance Summary
  - (S) Additional Threshold Selection
  - (T) Tax-exempt Financing Information
  - (U) 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 purposes of this Section all of the following project participants, if applicable will be considered to be members of the Development Team. The application must contain the company name and contact person, address, telephone number, and fax number of each:
- (A) developer;
  - (B) general contractor;
  - (C) architect;
  - (D) attorney;
  - (E) tax professional;
  - (F) property management company;
  - (G) consultant;
  - (H) market analyst and/or appraiser; and
  - (I) CNA consultant.
- If any members of the Development Team have not yet been selected at the application filing deadline, each must be named and materials required above must be submitted at the 150 day deadline described in Section 10325(c)(8).
- (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 Layout, Location, Unique Features and Surrounding Areas.
- (A) A narrative description of the current use of the subject property;
  - (B) A narrative description of all adjacent property land uses, the surrounding neighborhood, and identification and proximity of services, including transportation
  - (C) Labeled photographs, or color copies of photographs of the subject property and all adjacent properties;
  - (D) A layout of the subject property, including the location and dimensions of existing buildings, utilities, and other pertinent features.
  - (E) A site or parcel map indicating the location of the subject property and showing exactly where the buildings comprising the Tax Credit Project will be situated. (If a subdivision is anticipated, the boundaries of the parcel for the proposed project must be clearly marked; and
  - (F) A description of any unique features of the site, noting those that may increase project costs or require environmental mitigation.

- (9) **Market Studies.** A full market study prepared within 180 days of the filing deadline by an independent 3<sup>rd</sup> party having no identity of interest with the development's partners, intended partners, or any other member of the Development Team described in Subsection (5) above. The study must meet the current market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. If the market study does not meet the guidelines or support sufficient need and demand for the project, the application may be considered ineligible to receive Tax Credits.
- (10) **Construction and design description.** A detailed narrative description of the proposed project construction and design, including how the design will serve the targeted population.
- (11) **Architectural drawings.** Preliminary drawings of the proposed project, including a site plan, building elevations, and unit floor plans (including square footage of each unit). The project architect must certify that the development will comply with building codes and 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.
- (12) **Placed-in-service schedule.** A schedule of the projected placed-in-service date for each building.
- (13) **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
- (14) **Sources and uses of funds.** The sources and uses of funds description shall separately detail apportioned amounts for residential space and commercial space.
- (15) **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.
- (16) **Eligible basis certification.** A certification from a certified public accountant or tax attorney that project costs included in applicant's calculation of eligible basis are allowed by IRC Section 42, as amended, and are presented in accordance with standard accounting procedures. This must be delivered on the tax professional's corporate letterhead, in the prescribed CTCAC format. If the project uses HOME Investment Partnership Program funds, then the tax professional must further certify as to the treatment of HOME Program funds for purposes of eligible basis calculations.
- (17) **Use of tax benefits description.** If the Tax Credits are not to be offered to investors, a detailed explanation of how the tax benefits will be used by the applicant.
- (18) **Terms of syndication agreement.** Written estimate(s) from syndicator(s) or financial consultants on their corporate letterhead and in the prescribed CTCAC format, of equity dollars expected to be raised for the proposed project, based on the amount of Tax Credits requested, including gross and net proceeds, pay-in schedules, syndication costs (including syndicator consulting fees), and an estimated net tax Credit factor, for both

Federal and State Tax Credits if both are to be used or if State Tax Credits exchange points are requested.

- (19) Tax Credit certification. If the Tax Credits are not to be syndicated, a letter from a certified public accountant establishing the Tax Credit factor.
  - (20) Utility allowance estimates. Current utility allowance estimates consistent with 26 CFR Section 1.42-10. For buildings that are using an energy consumption model utility allowance estimate, the estimate shall be calculated using the most recent version of the California Utility Allowance Calculator (CUAC) developed by the California Energy Commission. The CUAC estimate shall be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Plans Examiner (CEPE) who is also either a California licensed Mechanical or Electrical Engineer, or a certified Home Energy Rating System (HERS) rater. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS Rater, in accordance with current HERS regulations. The applicant must indicate which components of the utility allowance schedule apply to the project.
  - (21) Certification of subsidies. The applicant must certify as to the full extent of all Federal, State, and local subsidies which apply (or for which the taxpayer expects to apply) with respect to the proposed project. (IRC Section 42(m)(2)(C)(ii)) If rental assistance, operating subsidies or annuities are proposed, all related commitments that secure such funds must be provided. The source, annual amount, term, number of units receiving assistance, and expiration date of each subsidy must be included.
  - (22) 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, it must be included in the 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.
  - (23) Self-scoring sheet as provided in the application.
- (i) Additional Subsequent 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; and
- (L) an updated development timetable as of Final Reservation filing date.

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

- (2) Placed-in-service application. Within one year of completing construction of the proposed project, the applicant shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs or changes to the services amenities, must be explained by the applicant in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:
  - (A) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Tax Credits are requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;
  - (B) an audited certification, prepared by a Certified Public Accountant under generally accepted accounting principles, with all disclosures and notes. This certification shall:
    - (1) reflect all costs, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan; and
    - (2) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.
  - (C) an itemized breakdown of 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(s) on the certificate(s) 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 sponsor-signed certification documenting the services currently being provided to the residents, including identifying service provider(s), describing services provided, stating services dollar value, and stating services funding source(s) (cash or in-kind), with attached copies of contracts and MOUs for services.
  - (I) a copy of any cost certification submitted to, required by and/or approved by RHS or any other lender;
  - (J) a list of all amenities provided at the project site, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided;
  - (K) 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;
  - (L) If applicable, a certification from a tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
  - (M) 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;
  - (N) 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;
  - (O) a certification from the project architect that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws; and

- (P) a certification from the project architect that the sustainable building methods of section 10325(c)(6) have been incorporated into the project, if applicable.
- (Q) a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(20) of these regulations. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS rater, in accordance with current HERS regulations.

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

- (3) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:
  - (A) a chain of title report;
  - (B) a tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
  - (C) 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) a value for the land of the subject property "as if vacant";
    - (v) an on site inspection; and
    - (vi) a purchase contract verifying the sales price of the subject property.

The "as if vacant" land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values will be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.

- (B) A Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will also include a 15-year reserve study, indicating anticipated dates and costs of future replacements of all major building components that are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. 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 and financially

burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.

Subsections (A) and (B) above shall not apply if the project previously received a reservation of Tax Credits 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 or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and 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 Tax Credits 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, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;
  - (E) a third party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,
  - (F) a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).
- (9) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations, 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 Tax Credits 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, obligated or committed as defined by RHS.

- (11) HOME funds match. Applicants requesting State Tax Credits to match HOME funds shall provide a letter from the local jurisdiction stating why local matching funds are not being provided.
- (j) Re-application. Proposals submitted under Section 10326 of these regulations do not require new applications for minor changes in costs or Tax Credits alone. Committee staff will normally adjust the Credit amount for projects requesting Tax Credit increases under Section 10326 only at one time, when the placed-in-service package is received and reviewed by Committee staff. However, reapplication is required and applications will be reviewed if the Executive Director deems it necessary to have the Committee take formal action due to substantial changes or an extraordinary increase in Tax Credits requested. For applications initially approved after February 1, 2005, "Substantial changes" for this purpose will mean any significant change in unit mix, number of buildings or building layout, or development cost increases greater than 20% of the original costs, and an "extraordinary increase" in Tax Credits will mean an increase greater than 15% of the original reservation amount. It is the applicant's responsibility to notify CTCAC of any such changes and when CTCAC is notified accordingly, new applications may be required. Reapplications at placed-in-service that are requesting additional Tax Credits 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 Tax Credits 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 Tax Credits, the basis limits to be used in the final underwriting shall be those in effect during the year the development is placed-in-service.
- (k) Unless the proposed project is a Single Room Occupancy development or within ten (10) years of an expiring tax credit regulatory agreement, applicants for nine percent (9%) Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall:
- (1) certify that the property sales price is no more than the current debt balance secured by the property, and
  - (2) be prohibited from receiving any tax credits derived from acquisition basis.

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 10323. American Recovery and Reinvestment Act of 2009

- (a) General. Under the authority granted by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the California Tax Credit Allocation Committee (CTCAC) may subaward Tax Credit Assistance Program (TCAP) funds and federal grants in lieu of housing credit allocations (Section 1602 Funds) to projects awarded Low Income Housing Tax Credits. The provisions of this section shall refer to the two federal funding sources collectively as ARRA Funds. While CTCAC may access and subaward these funds in accordance with the provisions of this Section, nothing in this Section shall be construed to imply an obligation by the Committee to award funds to specific projects. Circumstances related to a specific project, such as updated market information, or the sponsor's financial strength, including inadequate net assets or pending

litigation or other liabilities, may cause the Committee to deny a subaward, in spite of that project having previously received a reservation or allocation of credits. The Committee shall state in writing reasons for denying a subaward where the standards described below would otherwise have resulted in a subaward. The overriding public interest in sound investments through cash subawards shall be paramount as the Committee makes its funding decisions. Projects shall be evaluated in accordance with the underwriting criteria listed at Section 10327(g), as modified by this Section. CTCAC may defer to underwriting standards and conclusions reached by equity partners in those projects where CTCAC is providing financing only.

All terms and conditions established by federal rule shall hereby be incorporated by reference.

(b) Eligible Projects

Applicants for cash awards, ARRA Funds, must have a current reservation of federal Low Income Housing Tax Credits for a project awarded credits in federal fiscal year 2007, 2008, or 2009, except as provided in paragraph (b)(2) below. To be eligible for ARRA funds, projects must be expected to be completed by February 16, 2012. In addition, all ARRA fund recipients must be prepared to close all construction period financing and begin construction within 120 days of award. In addition, the project sponsor shall assure adherence to this requirement by entering into a contractual obligation to CTCAC to perform according to a draw schedule, and by providing CTCAC monthly updates as to the project's progress. Eligible projects are as follows:

- (1) 2007 and 2008 awardees: Projects with current 2007 or 2008 Credit Ceiling allocations are eligible for ARRA Funds. Tax-Exempt Bond Projects with current 2007 or 2008 credit reservations are also eligible for ARRA Funds under the conditions described in paragraph (d)(3)(A) below.
- (2) 2009 awardees: Tax Exempt Bond Projects receiving a 2009 credit reservation and projects receiving 2009 Credit Ceiling reservations by September 30, 2009 are eligible for TCAP funds. Projects receiving Credit Ceiling or Tax Exempt Bond credit reservations in calendar year 2009 are eligible for Section 1602 Funds, if exchange authority remains, under the conditions described in paragraph (d) below.
- (3) CTCAC may, as a priority, provide cash awards subject to (b)(1) and (b)(2) above under this Section to projects that also have funding commitments from programs receiving AB 55 loans through the State's Pooled Money Investment Account (PMIA). Assistance shall be provided in a manner and at the minimum amount required to generate adequate construction period financing. Any funds provided may be conditioned upon repayment by the State Department of Housing and Community Development (HCD) at the earliest opportunity that general obligation proceeds or AB 55 loans become available. These funds shall remedy gaps in construction-period financing, and may be in addition to funds mitigating equity gaps as described below.

CTCAC shall set aside no more than \$100 million in ARRA Funds for MHP, SHP, and Homeless Youth projects with signed HCD financing commitments that have yet to commence construction. Funds shall be committed from this set-aside to generate adequate construction financing, in concert with cash in lieu or gap financing awards. Within the Tax Exempt Bond Project competition described in paragraph (d)(3)(A), applicants may request zero ARRA funds where no equity gap exists, and apply for funds to assist with construction period financing only. Such applications would receive 100 points under the scoring factor listed at (d)(2)(C)(ii). Similarly, Credit Ceiling projects lacking an equity gap may also apply for ARRA funds solely to assist with gaps in construction period financing due to HCD funding. Credit Ceiling projects shall be of higher priority than Tax Exempt Bond projects in the event ARRA funds are oversubscribed for filling HCD construction financing gaps.

(c) Award Amounts.

- (1) Cash in lieu of credits: 2007 and 2008 credit recipients may receive an award equal to the stated equity in the original tax credit application up to 85 cents (\$0.85) for every currently reserved federal tax credit dollar and up to 60 cents (\$0.60) for every California State Credit currently reserved by CTCAC for the project.

2009 credit recipient projects may receive the original tax credit application-estimated equity up to 80 cents (\$0.80) for every currently reserved federal tax credit dollar, and up to 55 cents (\$0.55) for every California State Credit dollar currently reserved for the project. Applicants may request a cash in lieu award for a portion of their reserved credits, retaining the balance of credits for an equity partner. CTCAC shall reduce this award amount if a final cost certification would have resulted in a reduced credit award.

To be eligible for cash in lieu of credits, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. An applicant shall provide a narrative describing steps they have taken to secure an equity investment, and describing issues inhibiting investor interest in the project. The narrative must identify potential investors proffering unacceptable offers, and why specific terms and conditions were detrimental to the project's feasibility. CTCAC reserves the right to corroborate presented facts, and may request additional information from the applicant and/or the potential investor or syndicator. CTCAC shall determine whether an applicant has met the federal good faith effort test. Any misrepresentations by an applicant shall draw maximum penalties under program regulations.

Where TCAP funds are awarded as cash in lieu of credits, the project shall retain at least \$100 of annual federal Low Income Housing Tax Credits. For Tax Exempt Bond Projects CTCAC may elect, upon request by the project sponsor, to award Credit Ceiling credits for such minimal amounts rather than the originally-reserved credits. In addition, such projects shall also demonstrate a good faith effort has been made to sell as many of the originally awarded credits as circumstances and market conditions allow. However, if a developer cannot use and sell all of the tax credits, a written agreement that requires compliance with Low Income Housing Tax Credit and TCAP requirements for the period required by Section 42 of the Internal Revenue Code must be entered into by the project owner, along with an extended use agreement.

- (2) Gap financing: 2007 and 2008 projects may receive the difference between the credit equity stated in the original tax credit application, up to \$0.85 for every currently reserved federal tax credit dollar, and the committed equity up to 15 cents per federal tax credit dollar. 2007 and 2008 applicants may also apply for up to 10 cents (\$0.10) for every California State Credit dollar, up to the credit equity stated in the original application, not to exceed \$0.65 per California State Credit dollar.

2009 projects may receive up to 12 cents (\$0.12) per currently reserved federal tax credit dollar. Applicants may also apply for up to nine cents (\$0.09) for every California State Credit dollar. For 2009 Credit Ceiling applicants, projects may receive the above amounts in addition to the equity induced by the credits even where the final equity pricing exceeds the application estimate per federal tax credit dollar. CTCAC shall assure the combination of gap financing and equity does not over-subsidize the project.

- (3) If an ARRA award would add costs associated with the application of prevailing wage requirements, CTCAC may adjust the project award by up to 15 percent (15%) of the original application development budget's site work and structures line items to account for the higher costs. In such cases, the project sponsor must retain, or have on staff, subject matter experts to assist in complying with prevailing wage and other federal requirements. CTCAC may award TCAP or Section 1602 Funds to projects at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already

subject to related requirements, such as paying prevailing wages, or where federal funds are a funding source in the project.

- (4) No cash award amount shall exceed \$17 million, except to 2009 Credit Ceiling applicants who may receive a maximum of \$20 million, and Special Needs, Homeless Assistance, or SRO projects may receive up to \$25 million.

(d) Application and Award Processes.

- (1) 2007 and 2008 Credit Ceiling Recipients.

2007 and 2008 Credit Ceiling Reservation awardees may apply to CTCAC for an exchange of a portion or all currently reserved credits for ARRA Funds by a date publicly announced by CTCAC, and for an amount specified in (c)(1) above.

All other 2007 and 2008 applicants may propose retaining all of their credits and seeking gap financing. A portion of TCAP funding, along with any other non-exchanged 2007 or 2008 credits returned or recaptured on or before April 30, 2009, shall then be available to applicants to compete for gap financing. CTCAC shall use the competitive scoring under paragraph (2)(C) below.

CTCAC shall condition all awards of ARRA Funds upon the following:

Project owners seeking cash in lieu of 100% of their credit awards must return their entire current tax credit reservation, including any reserved State Credit to CTCAC.

The ARRA Funds recipient must adhere to the original tax credit required placed-in-service and project completion timelines for the project. The CTCAC Executive Director may adjust interim deadlines, including readiness deadlines, to accommodate loan closing schedules associated with these funds. In addition, the Executive Director, at his or her sole discretion, may exchange a 2008 Credit Ceiling reservation for 2009 Credit Ceiling credits. The Executive Director must find that circumstances beyond the project sponsor's control have delayed the project and warrant the extension of the placed in service date. Finally, the Executive Director may extend placed in service deadlines by up to six (6) months for projects receiving cash in lieu of credit awards.

- (2) 2009 Credit Ceiling reservation recipients.

For 2009 only, CTCAC shall conduct a single competition for Credit Ceiling tax credit awards. Notwithstanding Section 10325(c)(8), 2009 applicants may apply for readiness points without documenting committed public funding sources, and without documenting items (B) through (D) within the original submitted application. However, applicants must document all such approvals, and the expiration of associated appeal periods, no later than August 17, 2009 to receive the associated readiness points. Similarly, notwithstanding Sections 10325(c)(1)(C), 10325(c)(10), and 10325(f)(8), 2009 applicants may submit a public financing commitment no later than August 17, 2009 and comply with those scoring and basic threshold requirements. In addition, notwithstanding Section 10328(d), 2009 Credit Ceiling recipients must submit an application for a carryover allocation by November 20, 2009.

Within the initial application for Credit Ceiling credits as described in Section 10325, applicants may elect to assume a CTCAC cash award of 12 cents (\$0.12) for every federal tax credit dollar requested, and 9 cents (\$0.09) for every California State Credit dollar requested. Equity pricing assumptions within the original Credit Ceiling application shall be no less than 70 cents (\$0.70) for every tax credit dollar, and no less than 50 cents (\$0.50) for every California State Credit dollar requested.

- (A) Successful competitors for 2009 Credit Ceiling awards shall have 90 days, consistent with Section 10325(c)(8), to produce a letter of intent (LOI) from an equity partner.
- (B) If, after 60 days and a good faith effort as described in paragraph (c)(1) above, successful 2009 Credit Ceiling reservation recipients have failed to identify an equity partner, the project sponsor may apply for a cash in lieu of credits award from CTCAC. All projects applying for cash in lieu of credits shall submit materials requested by CTCAC, including evidence that the project would be financially feasible with the requested amount of cash in lieu of credits. Special Needs, Homeless Assistance, or SRO projects applying for cash in lieu of credits must return their federal and any State credit reservation, and CTCAC shall exchange all such returned federal credit to the Secretary of the Treasury as part of its grant election amount. CTCAC shall award this federal exchange cash to the applicant Special Needs, Homeless Assistance, and SRO projects subject to CTCAC confirming the project's feasibility. However, to qualify for a non-competitive exchange of ARRA funds for credits, the project sponsor must have at least five (5) years' experience providing such housing for Special Needs, Homeless Assistance, and/or SRO populations. All other cash in lieu of credits applicants shall be placed in a competition and scored as described in subsection (2)(C) below for an award of cash in lieu of credits. Current Credit Ceiling reservation recipients must return their reservation before competing for a cash award in lieu of credits. Beyond these funds, CTCAC shall also award additional funds as gap financing or cash in lieu of equity associated with California State Credits up to the applicable-loan maximum stated in paragraph (c)(4) above.
- (C) Competitors shall be scored and ranked competitively based upon the following criteria alone. All scoring information shall be drawn from the originally scored tax credit application with supplemental information as requested by CTCAC.
- (i) Project type (50 points). Projects shall earn points as no more than one project type as follows:
- Special Needs, Homeless Assistance, and SRO projects meeting the requirements of Section 10325(g)(4) 50 points
  - Rural projects meeting the requirements of Section 10315(c) 30 points
  - At-risk projects meeting the requirements of Section 10325(g)(5) 30 points
  - Family projects meeting the requirements of Section 10325(g)(1) and senior projects meeting the requirements of Section 10325(g)(2) 10 points
  - All others 0 points
- (ii) Cash award requested (100 points). Projects shall earn points based upon the cash requested in inverse relation to total project costs. Lesser cash requests relative to total project costs will garner higher scores. Where "N" equals the percentage the cash request represents relative to total project costs, points = 100-N. (Example: Where the cash request N equals 60% of the project cost, the applicant's score would be 40.) Rehabilitation projects, except for At-Risk projects, may access these points only if the per-unit rehabilitation hard costs equal \$40,000 or greater.
- (iii) Average Affordability (100 points). Projects shall earn 5 points for every one percent (1%) that the project's average affordability would be below 60 percent (60%) of Area Median Income (AMI). While CTCAC's Regulatory Agreement



shall regulate specific numbers of units at income levels specified in the application, this scoring factor would be based upon a calculation determining the project's average overall affordability. (Example: A project with an average affordability of 50% of AMI would garner the percentage below 60% (10) times 5 points, or 50 points). An average affordability of 40% of AMI would garner the full 100 points. Units with project-based rental or operating subsidy such as Section 8, HUD Project Rental Assistance Contracts (PRAC), Mental Health Services Act (MHSA), McKinney Act subsidies, or CTCAC-approved locally-funded operating subsidy programs shall be assumed to serve households at 40 percent (40%) of AMI, unless regulated to a lower level.

(iv) For Tax Exempt Bond Projects only, 25 points shall be awarded for projects with tax credit reservations in 2008 who lost their DDA status in 2009, and for projects wherein 100 percent (100%) of the project's units would be assisted with project-based rental assistance committed for a period of at least 15 years (to the extent permitted by the relevant program funding source). Projects with less than 100% project-based vouchers would receive a one-point discount off the 25 point bonus for every two percent (2%) below 100% represented by project-based voucher units, with zero bonus points for 50 percent (50%) or fewer project-based rental assistance units.

(3) Recipients of credits for Tax-Exempt Bond Projects.

- (A) Eligible 2007, 2008, and 2009 Tax-Exempt Bond Projects with, as of the application due date to be publicly announced by CTCAC, bond allocations, previously awarded tax-exempt bond allocations that have been returned to CDLAC or tax-exempt bond applications pending (a) with a current credit reservation and (b) lacking an equity partner, may apply and compete for cash in lieu of tax credits under the process described in subsections (d)(2)(B) and (C) above. To be eligible for cash in lieu of credits, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits as described in paragraph (c)(1) above, and that the project remains the same as originally proposed. Eligible 2007, 2008, and 2009 Tax-Exempt Bond Projects with committed equity partners that still have a funding gap may also compete for ARRA Funds as gap financing within the same competition as those seeking cash in lieu of credits. Those projects must also have a current bond allocation or an application pending, a current tax credit reservation, and an executed LOI with an equity partner for less than estimated in the original tax credit application. Projects may apply for either cash in lieu of credits or gap financing if they have a pending tax credit application accepted and deemed complete by CTCAC by the cash application due date referenced above, but only if they have an award of State HCD or MHSA funding. Successful applicants shall receive either ARRA Funds as determined by CTCAC.
- (B) Eligible 2009 Tax Exempt Bond Projects meeting the conditions of preceding paragraph (A) after the application due date required under (A) above, shall similarly compete among themselves for cash in lieu of credits or gap financing under a separate competition. This competition shall be held in an additional round during calendar year 2009, and shall also follow the process described in subsections (d)(2)(B) and (C) above.

Projects shall compete based on the information provided in the original awarded tax credit application and any supplemental information related to CTCAC employing the competitive system described in paragraph (d)(2)(C), except that Special Needs projects need not meet the 75 percent requirement contained in Section 10325(g)(4).

(4) Executive Director's discretion to award remaining funds.

If, following the award processes described in paragraphs (d)(1) through (d)(3) above, CTCAC has a surplus of either ARRA funds or Credit Ceiling credits, the Executive Director may take extraordinary measures to assure that all funds and credits are awarded and allocated by year-end. Such extraordinary measures include:

- (A) If Credit Ceiling credits remain with insufficient time for a waiting list award pursuant to Section 10325(c)(h), the Executive Director may declare a project possessing a Credit Ceiling reservation a Difficult to Develop Area (DDA) project and deliver additional federal Credit Ceiling credits in lieu of the reserved California State Credits. The Executive Director must attempt to minimize project disruption by first conferring with the project sponsor, and must also report such an action to the Committee at its next convened meeting.
- (B) If ARRA funds are recaptured or remain uncommitted at year-end, the Executive Director may offer such funds, first, to the next unfunded applicant competing under Section (d)(2)(B) above. If the requested cash in lieu of credit amount significantly exceeds the requested ARRA funds, the Executive Director may move down the ranked list of unfunded projects to the next ranked project seeking less than or approximately the amount available.
- (C) If no remaining projects on the unfunded ranked list described in preceding paragraph (B) requested less than or approximately the amount of ARRA funds remaining, the Executive Director may award remaining ARRA funds to the next ranked project competing under Section (d)(3)(A) above.

(e) Loan Terms.

The project owner receiving any cash award from CTCAC shall agree to the loan terms described below as applicable.

- (1) All funds must be expended by February 17, 2012.
- (2) All loans shall be underwritten in advance using the applicable financial feasibility standards listed within Section 10327, except that projects must demonstrate a first year debt service coverage ratio of at least 1.15 to 1.
- (3) Loans shall be originated for a term of 55 years, except for HCD backfill loans described under paragraph (b)(3) where the loan will be due upon HCD's earliest opportunity to repay. The project owner must execute a Promissory Note secured by a recorded Deed of Trust as required by CTCAC. In addition, the project owner must execute a recorded Regulatory Agreement provided by CTCAC. TCAC may agree to extending the loan term, and may agree to an assumption by a proposed new property owner.
- (4) Under the terms of the Promissory Note and Deed of Trust, the loan shall be deferred for the full term. The CTCAC Deed of Trust shall be recorded in a subordinate position relative to the principal private lender's Deed of Trust, as well as those of public lenders, unless the CTCAC loan amount is more than twice the amount lent by the public lender.
- (5) Recipients of cash loans in lieu of tax credits shall enter into a binding agreement establishing CTCAC's right of first refusal to purchase the project for its fair market value at the time the owner chooses to sell the project, except for a sale under IRC §42(i)(7). This right is assignable by CTCAC to a third party of its choice, and shall be in effect for the duration of the Regulatory Agreement. This requirement shall not apply to projects receiving gap financing only, as described in paragraph (c)(2) above.
- (6) The interest rate for any loans authorized under this section shall be zero.

- (7) In the event the United States Department of Treasury specifies other loan terms for Section 1602 funds, those terms would supersede any provisions contained herein where those funds are the source of ARRA financing.
- (8) CTCAC shall disburse loans provided as gap funding during construction as needed upon receiving evidence that costs have been incurred. CTCAC shall disburse loans provided in lieu of tax credit equity on the following schedule: 40 percent (40%) at and following construction loan closing as justified by costs; at least 35 percent (35%) at project completion as evidenced by a Certificate of Occupancy for the entire project; and 25 percent (25%) minus a hold-back at 90 percent (90%) occupancy by eligible households as certified by an independent third party. CTCAC shall hold back up to \$300,000 to be payable upon CTCAC approval of final cost certification and other placed-in-service materials. CTCAC may accelerate or depart from this described disbursement schedule at the sole discretion of the Executive Director and as expressed under the terms of a tri-party agreement with other lenders and the project sponsor.

Finally, at the sole discretion of the Executive Director, CTCAC may accelerate payment in order to conform with federal expenditure deadlines.

- (9) All executed loan agreements and regulatory agreements shall reflect recapture provisions for defaults on the regulatory agreement. The terms of recapture shall be proportionate to the scale and duration of the uncorrected noncompliance relative to a 15-year initial compliance period, consistent with guidance provided by the U.S. Department of Treasury for Section 1602 financed projects. If, following an ARRA application and award, a sponsor syndicates and sells a portion of their ownership interest to a partner seeking tax losses associated with the project, and such syndication was not set forth in the original ARRA application, nine-tenths of the gross proceeds of that sale shall be remitted to CTCAC as recaptured ARRA funds.

(f) Fees.

- (1) No additional processing fees or performance deposits shall be collected from ARRA funding recipients beyond tax credit fees collected pursuant to Section 10335. Such tax credit fees must be paid by all ARRA fund recipients, including an allocation fee, even where an allocation of credits is not ultimately made. CTCAC may charge an ARRA funds recipient an asset management fee for such services. This fee may be in the form of an annual charge during the project's regulatory term, or may be charged at or about project completion. In the event CTCAC contracts out for asset management services, the contracted entity may charge the sponsor an asset management fee directly.

Section 10325. Application Selection Criteria - Credit Ceiling Applications

- (a) General. All applications not requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4)(b) 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 Tax Credits 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 Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle except where a pre-existing project-based Section 8 contract is in effect, shall be scored proportionately in the site amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site. Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.

Effective in the second round of 2010, the number of awards received by individuals, entities, affiliates, and related entities is limited to no more than four (4) per competitive round. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint-control over an entity, having significant influence over an entity, or participating as key management of an entity. Related entity disclosure is required at the time of application.

## **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 after permitted adjustments, shall receive 1 point for each percent by which its eligible basis is below the maximum permitted adjusted threshold basis limit. In calculating the eligible basis under this scoring factor, CTCAC shall use all project costs listed within the application unless those costs are not includable in basis under federal law as demonstrated by the application form itself or by a letter from the development team's tax professional.
  - (B) Credit reduction. A project that reduces the amount of Tax Credits 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 and remain in place for at least ten years.
  - (C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior direct federal debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are 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. Land and building values must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(i)(4)(A). All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded.

To receive points under this subsection for loans, loans must be "soft" loans, having terms in excess of 15 years, and below market interest rates, interest accruals, residual receipts payments or other preferred terms 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 any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. Similarly, if the principal balances of any prior publicly funded or subsidized loans are to be assumed in the course of a proposed acquisition, verification of approval of the loan assumption or other required procedure by the agency initially approving the subsidy will be needed to satisfy the commitment requirements.

A maximum of 20 points shall be available in combining the cost efficiency, credit reduction, and public funds categories.

(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 Federal Credit Ceiling, calculated as of February first during any calendar year unless imposing this requirement would prevent allocation of all of the available Credit Ceiling.

(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. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the number of years that the project was owned by that general partner. 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	0.5 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. For maximum points in either subsection (A) or (B) above, a completed previous participation form for the general partner or for the management agent respectively must be provided 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 as described in Section 10322(h)(5) for items including, but not limited to:
- (A) 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;
  - (B) failure to utilize Tax Credits 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;
  - (C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed;
  - (D) removal or withdrawal under threat of removal as general partner from a housing tax credit partnership;
  - (E) 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);
  - (F) failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California;
  - (G) repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;
  - (H) failure to perform a tenant income recertification upon the first anniversary following the initial move-in certification for all one-hundred percent (100%) tax credit properties, or failure to conduct ongoing annual income certifications in properties with non-tax-credit units.
  - (I) material misrepresentation of any fact or requirement in an application;
  - (J) failure of a building to continuously meet the terms, conditions, and requirements 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;
  - (K) failure to submit a copy of the owner's completed 8609 showing the first year filing;
  - (L) failure to properly notify CTCAC and obtain prior approval of general or limited partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit; or
  - (M) certification of site amenities, distances or service amenities that were, in the Executive Director's sole discretion, inaccurate or misleading.

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 two calendar years, but in no event will they be in effect for less than one funding round. Furthermore, they may be assigned to one or more Development Team members, but do not necessarily apply to the entire Team. Negative points assigned by the

Executive Director may be appealed to the Committee under appeal procedures enumerated in Section 10330.

- (4) Housing Needs. (Points will be awarded only in one category listed below) The category selected hereunder shall also be the project category for purposes of the tie-breaker described in subsection 10325(c)(10) below.

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

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

For site amenities and service amenities combined.

- (A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application. Distances must be measured using a standardized radius from the development site determined by the Committee 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, color photographs, a contact person and a contact telephone must be included in the application. The Committee may employ third parties to verify distances or may have staff verify them. Only one point award will be available in each of the subcategories (1-9) listed below. Amenities may include:

1. Transit Amenities

The project is part of a transit-oriented development strategy where there is a transit station, rail station, commuter rail station, or bus station, or public bus stop within 1/4 mile from the 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

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

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

The site is located within 500 feet of a regular public bus stop, or rapid transit system stop. (For Rural set-aside projects, full points may be awarded where van or dial-a-ride service is provided to tenants, if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided) 4 points

The site is located within 1,500 feet of a regular public bus stop or rapid transit system stop 3 points

A private bus or transit system providing service to residents may be substituted for a public system if it (a) meets the relevant headway and distance criteria, and (b) if service is provided free to the residents. Such

private systems must receive approval from the CTCAC Executive Director prior to the application deadline. Multiple bus lines may be aggregated for the above points, only if multiple lines from the designated stop travel to an employment center. Such aggregation must be demonstrated to, and receive prior approval from, the CTCAC Executive Director in order to receive competitive points.

2. The site is within 1/4 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  
or within 1/2 mile (1 mile for Rural set-aside projects) 2 points
  
3. The site is within 1/4 mile of a book-lending public library that also allows for inter-branch lending (when in a multi-branch system) (1/2 mile for Rural set-aside projects) 3 points  
or 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 of at least 25,000 gross interior square feet where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural set-aside projects) 5 points  
or within 1/2 mile (1 mile for Rural set-aside projects) 4 points  
or within 1.5 miles (3 miles for Rural set-aside projects) 3 points
  
- The site is within 1/4 mile of a neighborhood market of 5,000 gross interior square feet or more where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural Set-aside projects) 4 points  
or within 1/2 mile (1 mile for Rural Set-aside projects) 3 points
  
- The site is within 1/4 mile of a weekly farmers market certified by the California Federation of Certified Farmers' Markets, and operating at least 5 months in a calendar year 2 points  
or within 1/2 mile 1 point
  
5. For a Large Family development, the site is within 1/4 mile of a public elementary, middle, or high school that children living in the development may attend (1/2 mile for Rural set-aside projects). Public schools demonstrated, at the time of application, to be under construction and to be completed and available to the residents prior to the housing development completion are considered in place at the time of application for purposes of this scoring factor. 3 points  
or within 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  
or 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  
  
or 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  
  
or within 1/2 mile (1 mile for Rural projects) 1 point
10. High speed internet service, with a minimum average download speed of 768 kilobytes/second must be made available to each unit for a minimum of 10 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. Will serve letters or other documentation of internet availability must be documented within the application. If internet is selected as an option in the application it must be provided even if it is not needed for points.  
  
2 points (3 points for rural projects)

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

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

The amenities must be available within 6 months of the project's placed-in-service date. Services must be committed for a period of 10-years.

All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. All organizations providing services for which the project is claiming service amenities points must have at least 24 months experience providing services to one of the target populations to be served by the project.

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

Amenities may include, but are not limited to:

1. Service Coordinator. Responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.). Minimum ratio of 1 Full Time Equivalent (FTE) Service Coordinator to 600 bedrooms. 5 points
2. Case Manager. Responsibilities must include (but are not limited to) working with tenants to develop and implement an individualized service plan, goal plan or independent living plan. Minimum ratio of 1 FTE Case Manager to 100 bedrooms. 5 points
3. Other Services Specialist. Must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor. Minimum ratio of 1 FTE Services Specialist to 600 bedrooms. 5 points
4. Adult educational classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes. Must provide a minimum of 60 hours of instruction each year (30 hours for small developments of 20 units or less). 5 points
5. Health and wellness or skill-building classes. Includes, but is not limited to: ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Must provide a minimum of 60 hours of instruction each year (30 hours for small developments of 20 units or less). 5 points
6. Health services provided by appropriately-licensed organization or individual. Includes but is not limited to: health clinic, adult day health center, medication management services. 5 points
7. Behavioral health services provided by appropriately-licensed organization or individual. Includes but is not limited to: mental health services and treatment, substance abuse services and treatment. 5 points
8. Licensed child care. Must be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 30% of units are three bedrooms or larger). 5 points
9. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. Minimum of 10 hours per week, Monday to Friday, offered throughout the school year. (Only for large family projects or other projects in which at least 30% of units are three bedrooms or larger). 5 points

Items 1 through 9 are mutually exclusive. One proposed service may not receive points under two different categories. Applicants may receive ten (10) points for item 4 or 5 if double the minimum hours of instruction is provided.

Documentation must be provided for each category of services for which the applicant is claiming service amenities points and must state the name and address of the organization or entity that will provide the services; describe the services to be provided; state the annual dollar value of the services; commit that services will be provided for a period of 10 years; commit that services will be available to tenants of the project free of charge (except for child care services or other charges required by law); name the project to which the services are being committed. Organizations providing in-kind or donated service must estimate the value of those services. Volunteer time may be valued at \$10 per hour.

Documentation may take the form of a contract for services, Memorandum of Understanding (MOU), or commitment letter on agency letterhead committing to provide services for at least one year.

For projects claiming points for items 1, 2 or 3, a position description must be provided. Services delivered by the on-site Property Manager or other property management staff will not be eligible for points under any category (items 1 through 9).

Applications must include a services sources and uses budget clearly describing all anticipated income and expenses associated with the services program and that aligns with the services commitments provided (i.e. contracts, MOUs, letters, etc.)

All organizations providing services for which the project is claiming points must document that they have at least 24 months of experience providing services to the project's target population. Experience of individuals may not be substituted for organizational experience.

Evidence that adequate physical space for services will be provided must be documented within the application.

- (6) Sustainable building methods. Maximum 8 points
- A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. 4 points
- For rehabilitation projects not subject to Title 24 requirements, 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. 2 points
- Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems. 2 points
- Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less). 1 point
- Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit. 2 points
- Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less). 1 point

- Use of no-VOC interior paint (5 g/l or less). 1 point
- Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less. 1 point
- Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer. 2 points
- Use of formaldehyde-free insulation. 1 point
- Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%). 1 point
- Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period. 1 point
- Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas. 2 points
- Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. 1 point
- The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 1 point
- The project proposes to use Historic Tax Credits 1 point
- The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 1 point
- To receive these points, the applicant and the project architect or mechanical engineer 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 and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.
- Develop and commit to certifying the project any one of the following programs: Leadership in Energy & Environmental Design (LEED for Homes); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

- (7) 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 Credits.

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

Lowest Income Points Table:

	Percent of Area Median Income					
	55	50	45	40	35	30
<b>80</b>				45	47.5	50
<b>75</b>				42.5	45	47.5
<b>70</b>				40	42.5	45
<b>65</b>			35	37.5	40	42.5
<b>60</b>			32.5	35	37.5	40
<b>55</b>			30	32.5	35	37.5
<b>50</b>		25*	27.5	30	32.5	35
<b>45</b>		22.5*	25	27.5	30	32.5
<b>40</b>	17.5*	20	22.5	25	27.5	30
<b>35</b>	15*	17.5	20	22.5	25	27.5
<b>30</b>	12.5*	15	17.5	20	22.5	25
<b>25</b>	10*	12.5	15	17.5	20	22.5
<b>20</b>	7.5*	10	12.5	15	17.5	20
<b>15</b>	5*	7.5	10	12.5	15	17.5
<b>10</b>	2.5*	5	7.5	10	12.5	15

\* Available to Rural set-aside projects only

- (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 Tax Credits 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.

- (8) 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, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) 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.

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet this timeline will result in rescission of the Tax Credit Reservation. The following must be delivered:

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

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

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 150-day requirements shall not apply to projects that do not obtain the maximum points in this category, for any items for which points are not awarded.

The Executive Director, at his or her sole discretion, may make a finding that a market-wide lack of investor equity or systemic credit market illiquidity warrants a general extension to the 150-day readiness deadline for projects that still have 2008 reservations. That Executive Director may extend the deadline for no more than an additional 90 days beyond the original deadline.

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

(10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed:

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

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

- (a) Committed permanent public funds, as described in Section 10325(c)(1)(C), defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, public funds shall be discounted by the proportion of the project that is non-residential. Permanent funds shall be demonstrated through documentation

including but not limited to public funding award letters, committed land donations, or documented project-specific local fee waivers. The numerator of this ratio may include permanent funding committed by foundations so long as the funding is a grant or residual receipts loan. Local land donations include land leased from a public entity for a de minimis annual lease payment. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

- (b) One (1) minus the ratio of requested unadjusted eligible basis to total residential project development costs.

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

- (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 Tax Credits 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, followed by the Rural set-aside (funding the RHS program apportionment first), the Small Development set-aside, the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits 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 calendar year. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in 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. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits 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 Tax Credits in either the Federal or State Tax Credit categories requested by the applicant, the application shall be bypassed 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 area, unless the projects are located within a Geographic Region and no other projects have been funded within the Project's region during the year in question, after a set-aside is reserved all remaining applications competing within the set-aside shall compete in the Geographic Region.

- (2) Geographic Areas selection. Tax Credits 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. The funding order shall be followed by funding the highest scoring application, if any, in each of the ten regions. After each region has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. TCAC shall assure 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.

Projects will be funded in order of their rank so long as at least 50% of the Tax Credits to be awarded to any single project are available under the applicable Geographical Apportionment, and the 125% limit for the Apportionment as a whole is not exceeded. Credits allocated in excess of the Geographic Apportionments by the application of the 125% and 50% rules described above will be drawn from the second round apportionments during the first round, and from the Supplemental Set Aside during the second round. However, all Credits drawn from the Supplemental Set Aside will be deducted from the Apportionment in the subsequent round.

When the next highest ranking project does not meet the 50% rule then the Committee will skip over the next highest-ranking project to fund a project that does meet this 50% requirement so long as the score of the funded project(s) is no more than 5 points below that of the first project skipped, so that the full Apportionment can be used. Any unused credit from the geographic areas in the second funding round will be added back into the Supplemental Set-Aside. Tax Credits reserved in all geographic areas shall be counted within the housing type goals.

- (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 Tax Credits, 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 Tax Credits under these regulations. The Committee shall make available to the general public a written explanation for any allocation of Tax Credits 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, among other tests. 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 one year of the application date 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)(9) of these regulations, which provides evidence that:
        - (i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below rents for the same unit types in comparable market rate rental properties;
        - (ii) The proposed unit value ratio stated as dollars per square foot (\$/s.f.) will be no more than the value ratios for comparable market rate units;
        - (iii) In rural areas without sufficient three- and four- bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at



- least 20% below the rents for single family homes and the \$/s.f. ratio will not exceed that of the single family homes; and
- (iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy – 90% occupancy for SRO and Special Needs projects and 95% for all other projects – within six months of being placed in service for projects of 150 units or less, and within 12 months for projects of more than 150 units and senior projects.

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

- (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 must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.
  - (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 acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:
  - (A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;
  - (B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;
  - (C) have a term of at least fifteen (15) years if it is permanent financing;
  - (D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,
  - (E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and
  - (F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

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

- (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, starting as of the planned placed in service date for new construction projects, and as of the rehabilitation completion date for acquisition/rehabilitation projects, 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 proposed project participants, as a Development Team, possess all of 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 Development 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 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
- (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. Roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty.
  - (C) Exterior doors. Insulated or 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 Star rated appliances, including but not limited to, refrigerators, dishwashers, and clothes washers shall be installed when such appliances are provided within Low-Income Units and/or in on-site community facilities 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 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, water resistant, 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 UMD, 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 Volatile Organic Compound (VOC) paints and stains (Non-flat: 150 g/l or less, Flat: 50 g/l or less) for all interior surfaces where paints and stains are applied.

A project proposing rehabilitation of existing structures shall be exempt from the provisions of subsections (D) and (F) above. If an applicant 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 Tax Credits.
  - (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. AHP funds may be substituted for any construction period funding source if an AHP commitment is obtained after the TCAC application due date. Funds from a previously committed source may be increased only in an amount necessary to achieve project feasibility. Adding new funding sources to cover additional, unanticipated costs requires TCAC pre-approval. This provision shall include projects that have already received a reservation or allocation of Tax Credits 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; the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's Mental Health Services Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction, or to

projects receiving Housing Tax Credits 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 Tax Credits available for award to any one project in any funding round shall not exceed Two Million Five Hundred Thousand (\$2,500,000) Dollars.
- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:
- (A) \$20,000 in hard construction costs per unit (except for those projects defined as "at risk" pursuant to these regulations, which must complete a minimum of \$10,000 in hard construction costs per unit); or
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).
- (g) Additional Threshold Requirements. To qualify for Tax Credits as a Housing Type as described in Section 10315(i), to receive points as a housing type, or to be considered a "complete" application, 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) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director. 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(e). 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(e), 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.
  - (H) Dishwashers shall be provided in all units unless a waiver is granted by the Executive Director because of planning or financial impracticality.
  - (I) 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) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director.
  - (F) For projects receiving Tax Credits 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 system is approved by the Executive Director;
  - (G) 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(e) are exempt from this requirement;

- (H) 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;
  - (I) 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.
  - (J) 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 served 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(s) identified in the preliminary service plan described in paragraph (L), must accompany the Tax Credit application;
  - (K) A summary of the experience of the developer and the service provider(s) in providing services to the project's special needs populations must accompany the Tax Credit application; and,
  - (L) A preliminary service plan that specifically identifies: the service needs of the projects special needs population; the organization(s) that would be providing the services to the residents; the services to be provided to the special needs population; how the services would support resident stability and any other service plan objectives; a preliminary budget displaying anticipated income and expenses associated with the services program. 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 Tax Credits, the project must meet the At-risk eligibility requirements under the terms of applicable federal and state law as verified by a third party legal opinion, except that a project that has been acquired by a qualified nonprofit organization within the past five years of the date of application with interim financing in order to preserve its affordability and that meets all other requirements of this section, shall be eligible to be considered an "at-risk" project under these regulations. A project application will not qualify in this category unless it is determined by the Committee that the project is at-risk of losing affordability due to market or other conditions;
    - (ii) the project must currently possess or have had within the past five 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 five years preceding the application deadline, Federal Housing Tax Credit restrictions whose compliance period is expiring or has expired within the last five years 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 five calendar years after the year in which the application is filed, except in cases where a qualified nonprofit organization acquired the property within the terms of (i) above and would otherwise meet this condition but for: 1) long-term use restrictions imposed by public agencies as a condition of their acquisition financing; or 2) HAP contract renewals secured by the qualified nonprofit organization for the maximum term available subsequent to acquisition;
- (v) the applicant agrees to renew all project based rental subsidies (such as Section 8 HAP or Section 521 rental assistance contracts) for the maximum term available 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 Tax Credit proceeds) must be 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 Eligible Project applications already scored, ranked and evaluated in anticipation of utilizing any Tax Credits that may be returned to the Committee, and/or that have not been allocated to projects with the Set-Asides or Geographic Regions for which they were intended. 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. Selections from the Waiting List will be made as follows:

- (1) If Credits are returned from projects originally funded under current year Set-Asides or Geographic Apportionments, applications qualifying under the same Set-Aside or Geographic Region will be selected in the order of their ranking.
- (2) Next, Eligible Waiting List projects in Set Asides or Geographic Apportionments that are not yet fully subscribed will be selected from the Waiting List for reservations. These will be selected first from the Set Asides in order of their funding sequence, and then from the Geographic Apportionments in the order of the highest to the lowest percentage by which each Apportionment is undersubscribed. (This will be calculated by dividing the unreserved Tax Credits in the apportionment by the total Apportionment.)
- (3) Finally, after all Set-Asides and Geographic Apportionments for the current year have been achieved, or if no further projects are available for such reservations, the unallocated



Tax Credits will be transferred to the Supplemental Set Aside and used for projects selected from the Waiting List, in the order of their score and tie breaker performance ranking, without regard to Set-Aside or Geographic Region. All Waiting List project reservations will be counted toward the projects' Geographic Apportionments.

- (4) If there are not sufficient Tax Credits to fully fund the next ranked application on the Waiting List, a reservation of all remaining Tax Credits may be made to that application, and any first recaptured or otherwise available Tax Credits in the following year may be reserved for that application up to the maximum amount previously approved by the Committee.
- (5) If the rules described above result in selection of a Waiting List application requesting both Federal and State Tax Credits, and State Tax Credits are not at that time available, the Committee shall allow said applicant to substitute other funds from any source in an amount equivalent to the amount of funds anticipated from the sale of requested State Tax Credits. 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 Tax Credits.

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 Tax Credits with other funds shall be limited to applications receiving an offer of Federal Tax Credits 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 Tax Credits 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 Tax Credits shall not be available thereafter to other waiting list projects under the option to substitute State Tax Credits with other funds. After being offered a reservation of Federal Tax Credits, 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 Tax Credits (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 Tax Credits has been accepted for an application pursuant to this subsection, the application shall not be eligible for State Tax Credits should additional State Tax Credits become available for waiting list applications.

- (i) Carry forward of Tax Credits. Pursuant to Federal and state statutes, the Committee may carry forward any unused Tax Credits or Tax Credits 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 Tax Credits 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 Tax Credits. However, those projects requesting State Tax Credits will be competitively scored as described in Section

10317(i)(2). 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 this section.

- (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 Tax Credits. Applicants must deliver applications no less than sixty (60) days prior to the CTCAC Committee meeting in which they wish to obtain a decision.
- (d) Issuer determination of Credit. The issuer of the bonds may determine the Federal Tax 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 Tax Credits, 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 Tax Credits 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 one year of the application date). 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)(9) of these regulations, which provides evidence that:

- (i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below rents for the same unit types in comparable market rate rental properties;
- (ii) The proposed unit value ratio stated as dollars per square foot (\$/s.f.) will be no more than the value ratios for comparable market rate units;
- (iii) In rural areas without sufficient three- and four- bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at least 20% below the rents for single family homes and the \$/s.f. ratio will not exceed that of the single family homes; and
- (iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy – 90% occupancy for SRO and Special Needs projects and 95% for all other projects – within six months of being placed in service for projects of 150 units or less, and within twelve months for projects of more than 150 units and senior projects

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

- (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 Development 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 Tax Credit Programs, or if additional Development 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 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
- (6) Minimum construction standards. Applicants shall adhere to minimum construction standards as set forth in Section 10325(f)(7).
- (7) Minimum Rehabilitation Project Costs. Projects involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:
  - (A) \$10,000 in hard construction costs per unit; or
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I)
- (h) Additional condition on applications. The following additional condition shall apply to applications for Tax Credits 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 Tax Credits shall be subject to conditions as described in this Section and applicable statutes. Reservations of Tax Credits 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 Tax Credits 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) Projects proposing the rehabilitation of existing structures shall provide CTCAC with an updated development timetable by December 31 of the year following the year the project received its reservation of Tax Credits.
    - (i) The report shall include the actual placed-in-service date or the anticipated placed-in-service date for the last building in the project and the date the project achieved full occupancy. The report shall detail the causes for any change from the original date.

- (ii) Projects proposing new construction shall provide CTCAC with an updated development timetable by December 31 of the second year following the year the project received its reservation of Tax Credits. The update shall include the actual placed-in-service date for the last building in the project and the date that the project achieved full occupancy; or the date the project is anticipated to achieve full occupancy.
- (5) 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 Section 10322(i)(2).

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 Tax Credits for which the proposed project is eligible, pursuant to the requirements herein, and may rescind a reservation or allocation of Tax Credits in the event that the maximum amount of Tax Credits 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 shall apply to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of builder overhead and profit, the cost of construction includes offsite improvements, demolition and site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages.
  - (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 eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's

- unadjusted eligible basis, or one million four hundred thousand (\$1,400,000) dollars; or
- (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or one million four hundred thousand (\$1,400,000) dollars; or
  - (iii) the maximum developer fee that may be included in eligible basis for projects receiving a waiver of the project size limitations under section 10325(f)(9)(C) of these regulations is the lesser of 15% of the project's eligible basis or \$1,680,000 for projects having between 201 and 250 units, \$1,750,000 for projects having between 251 and 300 units, and \$1,820,000 for projects having more than 300 units.
- (B) For 4% projects applying under Section 10326 of these regulations that do not apply for State Tax Credits, the maximum developer fee that may be included in project costs is the lesser of 15% of the project's eligible basis or two million five hundred thousand dollars (\$2,500,000). A cost limitation on developer fees that may be included in eligible basis, shall be as follows:
- (i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or two million five hundred thousand (\$2,500,000) dollars; or
  - (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis, or two million five hundred thousand (\$2,500,000) dollars. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(5) or for other acquisition/rehabilitation projects whose hard costs per unit in rehabilitation expenditures of at least \$15,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.
- (C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis.
- (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 Tax Credits 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. Syndication costs cannot be included in eligible basis.
- (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 Tax Credits 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 for both Federal and State Tax Credits. The minimum tax credit factor for applications made under Section 10326 shall be adjusted annually based on current market conditions.

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

**Exceptions to limits.**

- (A) Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed thirty-nine percent (39%).
- A twenty percent (20%) increase to the unadjusted eligible basis for a development that is 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
  - A ten percent (10%) increase to the unadjusted eligible basis for a development wherein at least 95% of the project’s upper floor units are serviced by an elevator.

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

- (B) A further four percent (4%) increase in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that either (a) exceed Title 24 standards by at least 35 percent, or (b) include three of the following energy efficiency/resource conservation/indoor air quality items:

Exceed Title 24 standards by at least 15%.

Use tankless water heaters, a high efficiency condensing boiler (92% AFUE or greater), or a solar thermal domestic hot water pre-heating system.

Use a Minimum Efficiency Report Value (MERV) 8 or higher air-filter for HVAC systems that introduce outside air.

Irrigation system using only reclaimed water and/or captured rainwater.

Recycle at least 75% of construction and demolition waste (measured by either by weight or volume).

Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).

Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all living rooms or 50% of all common areas.

Install CRI Green Label Plus Carpet, or no carpet, in all bedrooms.

Vent kitchen range hoods to the exterior of the building in at least 80% of units.

Use at least four recycled products listed in the Construction, Flooring, or Recreation section of the California Integrated Waste Management Boards Recycle Content Products Database [www.ciwmb.ca.gov/RCP](http://www.ciwmb.ca.gov/RCP).

In order to receive the four percent (4%) increase to the basis limit, the application shall contain a certification from the project architect confirming that item(s) listed above will be incorporated into the project design.

- (C) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the project's units that will be restricted at or below 35% of AMI. In addition, 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 may be permitted an increase in basis limit 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 cost of the system and the operating cost savings to be created through the use of the technology, throughout the time of the compliance period.
- (6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency.
  - (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 (as defined in Section 10322(i)(4)(A)) and its existing improvements without consideration of the future use of the property as rent restricted housing except if the property has existing long term rent restrictions that affect the as-is value of the property. The land value shall be based upon an "as if vacant" value as determined by the appraisal methodology described in Section 10322(i)(4) of these regulations. If the purchase price is less than the appraised value, the savings shall be prorated between the land and improvements based on the ratio in the appraisal. The Executive Director may waive this requirement where a local governmental entity is purchasing, or providing funds for the purchase of land for more than its appraised value in a designated revitalization area when the local governmental entity has determined that the higher cost is justified.
  - (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 as stated below. 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 requesting a reservation of Tax Credits under the Nonprofit set-aside homeless assistance apportionment, as described in Section 10315(b), SRO, Special Needs, or HOPE VI, or project based Section 8 projects. The original Sources and Uses budget, the pro forma balance sheet and pro forma income/expense statement, and the final cost certification should demonstrate the initial and subsequent funding of the replacement and operating reserves.



- (A) The Minimum replacement reserve for projects shall be three hundred dollars (\$300) per unit per year; or
  - (B) For new construction or senior projects, two hundred fifty dollars (\$250) per unit per year.
  - (C) An operating reserve will be funded in an amount equal to three months of estimated operating expenses and debt service under stabilized occupancy. Additional funding will be required only if withdrawals result in a reduction of the operating reserve account balance to 50% or less of the originally funded amount. An equal, verified operating reserve requirement of any other debt or equity source may be used as a substitute, and the reserve may be released following achievement of a minimum annual debt service ratio of 1.15 for three consecutive years following stabilized occupancy.
- (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 funds to successfully accomplish the financing.
- (d) Determination of eligible and qualified basis. 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)(c)(iii), 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. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.
- (e) Determination of Credit amounts. The applicant shall determine, and the Committee shall verify, the maximum allowable Tax Credits and the minimum Tax Credits necessary for financial feasibility, subject to all conditions of this Section. For purposes of determining the amount of Tax Credits, the project's 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 beginning at stabilized occupancy, or in the case of acquisition/rehabilitation projects, at the completion of rehabilitation. "Cash flow after debt service" is defined as gross income (all rental income) minus vacancy, operating expenses, property taxes, service amenity expenses, operating and replacement reserves and debt service. Applications that qualify for a reservation of Tax Credits from the Nonprofit set-aside homeless assistance apportionment, as described in subsection 10315(b), 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 pro forma analysis of proposed project cash flow to determine the minimum Tax Credits necessary for financial feasibility and the maximum allowable Tax Credits:
- (1) Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published

by the Committee staff annually. (Consistent with California State law, projects with 16 or more residential units must have an on-site manager's unit. In addition, for every 80 non-manager units in a project, at least one on-site manager's unit shall also be provided. Special needs projects may demonstrate 24-hour desk staffing in lieu of an on-site manager's unit.) The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to TCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting when the equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities.

- (A) 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. 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 (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes.
- (2) 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.
- (3) 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.
- (4) 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
- (5) Variable interest rate permanent loans shall be considered at the underwriting 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. All permanent loan commitments with variable interest rates must demonstrate that a "ceiling" rate is included in the loan commitment or loan documentation. If not, the permanent loan will not be accepted by CTCAC as a funding source.
- (6) "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. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service, must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations.

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

- (7) 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. Applicants must provide an analysis of the anticipated commercial income and expenses.

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 Tax Credits shall be conditioned upon:
  - (1) timely project completion;
  - (2) receipt of amounts of Tax Credits 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 Tax Credits shall be subject to conditions as described in this subsection and applicable statutes. Reservations of Tax Credits 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 Tax Credits shall be made in an amount not to exceed the maximum dollar amount of Tax Credits stated in the Preliminary Reservation. The Committee shall detail in the final reservation letter additional submission requirements necessary to receive tax forms for claiming Tax Credits.

- (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 twelve (12) 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 Tax Credits 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 Internal Revenue Code, to receive a carryover allocation an applicant shall provide evidence that applicant has maintained site control from the time of the initial 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 a carryover allocation is made.
- (e) Placed-in-service. Within one year following the project’s completion of construction, the applicant shall submit documentation required by Section 10322(i)(2).
- (f) Additional Conditions to Reservations and Allocations of Tax Credits. Additional conditions, including cancellation, disqualification and other sanctions may be imposed by the Committee in furtherance of the purposes of the Tax Credits 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. No applicant may appeal the Committee staff evaluation of another applicant’s application. An applicant may file an appeal of a Committee staff evaluation, limited to:
  - (1) determination of the application point score;
  - (2) disqualification from participation in the program pursuant to subsection 10325(c);
  - (3) qualification for “additional threshold requirements,” pursuant to subsection 10325(g); and,
  - (4) determination of the Credit amount, pursuant to Section 10327.
- (b) Timing. The appeal must be submitted in writing and received by the Committee no later than seven (7) calendar days following the transmittal date of the Committee staff ‘s point or disqualification letter. The appeal shall identify specifically, based upon previously submitted application materials, the applicant’s grounds for the appeal.

Staff will respond in writing to the appeal letter within 7 days after receipt of the appeal letter. If the applicant is not satisfied with the staff response, the applicant may appeal in writing to the Executive Director within seven days after receipt of the staff response letter. The Executive Director will respond in writing no more than seven (7) days after receipt of the appeal. If the

applicant is not satisfied with the Executive Director's decision and wishes to appeal the Executive Director's decision, a final appeal may be submitted to the Committee no more than seven days following the date of receipt of the Executive Director's letter. An appeal on any given project, when directed to the Executive Director or the Committee, must be accompanied by a one time, five hundred dollar (\$500) non-refundable fee payment payable by cashier's check to CTCAC. No appeals will be addressed without this payment. The appeal review shall be based upon the existing documentation submitted by the applicant when the application was filed.

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 Tax Credits, 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 Tax Credits 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. Preliminary reservation recipients receiving any competitive readiness points under Section 10325(c)(8) must pay one-half of the allocation fee within 90 days of the preliminary reservation, and the balance as described above. This fee is not refundable.
- (c) Appeal fee. Any applicant submitting an appeal to the Executive Director and/or the Committee with respect to CTCAC's action on a given application, will pay a one time fee to CTCAC. This fee, in the amount of five hundred dollars (\$500) must be paid by cashier's check payable to CTCAC, and must accompany the original appeal letter.
- (d) 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 Tax Credit reserved. Reservations of Tax Credits 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.

- (e) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State, Tax Credits 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 Tax Credits not subject to the Federal housing Credit Ceiling and requesting State Tax Credits, 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 Tax Credits not subject to the Federal 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 Tax Credits. If Tax Credits are 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 Tax Credits was made; certify to the Committee that the Tax Credits 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.
- (f) 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 Tax Credits, whether Federal only, or both Federal and State, are required to execute a regulatory agreement, as a condition to the Committee's making an allocation, which will be recorded against the property for which the Tax Credits are allocated, and, if applicable, will reflect all scoring criteria proposed by the applicant in the competition for Federal and/or State housing Credit Ceiling.
- (b) Responsibility of owner. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Project owners are required to annually certify tenant incomes in conformance with IRS regulation §1.42-5(c)(3) unless the project is a 100 percent (100%) tax credit property exempted under IRC Section 142(d)(3)(A). Owners of a 100% tax credit property must perform a first annual income recertification in addition to the required initial move-in certification. After initial move-in certification and first annual recertification, owners of 100% tax credit properties may discontinue obtaining income verifications. Owners of 100% tax credit properties must continue to check for full-time student status of all households during the entire tenancy of the households and throughout the initial compliance period, and continue recordkeeping in accordance with paragraph (1) of this subsection. These requirements continue if the tax credit property is sold, transferred, or under new management. 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 keep records for each qualified low income building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms, and unit size in square feet); the percentage of residential rental units in the building that are low-income units; the rent charged for each unit; a current utility allowance as specified in 26 CFR Section 142.10(c) and Section 10322(h)(20) of these regulations (for buildings using an energy consumption model utility allowance, that allowance must be calculated using the most recent version of the CUAC); the number of household members in each unit; notation of any vacant units; move-in dates for all units; tenant's (i.e., household) income; documentation to support each household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the Credit period; and, the character and use of any nonresidential portion of the building included in the building's eligible basis.
  - (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.
  - (G) the services specified in the Regulatory Agreement were provided to the tenants 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.

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.

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