CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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Mark Stivers

DATE: September 15, 2016

TO: Tax Credit Stakeholders

FROM: Mark Stivers, Executive Director

SUBJECT: Proposed Regulation Changes with Initial Statement of Reasons

Attached for public review and comment are the regulation changes proposed by the California Tax Credit Allocation Committee (TCAC) staff. This memorandum summarizes the proposed changes. Attached to this memorandum is the complete set of proposed changes with reasoning. The target date for regulation change adoption is December 14, 2016. In conjunction with CDLAC, TCAC staff will conduct public hearings to explain, answer questions, and solicit comments regarding the proposals at the following times and locations:

Tuesday October 4, 2016
Oakland, 12:30 pm
Elihu M. Harris Building
1515 Clay Street, Auditorium
Oakland, CA 94612

Wednesday, October 5, 2016
San Diego, 12:30 pm
San Diego Housing Commission
1122 Broadway, Conference Room 426
San Diego, CA 92101

Thursday, October 6, 2016
Los Angeles, 9:30 am
Ronald Reagan State Building
300 South Spring Street, Auditorium
Los Angeles, CA 90013

Friday, October 7, 2016
Sacramento, at 9:30 am
EDD
722 Capitol Mall, Auditorium
Sacramento CA 95814

Please see the public notice for additional information regarding public comments on this proposed regulation changes. Interested persons wishing to express their views on the proposed regulation changes may do so at a public hearing and/or may submit written comments to TCAC by 5:00 pm on Monday, October 31, 2016.

Summary of Changes Proposed

The following section summarizes all of the proposed changes to the TCAC regulations. Those changes that staff considers most significant are highlighted in bold. The attached Initial Statement of Reasons provides the actual language and the explanation for each proposed change.

1. **For purposes of transfer events, redefine "qualified capital needs assessment" to require a determination of the "short-term work" over a three year period, as opposed to two years, and of the "long term work" over the succeeding 12 years, as opposed to 13 years. Section 10302(ff) . Page 1.**

2. **Alter the first priority for homeless assistance projects in the nonprofit setaside by** 1) referencing CalHFA's Local Government Special Needs Housing Program and HCD's No Place Like Home Program in the list of enumerated programs receiving priority; 2) combining the first priority (projects with funding from enumerated programs) and second priority (projects with rental or operating assistance funding); and **3) requiring that homeless assistance projects reserve vacant homeless assistance units for homeless persons who are on either a list of most of vulnerable persons developed by the relevant Continuum of Care or a list of most frequent health care users developed by the relevant county health department, where either of such lists exists. Section 10315. Page 2.**

3. **To address the significant over-allocation of state credits, create a second supplemental set-aside in an amount to be set by the Executive Director annually. Section 10315. Page 2.**

4. Clarify that At-Risk and Special Needs/SRO projects, if unsuccessful in the Nonprofit set-aside, may fall down and compete in their respective set-asides. Section 10315. Page 2.

5. **To address the over-allocation of state credits, prohibit awards of state credits to additional 9% projects after the allocation amount is reached but consider all remaining projects eligible for state credits as DDA projects. Section 10317(c). Page 7.**

6. **To address the over-allocation of state credits, require special needs projects seeking state credits in addition to the 30% DDA basis boost to maximize basis except as specified. Section 10317(d). Page 8.**

7. Codify the statutory limits on cash distribution from projects that have received state credits. Section 10317(j). Page 8.

8. Enact regulation changes necessary to implement SB 837 allowing for the outright sale ("certification") of state credits. Section 10317(k). Page 9.

9. Make conforming changes to Item 1 above and delete a mistaken cross-reference. Section 10320(b)(2). Page 10.

10. Codify recent guidance relating to transfer events and resyndications and more clearly distinguish the transfer event requirements related to resyndications. Section 10320(b)(4). Page 12.

11. Eliminate the "reproduction or applicant assembly error" exception to the requirement that TCAC shall not accept additional documentation from the applicant after the application deadline. Section 10322(e). Page 13.

12. Clarify that neither scores, tiebreakers, nor credit amounts can increase but can decrease as a result of allowable staff adjustments to development and operational costs. Section 10322(f). Page 14.

13. Clarify the types of applications that must submit an appraisal. Section 10322(h)(9). Page 14.

14. Require appraisals for new construction projects to be within 120 days on either side of the purchase contract date or transfer date, except that TCAC will continue to allow appraisals up to one year old for a new construction project if the latest purchase contract was executed within one year of the application deadline. Section 10322(h)(9). Page 14.

15. Move appraisal underwriting standards to the underwriting section of Section 10327. Section 10322(h)(9). Page 14.

16. With respect to the authority to use a streamlined market study for certain rehabilitation projects, clarify that a project is eligible if *tenant-paid* rents do not increase by more than 5%. Section 10322(h)(10). Page 16.

17. Require all market studies to calculate the project's lifetime rent benefit. Section 10322(h)(10). Page 16.

18. Allow existing projects receiving awards from the Multifamily Affordable Housing Solar Roofs Program to utilize the CUAC. Section 10322(h)(21). Page 17.

19. Allow applicants to state that they are exempt from the 10-year rule but require an attorney to opine that the project complies with the rule if the project is not exempt. Section 10322(h)(25)(B). Page 18.

20. Eliminate the ability of a project sponsor or architect to perform a capital needs assessment. Section 10322(h)(26)(B). Page 18.

21. Clarify that TCAC requires a pre-rehabilitation reserve study. Section 10322(h)(26)(B). Page 18.

22. Delete redundant and conflicting language relating to waivers of minimum construction standards. Section 10322(h)(26)(B). Page 18.

23. Update the list of documents an applicant must provide at placed in service. Section 10322(i). Page 19.

24. Exempt scattered site projects of fewer than 20 units from proportionate scoring for services amenities. Section 10325(c). Page 22.

25. Conform the language relating to the timing of land donation appraisals with the changes proposed in Section 10322(h)(9) for the timing of appraisals generally. Section 10325(c)(1)(C). Page 23.

26. Clarify that donated building values shall be considered for tiebreaker credit only to the extent that those existing buildings are to be retained for the project. Section 10325(c)(1)(C). Page 23.

27. Delete an outdated reference to the "pilot" Native American apportionment. Section 10325(c)(1)(C). Page 23.

28. **For 2018 and beyond staff proposes to alter how rental assistance is valued for purposes of both point scoring and the tiebreaker. Section 10325(c)(1)(C). Page 23.**

29. Provide that a project's tie-breaker shall not be reduced for off-site costs if the total off-site costs are less than or equal to $100,000. Section 10325(c)(1)(C). Page 23.

30. With respect to applicant experience points, require accountant to certify positive cash flow based on a project's last financial statement, as opposed to a statement less than one year old. Section 10325(c)(2)(A)(i). Page 25.

31. Restore the requirement that management companies managing less than two *active* TCAC projects (or less than one *active* special needs TCAC project) contract with more experienced company. Section 10325(c)(2)(B)(ii). Page 26.

32. Clarify that a project need not notify TCAC of a limited partner change absent a transfer event. Section 13025(c)(3)(M). Page 27.

33. Given the removal of the cashier's check requirement in Section 10335, allow negative points for uncollectable checks after TCAC has given the applicant an opportunity to correct. Section 10325(c)(3)(V). Page 27.

34. Allow a scattered site applicant with differing housing types to choose between scoring the project in the aggregate or by site for housing type points. Section 10325(c)(4). Page 27.

35. Allow transit site amenity points for proximity to ferry service. Section 10325(c)(5)(A) 1. Page 28.

36. Conform the point scoring language for large family projects with the 2015 change to require only 25% three-bedroom units. Section 10325(c)(5)(B). Page 29.

37. Allow five sustainability points for new construction projects for certification from the PHIUS, Passive House, and Living Building Challenge programs and one point for WELL certification. Section 10325(c)(6)(A). Page 29.

38. Reference the 2016 building codes in the energy efficiency point standards. Section 10325(c)(6)(B). Page 30.

39. Require that each building in a new construction project receive at least half the percentage of energy efficiency improvement for which the project is seeking points. Section 10325(c)(6)(B). Page 30.

40. Clarify the definition of "high-rise multifamily" for purposes of energy efficiency points. Section 10325(c)(6)(B). Page 30.

41. Allow five sustainability points for rehabilitation projects for certification from the PHIUS, Passive House, and Living Building Challenge programs and one point for WELL certification. Section 10325(c)(6)(C). Page 31.

42. Require that each building in a rehabilitation project receive at least half the percentage of energy efficiency improvement for which the project is seeking points. Section 10325(c)(6)(D). Page 32.

43. Establish a minimum of 30% reduction in tenant loads to receive points photovoltaic generation. Section 10325(c)(6)(E) 1. Page 32.

44. Establish a minimum offset of 10,000 gallons annually to receive points for use of reclaimed water, greywater, or rainwater. Section 10325(c)(6)(F). Page 33.

45. Continue to require sustainability workbook submission for projects receiving WELL points. Section 10325(c)(6)(G) 1. Page 33.

46. Allow rehabilitation projects seeking points for photovoltaic generation to meet the certification requirements from the new Multifamily Affordable Housing Solar Roofs Program (MAHSRP). Section 10325(c)(6)(G) 6. (i). Page 34.

47. Allow a water system engineer, HERS Rater, GreenPoint Rater, or LEED Rater to certify compliance with water efficiency point requirements. Section 10325(c)(6)(G) 7. Page 34.

48. Eliminate overlap in readiness point categories. Section 10325(c)(8). Page 34.

49. Exempt hard loans for which the applicant is not seeking public funds points or tiebreaker benefit from the readiness point requirement to have all environmental review complete. Section 10325(c)(8). Page 34.

50. **Beginning in 2018, for purposes of tiebreaker credit only and not for public funds points, discount the value of assumed or recycled loan proceeds by 50%. Section 10325(c)(10)(A). Page 36.**

51. **Beginning in 2018, for tiebreaker purposes only, exclude seller carryback notes or loans that derive directly or indirectly from sale proceeds. Section 10325(c)(10)(A). Page 36.**

52. Clarify that land donations or soft financing will not receive tiebreaker credit if they come from a partner or proposed partner in the limited partnership and that land donations shall not involve land that has been owned previously by a related party or a partner or proposed partner, except as specified. Section 10325(c)(10)(A). Page 36.

53. Codify the current TCAC guidance on how to document that private soft resources meet the regulatory requirements. Section 10325(c)(10)(A). Page 36.

54. **Beginning in 2018, eliminate the increase to the numerator of the first tie-breaker factor for rental assistance. Section 10325(c)(10)(A). Page 36.**

55. Relocate tiebreaker language regarding land leases and the use of an appraisal reviewer. Section 10325(c)(10)(A). Page 36.

56. **Eliminate the ability for applicants with projects exceeding the high cost test to petition the committee for special consideration. Section 10325(d). Page 39.**

57. Correct a drafting error related to the number of geographic regions. Section 10325(d)(2). Page 40.

58. Clarify the site control language to require that the applicable document must "connect" the applicant with the owner or public agency, as opposed to directly involving the two parties. Section 10325(f)(2)(A). Page 41.

59. Eliminate the requirement to include various development team contracts with a 9% credit application. Section 10325(f)(6). Page 42.

60. For competitive applications only, eliminate the requirement for applicants to consult with the energy analyst prior to application. Section 10325(f)(7)(A). Page 42.

61. Allow the CABEC Certified Energy Analyst to have a 2013 or 2016 certification. Section 10325(f)(7)(A). Page 42.

62. Exempt projects with Passive House Institute US (PHIUS), Passive House, or Living Building Challenge certification from the sustainable building methods workbook requirement. Section 10325(f)(7)(A). Page 42.

63. Correct a mistaken cross-reference to the CDLAC regulations. Section 10325(f)(7)(A). Page 42.

64. Require applicants to provide all units with a stove and refrigerator, unless the unit is an SRO unit. Section 10325(f)(7)(E). Page 44.

65. Clarify accessibility requirements for both new construction and rehabilitation projects. Section 10325(f)(7)(K). Page 44.

66. Allow the Director to approve a waiver to accessibility requirements if the applicant and architect can demonstrate impracticality or excessive expense, as opposed to just excessive expense. Section 10325(f)(7). Page 45.

67. Update the documentation requirements relating to verification of compliance with minimum construction standards at placed in service. Section 10325(f)(7). Page 45.

68. Correct a cross-reference. Section 10325(g). Page 46.

69. Reduce minimum size requirements by 50 square feet in one- and two-bedroom units and 100 square feet in larger units and clarify that waivers must be approved prior to application submission. Section 10325(g)(1)(B). Page 47.

70. More clearly define "outdoor play/recreational facilities" required for the large family housing type and allow a waiver for rehabilitation projects with existing facilities. Section 10325(g)(1)(D). Page 47.

71. Allow waivers of the common area size requirements for rehabilitation projects with existing common areas. Section 10325(g)(1)(E). Page 48.

72. Delete the requirement for gas dryers when the property has a gas connection and the owner is placing dryers in units. Section 10325(g)(1)(G). Page 49.

73. **Prohibit new construction, large-family, competitive tax credit projects in areas of low-opportunity unless the project is part of a concerted community revitalization program involving the local government and significant investment outside of the project. Section 10325(g)(1)(J). Page 49.**

74. Reduce minimum size requirements by 50 square feet in one- and two-bedroom senior units and clarify that waivers must be approved prior to application. Section 10325(g)(2)(E). Page 50.

75. Allow waivers of the common area size requirements for rehabilitation projects with existing common areas. Section 10325(g)(2)(G). Page 50.

76. Delete the requirement for gas dryers when the property has a gas connection and the owner is placing dryers in units. Section 10325(g)(2)(I). Page 51.

77. Alter the size requirements for SRO units. Section 10325(g)(3)(B). Page 51.

78. Add to the list of special needs populations families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county. Section 10325(g)(4). Page 52.

79. Allow special needs projects subject to meet a second housing type or unit mix requirement to choose the large family housing type. Section 10325(g)(4). Page 52.

80. **Require a 9% resyndication project to provide a similar level of services as to what was required under the previous regulatory agreement and allow waivers under specified circumstances. Section 10325(i)(11)(A). Page 52.**

81. Clarify that non-competitive applicants may meet the general partner experience requirements without providing the accountant certification. Section 10326(g)(5). Page 53.

82. Eliminate the requirement to include various development team contracts with a 4% credit application. Section 10326(g)(5). Page 53.

83. **Require resyndication applicants to demonstrate in their capital needs assessment that the project has a rehabilitation need of $20,000 per unit within the next seven years. Section 10326(g)(7). Page 54.**

84. **Require a 4% resyndication project to provide a similar level of services as to what was required under the previous regulatory agreement and allow waivers under specified circumstances. Section 10326(g)(8). Page 55.**

85. Apply the 9% standards for eventual homeownership to 4% projects. Section 10326(j)(5). Page 56.

86. Clarify that TCAC may adjust a project's basis to reflect the costs reduced to comply with TCAC standards. Section 10327(a). Page 57.

87. **For 9% new construction projects only, increase the maximum base developer fee in cost to $2.2 million and then adjust the maximum developer fee limit to reflect a project's cost efficiency using the same test employed for the high-cost threshold. Section 10327(c)(2). Page 57.**

88. Correct a mistaken cross-reference. Section 10327(c)(5). Page 59.

89. Clarify that the architect certification for threshold basis limit increases must be included in both the initial and placed in service application. Section 10327(c)(5)(A). Page 60.

90. Allow the current threshold basis limit for using renewable energy generation to supply 50% of the project's total energy load to tenant loads only and clarify that a project may only claim the threshold basis limit increases for meeting both tenant and common area loads if the energy generation counted towards each standard does not overlap. Section 10327(c)(5)(B)(1) and (2). Page 61.

91. Reflect the new 2016 building code in the threshold basis limit increase for energy efficiency. Section 10327(c)(5)(B)(3). Page 62.

92. Establish establish a minimum offset of 20,000 gallons annually to receive the threshold basis limit increase for water efficiency. Section 10327(c)(5)(B)(5). Page 62.

93. For threshold basis limit increases related to sustainability, allow certification PHIUS, Passive House, or Living Building Challenge raters. Section 10327(c)(5)(B). Page 62.

94. For threshold basis limit increases verified with the sustainable building methods workbook, delete the requirement for the applicant to also submit the energy consumption and analysis report. Section 10327(c)(5)(B). Page 62.

95. Allow a water system engineer to certify achievement of the water efficiency threshold basis limit increase requirements and require all certifications to specifically confirm the annual offset of potable water. Section 10327(c)(5)(B). Page 62.

96. Eliminate the requirement for projects providing community gardens to submit a management plan. Section 10327(c)(5)(B). Page 62.

97. Allow a seismic engineer to certify the costs of seismic work. Section 10327(c)(5)(D). Page 63.

98. **Provide a 10% threshold basis limit increase for projects in high-opportunity areas, as defined. Section 10327(c)(5)(F). Page 63.**

99. Relocate and rework the underwriting standards for land and improvement values. Section 10327(c)(6). Page 64.

100. Apply the existing default credit pricing for self-syndication to 4% projects. Section 10327(c)(9). Page 66.

101. Require new construction projects that exceed the AB 744 parking ratios to exclude the cost of the excess parking spaces from basis. Section 10327(c)(10). Page 66.

102. Grandfather in a 9% project's qualified census tract (QCT) status for one year in the event that the location falls out of a QCT. Section 10327(d)(1). Page 67.

103. After TCAC has awarded all state credits available for 9% projects, designate the remaining 9% applications seeking state credits as DDA projects. Section 10327(d)(3). Page 68.

104. Exempt projects with less than 50% tax credit units from the TCAC cash flow limits. Section 10327(g)(6). Page 68.

105. Remove the exception from the requirement that commercial income shall not support the residential portion of the project. Section 10327(g)(7). Page 69.

106. Remove the requirement that appeal fees be paid by cashier's check. Section 10330(b). Page 69.

107. Remove the requirement that all fees be paid by cashier's check. Section 10335. Page 70.

108. Remove the requirement that 9% projects receiving readiness points pay half of the allocation fee within 90 days of reservation. Section 10335. Page 70.

109. Codify the fine authority granted by AB 1920, if enacted. Section 10337(f). Page 72.

2016 Proposed Regulation Change with Reason
September 15, 2016

Section 10302(ff)

Proposed Change:

10302(ff) "Qualified Capital Needs Assessment" shall mean a capital needs assessment for a property subject to a Transfer Event dated within one hundred eighty (180) days of the proposed Transfer Event which (i) meets the requirements of (a) the Fannie Mae Multifamily Instructions for the PNA Property Evaluator, (b) Freddie Mac's Property Condition Report requirements in Chapter 14 of the Small Balance Loan Addendum, (c) HUD's Multifamily Capital Needs Assessment section in Appendix 5G of the Multifamily Accelerated Process Guide, or (d) Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Designation E 2018-08) utilizing a recognized industry standard to establish useful life estimates for the replacement reserve analysis, and (ii) clearly sets forth (a) the capital needs of the project for the next ~~two (2)~~three (3) years (the "Short-Term Work") and the projected costs thereof, and (b) the capital needs of the project for the subsequent ~~thirteen (13)~~twelve (12) years (the "Long Term Work") and the projected contributions to reserves that will be needed to accomplish that work.

Reason: The 2015 regulation changes added a requirement that owners participating in a Transfer Event fund a Short Term Work reserve to cover the project's capital needs in the next two years and right-size annual replacement reserve contributions to cover capital needs identified for years three to fifteen. If the Transfer Event is concurrent with a resyndication, the regulations require the applicant to establish the Short Term Work reserve only. In either case, if the Transfer Event involves no distribution of net equity, the requirement is waived.

When these requirements were proposed and debated, staff envisioned that resyndication projects would not be able to claim eligible basis for the amount of the Short Term Work reserve. As a result, staff agreed to limit the Short Term Work reserve to two years rather than three. Subsequent to adoption of the new requirements, staff allowed resyndication applicants to use the Short Term Work reserve for the rehabilitation and even to claim basis for these costs if the Short Term Work amount was funded by (i) a credit from the seller, (ii) a reduction in the purchase price of the project, and/or (iii) general partner equity. Most resyndication applicants subject to the Transfer Event requirements have chosen this option. Given this allowance to claim basis on the Short Term Work amount, staff now believes it is appropriate to set the Short Term Work period at three years. While this revision affects all Transfer Events, the change is largely a wash for projects with a Transfer Event not related to a resyndication (i.e., straight sales or refinances), because while the Short Term Work reserve amount will increase the Long Term Work amount and corresponding reserve requirements will decrease accordingly.

Staff further notes that the transfer event requirements have been much less onerous than stakeholders generally predicted. The first 32 capital needs covenants have had an average short term work amount of $631 per unit. Increasing the Short Term Work period to three years is unlikely to move this average beyond $1000 per unit. The long-term replacement reserve has averaged $320 per unit per year, only slightly higher than TCAC's standard $250 or $300 per unit per year requirements.

See the related changes in Section 10320(b)(2) and 10320(b)(4).

Section 10315

Proposed Change:

10315 Set-asides and Apportionments

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

(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) in the following priority order:

- First, projects with 1) McKinney-Vento Homeless Assistance Act, MHP-Supportive Housing Program, HCD Veterans Housing and Homeless Prevention Program, ~~or~~ Mental Health Services Act (MHSA), CalHFA Local Government Special Needs Housing Program, or HCD No Place Like Home development capital funding committed~~. The~~ for which the amount of development capital funding committed shall be at least $500,000 or $10,000 per unit for all units in the project (irrespective of the number of units assisted by the referenced programs), whichever is greater; or 2) ~~.~~

- ~~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~~ Second, other qualified homeless assistance projects.

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

(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(A) Has a primary nighttime residence that is a public or private place not meant for human habitation;
(B) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
(C) Is exiting an institution and resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

(2) Individual or family who will imminently lose their primary nighttime residence, provided that:
(A) Residence will be lost within 14 days of the date of application for homeless assistance;
(B) No subsequent residence has been identified; and
(C) The individual or family lacks the resources or support networks needed to obtain other permanent housing.

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
(A) Are defined as homeless under the other listed federal statutes;
(B) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
(C) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and
(D) Can be expected to continue in such status for an extended period of time due to special needs or barriers.

(4) Any individual or family who:
(A) Is fleeing, or is attempting to flee, domestic violence;
(B) Has no other residence; and
(C) Lacks the resources or support networks to obtain other permanent housing.

To compete as a homeless assistance project, the applicant shall commit to reserving vacant homeless assistance units for occupancy by persons or households referred by either 1) the relevant Continuum of Care from a list of most of vulnerable persons, or 2) the relevant county health department from a list of most frequent health care users, where either of such lists exists.

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. For purposes of implementing Section 50199.21(a), an area is eligible under the Section 515 program on January 1 of the calendar year in question if it either resides on the Section 515 designated places list in effect the prior September 30, or is so designated in writing by the USDA Multifamily Housing Program Director. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current

year. In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.

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

(1) RHS and HOME 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, RHS's Section 515 Rural Rental Housing Loan Program, or a reservation from a Participating Jurisdiction or the State of California of at least $1,000,000 in HOME funding.

All projects meeting the RHS and HOME program apportionment eligibility requirements shall compete under the RHS and HOME program apportionment. Projects that are unsuccessful under the apportionment shall then compete within the general rural set-aside described in subsection (c). Any amount reserved under this subsection for which RHS or HOME 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.

(2) Native American apportionment. One million dollars ($1 million) in annual federal credits shall be available during the first round and, if any credits remain, in the second round for applications proposing projects on land to be owned by a Tribe, whether the land is owned in fee or in trust, provided that if the land is off reservation occupancy will be legally limited to tribal households. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by TCAC under Section 10305(h). In addition, tribal communities shall garner the minimum points available for General Partner/Management Company Characteristics under Section 10325(c)(2) or shall partner or contract with a developer and with a property management entity that would garner the minimum points available for General Partner/Management Company Characteristics under Section 10325(c)(2), except that the management company minimum scoring cannot be obtained through the point category for a housing tax credit certification examination.

(d) "At-Risk" set-aside. After accounting for the second supplemental set-aside described in (g), f~~F~~ive 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 and apply as an "At risk" housing type pursuant to subsection (~~g~~h) below. Any proposed project that applies and is eligible under the Nonprofit set-aside but is not awarded credits from that set-aside shall be eligible to be considered under this At-Risk set-aside if the project meets the housing type requirements.

(e) Special Needs/SRO set-aside. After accounting for the second supplemental set-aside described in (g), f~~F~~our percent (4%) 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 and apply as a Special Needs or Single Room Occupancy housing type project pursuant to these regulations. Any proposed ~~homeless assistance~~ project that applies and is eligible under

the Nonprofit Set Aside, but is not awarded credits from that set-aside, shall be eligible to be considered under this Special Needs/SRO set-aside if the project meets the housing type requirements.

(f) First sSupplemental set-aside. After accounting for the second supplemental set-aside described in (g), aAn 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.

(g) Second supplemental set-aside. For each calendar year an amount of the Federal Credit Ceiling determined by the Executive Director, calculated as of February first of the calendar year, shall be held back to fund projects designated as a DDA project pursuant to Section 10327(d)(3).

(h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable "additional threshold requirements" of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(10) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

Housing Type Goal
Large Family 65%
Special Needs 25%
Single Room Occupancy 15%
At-Risk 15%
Seniors 15%

(hi) Geographic Apportionments. Annual apportionments of Federal and State Credit Ceiling shall bemade in approximately the amounts shown below:

Geographic Area	**Apportionments**
City of Los Angeles	17.6%
Balance of Los Angeles County	17.2%
North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)	10.8%
Central Valley Region (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	8.6%
San Diego County	8.6%
Inland Empire Region (San Bernardino, Riverside, Imperial Counties)	8.3%
Orange County	7.3%
Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo	6.7%

Counties)	
South and West Bay Region (San Mateo, Santa Clara Counties)	6.0%
Central Coast Region (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5.2%
San Francisco County	3.7%

(~~i~~j) 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~~g) from the annual Credit Ceiling.

Reason: Staff proposes three independent sets of changes to this section. The first set relates to the priority for homeless assistance projects within the non-profit set-aside and contains three specific elements: 1) the addition of two new statewide funding sources, CalHFA's Local Government Special Needs Housing Program and HCD's No Place Like Home Program, to the list of enumerated programs receiving priority; 2) a combination of the first priority (projects with funding from enumerated programs) and second priority (projects with rental or operating assistance funding); and 3) a requirement that homeless assistance projects reserve vacant homeless assistance units for homeless persons who are on either a list of most of vulnerable persons developed by the relevant Continuum of Care or a list of most frequent health care users developed by the relevant county health department, where either of such lists exists.

With respect to the list of enumerated funding programs, these two new programs serve a similar population and function as the currently enumerated programs. Staff believes it is appropriate to afford them similar priority.

With respect to combining the first and second priorities, staff is persuaded that homeless assistance projects with rental assistance are of similar value to projects with capital funds from the enumerated programs and should be afforded equal priority.

With respect to the requirement to reserve homeless assistance units for certain individuals or households, staff believes that homeless assistance units receiving priority in this set-aside should be targeted to the most vulnerable or costly homeless persons. Not only are such individuals among the most needy, but this requirement has the ability to save significant public resources in other arenas, particularly health care and social services. Moreover, staff believes that strengthening partnerships between owners and the local Continuum of Care or county health department will streamline the outreach process and help owners fill the units set aside for homeless households. In accordance with HUD rules, TCAC does not allow units to be held vacant more than 60 days, so the requirement to reserve a particular unit will necessarily lapse if the unit is not filled within this time.

The second set of changes relate to the creation of a second supplemental set-aside to address the significant over-allocation of state credits. In late 2015, staff issued a document describing the over-allocation problem and proposing a variety of possible solutions. Staff then held open forums in Northern and Southern California to solicit feedback and additional ideas. On March

15, 2016 staff stated its intent (see http://www.treasurer.ca.gov/ctcac/2016/overallocation.pdf) to pursue two strategies, including a second supplemental set-aside.

Under this proposal, once the limit on state credits for a particular competitive round has been reached, TCAC will award state credits to no more projects but will use the authority provided by federal law to declare all remaining projects eligible for state credits to be DDA projects (see the related changes in Sections 10317(c) and 10327(d)(3)). This will ensure that all 9% projects continue to receive credits based on 130% of basis, either through federal credits or a combination of federal and state credits. A second supplemental set-aside is needed to accommodate the additional federal credit awards to the additional DDA projects. Staff proposes to allow the Executive Director to set the amount of the second supplemental set-aside annually given that the amount is a projection that will need refining and is likely to vary over time. Staff further proposes to reduce both the other set-asides (except for the non-profit and rural set-asides which are fixed by statute as a percentage of the total federal credits) and the geographic apportionments proportionately to ensure fairness. Based on the forward commitment of 2016 credits in 2015, the set-aside would have been $2.3 million in annual federal credits to break even in 2015. In 2016, it is likely that the over-allocation of state credits will be in the neighborhood of $19.3 million, which would be down significantly from 2015. Based on this amount of over-allocation, the set-aside would only need to be $1.25 million in federal credits to break even. TCAC will continue to monitor the situation, however, as future state credit requests may decrease due to the related change in Section 10317(d) but increase in the second round of 2017 and beyond when the grandfathering of DDA status expires.

The third set of proposed changes clarifies that At-Risk and Special Needs/SRO projects, if unsuccessful in the Nonprofit set-aside, may compete in their respective set-asides.

Section 10317(c)

Proposed Change:

10317(c) Limit on Credit amount. Except for Special Needs applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area (DDA). Once CTCAC has awarded all state credits available for credit ceiling applications, CTCAC shall not award state credits to any additional credit ceiling projects but shall consider remaining projects seeking state credits as a difficult development area (DDA) pursuant to Section 10327(d)(3).

Reason: This change is part of the effort to reduce the over-allocation of state credits described in Section 10315. Under this proposal, once the limit on state credits for a particular competitive round has been reached, TCAC will award state credits to no more projects but will use the authority provided by federal law to declare all remaining projects eligible for state credits to be DDA projects (see the other related change in Section 10327(d)(3)). This will ensure that all 9% projects continue to receive credits based on 130% of basis, either through federal credits or a combination of federal and state credits.

Section 10317(d)

Proposed Change:

10317(d) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(F)(ii), 17058(b)(2)(E)(ii), and 23610.5(b)(2)(E)(ii), applications for Special Needs projects within a QCT or DDA may request the federal 130% basis boost and may also request State credits, provided that the applicant does not voluntarily reduce basis related to federal tax credits except to reduce the credit request to the amount available in the project's geographic region or the $2.5 million limit. Under authority granted by Internal Revenue Code Section 42(d)(5)(B)(v), CTCAC designates Special Needs housing type applicants for credit ceiling credits as Difficult Development Area projects, regardless of their location within a federally-designated QCT or DDA.

Reason: This change is the second proposal to address the over-allocation of state credits described in Section 10315. It requires special needs projects seeking state credits in addition to the 30% DDA basis boost to maximize basis (i.e., not voluntarily reduce basis). While special needs projects would still have access to DDA status and state credits, this will ensure that state credits are only used for such projects when necessary for feasibility. Past experience has shown that many special needs projects, if they had maximized their requested basis, would not have needed state credits. Because the tiebreaker formula now adds back most voluntary reductions in basis, this change should have little to no effect on tiebreaker scores for special needs projects. Staff proposes to allow exceptions to the requirement to maximize basis when the project's credit request is reduced 1) to not exceed the amount of credits available in the project's geographic region; or 2) to not exceed the $2.5 million limit on credits awarded to a single project. For the purposes of this section only (i.e., not for the addback provisions in the second tiebreaker factor), such reductions will not be considered voluntary.

Section 10317(j)

Proposed Change:

10317(j) All projects that have received state credits shall comply with the limitations on cash distributions required pursuant to Sections 12206(d), 17058(d), and 23610.5(d) of the Revenue and Taxation Code.

Reason: Since the enactment of the state low-income housing tax credit in 1987, state law has placed cash distribution limits on projects that have received state credits. In general, the annual limit is the lesser of:

(i) 8 percent of the owner equity, which is the sum of original tax credit equity and general partner equity contributions; or
(ii) 8 percent of twenty percent (i.e., 1.6%) of the adjusted basis of the building as of the close of the first taxable year of the credit period, which means the original tax credit basis minus the first year depreciation.

If the project contains market rate units, the owner may instead elect to use a limit equal to the cash flow from the market rate units, provided that operating costs are allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

The proposed addition of this subdivision to the regulations in intended simply to highlight and remind owners of the statutory requirement.

Section 10317(k)

Proposed Change:

10317(k)(1) In the initial application, applicants requesting state credits shall make an irrevocable election to sell ("certificate") or not sell all or any portion of the state credit, as allowed pursuant to Revenue and Taxation Code Sections 12206(o), 17058(q), and 23610.5(r). After a reservation is made, the applicant may only rescind an election to sell if the state credit pricing falls below the required 80 cents per dollar of credit and with the approval of the Executive Director.

(2) At the request of the owner at placed in service, TCAC shall issue the Form 3521A tax forms to a non-profit general partner member of the partnership, which shall not be considered a sale of the credits to another taxpayer or other party.

(3) An applicant who elects to sell any portion of the state credit and a buyer who later resells any portion of the credit (credits may be resold only once) shall report to CTCAC within 10 days of the sale of the credit, in a form specified by CTCAC, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the party or parties to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received for the sale of the credit. At the request of the owner, CTCAC shall reissue the Form 3521A in the name of the buyer.

(4) CTCAC shall deem, including but not limited to, the following persons to meet the statutory requirement that a buyer of a certificated state credit be a taxpayer allowed the state low-income housing tax credit for the taxable year of the purchase or any prior taxable year or be a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code for the taxable year of the purchase or any prior taxable year:

(A) a syndication fund operated by a sponsor who has operated other funds allowed the state or federal credit.
(B) a syndication fund of which at least 25% is owned by taxpayers allowed the state or federal credit.
(C) An investor in either of the funds described in paragraphs (A) and (B).

Reason: SB 837 of 2016 allows projects awarded state credits in 2017-2019 to "certificate" the credits. Certification means that the state credits may be sold outright to the state credit investor, as opposed to inviting the state credit investor into the partnership. Under this model, the state credit investor need not have an ownership interest in the project. Because federal tax law treats

a purchased credit differently from an allocated received as a partner, this new law has the ability to eliminate the adverse federal tax impact of state credits for the investor and significantly increase state credit pricing. Applicants seeking state credits will have the ability to use this new certification model or continue with the traditional investor as a partner model. If the applicant chooses the certification model, the law requires the following:

1. The applicant must make an irrevocable election at initial application to certificate or not certificate. After reservation, the election to certificate may only be revoked if the credit pricing falls below the minimum described below.

2. The state credit pricing for certificated credits must be at least 80 cents on the dollar.

3. The state credit buyer must be or have been an investor in state or federal tax credits for any other project in California.

4. The applicant must report specified information to TCAC within 10 days of the sale. TCAC intends to create a form for this purpose.

5. The initial state tax credit buyer may only resell the credit once. Thereafter, it may not be resold. The seller must likewise notify TCAC of the sale within ten days.

6. The applicant remains solely liable for all obligations and liabilities imposed by the state tax credit program.

The proposed changes seek to codify relevant statutory provisions in the TCAC regulations and provide additional guidance. At the request of an owner, TCAC will issue the Form 3521A tax forms to a non-profit general partner member of the partnership. This will facilitate the sale to the ultimate investor. In addition, once the credits are sold, upon request of the owner TCAC will reissue the Form 3521A in the name of the buyer to facilitate the claiming of the credits. The proposed changes also seek to clarify who meets the requirement that the buyer be or have been an investor in state or federal tax credits for any other project in California.

Section 10320(b)(2)

Proposed Change:

10320(b)(2) In addition to any applicable requirements set forth in Section 10320(b)(1), all Transfer Events shall be subject to the prior written approval of the Executive Director. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(M), in addition to other remedies. The following requirements apply to all Transfer Events for which approval is requested on or after October 21, 2015:

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

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

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

(ii) perform the Short Term Work within ~~two (2)~~three (3) years from the date of the Transfer Event;

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

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

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

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

Reason: The change in clause (B)(ii) corresponds to the change proposed for Section 10302(ff). The deletion of paragraph (C) corrects a drafting error. The cross reference is to a paragraph proposed in the initial 2015 regulation package but never adopted.

Section 10320(b)(4)

Proposed Change:

10320(b)(4) If a projects seeks to receive a new reservation of 9% or 4% tax credits concurrently with a Transfer Event or during the time that the project is subject to a Capital Needs Covenant, the following provisions shall apply in lieu of paragraph (2):

(A) The applicant shall submit a Qualified Capital Needs Assessment. In cases in which a third-party lender is providing financing, the Qualified Capital Needs Assessment shall be commissioned by said third-party lender.

(~~A~~B) ~~The underwriting for the new reservation of 9% or 4% credits shall include a capitalized replacement reserve in an amount equal to the cost of any Short Term Work which will not be performed as of the date of the syndication of the new 9% or 4% tax credits reserved for the project.~~The rehabilitation scope of work shall include all of the Short Term Work. The applicant may receive eligible basis for the costs of the Short Term Work only if the applicant can demonstrate that the Short Term Work was funded by one of the following:

(i) a credit from the seller of the project equal to the costs of Short Term Work.
(ii) a reduction in the purchase price of the project as compared to the purchase price of the project had the project not been subject to the Transfer Event requirement, as shown by an appraisal that calculates the impact of the Short Term Work requirement on value.
(iii) general partner equity.
(iv) developer fee contributed to the project (a deferred developer fee does not qualify).

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

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

The Executive Director shall waive or modify the requirements of this Section 10320(b)(4) if the owner can demonstrate that the Transfer Event will not produce, prior to any distributions of Net Project Equity to parties related to the sponsor, developer, limited partner(s) or general partner(s), sufficient Net Project Equity to fund all or any portion of the work contemplated by the Qualified Capital Needs Assessment. There shall be a presumption that a Transfer Event has insufficient Net Project Equity if no Net Project Equity from the Transfer Event is distributed to parties related to the sponsor, developer, general partner(s) or limited partner(s) of the owner other than a distribution or a payment to the limited partner(s) of the selling entity in the amount

equal to, or less than, all federal, state, and local taxes incurred by the limited partner(s) as a result of the Transfer Event.

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

Reason: The 2015 regulation changes added a requirement that owners participating in a Transfer Event fund a Short Term Work reserve to cover the project's capital needs in the next two years and right-size annual replacement reserve contributions to cover capital needs identified for years three to fifteen. If the Transfer Event is concurrent with a resyndication, the regulations require the applicant to establish the Short Term Work reserve only. In either case, if the Transfer Event involves no distribution of net equity, the requirement is waived.

When these requirements were proposed and debated, staff envisioned that resyndication projects would not be able to claim eligible basis for the amount of the Short Term Work reserve. Subsequent to adoption of the new requirements, staff allowed resyndication applicants to use the Short Term Work reserve for the rehabilitation and even to claim basis for these costs if the Short Term Work amount was funded by (i) a credit from the seller, (ii) a reduction in the purchase price of the project, (iii) general partner equity, or (iv) contributed developer fee. All resyndication applicants subject to the Transfer Event requirements have chosen this option to date. The proposed change codifies this allowance and removes the resyndication reserve requirement that no applicants have chosen.

Resyndications are currently subject to both paragraph (b)(2) and (b)(4). The proposed changes also simplify the structure of subdivision (b) by making the two paragraphs independent. Under the new language, Transfer Events not concurrent with a resyndication are subject to (b)(2). Transfer Events concurrent with a Transfer Event are subject to (b)(4). The overlap for resyndications is eliminated.

Section 10322(e)

Proposed Change:

Section 10322(e) 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~~ application 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. Upon the Executive Director's request, the information sources shall be given up to five (5) business days, from the date of receipt of staff notification, to submit

said documents to clarify 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.

Reason: The reference in the current regulations to a "clear reproduction or assembly error" dates to the era of paper copy application binders and was generally understood to apply to individual missing pages. In the current era of electronic application submissions, omissions generally have not been individual pages but whole documents. TCAC has consistently found that such omissions are not reproduction or assembly members, in part because there is no way to differentiate between a document that an applicant forgot to attach and one that the applicant needed more time to complete. Given that staff has found no use for the current language, staff proposes to eliminate the reproduction or assembly error exception.

Section 10322(f)

Proposed Change:

10322(f) Application changes. Only the Committee may change an application as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never ~~improve~~ increase the score, tiebreaker, or credit amount of the application as submitted~~,~~ and may reduce the application's score, tiebreaker, and/or credit amount.

Reason: Section 10327(a) allows TCAC to adjust development and operational costs to TCAC limits. Such adjustments can affect scores, tiebreakers, and credit amounts. The current language of 10322(f) states that such adjustments cannot increase a score and may reduce scores and credit amounts, but the language is silent about other effects. The proposed changes clarify that neither scores, tiebreakers, nor credit amounts can increase but can decrease as a result of such adjustments. TCAC will continue to correct self-scores and tie-breakers both up and down as appropriate.

Section 10322(h)(9)

Proposed Change:

10322(h)(9) Appraisals. Appraisals are required for all rehabilitation applications except as noted in (A), for all competitive applications except for ~~tribal trust land and~~ new construction projects that are on tribal trust land or that that have a third party purchase ~~contracts~~ contract with, or evidence of a purchase from, an unrelated third party, and for all applications seeking competitive points or tiebreaker credit for donated or leased land. ~~If land is donated or leased from a public entity or available through a related party purchase, an appraisal is required to establish value for competitive scoring.~~

(A) Rehabilitation applications. An "as-is" appraisal prepared within 120 days before or after the execution of a purchase contract or the transfer of ownership by all the parties by a California certified general appraiser having no identity of interest with the development's partner(s) or

intended partner or general contractor, acceptable to the Committee, and that includes, at a minimum, the following:

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

~~Except as described below, the "as if vacant" land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values shall be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.~~ For tax-exempt bond-funded properties receiving credits under Section 10326 only or in combination with State Tax Credits, the applicant may elect to forego the appraisal required pursuant to this ~~Section 10322(h)(9)~~section and use an acquisition basis equal to the sum of the third party debt encumbering the seller's property, which may increase during subsequent reviews to reflect the actual amount.

(B) New construction applications. An "as-is" appraisal with a date of value that is within 120 days before or after the execution of a purchase contract or the transfer of ownership by all the parties, or within one year of the application date if the latest purchase contract was executed within that year, prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee.

~~All applications, including those funded with tax-exempt bond financing, must include a land cost or value in the Sources and Uses budget. A nominal cost will not be accepted, and costs shall be evidenced by sales agreements, purchase contracts, or appraisals. Tribal trust land is excluded from this requirement. However, existing improvement values must be supported by an appraisal pursuant to this section.~~

Reason: Staff proposes a number of independent changes to this section. First, the proposed changes seek to clarify the current regulations by clearly delineating the three categories of projects which must submit an appraisal with the applications: 1) all 4% and 9% rehabilitation projects unless the applicant will use the value of assumed debt as the acquisition value; 2) all competitive applications that seek points or tiebreaker for donated land; and 3) all competitive new construction applications that involve transactions between related parties, unless the project is located on tribal trust land.

Second, the proposed changes move the provisions relating to how TCAC will underwrite acquisition values to a new Section 10327(c)(6).

Third, the current regulations require rehabilitation applications to include an appraisal completed within 120 days on either side of the purchase contract date or transfer date. New construction applications, on the other hand, must include an appraisal completed less than one

year before the application date. To the extent that a new construction applicant entered into a purchase contract, bought, or received a donation for land more than one year before the application date, staff believes it is more appropriate to value the land as of those earlier dates. Otherwise, the value may not reflect the actual price and, in the case of a land donation, may give an applicant benefit for appreciation during the time he or she owned the property, which is not a donation from the original donor. The proposed change generally applies the rehabilitation appraisal timing standard to new construction projects, such that the appraisal shall be dated within 120 days on either side of the purchase contract date or transfer date, except that TCAC will continue to allow appraisals up to one year old for new construction projects if the latest purchase contract was executed within one year of the application deadline.

Section 10322(h)(10)

Proposed Change:

10322(h)(10) Market Studies. A full market study prepared within 180 days of the filing deadline by an independent 3rd party having no identity of interest with the development's partners, intended partners, or any other member of the Development Team described in Subsection (5) above. The study must meet the current market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. CTCAC shall publicly notice any changes to its market study guidelines and shall take public comment consistent with the comment period and hearing provisions of Health and Safety Code Section 50199.17. For scattered site projects, a market study may combine information for all sites into one report, provided that the market study has separate rent comparability matrices for each site.

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

For acquisition/rehabilitation projects meeting all of the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean a written statement by a third party market analyst certifying that the project meets these criteria:

• All of the buildings in the project are subject to existing federal or state rental assistance or operating subsidies, an existing TCAC Regulatory Agreement, or an existing regulatory agreement with a federal, state, or local public entity.

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

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

All market studies, including the streamlined written statement described above, shall calculate the project's lifetime rent benefit as follows: 1) find the aggregate difference between current monthly market rents and the project's proposed target rents; 2) multiply the difference by 12 to arrive at an annual rent difference; and 3) multiply the annual rent difference by 55 years.

Reason: The current regulations allow for an alternative market study for rehabilitation projects that meet certain criteria, one of which is that the proposed rent and income targeting generally shall not increase by more than five percent. The proposed change clarifies that TCAC intended to reference tenant-paid rents. The theory here is that if a project is mostly occupied and rents will not change significantly, TCAC recognizes that the project has shown demand. In the event that regulated rent levels remain within five percent but actual tenant rents increase more, then a market study is needed to demonstrate demand at the new actual rents.

The proposed changes also require all market studies to calculate the project's lifetime rent benefit. TCAC intends to include this figure in each project's staff report to highlight one part of the project's public benefit.

Section 10322(h)(21)

Proposed Change:

10322(h)(21) Utility allowance estimates. Current utility allowance estimates consistent with 26 CFR Section 1.42-10. The applicant must indicate which components of the utility allowance schedule apply to the project. For buildings that are using an energy consumption model utility allowance estimate, the estimate shall be calculated using the most recent version of the California Utility Allowance Calculator (CUAC) developed by the California Energy Commission, with any solar values determined from the California Energy Commission's Photovoltaic Calculator. The CUAC estimate shall be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA). Measures that are used in the CUAC that require field verification shall be verified by a certified HERS Rater, in accordance with current HERS regulations. Use of CUAC is limited to new construction projects and to existing tax credit projects with Multifamily Affordable Solar Housing (MASH) program or Multifamily Affordable Housing Solar Roofs Program (MAHSRP) awards that offset tenant area electrical load. All CUAC utility allowances require a quality control review and approval. CTCAC will submit modeled CUAC utility allowance estimates to a quality control reviewer and shall establish a fee

to cover the costs of this review. Existing tax credit projects converting to the CUAC shall provide tenants at least 90 days prior to the effective date with an informative summary about the current utility allowance and the proposed CUAC allowances, including notice of any actual rent increase to the tenant. Such projects shall also provide CTCAC with the actual rent increases in the first year's CUAC update submittal. For existing projects requesting CUAC utility allowances, cash flow is limited to 15.0% or less of residential income and a debt service coverage ratio of 1.50 or less, as verified by audited financial statements.

Reason: With respect to existing projects, TCAC currently allows only MASH Program awardees to utilize the alterative utility allowance calculator known as CUAC. The MASH Program is winding down, but the State of California is unveiling a new program to support solar energy generation in affordable rental housing. The proposed change allows projects receiving awards from the Multifamily Affordable Housing Solar Roofs Program to also use the CUAC. Without the change, no existing projects would have access to CUAC once MASH is done.

Section 10322(h)(25)(B)

Proposed Change:

10322(h)(25)(B) an applicant statement that the acquisition is exempt from, or a third party tax ~~professional's~~ attorney'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,

Reason: The current regulations require a third party "tax professional's" opinion that a project is exempt from or complies with the federal 10-year rule. It is unclear if this refers to an accountant, attorney, or either. To the extent that a project is subject to the 10-year rule, staff believes that only a tax attorney is qualified to opine on compliance. Given that the exemptions are pretty straight forward, staff believes that the applicant and TCAC can evaluate the validity of an exemption. The proposed changes allow an applicant to affirm a project's exemption, which TCAC shall review, but require a tax attorney to opine that a project subject to the rule complies with the rule.

Section 10322(h)(26)(B)

Proposed Change:

10322(h)(26)(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~~ shall also include a pre-rehabilitation15-year reserve study, indicating anticipated dates and costs of future replacements of all current 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.~~

Reason: Staff proposes a few independent changes to this section. First, the current regulations allow a project architect or sponsor, in addition to a qualified independent third party, to perform a capital needs assessment (CNA). Staff believes it is more appropriate to limit CNAs to qualified independent third parties, who generally conduct most CNAs now anyway.

Second, TCAC recently has seen CNAs that include a post-rehabilitation reserve study. Whereas TCAC has set replacement reserve requirements, these reserve studies are not helpful to TCAC. It is useful, however, for staff to understand what rehabilitation is needed and when to compare to the scope of work. In addition, this information is necessary to evaluate compliance with the proposed requirement in Section 10326(g)(7) that resyndication projects show a rehabilitation need of $20,000 per unit in the first seven years. The proposed change clarifies that TCAC requires a pre-rehabilitation reserve study.

Third, this section currently contains language relating to waivers of minimum construction standards that is generally redundant of, but in part conflicts with, the language in Section 10325(f)(7) itself. Most importantly, this section contains a different standard ("unnecessary and financially burdensome") than Section 10325(f)(7) ("unnecessary or excessively expensive"). Staff proposed to delete the language in this section and rely exclusively on the language in Section 10325(f)(7).

Section 10322(i)

Proposed Change:

10322(i) Placed-in-service application. Within one year of completing construction of the proposed project, the ~~applicant~~ project owner 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~~ project owner 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:

(1) 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;

(2) an audited certification, prepared by an independent Certified Public Accountant under generally accepted auditing standards, with all disclosures and notes. The Certified Public Accountant (CPA) or accounting firm shall not have acted a manner that would impair independence as established by the American Institute of Certified Public

Accountants (AICPA) Code of Professional Conduct Section 101 and the Securities and Exchange Commission (SEC) regulations 17 CFR Parts 210 and 240. Examples of such impairing services, when performed for the final cost certification client, include bookkeeping or other services relating to the accounting records, financial information systems design and implementation, appraisal or evaluation services, actuarial services, internal audit outsourcing services, management functions or human resources, investment advisor, banking services, legal services, or expert services unrelated to the audit. Both the referenced SEC and AICPA rules shall apply to all public and private CPA firms providing the final audited cost certification. In order to perform audits of final cost certifications, the auditor must have a peer review of its accounting and auditing practice once every three years consistent with the AICPA Peer Review Program as required by the California Board of Accountancy for California licensed public accounting firms (including proprietors); and make the peer review report publicly available and submit a copy to CTCAC along with the final cost certification. If a peer review reflects systems deficiencies, CTCAC may require another CPA provide the final cost certification. This certification shall:

(A) reflect all costs, in conformance with 26 CFR §1.42-17, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan. Projects developed with general contractors who are Related Parties to the developer must be audited to the subcontractor level;

(B) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan; and

(C) certify that the CPA has not performed any services, as defined by AICPA and SEC rules, that would impair independence;

(3) 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;

(4) photographs of the completed building(s);

(5) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;

(6) a certification from the investor or syndicator of equity raised and syndication costs in a Committee-provided format;

(7) an updated application ~~project ownership profile on a Committee-provided~~ form;

(8) an owner~~-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;

(9) a copy of ~~any cost certification submitted to, required by and/or and approved by RHS or any other lender~~the project owner limited partnership agreement;

(10) a list of all amenities provided at the project site including any housing type requirements of Section 10325(g) committed to in the Tax Credit application, and color photographs of

the amenities. If the list differs from that submitted at application, an explanation must be provided; housing type requirements must be completed. In addition, the ~~sponsor~~ project owner must provide a list of any project amenities not included in basis for which the property owner intends to charge an optional fee to residents;

(11) 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;

(12) if applicable, a certification from a third party 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;

(13) all documentation required pursuant to the Compliance and Verification requirements of Sections 10325(f)(7) and 10326(g)(6);

(14) all documentation required pursuant to the Compliance and Verification requirements of Section 10327(c)(5)(B);

(15) 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;

(16) a certification from the project architect or, in the case of rehabilitation projects, from an architect retained for the purpose of this certification, that the physical buildings are in compliance with all ~~applicable building codes and~~ applicable fair housing laws~~. In the case of rehabilitation projects proceeding without an architect, the entity performing the Capital Needs Assessment shall note necessary fair housing improvements, and the applicant shall budget for and implement the related construction work~~;

(17) all documentation required pursuant to the Compliance and Verification requirements of Section 10325(c)(6), if applicable;

(18) evidence that the project is in compliance with any points received under Section 10325(c)(9);

(~~18~~19) a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(21) 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; and

(~~19~~20) for tribal trust land, the lease agreement between the Tribe and the project owner.

(~~20~~21) Evidence that the subject property is within the control of the ~~applicant~~ project owner in the form of an executed lease agreement, a current title report (within 90 days of application) showing the ~~applicant~~ project owner holds fee title, a grant deed, or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status.

(22) Evidence that the project is in compliance with the provisions of the CDLAC resolution, if applicable;

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

Reason: These proposed changes update the list of documents that an applicant must submit at placed in service to better reflect current needs and practices. Specifically, the proposed changes:

- Remove the requirement to submit a project ownership profile.
- Delete the reference to a duplicative cost certification submitted to, required by and/or and approved by RHS or any other lender.
- Require submittal of an updated application.
- Require submittal of the limited partnership agreement.
- Require evidence that the project has met all point commitments in the miscellaneous points category.
- Require evidence of compliance with commitments in the CDLAC resolution.
- Require evidence of compliance with housing-type requirements, where applicable.
- Require certification of compliance with fair housing laws from the project architect, disallowing certifications from the capital needs analyst.
- Allow an owner to demonstrate site control with a grant deed.
- Refer to owners rather than applicants or sponsors.
- Refer to investors in addition to syndicators.

Section 10325(c)

Proposed Change:

(c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.

Scattered Site Projects shall be scored proportionately in the site and service amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site, except that for scattered site projects of less than 20 units, service amenities shall be scored in the aggregate across all sites.

The number of awards received by individuals, entities, affiliates, and related entities is limited to no more than four (4) per competitive round. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of

entities, and family members. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint-control over an entity, having significant influence over an entity, or participating as key management of an entity. Related entity disclosure is required at the time of application. Furthermore, no application submitted by a sponsor may benefit competitively by the withdrawal of another, higher-ranked application submitted by the same sponsor or related parties as described above.

Reason: While staff generally believes that tenants at scattered site projects should have equal access to service amenities, staff also realizes that this may be impractical for very small projects. The proposed changes require proportionate scoring for services at scattered site projects unless the project as a whole has fewer than 20 units.

Section 10325(c)(1)(C)

Proposed Change:

10325(c)(1)(C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior existing public debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction. Outstanding principal balances shall not include any accrued interest on assumed loans even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include 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. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be scored as public funds under this scoring factor. ~~Current l~~Land and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreements negotiated between public entities and private developers, must be supported by an independent, third party appraisal~~,~~ ~~conducted within one year of the tax credit application, and otherwise~~ consistent with the guidelines in Section 10322(h)(9). Building values shall be considered only ~~if~~ to the extent that those existing buildings are to be retained for the project, and the appraised value is not to include off-site improvements. All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded. For Tribal ~~pilot~~ apportionment applications, land purchased with public funds shall not be eligible for public funds points. However, unsuccessful Tribal pilot program applicants subsequently competing within the rural set-aside competition could have such tribal land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

To receive points under this subsection for loans, those loans must be "soft" loans, having terms (or remaining terms) of at least 15 years, and below market interest rates and interest accruals, and are either fully deferred or require only residual receipts payments for at least the first fifteen years of their terms. Qualified soft loans may have annual fees that reasonably defray

compliance monitoring and asset management costs associated with the project. The maximum below-market interest rate allowed for scoring purposes shall be four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt for scoring purposes in spite of a debt service requirement. 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. For 2015 competitive tax credit applications with Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) included as funding sources, a project's recommendation by state program staff may be substituted for evidence that the funding has been firmly committed, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award.

Public contributions of off-site costs shall not be counted competitively, unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees, ~~or~~ (2) the off-sites must be developed by the sponsor as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property, or 3) the off-site costs total less than or equal to $100,000.

On or before December 31, 2017, ~~Private~~ private "tranche B" loans underwritten based upon rent differentials attributable to rent subsidies shall also be considered public funding for purposes of the final tiebreaker. The amount of private loan counted for scoring purposes would be the lesser of the private lender commitment amount, or an amount based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

On or after January 1, 2018 the capitalized value of rent differentials attributable to rent subsidies shall be considered public funds based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

Reason: Staff proposes a few independent changes to this section. First, staff proposes to conform the language relating to the timing of land donation appraisals with the changes proposed in Section 10322(h)(9) for the timing of appraisals generally, which would require that appraisals be conducted within 120 days on either side of the purchase contract date or transfer date, except that TCAC will continue to allow appraisals up to a year old for new construction projects if the latest purchase contract was executed within one year of the application deadline.

Second, the proposed changes clarify that donated building values shall be considered only to the extent that those existing buildings are to be retained for the project. If buildings will be substantially or completely demolished, or if significant portions of an adaptive reuse project will go unused, staff believes that the applicant should not receive tax credits for the value of the unused or demolished structures.

Third, the proposed changes delete an outdated reference to the “pilot” Native American apportionment.

Fourth, for 2018 and beyond staff proposes to alter how rental assistance is valued for purposes of both point scoring and the tiebreaker. Currently, credit is given for the lesser of TCAC’s Tranche B underwriting formula or the committed Tranche B loan amount from a lender. Projects that use the rental subsidy overhang income to cover expenses rather than leverage debt receive no benefit. Staff believes that rental assistance is a public subsidy regardless of how it is used. As a result, the proposed change uses the current TCAC formula to calculate the capitalized value of the rental assistance and gives full credit for this amount to all projects, regardless of whether or not there will be an actual Tranche B loan. Staff is confident that projects able to leverage a Tranche B loan will continue to do so to close financing gaps and in order to comply with TCAC’s cash flow limitations. Along with other changes that affect the tiebreaker, staff suggests implementing this change beginning in 2018.

Fifth, the proposed changes provide that a project’s tie-breaker shall not be reduced for off-site costs if the total off-site costs are less than or equal to $100,000. The tie-breaker reduction for off-sites can be complex and time consuming. Staff believes that this effort is not warranted for relatively small amounts.

Section 10325(c)(2)(A)(i)

Proposed Change:

10325(c)(2)(A)(i) For projects in operation for over three years, submit a certification from a third party certified public accountant that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development’s last financial statement has been prepared ~~(which must be effective no more than one year prior to the application deadline)~~ and have funded reserves in accordance with the partnership agreement and any applicable loan documents. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the number of years that the project was owned by that general partner. To obtain points for projects previously owned, the ending date of ownership or participation must be no more than 10 years from the application deadline. This certification must list the specific projects for which the points are being requested. The certification of the third party certified public accountant may be in the form of an agreed upon procedure report that includes funded reserves as of the report date, which shall be dated within 60 days of the application deadline. Where there is more than 1 general partner, experience points may not be aggregated; rather, points will be awarded based on the highest points for which 1 general partner is eligible.

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

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

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

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

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

Reason: The current regulations require an accountant certification that projects for which the applicant is seeking experience points have maintained a positive operating cash flow. The certification must cover the year of each development's last financial statement, provided that the financial statement is executed not more than one year from the application date. The timing of application cycles is such that the financial statements of the last audited year may be more than one year old as of the date of application. Staff proposed to remove the one-year limitation and simply require the project's last financial statement. Staff is confident that owners, lenders, and investors will continue to insist upon timely annual financial statements.

Section 10325(c)(2)(B)(ii)

Proposed Change:

10325(c)(2)(B)(ii) Management companies ~~that do not meet the California Low Income Housing Tax Credit project requirement above~~managing less than two (2) active California Low-Income Housing Tax Credit projects for more than three years, and management companies for projects requesting points under the special needs categories of subparagraph (i) above and managing no active California Low-Income Housing Tax Credit projects for more than three years, shall contract with a bona-fide management company currently managing two (2) California Low Income Housing Tax Credit projects for more than three years and which itself earns a minimum combined total of two (2) points at the time of application.

Reason: This change corrects a drafting error from the 2015 regulations changes. In clarifying this section, staff omitted the distinction between active and past TCAC project management experience. Whereas the previous regulations required contracting for management services if the applicant management company had fewer than two active projects (or one active TCAC project if using the special needs exception), the current regulations ignore active projects and theoretically allow managers who have experience within the last ten years in the specified number of projects but no active projects to solely manage the new development. Staff believes that current management experience is an important element of capacity so that managers are current on program rules and procedures. As a result, staff proposes to restore the pre-2016

language requiring an applicant to contract for management services if the proposed manager has fewer than two active TCAC projects (or fewer than one active TCAC project if using the special needs exception).

Section 10325(c)(3)(M)

Proposed Change:

10325(c)(3)(M) failure to properly notify CTCAC and obtain prior approval of Transfer Events, general ~~or limited~~ partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit;

Reason: Section 10320 does not require TCAC approval of a limited partner change if no Transfer Event is involved. Whereas this provision of the negative points section already refers to failure to notify TCAC of a Transfer Event and the reference to limited partner changes is not always applicable, staff proposes to delete the reference to limited partner changes. Negative points may still be assessed for failure to notify TCAC of a limited partner change that involves a Transfer Event.

Section 10325(c)(3)(V)

Proposed Change:

10325(c)(3)(V) Submitting a check which CTCAC, after reasonable efforts to correct, cannot deposit.

Reason: In Section 10335 staff proposes to eliminate the requirement that applicants pay fees with cashier's checks. In the event that an applicant submits a regular check which TCAC, after reasonable efforts to correct the situation, cannot cash, staff believes that some remedy is needed and that negative points are most appropriate. Staff is willing to simplify the payment process but must ensure payment both for its own financial health and in fairness to all applicants.

Section 10325(c)(4)

Proposed Change:

10325(c)(4) Housing Needs. (Points will be awarded only in one category listed below except that acquisition and/or rehabilitation Scattered Site Projects ~~shall~~ may, at the applicant's election, be scored either in the aggregate or proportionately based upon (i) each site's score, and (ii) the percentage of units represented by each site.) The category selected hereunder (which shall be the category represented by the highest percentage of units in a proportionally scored project) shall also be the project category for purposes of the tie-breaker described in subsection 10325(c)(10) below.

Large Family Projects	10 points
Single Room Occupancy Projects	10 points

Special Needs Projects	10 points
Seniors Projects	10 points
At-Risk Projects	10 points

Reason: The 2015 regulation changes addressed the situation in which a scattered site project has different housing types at the different sites. The added language stated that TCAC will score each site proportionately. It was not staff's intent, however, to prevent a project that can meet the housing type requirements for the project in the aggregate to do so. The proposed language allows a scattered site applicant with differing housing types to choose between scoring the project in the aggregate or by site.

Section 10325(c)(5)(A) 1.

Proposed Change:

10325(c)(5)(A) 1. Transit Amenities

The project is located where there is a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop within 1/3 mile from the site with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station or ferry terminal) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday, and the project's density will exceed 25 units per acre. 7 points

The site is within 1/3 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station or ferry terminal) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. 6 points

The site is within 1/2 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station or ferry terminal) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. 5 points

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

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

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

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

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

Reason: The current regulations provide site amenity points for projects near a bus rapid transit station, light rail station, commuter rail station, bus station, or public bus stop. In some parts of the state, ferry service is an analogous form of public transportation. The proposed changes equally allow points for proximity to ferry service.

Section 10325(c)(5)(B) 5.

Proposed Change:

10325(c)(5)(B) 5. Licensed child care. Shall 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~~25% of units are three bedrooms or larger). 5 points

6. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. (Only for large family projects or other projects in which at least ~~30~~25% of units are three bedrooms or larger).

10 hours per week, offered weekdays throughout school year	5 points
6 hours per week, offered weekdays throughout school year	3 points
4 hours per week, offered weekdays throughout school year	2 points

Reason: The 2015 regulation changes reduced the required percentage of 3-bedroom units in large family developments from 30% to 25% but neglected to update the percentages in this section. The proposed changes correct this drafting error.

Section 10325(c)(6)(A)

Proposed Change:

10325(c)(6)(A) New Construction and Adaptive Reuse Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs:

Leadership in Energy & Environmental Design (LEED); Green Communities; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; or the GreenPoint Rated Program. 5 points

WELL (when not combined with the programs above) 1 point

Reason: After consulting with TCAC's energy consultant, staff believes that other sustainability certification programs beyond those currently referenced provide similar public benefit. The proposed changes allow full points for certification from the PHIUS, Passive House, and Living Building Challenge programs. In addition, staff believes that the WELL program has value but covers only a subset of sustainability issues addressed by other programs. As a result, staff proposes one point for WELL certification. See the related change in Section 10325(c)(6)(C).

Section 10325(c)(6)(B)

Proposed Change:

10325(c)(6)(B) New Construction and Adaptive Reuse Projects: Points for energy efficiency shall be awarded according to one of the following:

(i) Energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the ~~2013~~ 2016 Title 24, Part 6, of the California Building Code (the ~~2013~~ 2016 Standards) for the project as a whole~~,~~ shall be awarded as follows, provided that each building shall meet at least half of the percentage for which the project receives points:

9 percent	3 points
15 percent	5 points

(ii) Energy Efficiency with renewable energy that provides the following percentages of project tenants' energy loads for the project as a whole, provided that each building shall meet at least half of the percentage for which the project receives points:

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

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

regardless of whether they are central or distributed. For purposes of this paragraph, “High-Rise Multifamily” is defined consistently with the California Building Code.

Reason: Staff proposes three independent changes to this section. First, the proposed change references the new 2016 version of the California Building Code to align TCAC’s standards with the new building codes. The 2016 California Building Code effective date is January 1, 2017.

Second, staff proposes to require that energy efficiency measures benefit all tenants to some extent. While the project will be scored based on energy efficiency in the aggregate, the proposed change requires that each building receive at least half the percentage of improvement for which the project is seeking points. It would be unfair to tenants if certain buildings received all of the improvement benefit and others none. See the related change in Section 10325(c)(6)(D).

Third, the distinction between low-rise and high-rise developments as it relates to renewable generation is intended to be consistent with building code definitions. Staff notes, however, that Section 10302(v) defines High-Rise in a different manner for purposes of the credit exchange and longer development timelines. This proposed change clarifies that the definition of 10302(v) does not apply to this section, but rather the building code definition does.

Section 10325(c)(6)(C)

Proposed Change:

10325(c)(6)(C) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs:

Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; or 2011 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

WELL (when not combined with the programs above) 1 point

Reason: After consulting with TCAC’s energy consultant, staff believes that other sustainability certification programs beyond those currently referenced provide similar public benefit. The proposed changes allow full points for certification from the PHIUS, Passive House, and Living Building Challenge programs. In addition, staff believes that the WELL program has value but covers only a subset of sustainability issues addressed by other programs. As a result, staff proposes one point for WELL certification. See the related change in Section 10325(c)(6)(A)

Section 10325(c)(6)(D)

Proposed Change:

10325(c)(6)(D) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the ~~building(s)~~project as a whole based on existing conditions, provided that each building shall meet at least half of the percentage for which the project receives points. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. The project must undergo an energy assessment that meets the CTCAC Existing Multifamily Assessment Protocols. The report documenting the results of the Assessment must be submitted using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Report Template. Points are awarded based on the building(s) percentage decrease in estimated Time Dependent Valuation (TDV) energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the appropriate performance module of California Energy Commission (CEC) approved software:

Improvement Over Current	
15 percent	3 points
20 percent	5 points

Reason: Staff proposes to require that energy efficiency measures benefit all tenants to some extent. While the project will be scored based on energy efficiency in the aggregate, the proposed change requires that each building receive at least half the percentage of improvement for which the project is seeking points. It would be unfair to tenants if certain buildings received all of the improvement benefit and others none. See the related change in Section 10325(c)(6)(B).

Section 10325(c)(6)(E) 1.

Proposed Change:

10325(c)(6)(E) 1. Projects shall include either:

a. Photovoltaic (PV) generation that offsets 30% of tenant loads (if the combined available roof area of the project structures, including carports, is insufficient for provision of 30% of annual common area electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area); or

b. PV that offsets either 50 percent (50%) of common area load (if the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual common area electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area); or

c. Solar hot water for all tenants who have individual water meters.

2 points

Reason: The current regulations provide points for rehabilitation projects that install photovoltaics to offset tenant loads. The regulations do not specify a minimum percentage of the load that must be offset. Staff proposes to establish a minimum of 30% of tenant loads to ensure that projects do not receive competitive points for minimal effort. This is less than the 50% of total project load that must be offset to receive an increase in the threshold basis limit pursuant to Section 10327(c)(5)(B)(1). Along with a fixed minimum percentage, staff also proposes to add language such that if the combined available roof area of the project structures, including carports, is insufficient for provision of 30% of annual common area electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. This aligns with others sections setting fixed percentages relating to photovoltaics

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Section 10325(c)(6)(F)

Proposed Change:

10325(c)(6)(F) Water efficiency:
Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), provided that the offset of potable water equals or exceeds 10,000 gallons annually
3 points

Reason: The current regulations provide points for projects that irrigate only with reclaimed water, greywater, or rainwater. The regulations do not specify a minimum amount of potable water use that must be offset. Staff proposes to establish a minimum offset of 10,000 gallons annually to ensure that projects do not receive competitive points for minimal effort. This is less than the 20,000 gallons per year offset proposed for a project to receive an increase to its threshold basis limit pursuant to Section 10327(c)(5)(B)(5). See also the proposed change relating to verification of the 10,000 gallon offset in Section 10325(c)(6)(G) 7.

10325(c)(6)(G) 1.

Proposed Change:

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

Reason: The proposed changes to Section 10325(c)(6)(A) and (C) provide one point for projects achieving WELL certification. Unlike the other additions, this certification is not comprehensive enough to exempt a project from submitting the sustainable building methods workbook. The

proposed change to this section requires workbook submission for projects receiving WELL points.

10325(c)(6)(G) 6. (i)

Proposed Change:

10325(c)(6)(G) 6. (i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a Multifamily Affordable Solar Home (MASH) Program or Multifamily Affordable Housing Solar Roofs Program (MAHSRP) field verification certification form signed by the project's solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter. The applicant shall use the California Energy Commission's Photovoltaic Calculator for purposes of determining the solar values to be input into the CUAC calculator.

Reason: The proposed change conforms to the change in Section 10322(h)(21) that allows existing projects with Multifamily Affordable Housing Solar Roofs Program (MAHSRP) awards to utilize the CUAC. To the extent that this program develops a similar form to the MASH field verification certification, the change allows for the applicant to use the new forms rather than forms from the soon-to-be dormant MASH program.

10325(c)(6)(G) 7.

Proposed Change:

10325(c)(6)(G) 7. For placed in service applications to receive points under Section 10325(c)(6)(F), the project architect, water system engineer, HERS Rater, GreenPoint Rater, or LEED for Homes Green Rater shall certify that reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property (excepting water used for Community Gardens) under normal conditions and that the systems offset at least 10,000 gallons of potable water annually.

Reason: For projects receiving points for water efficiency, the current regulations require the project architect to certify at placed in service that reclaimed water, greywater, or rainwater systems have been installed and are functioning. The proposed changes additionally allow a water system engineer, HERS Rater, GreenPoint Rater, or LEED Rater to make this certification. The proposed changes also reflect the minimum offset standard proposed in Section 10325(c)(6)(F).

Section 10325(c)(8)

Proposed Change:

10325(c)(8) Readiness to Proceed. 15 points will be available to projects that document items (A) through (C) below, and commit to begin construction within 180 days of the Credit

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

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

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

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

(B) evidence, as verified by the appropriate officials, ~~of site plan approval and~~ that all ~~local land use~~ environmental review clearances (CEQA, NEPA, and applicable tribal land environmental reviews) necessary to begin construction<u>, except for clearances related to loans with must pay debt service for which the applicant is not seeking public funds points or tiebreaker benefit,</u> are either finally approved or unnecessary; and

(C) evidence of all necessary public or tribal <u>land use</u> approvals subject to the discretion of local or tribal elected officials ~~(other than those covered by (B))~~.

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

Reason: The current regulations provide five readiness points in each of three categories. The current categories (B) and (C) overlap in that the first refers to site plan approval and the second

refers to public approvals generally, both of which relate to land use entitlements. Staff proposes to differentiate categories (B) and (C) more cleanly, focusing (B) on environmental review and (C) on land use entitlements.

The proposed changes also provide that a project may receive full readiness points under (B) even if environmental review of a hard loan for which the applicant is not seeking public funds points or tiebreaker benefit is not yet complete. To require full environmental review for hard loans from public sources puts those public lenders, HUD and CalHFA primarily, at a competitive disadvantage to other lenders. TCAC will continue to insist on full environmental review prior to application, except as allowed for appeal periods, for all other public sources of funding.

Section 10325(c)(10)(A)

Proposed Change:

10325(c)(10)(A) Leveraged soft resources, as described below, defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, leveraged soft resources shall be discounted by the proportion of the project that is non-residential. Leveraged soft resources shall be demonstrated through documentation including but not limited to funding award letters, committed land donations, or documented project-specific local fee waivers.

Leveraged soft resources shall include all of the following:

(i) public funds, as described in Section 10325(c)(1)(C), except that on or after January 1, 2018 1) outstanding principal balances of prior existing public debt or subsidized debt that has been or will be assumed or recycled shall be discounted by one-half for purposes of the tiebreaker, and 2) seller carryback financing and any portion of a loan from a seller or related party that is less than or equal to sale proceeds due the seller shall be excluded for purposes of the tiebreaker.

(ii) soft loans that meet the criteria described in Section 10325(c)(1)(C) (except that terms shall be of at least 55 years), or grants, from unrelated non-public ~~entities~~ parties that are not covered by subparagraph (i) and that do not represent Financing available through the National Mortgage Settlement Affordable Rental Housing Consumer Relief programs. The ~~entity~~ party providing the soft loans or grants shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. The application shall include (1) a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the leveraged soft resource(s) is from an unrelated non-public entity(ies), that the unrelated non-public entity(ies) shall not receive any benefit from a related party to the project, and that the leveraged soft resource(s) is available and not committed to any other project or use; and (2) a narrative from the applicant regarding the nature and source of the leveraged soft resource(s) and the conditions under which it was given. On or after January 1, 2018, seller carryback financing and any portion of a loan from a seller or related party that is less than or equal to sale proceeds due the seller shall be excluded for purposes of the tiebreaker

(iii) the value of donated land and improvements that are not covered by subparagraph (i), that meet the criteria described in Section 10325(c)(1)(C), and that are contributed by an unrelated entity (unless otherwise approved by the Executive Director), so long as the contributed asset has been held by the entity for at least 5 years prior to the application due date. The party providing the donation shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. In addition, the land shall not have been owned previously by a related party or a partner or proposed partner (unless the partner has no ownership interest and only the right to complete construction).

~~Land donations include land leased for a de minimis annual lease payment. CTCAC may contract with an appraisal reviewer and, if it does so, shall commission an appraisal review for donated land and improvements if a reduction of 15% to the submitted appraisal value would change an award outcome. If the appraisal review finds the submitted appraisal to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer for calculating the tiebreaker only.~~

(iv) For purposes of this section, a related party shall mean a member of the development team or a Related Party, as defined in Section 10302(gg), to a member of the development team.

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

Land donations include land leased for a de minimis annual lease payment. CTCAC may contract with an appraisal reviewer and, if it does so, shall commission an appraisal review for donated land and improvements if a reduction of 15% to the submitted appraisal value would change an award outcome. If the appraisal review finds the submitted appraisal to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer for calculating the tiebreaker only.

On or before December 31, 2017, t~~T~~he numerator of projects with public operating- or rental-subsidies may be increased by 25 percent (25%) of the percentage of proposed tax credit assisted units benefitting from the subsidy. Such subsidies must be received from one or more of the following programs: Project Based Section 8; PRAC (Section 202 and 811); USDA Section 521 Rental Assistance; Shelter Plus Care; McKinney Act Supportive Housing Program Grants; Native American Housing Block Grant (IHBG); California Mental Health Services Act operating subsidies; California Department of Health Care Services; and Public Housing Annual Contributions contracts. Applicants seeking scoring consideration for other public sources of operating- or rent-subsidies must receive written Executive Director approval prior to the application due date.

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

Reason: Staff proposes six distinct changes to this section. First, beginning in 2018 the proposed change, for purposes of the tiebreaker only and not for public funds points, discounts the value of assumed or recycled (i.e., re-lent) loan proceeds by 50%. The current tiebreaker relies heavily on a project's percentage of soft financing, in large part to recognize a project's ability to attract scarce public and private resources. Staff believes that maintaining existing funds in a deal is not of the same difficulty or value as attracting new funding. These funds are not generally available to any other project. In addition, fully counting assumed loans gives a large competitive advantage to existing projects over new projects, when TCAC's priority for 9% tax credits is new construction that increases the supply of affordable housing. In the second round of 2016, the top seven tiebreaker scores all achieved a significant percentage of their tiebreaker from assumed loans. All were effectively rehabilitation projects (two technically were new construction projects but actually were reconstructions of existing projects).

Second, beginning in 2018 staff also proposes to exclude from tiebreaker credit seller carryback notes or loans that derive directly or indirectly from sale proceeds. The intent is to even the playing field between public and private applicants. Currently, a public entity who sells a project or land to a related entity and carries back some or all of the price with a carryback note receives a significant benefit to its tiebreaker as well as public funds points. A private entity who does the same receives no benefit. Staff considered counting only seller carrybacks or comparable loans from unrelated parties, but that encourages public owners to sell to third parties, which has no policy benefit. As a result, staff proposed to exclude all seller carryback notes. Because a seller could just make a direct loan in lieu of a seller carryback, the proposed change also excludes all seller loans that up to the amount of proceeds received from the sale. In addition to issues of fairness, credit for seller carryback notes tends to benefit rehabilitation projects. Staff prefers to prioritize 9% credits for new construction.

Third, the proposed changes clarify that land donations or soft financing will not receive tiebreaker credit if they come from a partner or proposed partner in the limited partnership, except in the rare case of a partner who has no ownership interest and only the right to complete construction (e.g., a master developer subject to a concurrency requirement who enters the partnership only to protect his or her right to ensure completion of the affordable project). In opening up the public funds category last year to recognize private sources of soft financing, TCAC required that such financing come from unrelated parties to ensure these were additional sources that would not have been available to the project otherwise. Since not all partners are included in the definition of a related party (e.g., investors), TCAC would like to preemptively close the loophole that might allow a possible investor to contribute to a project in a way that would enhance its likelihood of receiving an award. Any such contribution could affect the credit pricing that the investor may offer later and neutralize the value of the contribution.

Likewise, the third proposed change clarifies that land donations shall not involve land that has been owned previously by a related party or a partner or proposed partner, unless the partner has no ownership interest and only the right to complete construction. Washing title to land to obtain credit for a land donation from an unrelated party subverts the intent of not providing credit for land donations from related parties.

Fourth, the proposed changes codify the guidance TCAC provided this year on how to document that private soft resources meet the regulatory requirements. Specifically, the change requires applicants seeking credit for leveraged soft resources 1) to obtain a certification from the accountant or independent tax attorney that the leveraged soft resources are from an unrelated non-public entity, that the unrelated non-public entity shall not receive any benefit from a related party to the project, and that the leveraged soft resource are available and not committed to any other project or use; and (2) to provide a narrative regarding the nature and source of the leveraged soft resources and the conditions under which they were given. Staff believes that this change will both ensure compliance with the regulations and provide clear direction to applicants on what to include in the application.

Fifth, the proposed change, beginning in 2018, eliminates the increase to the numerator of the first tie-breaker factor for rental assistance. The current regulations give all projects with rental assistance an increase in the numerator of the first tie-breaker factor of up to 25%. Projects that can leverage the rental assistance with tranche B financing get a second tie-breaker benefit, which can be seen as a double dip. In addition, the current system provides uneven benefit because the numerators which receive the 25% increase are not equal to start with (for example, if the numerator is zero, the multiplier is moot) and because it is often only the projects with higher tenant rents that can leverage trance B financing. Staff instead proposes in Section 10325(c)(1)(C) to give all projects with rental assistance one benefit equal to the calculated capitalized value of the rental assistance regardless of whether or not they leverage tranche B financing. Staff believes that the current double dip provides excessive tie-breaker benefit. In addition, the single proposed benefit treats all projects with rental assistance equally and values the rental assistance in a manner that directly equates to other public funds. Staff is confident that projects able to leverage a tranche B loan will continue to do so to close financing gaps and in order to comply with TCAC's cash flow limitations.

Sixth, the proposed change moves the language regarding land leases and the use of an appraisal reviewer out of subparagraph (iii) into the larger paragraph (A) in order to clarify that these provisions apply to both public and private leases and land donations.

Section 10325(d)

Proposed Change:

10325(d) Application selection for evaluation. Except where CTCAC staff determines a project to be high cost, staff shall score and rank projects as described below. Staff shall identify high cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits. CTCAC shall calculate total eligible basis consistent with the method described in Section 10325(c)(1)(A). A project would be designated "high cost" if a project's total eligible basis exceeds its total adjusted threshold basis limits by 30%. Staff shall not recommend such project for credits~~, but shall advise the project's sponsors that they may petition the Committee to award the project credits in spite of its cost. Such petitioners shall be calendared to appear before the Committee prior to the application deadline, if possible, but in no case later than the first meeting after the application deadline. Prior to the Committee meeting, staff shall provide the Committee with available data on the costs of any similar projects developed within the project's community, as well as any other mitigating information provided within the application, along with a recommendation. Petitioners must explain in writing~~

~~the project's unusual cost features, and explain why awarding credits would be sound public policy in spite of those costs. In addition, petitioning sponsors must be accompanied by a representative from the relevant local public entity who must also endorse awarding the credits and explain the compelling reason why the Committee should award the requested credits. Only if the Committee acts to authorize consideration of the application in the current competition would the project be considered for credits~~. Any project that receives a reservation on or after January 1, 2016, regardless of whether or not it is considered high cost at preliminary reservation, may be subject to negative points if the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher) by 40%. A project to which the Committee has awarded credits in spite of its cost may be subject to negative points if the project's ratio of total eligible basis at placed in service to the revised total adjusted threshold basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher) exceeds the ratio of total eligible basis to the revised total adjusted threshold basis limits that the Committee approved at application by 10%.

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

Reason: The current regulations define a "high-cost" project and state that staff shall not recommend such a project for an award of credits but also allow the applicant to petition the committee to consider the project in spite of the cost. The committee received its first petition this year and denied the request. California is constantly under pressure to contain the high cost of projects. This test is the one direct mechanism that TCAC employs to do so. Staff is concerned that allowing a project-specific determination is inherently subjective, may lead to arbitrary application, and ultimately could render this important tool moot. In the event that the committee were to desire a different standard for any project, staff believes it would be better to amend the regulations to create a new standard equally applicable to all projects. For those reasons, staff proposes to eliminate the ability for applicants with projects exceeding the high cost test to petition the committee for special consideration. To mitigate the disadvantage to projects in naturally high-cost areas, TCAC is proposing an additional increase in the threshold basis limit for projects within high-opportunity areas (see Section 10327(c)(5)(F)).

Section 10325(d)(2)

Proposed Change:

10325(d)(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~~ eleven 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. Projects will be funded in order of their rank so long as the region's last award does not cause the region's aggregate award amount to exceed 125 percent (125%) of the amount originally available for that region in that funding round. Credits

allocated in excess of the Geographic Apportionments by the application of the 125% rule 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 125% rule then the Committee shall skip over the next highest-ranking project to fund a project requesting a smaller credit award that does meet the 125% requirement. However, no project may be funded by this skipping process unless it (a) has a point score equal to that of the first project skipped, and (b) has a final tiebreaker score equal to at least 75% of the first skipped project's final tiebreaker score.

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. 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.

Reason: The proposed change conforms the number of regions referenced in this section to the actual number of current regions that has existed since the addition of the City of Los Angeles as its own region.

Section 10325(f)(2)(A)

Proposed Change:

10325(f)(2)(A) Site control may be evidenced by:
(i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;
(ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program ~~between~~ connecting the applicant and the owner of the subject property;
(iii) an executed disposition and development agreement ~~between~~ connecting the applicant and a public agency; or,
(iv) a valid, current, enforceable contingent purchase and sale agreement or option agreement ~~between~~ connecting 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.

Reason: The current regulations require applicants to demonstrate site control with a title report, lease, disposition and development agreement, or purchase agreement. With respect to the latter three, the regulations state that the document must be "between" the applicant and the land owner or public agency. Interpreted narrowly, this could preclude valid agreements that have a third party involved as an intermediary. For example, this could be interpreted to preclude an applicant from demonstrating site control when the applicant is a sublessor or has an option to purchase with a person who him- or herself has a purchase contract. The intent of this section is

to ensure that the applicant has a legally binding right to take control of the property so that completion is not endangered or delayed. Staff finds that binding agreements with third parties who themselves have a legal right to take control of the property equally serves this intent. As a result, staff proposes to clarify the language of the section and require that the applicable document "connect" the applicant with the owner or public agency.

Section 10325(f)(6)

Proposed Change:

10325(f)(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 property management 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~~

Reason: The proposed changes eliminate the requirement for applicants to provide copies of contracts for attorney, tax professional, architect, consultant, and market analyst services. TCAC sees no need to review these contracts. TCAC will continue to require a copy of the management contract to ensure the provide meets minimum experience requirements.

Section 10325(f)(7)(A)

Proposed Change:

10325(f)(7)(A) Energy Efficiency. New construction and rehabilitation non-competitive applicants shall consult with the design team, a CABEC certified 2013 or 2016 Certified Energy Analyst, and a LEED Green Rater or GreenPoint Rater (one person may meet all of these qualifications) early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency or generation measures beyond those required by this subsection. Prior to the meeting, the energy analyst shall complete an initial energy model based on either current Title 24 standards or, if the project is eligible, the California Utility Allowance Calculator using best available information on the project. ~~The~~ All non-competitive applications to CTCAC

shall include a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting. All rehabilitated buildings, both competitive and non-competitive, shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report template. Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for the project as a whole, except that Scattered Site applications shall also document at least a 5% post-rehabilitation improvement over existing conditions energy efficiency achieved for each site. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. Furthermore, rehabilitation applicants must submit a completed Sustainable Building Method Workbook with their preliminary reservation application unless they are developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED), Passive House Institute US (PHIUS), Passive House, Living Building Challenge, or GreenPoint Rated Program. In addition, all applicants who will receive points from CDLAC pursuant to Sections 5230(k)~~(7),(9), or (10)~~(6), (8), or (9) of the CDLAC regulations must submit a completed Sustainable Building Method Workbook with their preliminary reservation application.

Reason: In 2015, TCAC altered its minimum construction standards related to energy efficiency, including eliminating the requirement for new construction applicants to exceed Title 24 building codes. The committee felt it was still important, however, for projects to consider energy efficiency and other sustainable design elements even if such elements were not required. In many instances, sustainability elements are cost-effective over time and therefore may be attractive in their own right to developers. As a result, the committee included a requirement for the design team to consult with a sustainability analyst early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency or generation measures beyond those required as minimum construction standards. In addition, the regulations now require applicants to document these meetings by providing TCAC in the application with a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting.

Competitive tax credit applicants (9% and 4% plus state credit applicants) almost always must score sustainability points (i.e., go significantly beyond the minimum construction standards) in order to be competitive and receive an award. Generally, the applicants must conduct a consultation meeting described in this section to accomplish that. As a result, the meeting and documentation requirement in this section is redundant for competitive applicants. Moreover, a simple omission of any piece of the documentation could disqualify an applicant from the competition for failure to meet threshold requirements. Staff believes that disqualifying a competitive application for this minor transgression when the project almost certainly exceeds the minimum energy efficiency standards is needless. Staff therefore proposes to eliminate these consultation and documentation requirements for competitive application and rely on the scoring system to achieve a similar result. The consultation and documentation requirements continue to apply to non-competitive (4% federal credits only) projects.

The proposed changes also 1) allow the CABEC Certified Energy Analyst to have a 2013 or 2016 certification to reflect the fact that the 2016 CEA exam is not yet ready but will be in place soon; 2) exempt projects with Passive House Institute US (PHIUS), Passive House, or Living Building Challenge certification from the sustainable building methods workbook requirement, similar to projects with LEED or GreenPoint Rated certification; and 3) correct a mistaken cross-reference to the CDLAC regulations.

Section 10325(f)(7)(E)

Proposed Change:

10325(f)(7)(E) Appliances. Except for SRO units, all units shall provide a stove and refrigerator. Refrigerators, dishwashers, clothes washers and dryers provided or replaced within Low-Income Units and/or in on-site community facilities shall be ENERGY STAR rated appliances, unless waived by the Executive Director.

Reason: As a general rule, owners provide all tenants with a stove and refrigerator. Compliance staff has encountered rare situations, however, where that is not the case. Staff believes that such appliances are necessary and appropriately provided by the owner. The proposed change explicitly requires applicants to provide all units with a stove and refrigerator, unless the unit is an SRO unit. SRO units sometimes do not provide kitchen space within each unit.

Section 10325(f)(7)(K)

Proposed Change:

10325(f)(7)(K) All ~~tax credit recipient~~new construction projects shall adhere to the provisions of California Building Code (CBC) Chapter 11(B) regarding accessibility to privately owned housing made available for public use~~. Tax credits shall be viewed as invoking those requirements as applicable, including~~ in all respects except as follows: 11B-233.3.1.1 is amended to require a minimum of ten percent (10%) of the units with mobility features, and and11B 233.3.1.3 is amended to require four percent (4%) with communications features. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.

Rehabilitation projects shall provide a minimum of ten percent (10%) of the units with mobility features, as defined in CBC 11B-809.2 through 11B-809.4, and four percent (4%) with communications features, as defined in CBC 11B-809.5. To the maximum extent feasible and subject to reasonable health and safety requirements, these units shall be distributed throughout the project consistent with 24 CFR Section 8.26. At least one of each common area facility type and amenity, as well as paths of travel between accessible units and such facilities and amenities, the building entry and public right of way, and the leasing office or area shall also be made accessible utilizing CBC Chapter 11(B) as a design standard. In all other respects, applicable building code will apply.

Reason: The current regulations require tax credit projects to provide twice the percentage of mobility and communications accessible units (10% and 4%, respectively) as building codes

require. These units must meet the design standards of Chapter 11(B) of the building codes. The language of the current regulations contains many other ambiguities, however. For example, must a rehabilitation project meet all the provisions of Chapter 11(B), even those that go beyond the design of the accessible units and paths of travel between those units and site amenities? Staff proposed to rewrite this section to clarify the ambiguities while maintaining the intent to require additional accessible units. The intent is to state that 1) new construction projects shall meet the requirements of Chapter 11(B) in their entirety and also increase the percentage of mobility and communications accessible units; and 2) rehabilitation projects need not meet the requirements of Chapter 11(B) in their entirety (i.e., are subject to building codes generally) but shall meet the requirements of Chapter 11(B) with respect to providing 10% communications accessible units, 4% communications accessible units, and accessible common areas.

Section 10325(f)(7)

Proposed Change:

10325(f)(7) Except ~~of~~ for paragraph (J) and (K), if a rehabilitation applicant does not propose to meet the requirements of this subsection, its Capital Needs Assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive. The Executive Director may approve a waiver to paragraph (J) for a new construction or rehabilitation project, provided that tenants will have equivalent access to management services. The Executive Director may approve a waiver to paragraph (K) for a rehabilitation project, provided that the applicant and architect demonstrate that full compliance would be impractical or excessively expensive. All waivers must be approved in advance by the Executive Director.

Compliance and Verification: For placed-in-service applications, applicants with rehabilitation projects, with the exception of applicants developing a project in accordance with the minimum requirements of LEED, PHIUS, Passive House, Living Building Challenge, or GreenPoint Rated Program who will not receive points pursuant to Section 5230(k)(9) of the CDLAC regulations, or applicants with new construction projects that will receive points from CDLAC pursuant to Section 5230(k)(~~7~~6) or (8) of the CDLAC regulations must submit ~~either (a) the appropriate California Energy Commission (CEC) compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards, or (b) a completed CUAC analysis establishing the total tenant energy load, and documentation of the PV output using CEC's PV Calculator, which shows the necessary percentage of tenant energy load offset from renewable energy. For subsection (A), applicants with rehabilitation projects must submit the energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation estimated Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service package. With the exception of applicants developing a project in accordance with the minimum requirements of LEED or GreenPoint Rated Program who will not receive points pursuant to Section 5230(k)(9) or (10) of the CDLAC regulations, applicants must submit~~ a completed Sustainable Building Method Workbook for subsection (A). For subsections (B) through (~~K~~I) applicants shall submit LEED, PHIUS, Passive House, Living Building Challenge, or GreenPoint Rated Program certification or third party certification ~~documentation from one of the following sources~~ confirming ~~the existence of items, measures, and/or project characteristics~~compliance from one of the following: a certified HERS Rater, a certified GreenPoint rater, a US Green

Building Council certification, or the project architect. For Subsection (K), the project architect shall provide third party documentation confirming compliance. Failure to produce appropriate and acceptable third party documentation for ~~(A) through (K) of this subsection~~ may result in negative points.

Reason: This section contains two distinct sets of proposed changes. First, staff proposes to alter three elements relating to the criteria for granting a waiver of minimum accessibility standards. The current regulations require that the capital needs assessment demonstrate that the elements for which the waiver is sought are either unnecessary or excessively expensive. First, because many persons with disabilities would benefit from accessible and affordable housing, staff believes the "unnecessary" test cannot be met and is therefore irrelevant. Second, capital needs analysts are not particularly qualified to make this assessment. Staff prefers that an architect demonstrate need for the waiver and the applicant demonstrate the excessive cost with estimates from the contractor. Third, staff has encountered situations in which the true issue in rehabilitation projects is practicality. In one project, all the parking was ¾ underground, and site had no room to build a ramp from the parking to the street level. As a result, the only way to create accessible units that had access to the parking would be to raze the building and reconstruct them. It seemed pointless to require a cost estimate for this theoretical exercise. In a second case, widening the kitchen to accommodate the required turning radius resulted in an unusable dining/living space. The reconfiguration was not excessively expensive but would have resulted in a seriously compromised and potentially unmarketable unit. Staff proposes to allow waivers to the accessibility requirements for rehabilitation projects in cases where full compliance would be impractical.

The second set of proposed changes updates the documentation requirements relating to verification of compliance with minimum construction standards at placed in service. With respect to energy efficiency (paragraph (A)), the proposed changes continue generally to require submission of TCAC's sustainable building methods workbook completed by a certified HERS Rater for rehabilitation projects and for new construction projects that receive CDLAC points for energy efficiency. Except for projects that receive CDLAC points for energy efficiency and must therefore still show the percent improvement, projects that obtain LEED or GreenPoint Rated certification are exempt from the workbook requirement.

With respect to the standard in paragraphs (B) to (I), the proposed changes allow verification with a general LEED, GreenPoint Rated, PHIUS, Passive House, or Living Building Challenge certification (reflecting the addition of the latter three to the list of programs for which points may be received) or with a certification verifying compliance with the specific standards from the project architect or a specified sustainability rater. For paragraph (K) relating to accessibility, the proposed changes require certification of compliance from the project architect.

Section 10325(g)

Proposed Change:

(g) Additional Threshold Requirements. To qualify for Tax Credits as a Housing Type as described in Section 10315(~~g~~h), to receive points as a housing type, or to be considered a

"complete" application, the application shall meet the following additional threshold requirements:

Reason: The proposed change corrects a cross-reference to reflect changes made to Section 10315.

Section 10325(g)(1)(B)

Proposed Change:

10325(g)(1)(B) One-bedroom units must include at least ~~500~~ 450 square feet and two-bedroom units must include at least ~~750~~ 700 square feet of living space. Three-bedroom units shall include at least ~~1,000~~900 square feet of living space and four-bedroom units shall include at least ~~1,200~~1,100 square feet of living space, unless these restrictions conflict with the requirements of another governmental agency to which the project is subject to approval. These limits may be waived for rehabilitation projects~~,~~ at the discretion of the Executive Director prior to the application submission. 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;

Reason: TCAC is always looking for ways to help reduce projects costs while maintaining high quality. Staff believes that the current minimum unit size requirements can be reduced marginally while maintaining a high quality tenant living space. This has the potential to both reduce costs slightly and to provide additional flexibility in design. The proposed change reduces minimum size requirements by 50 square feet in one- and two-bedroom units and 100 square feet in larger units. See the related change in Section 10325(g)(2)(E).

The propose change also clarifies that TCAC must approve waivers prior to the application submission.

Section 10325(g)(1)(D)

Proposed Change:

(D) The project shall provide outdoor play/recreational facilities suitable and available to all tenants, ~~for~~ including children of all ages, except for small developments of 20 units or fewer. The minimum square footage of play/recreational area for children ages 2-12 years is 600 square feet and must include an accessible entrance point. For projects with more than 100 total units this square footage shall be increased by 5 square feet for each additional unit. Outdoor play/recreational space must be equipped with reasonable play equipment for the size of the project, and the surface must be natural or synthetic protective material. The application must demonstrate the availability of outdoor play or recreational facilities suitable for children ages 13-17. Square footage of a community building cannot be included in the minimum square footage for the play/recreational area unless that square footage is dedicated as a

play/recreational facility for children. An onsite day care center or an after school program pursuant to Section 10325(c)(5)(B) is not a recreational facility for purposes of this section.

Rehabilitation projects with existing outdoor play/recreational facilities may request a waiver of the minimum square footage requirement if outdoor play/recreational facilities of a reasonable size and type currently exist onsite. The written waiver must be approved prior to the application submission.

The Executive Director, in her/his sole discretion may waive this requirement upon demonstration of nearby, readily accessible, recreational facilities;

Reason: The proposed change more clearly defines "outdoor play/recreational facilities" required for the large family housing type. In reviewing competitive application proposals for large family housing "recreational facilities suitable and available to all tenants," there is a range in the designated space and quality of the facilities provided, particularly for children. Staff has found that after projects are built, often times the final outdoor play/recreational facilities presented in the placed in service package are downsized versions of what the application represented and, staff believes, fall short of the intent of the regulation. In nearly all cases, developers changed their plans for this space without TCAC consultation or confirmation that the changes would meet this housing type requirement. Staff believes that more guidance is needed and proposes to more clearly define the space to be allocated for children's recreation. The proposed language is based on research that included local, state, federal, and industry guidelines for playground safety and other state housing agency requirements for multifamily play areas. The regulation continues to include the ability to waive this requirement upon demonstration of nearby, readily accessible recreational facilities.

Section 10325(g)(1)(E)

Proposed Change:

10325(g)(1)(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 of 20 units or fewer are exempt from this requirement. At the discretion of the Executive Director, these limits may be waived for rehabilitation projects with existing common area prior to the application submission;

Reason: While providing adequate space for services and tenant activities is an important element of affordable housing, expanding common areas in rehabilitation projects that come short of the standard can be costly and result in the loss of affordable units. Staff believes that all projects should have common area but that the director should have some flexibility as to the size

requirement for rehabilitation projects as s/he does for minimum unit size requirements. See the related change in Section 10325(g)(2)(G).

Section 10325(g)(1)(G)

Proposed Change:

10325(g)(1)(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~~;

Reason: While gas dryers may be less expensive for tenants, an open flame also poses a fire hazard. Staff believes that applicants should have the flexibility to choose between gas and electric dryers if they choose to provide dryers in individual units. The proposed change deletes the requirement for gas dryers when the property has a gas connection and the owner is placing dryers in units. See the related change in Section 10325(g)(2)(I).

Section 10325(g)(1)(J)

Proposed change:

10325(g)(1)(J) New construction projects shall not be located within a low-opportunity area unless the project 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, demonstrate significant funds committed or expended in the previous five years apart from the proposed project, and how the project would contribute to the community's revitalization. For purposes of this paragraph, "low-opportunity area" means an area designated as lowest opportunity (red) on the UC Davis Regional Opportunity Index: Place map (see http://interact.regionalchange.ucdavis.edu/roi/webmap/webmap.html.)

Reason: There is currently a national discussion of how tax credit programs can best provide educational, economic, and social opportunity for tenants. Staff endorses this important objective and believes that California, while its 9% program has started down this path by considering proximity to various site amenities, can do more. In that vein, staff proposes to generally prohibit new construction, large-family, competitive tax credit projects in areas of low-opportunity unless the project is part of a concerted community revitalization program involving the local government and significant investment outside of the project. The prohibition would not apply to rehabilitation projects, to non-family projects, or to non-competitive (4% federal credits only) projects. Given that competitive credits are limited and over-subscribed, staff believes that it should focus its resources for large family projects in areas that will provide adequate opportunity for both working adults and children. That said, staff believes that it is appropriate to support family projects in low-opportunity areas that are part of a larger,

coordinated, community revitalization effort. Comprehensively improving disadvantaged communities is also an important goal.

Staff encourages suggestions on how to define a low-opportunity area but is leaning towards using UC Davis' Regional Opportunity Index for Place (not People), which integrates various economic, infrastructure, environmental, and social indicators into a comprehensive assessment of the factors driving opportunity. While no index is perfect, staff has consulted with HCD and believes that this is the best resources available at this time.

Section 10325(g)(2)(E)

Proposed Change:

10325(g)(2)(E) One-bedroom units must include at least ~~500~~ 450 square feet and two-bedroom units must include at least ~~750~~ 700 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director, prior to application submission;

Reason: TCAC is always looking for ways to help reduce projects costs while maintaining high quality. Staff believes that the current minimum unit size requirements can be reduced marginally while maintaining a high quality tenant living space. This has the potential to both reduce costs slightly and to provide additional flexibility in design. The proposed change reduces minimum size requirements by 50 square feet in one- and two-bedroom units. See the related change in Section 10325(g)(1)(B).

The proposed changes also clarify that TCAC must approve waivers prior to application submission.

Section 10325(g)(2)(G)

Proposed Change:

10325(g)(2)(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 of 20 units or fewer are exempt from this requirement. These limits may be waived, at the discretion of the Executive Director, for rehabilitation projects with existing common area;

Reason: While providing adequate space for services and tenant activities is an important element of affordable housing, expanding common areas in rehabilitation projects that come short of the standard can be costly and result in the loss of affordable units. Staff believes that all projects should have common area but that the director should have some flexibility as to the size

requirement for rehabilitation projects as s/he does for minimum unit size requirements. See the related change in Section 10325(g)(1)(E).

Section 10325(g)(2)(I)

Proposed Change:

10325(g)(2)(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~~;

Reason: While gas dryers may be less expensive for tenants, an open flame also poses a fire hazard. Staff believes that applicants should have the flexibility to choose between gas and electric dryers if they choose to provide dryers in individual units. The proposed change deletes the requirement for gas dryers when the property has a gas connection and the owner is placing dryers in units. See the related change in Section 10325(g)(1)(G).

Section 10325(g)(3)(B)

Proposed Change:

10325(g)(3)(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, while the ~~minimum size for ~~new construction ~~SRO units shall be 200 square feet~~. At~~, and at least 90% of the SRO units ~~in the project must meet these requirements~~shall not exceed 500 square feet. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director;

Reason: Staff believes that the current language regarding size requirements for SRO units can be improved. It sets minimum and maximum size standards but then states that only 90% of the units must meet these standards. For new construction, staff believes that all SRO units should meet the minimum size standard and that at least 90% of the SRO units should meet the maximum standard. With respect to rehabilitation projects, staff believes that these general standards are likewise appropriate but that applicants should be able to seek a waiver when the existing configuration makes compliance extremely difficult and/or expensive.

Section 10325(g)(4)

Proposed Change:

10325(g)(4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental or mental health disabilities; individuals who are survivors of physical abuse; individuals who are homeless as described in Section 10315(b); individuals with chronic illness, including HIV; homeless youth as defined in Government Code Section 11139.3(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; 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 the large family, senior, or SRO housing type (although the project will be considered as a special needs project for purposes of Section ~~10325~~10315) or consist of at least 20% one-bedroom units and at least 10% larger than one-bedroom units. Studio or SRO units must include at least 200 square feet, one-bedroom units must include at least 500 square feet, and two-bedroom units must include at least 750 square feet of living space. These bedroom and size requirements may be waived for rehabilitation projects or for projects that received entitlements prior to January 1, 2016 at the discretion of the Executive Director. The application shall meet the following additional threshold requirements:

Reason: This section contains two distinct proposed changes. The first adds to the list of special needs populations families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county. Maintaining children in foster care for longer than necessary due to the parents' housing instability has negative impacts on the families and increases county costs. To the extent that a developer wishes to serve this population, staff believes such families are deserving of special needs status.

The 2015 regulation changes gave special needs projects with less than 75% special needs units more flexibility with respect to meeting a second housing type. Instead of having to pick a second housing type for the non-special needs units, the changes allowed such projects to meet a minimum unit mix requirement or pick or a second housing type. When staff drafted this provision, it left off large family as a possible second housing type in the belief that applicants would prefer not to combine the special needs and large family types. It turns out that applicants sometimes do prefer such a combination. As a result, staff proposes to add large family as a possible second housing type to fulfill the intent of providing flexibility. The proposed changes also correct an erroneous cross reference.

Section 10325(i)(11)(A)

Proposed Change:

10325(i)(11)(A) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income

targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.

(B) If the regulatory agreement for an existing tax credit project applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) contains a requirement to provide service amenities, even if that requirement has expired, the project shall provide a similar or greater level of services for a period of at least 15 years under the new regulatory agreement. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the service expenditures shall be the maximum that project feasibility allows.

Reason: Staff believes that providing services to tenants greatly enhances the tenant experience and contributes to additional tenant opportunity and well-being. Services can also benefit owners by increasing tenant stability. As a practical matter, most competitive projects provide services in order to garner adequate points. For non-competitive projects, CDLAC encourages services with points, but many projects forgo these points. Staff is unwilling at this time to require services but does believe that resyndication projects that have provided services under the previous regulatory agreement should continue to do so as a general rule. The proposed change generally requires a resyndication project to provide a similar level of services as to what was required under the previous regulatory agreement. This rule applies even in cases where the service requirement under the previous requirement has expired (i.e., services were required for only ten years and are no longer provided). Staff recognizes, however, that some distressed projects may not be able financially to do so. The proposed change therefore allows for a full or partial waiver in the event that the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility. A rental assistance contract that is generally renewable will not be considered at risk of loss. This is the same standard TCAC currently uses for considering waivers to the requirement that resyndication projects maintain at least the same level of affordability. See also the related change in Section 10326(g)(8).

Section 10326(g)(5)

Proposed Change:

10326(g)(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. General partners and

management companies lacking documented experience with Section 42 requirements using the minimum scoring standards at Section 10325(c)(2)(A) and (B) shall be required to complete training as prescribed by CTCAC prior to a project's placing in service. The minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(2). Applicants need not submit the third party public accountant certification that the projects have maintained a positive operating cash flow.
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 property management 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~~

Reason: The current regulations require 4% credit applicants to demonstrate that the development team possesses the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. Applicants generally must show that they would qualify for minimum general partner and management company experience points under the scoring system for competitive projects or agree to complete TCAC training prior to placing in service. The competitive scoring system requires general partners, in order to receive points, to submit a third party public accountant certification that the projects for which it is requesting points have maintained a positive operating cash flow. While staff is interested is seeing that general partners have prior experience with affordable housing projects, including California tax credit projects, staff does not believe that the additional requirement of a CPA certification demonstrating positive cash flow is necessary for non-competitive projects. The proposed change seeks to clarify that non-competitive applicants may meet the minimum points equivalence standard without providing the accountant certification.

The proposed changes also eliminate the requirement for applicants to provide copies of contracts for attorney, tax professional, architect, consultant, and market analyst services. TCAC sees no need to review these contracts. TCAC will continue to require a copy of the management contract to ensure the provide meets minimum experience requirements.

Section 10326(g)(7)

Proposed Change:

10326(g)(7) Minimum Rehabilitation Project Costs. Projects involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:

(A) $15,000 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).

In addition, for existing tax credit projects applying for additional tax credits for acquisition and/or rehabilitation (i.e., resyndication), the capital needs assessment shall demonstrate a rehabilitation need of at least $20,000 per unit over the first seven years of the 15-year reserve study. Projects with ten years or less remaining on the CTCAC regulatory agreement are exempt from this requirement.

Reason: TCAC has experienced phenomenal growth in the number of resyndication projects in the last few years. Through the August committee meeting, TCAC has reserved credits for 38 resyndication projects in 2016 alone. In some cases, there appears to be no urgency to the rehabilitation as the capital needs assessment does not show significant immediate or even medium term needs. In such cases, staff believes that an owner could just as easily wait to resyndicate the project. Staff understands that projects will need major rehabilitations over the 55 year term of the regulatory agreement, is proud to make tax credits available for that purpose, and appreciates the beneifts of extending the regulatory agreement at that time. However, staff does not believe that projects should automatically resyndicate every 15 years, which seems like churning to reap developer fees or other financial benefits. The benefits of extending the regulatory agreements will accrue whenever the resyndication happens, so staff supports waiting until a time it is truly needed. As a result, staff proposes to require resyndication applicants to demonstrate in their capital needs assessment that the project has a rehabilitation need of $20,000 per unit within the next seven years. For purposes of this provision, TCAC will consider rehabilitation needs to include repair or replacement of current structures and systems. While upgrades to the property will remain eligible in cost and basis, TCAC will exclude these from the $20,000 per unit rehabilitation need standard. Staff further proposes to exempt from this requirement projects for which the TCAC regulatory agreement will expire within ten years. TCAC does not want to discourage such projects from remaining in the program.

Section 10326(g)(8)

Proposed Change:

10326(g)(8)(A) Existing tax credit projects applying for additional tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.

(B) If the regulatory agreement for an existing tax credit project applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) contains a requirement to

provide service amenities, even if that requirement has expired, the project shall provide a similar or greater level of services for a period of at least 15 years under the new regulatory agreement. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the service expenditures shall be the maximum that project feasibility allows.

Reason: Staff believes that providing services to tenants greatly enhances the tenant experience and contributes to additional tenant opportunity and well-being. Services can also benefit owners by increasing tenant stability. As a practical matter, most competitive projects provide services in order to garner adequate points. For non-competitive projects, CDLAC encourages services with points, but many projects forgo these points. Staff is unwilling at this time to require services but does believe that resyndication projects that have provided services under the previous regulatory agreement should continue to do so as a general rule. The proposed change generally requires a resyndication project to provide a similar level of services as to what was required under the previous regulatory agreement. This rule applies even in cases where the service requirement under the previous requirement has expired (i.e., services were required for only ten years and are no longer provided). Staff recognizes, however, that some distressed projects may not be able financially to do so. The proposed change therefore allows for a full or partial waiver in the event that the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility. A rental assistance contract that is generally renewable will not be considered at risk of loss. This is the same standard TCAC currently uses for considering waivers to the requirement that resyndication projects maintain at least the same level of affordability. See also the related change in Section 10325(i)(11).

Section 10326(j)(5)

Proposed Change:

10326(j)(5) Projects intended for eventual tenant homeownership 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.

Reason: Section 10325(c)(7) establishes standards for projects that intend to convert to homeownership after year 15. Because this section only applies to competitive projects, staff proposed to add this provision to Section 10326 to clarify that these standards also apply to non-competitive projects that intend to convert to homeownership.

Section 10327(a)

Proposed Change:

10327(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 the Committee may ~~be~~ adjust~~ed by the Committee,~~these costs and any corresponding basis 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.

Reason: The current regulations establish explicit limits on various costs such as developer fees, and construction overhead. The regulations further state that TCAC may adjust these costs as needed to fall within the limits. Whereas these costs are generally eligible in basis, the proposed change clarifies that TCAC may also adjust a project's basis to reflect the reduced costs. It would be non-sensical for a project's eligible basis to exceed the project's costs as adjusted by TCAC.

Section 10327(c)(2)

Proposed Change:

10327(c)(2) Developer fee. ~~The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis, or two million ($2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:~~

(A) The maximum developer fee that may be included in project costs for a 9% competitive credit rehabilitation application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million ($2,000,000) dollars.

The maximum developer fee that may be included in project costs for a 9% competitive credit new construction application shall be calculated as follows: The base fee limit shall be the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million two hundred thousand ($2,200,000) dollars. To arrive at the maximum developer fee, the base limit shall then be multiplied by the difference between 2 and the project's high-cost test factor, which equals the project's total eligible basis divided by its total adjusted threshold basis limits.

For 9% competitive applications applying under section 10325 of these regulations, the cost limitation on developer fees that may be included in eligible basis, shall be as follows:~~the following limitations shall apply~~:

(i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis~~,~~ or one million four hundred thousand ($1,400,000) dollars; or

(ii) the maximum developer fee that may be included in eligible basis for acquisition/ rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis~~,~~ or one million four hundred thousand ($1,400,000) dollars; or the maximum developer fee that may be included in eligible basis for projects receiving a waiver of the project size limitations under section 10325(f)(9)(C) of these regulations is the lesser of 15% of the project's eligible basis or $1,680,000 for projects having between 201 and 250 units, $1,750,000 for projects having between 251 and 300 units, and $1,820,000 for projects having more than 300 units.

(B) For 4% credit projects applying under Section 10326 of these regulations, the maximum developer fee that may be included in project costs and eligible basis shall be as follows:

(i) for new construction or rehabilitation only projects, the maximum developer fee that may be included in project costs and eligible basis is 15% of the project's unadjusted eligible basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $10,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.

(ii) the maximum developer fee that may be included in project costs and eligible basis for acquisition/rehabilitation projects is 15% of the unadjusted eligible construction related basis and 5% percent of the unadjusted eligible acquisition basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $10,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(5) or for other acquisition/rehabilitation projects whose hard construction costs per unit in rehabilitation expenditures are at least $20,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

(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, except that the adjustment factor related to costs described in paragraph (A) shall be recalculated at placed in service where applicable. Both the developer fee limitations in total project costs described in paragraphs (2) and (2)(B) above, and the developer fee limitations in basis described in (2)(A) and (2)(B) above apply to projects developed as multiple simultaneous phases using the same credit type (all 9% or all 4% credits) in both phases. Only when a phased project is using both credit types may simultaneously phased projects exceed the limitations in (2), (2)(A), and (2)(B) in the aggregate. For purposes of this limitation, "simultaneous" refers to projects consisting of a single building, or projects on the same or adjacent parcels with construction start dates within six months of each other, or completion dates that are within six months of each other.

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

Reason: Staff seeks to create greater incentives for developers to find and implement cost savings in the 9% program, particularly new construction projects. Various stakeholders have advocated that the tiebreaker give greater weight to cost efficiency. Staff has not pursued this course out of concern that such a change would have unwanted impacts on project location and housing type. Staff does believe, however, that the developer fee limit is a tool that can be used to incentivize cost efficiency without having competitive impacts. For purposes of 9% new construction projects only, the proposed change adjusts the maximum developer fee in cost (the $1.4 million limit on developer fee in basis is not changing) to reflect a project's cost efficiency using the same test employed for the high-cost threshold. The concept is not applied to 9% rehab projects because costs are easily altered by reducing acquisition prices or the scope of work, neither of which we want to encourage generally. Also, the concept is not applied to 4% projects, which already have an incentive to reduce costs to minimize financing gaps.

First, the proposed change raises the base developer fee limit in cost on 9% new construction projects to $2.2 million. The intent is to protect higher cost projects from receiving significantly lower fees than they currently receive with the $2 million limit. The proposed changes then apply the incentive such that the overall limit in cost equals the base limit (15% of basis or $2.2 million) plus or minus a 1% increase/decrease to the base limit for each 1% that the high-cost test (eligible basis/threshold basis limit) is below/above 100%. This can also be expressed mathematically as:

Base limit * [2 – (project's total eligible basis / total adjusted threshold basis limits)]

For example, a project that has a high-cost percentage of 90% would have a cost developer fee limit of 16.5% of basis or $2.42 million. A project with a high-cost test of 120% would have a cost developer fee limit of 12% or $1.76 million. To maintain the incentive to reduce costs through the construction period, TCAC will recalculate this adjustment at placed in service and alter the developer fee limit in cost accordingly.

To mitigate the disadvantage to projects in naturally high-cost areas, TCAC is proposing an additional increase in the threshold basis limit for projects within high-opportunity areas (see Section 10327(c)(5)(F)).

Section 10327(c)(5)

Proposed Change:

(5) Threshold Basis Limits. The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Tax Credits to amounts published on its website in effect

at the time of application, and in accordance with the definition in Section 10302(~~nn~~rr) 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.

Reason: The proposed change corrects a mistaken cross-reference.

Section 10327(c)(5)(A)

Proposed Change:

10327(c)(5)(A) Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed thirty-nine percent (39%).

A twenty percent (20%) increase to the unadjusted eligible basis for a development that is paid for in whole or in part out of public funds and is subject to a legal requirement for the payment of state or federal prevailing wages or financed in part by a labor-affiliated organization that requires the employment of construction workers who are paid at least state or federal prevailing wages. An additional five percent (5%) increase to the unadjusted eligible basis shall be available for projects that certify that they are subject to a project labor agreement within the meaning of Section 2500(b)(1) of the Public Contract Code that requires the employment of construction workers who are paid at least state or federal prevailing wages or that they will use a skilled and trained workforce, as defined in Section 25536.7 of the Health and Safety Code, to perform all onsite work within an apprenticeable occupation in the building and construction trades. All applicants under this paragraph shall certify that contractors and subcontractors will comply with Section 1725.5 of the Labor Code, if applicable;

A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not "tuck under" parking) or through construction of an on-site parking structure of two or more levels;

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, the Local Impact Fee increase, and the special needs increase, in order to receive the basis limit increases by the corresponding percentage(s) listed above, a certification signed by the project architect shall be provided within the initial and placed-in-service application confirming that item(s) listed above will be or have been incorporated into the project design, respectively.

Reason: The current regulations establish threshold basis limits and allow various increases related to project-specific costs or amenities. For most of these increases the regulations further require the application to include a certification from the project architect that the items will be incorporated into the project design. This language implies that the requirement only applies to the initial application. The proposed changes clarify that the architect certification must be included in both the initial and placed in service applications, the former speaking to the design and the latter confirming the actual construction of the items.

Section 10327(c)(5)(B)(1) and (2)

Proposed Change:

10327(c)(5)(B)(1) Project shall have onsite renewable generation estimated to produce 50 percent (50%) or more of annual tenant electricity use ~~(dwelling unit and common area meters combined)~~. If the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (2) only if the renewable generation used to calculate each basis increase does not overlap. Five percent (5%)

(2) Project shall have onsite renewable generation estimated to produce 75 percent (75%) or more of annual common area electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 75% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (1) only if the renewable generation used to calculate each basis increase does not overlap. Two percent (2%)

Reason: The current regulations provide two separate increases to a project's threshold basis limit for meeting specified thresholds of renewable energy generation. The proposed changes clarify that a project may only claim both increases if the energy generation counted towards each standard does not overlap. In other words, only a project that generates enough renewable energy to meet each threshold independently may receive both increases. If a project has a reduced threshold because of the 90% roof area exception, then it may not receive both increases.

The proposed changes also apply the 50% threshold in paragraph (1) solely to tenant loads, as opposed to the project's total load. This aligns better with the point scoring system in Section 10325(c)(6) which similarly differentiates between tenant and common area loads. It also eliminates any overlap in the calculation in the event that a project seeks both threshold basis limit increases.

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

Proposed Change:

10325(c)(5)(B)(3) Newly constructed project buildings shall be fifteen percent (15%) or more energy efficient than the ~~2013~~ 2016 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). Four percent (4%)

Reason: The proposed change reflects the new California Building Code in effect January 1, 2017.

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

Proposed Change:

10327(c)(5)(B)(5) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), provided that the offset of potable water equals or exceeds 20,000 gallons annually. One percent (1%)

Reason: The current regulations provide a threshold basis limit increase for projects that irrigate only with reclaimed water, greywater, or rainwater. The regulations do not specify a minimum amount of potable water use that must be offset. Staff proposes to establish a minimum of offset of 20,000 gallons annually to ensure that projects do not receive basis limit increases for minimal effort. This is twice the 10,000 gallons per year offset proposed for a project to receive competitive points pursuant to Section 10325(c)(6)(F).

Section 10327(c)(5)(B)

Proposed Change:

10327(c)(5)(B) Compliance and Verification: For placed-in-service applications, in order to receive the increase to the basis limit, the application shall contain a certification from ~~the~~ a HERS ~~Rater~~, ~~a~~ GreenPoint ~~Rater~~, PHIUS, Passive House, or Living Building Challenge Rater, or from an ~~accredited~~ LEED for Homes Green Rater, verifying that item(s) listed above have been incorporated into the project, except that items (5) through (8) may be verified by the project architect. For items (3) and (4), the applicant must submit ~~the energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation estimated Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service application. Applicants must submit~~ a Sustainable Building Method Workbook with the original application and the placed-in-service application. ~~Additionally, for item (6) a management plan must be submitted and must be available to onsite staff.~~ For item (5), the Rater, architect, or water system engineer shall confirm the annual offset of potable water. Failure to incorporate the features, or to submit the appropriate documentation may result in a reduction in credits awarded and/or an award of negative points.

Reason: The proposed changes seek to streamline the verification process for threshold basis limit increases related to sustainability. First, the proposed changes allow certification from raters for the new sustainability programs for which an applicant may receive maximum sustainability points.

Second, for the energy efficiency items that require submission of the sustainable building methods workbook, the proposed changes delete the requirement for the applicant to also submit the energy consumption and analysis report. The certified rater completing the workbook will need the information from the energy consumption and analysis report, but TCAC will rely on the workbook summary.

Third, the proposed changes additionally allow a water system engineer to certify the water efficiency measures and require all certifications to specifically confirm the annual offset of potable water.

Fourth, the proposed changes eliminate the requirement for projects providing community gardens to submit a management plan. TCAC will rely on photos of the garden to verify its existence.

Section 10327(c)(5)(D)

Proposed Change:

10327(c)(5)(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 or seismic engineer certifies in the application to the costs associated with such work.

Reason: In order for a project to receive a threshold basis limit increase for seismic upgrading or environmental mitigation, the current regulations require the project architect to certify the costs. Staff believes that a seismic engineer is equally capable of certifying the costs of seismic work.

Section 10327(c)(5)(F)

Proposed Change:

10327(c)(5)(F) A ten percent (10%) increase to the unadjusted eligible basis for a development located in in an area that meets all of the following criteria:

(i) is within a city with a population of at least 50,000 or that, when combined with abutting cities, has a population of at least 50,000.
(ii) is within a county that has a 9% threshold basis limit for 2-bedroom units equal to or less than $300,000.

(iii) is deemed to have the highest opportunity by the UC Davis Regional Opportunity Index for Places (see the dark green shaded areas on the "Place" map at http://interact.regionalchange.ucdavis.edu/roi/webmap/webmap.html).

Reason: The threshold basis limits determine not only a project's maximum credit request but also affect a project's high cost test. The proposed changes in Section 10327(c)(2) would further use the threshold basis limits to affect a 9% new construction project's maximum developer fee in cost. The biggest complaint with the threshold basis limits is that they fail to account for cost differences within counties. For example, a project in Santa Monica is subject to the same limits as a project in Lancaster, although the costs are admittedly different. Staff seeks to mitigate this disadvantage for projects in naturally high-cost portions of a county. The proposed change provides a 10% increase to the unadjusted threshold basis limit for projects whose locations meet specified criteria.

The challenge is defining a high-cost area. While staff invites comment on alternative measures, the UC Davis's Regional Opportunity Index for Places is the best alternative that staff is aware of. The index integrates various economic, infrastructure, environmental, and social indicators into a comprehensive assessment of the factors driving opportunity. While opportunity is not the same as cost, there seems to be a fairly high degree of correlation between cost and places with high opportunity. Staff does believe that two additional criteria are warranted, however. First, staff does not believe that outlying areas have the same cost pressures, regardless of the opportunity designation. Staff proposes to limit the increase to cities that by themselves or in combination with immediately abutting cities have at least 50,000 population. Second, in the interests of containing outlier high cost projects, staff does not believe that projects in counties with base threshold basis limits above $300,000 should receive a further increase.

Section 10327(c)(6)

Proposed Change:

10327(c)(6) Acquisition costs. All applications must include the cost or value of land and improvements in the Sources and Uses budget, except that projects on tribal trust land need only provide an improvement cost or value. If the acquisition for a new construction project involves a Related Party, the applicant shall disclose the relationship at the time of initial application. All applications seeking competitive points or tiebreaker credit for donations shall include values for land and improvements, if any, that are not nominal. Except as allowed pursuant to Section 10322(h)(9)(A) for rehabilitation projects basing value on assumed debt, the "as if vacant" land value and the existing improvement value established at application for all projects, as well as the eligible basis amount derived from those values, shall not increase during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.

(A) New Construction. The value of land acquired through a third party transaction with an unrelated party shall be evidenced by a sales agreement, purchase contract, or escrow closing statement. The value of land acquired from a Related Party shall be underwritten using the lesser of the purchase price or appraised value pursuant to Section 10322(h)(9). The value of

donated land, including land donated as part of an inclusionary housing ordinance, must be evidenced by an appraisal pursuant to Section 10322(h)(9).

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

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

Reason: Staff proposes a few independent sets of changes to this section. First, the current provisions of Section 10322(h)(9) that relate to how TCAC underwrites land and improvement values are moved to this section with a few changes.

1) The current regulations require all applications to include a land value that is not nominal. This is problematic when an appraiser opines that land has no value as a result of affordability covenants that may exist due to inclusionary zoning ordinances or other legal reasons. The change allows nominal or no value in such cases. The current regulations also require land values even if the land is donated. For competitive applications (9% and 4% plus state projects), staff needs to know the donated value for purposes of scoring and the tiebreaker. For non-competitive projects, staff does not need to know the value of the donation, and including the donated value misleadingly inflates the cost of the project. The proposed change requires a land value only for competitive projects. To the extent a non-competitive applicant is actually paying for land, that value of course must still be included.

2) The current regulations clearly state that acquisition costs and basis may not change after reservation, but the paragraph relating to new construction projects is silent on this issue. Because credits are calculated not just on basis but also on the project's financing shortfall, an increase in land or improvement costs will increase the shortfall and could increase the credits a

project is eligible for. Staff believes that sales prices agreed to at reservation should not increase thereafter. There is no public benefit for granting additional credits to a project just so a seller who already accepted one price can renegotiate a new price. The proposed change clarifies that new construction land prices may not increase after reservation.

3) The current regulations state the land and improvement values and basis established at application shall be used for all subsequent reviews. The proposed change clarifies that values may decrease but may not increase.

The second set of proposed changes clarifies how TCAC will underwrite acquisition cost in various scenarios. For new construction projects, TCAC will use the sales price for the land when the sale involves a third party transaction with an unrelated party. TCAC will use the appraised value when the land is donated. And if the sale involved a related party, TCAC will use the lesser of the sales price or appraised value. The regulations further require an applicant to disclose when a sale involves a related party.

For rehabilitation projects in general, the value of land and improvements shall be the lesser of the purchase price or appraised value. TCAC will look to the appraisal to allocated value between land and improvements. The one exception is for projects using assumed debt as the acquisition basis. TCAC will use the value of the assumed debt as the overall value and look to the applicant to propose a reasonable proration of land and improvement value consistent with similar projects in the market area. TCAC reserves the right to adjust the proration if it finds the proposed proration unreasonable.

Section 10327(c)(9)

Proposed Change:

10327(c)(9) Self-syndication. If the applicant or a Related Party intends to be the sole or primary tax credit investor in a project~~ seeking Federal Credit Ceiling~~, the project shall be underwritten using a tax credit factor (i.e., price) of $1 for each dollar of federal tax credit and $.65 dollars for each dollar of State Tax Credit, unless the applicant proposes a higher value.

Reason: The 2015 regulation changes set a credit price for TCAC to use for underwriting purposes in the event an applicant chooses to self-syndicate the tax credits. The language was written to apply only to 9% credit applications. Staff believes that the concept is equally valid for 4% credit projects in order to avoid the inefficient use of credits and added profit potential to the applicant or a related party when the credits are not offered on the open market.

Section 10327(c)(10)

Proposed Change:

10327(c)<u>(10) Basis related to parking. For new construction projects of a type described in Section 65915(p)(2) or (3) of the Government Code, regardless of whether or not the developer</u>

makes a request to the city or county, an applicant shall exclude from basis the proportionate cost of parking spaces that exceed the applicable ratios described in those paragraphs.

Reason: Staff is interested in containing the costs of projects where possible, and parking is a significant contributor to costs. Recent legislation, AB 744 of 2015, generally established caps on the amount of parking a local government may require of certain 100% affordable housing developments as follows:

- .5 spaces per unit for transit-oriented (TOD) and senior projects
- .3 spaces per unit for special needs projects

To the extent that a local government requires or asks for more parking (either by utilizing the study provision of AB 744 or as a condition of funding) or a developer chooses to provide more parking, staff believes that tax credits should not subsidize the additional parking. The proposed change requires new construction projects described in AB 744 that exceed the AB 744 ratios to exclude the cost of the excess parking spaces from basis. This provision does not apply to rehabilitation projects or to other types of new construction projects not described in AB 744 (e.g., a large family project not considered a transit-oriented development).

Staff encourages comments on a possible alternative that, instead of requiring a project-specific calculation of the proportionate cost of the excess parking, would instead employ a calculation with a fixed formula. The provision could assume that all surface parking spaces cost $10,000 per space and that all structured or underground spaces cost $30,000 per space (or some other amount in both cases) and require a reduction in basis equal to the number of excess spaces multiplied by the fixed cost per space.

Section 10327(d)(1)

Proposed Change:

10327(d)(1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations. Pursuant to Authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications relating to sites that have lost their difficult development area or qualified census tract status within the previous 12 months as a difficult development area (DDA).

Reason: The 2015 regulation changes grandfathered in a project's difficult development area (DDA) status for one year in the event that the location fell out of a DDA. Given that qualified census tract (QCT) designations also change over time, staff believes it is equitable to grant projects that have lost QCT status the same 12 month grandfathering benefit.

Section 10327(d)(3)

Proposed Change:

10327(d)(3) Pursuant to authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications seeking state credits, after CTCAC has awarded all state credits available for credit ceiling applications, as a difficult development area (DDA).

Reason: As discussed under Section 10315, staff proposes to create a second supplemental set-aside to address the over-allocation of state credits. Under this proposal, once the limit on state credits for a particular competitive round has been reached, TCAC will award state credits to no more projects but will use the authority provided by federal law to declare all remaining projects eligible for state credits to be DDA projects. This proposed change implements the DDA designation element of the second supplement set-aside concept (see the related changes in Sections 10315 and 10317(c)). This will ensure that all 9% projects continue to receive credits based on 130% of basis, either through federal credits or a combination of federal and state credits.

Section 10327(g)(6)

Proposed Change:

10327(g)(6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except for projects in which less than 50% of the units are Tax Credit Units or where a higher first year ratio is necessary to meet the requirements of subsection 10327(f) (under such an exception the year-15 cash flow shall be no more than the greater of 1) two percent (2%) of the year-15 gross income or 2) the lesser of $500 per unit or $25,000 total), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during each of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service, must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

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

Reason: The current regulations establish cash flow limits to ensure that projects adequately leverage private financing and to minimize credits awards to amounts needed to make a project financially feasible. Applying these cash flow limits to projects that have a majority of market-rate units is challenging at best and not necessarily appropriate given the greater financial risk associated with market-rate projects. As a result, staff proposes to exempt projects with a majority of market-rate units from the cash flow limits.

Section 10327(g)(7)

Proposed Change:

10327(g)(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.

Reason: Because commercial space rental income can be much more volatile than residential income, the current regulations generally prohibit commercial income from subsidizing the residential portion of a project. The regulations, however, do provide an exemption if the applicant can demonstrate evidence of adequate security to substitute for commercial deficits. Staff cannot recall use of this exception, and it is unclear what adequate security an applicant could or would provide to meet the standard. As a result, staff proposes to eliminate the exception and reinforce the prohibition on commercial income subsidizing the residential portion of a project.

Section 10330(b)

Proposed Change:

10330(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.

Reason: TCAC currently requires applicants to pay appeal fees with a cashier's check. In order to spare applicants the additional time and expense necessary to obtain a cashier's check, staff is willing to let applicants pay fees with regular checks. CDLAC already allows payment with regular checks and has not experienced problems with bad checks. Nonetheless, staff is also proposing to add Section 10325(c)(3)(V) to allow for the imposition of negative points in the

event that TCAC is unable to collect on a bad check after giving the applicant an opportunity to correct the situation.

Section 10335

Proposed Change:

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~~paid 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.

Reason: TCAC currently requires applicants to pay all fees with a cashier's check. In order to spare applicants the additional time and expense necessary to obtain a cashier's check, staff is willing to let applicants pay fees with regular checks. CDLAC already allows payment with regular checks and has not experienced problems with bad checks. Nonetheless, staff is also proposing to add Section 10325(c)(3)(V) to allow for the imposition of negative points in the event that TCAC is unable to collect on a bad check after giving the applicant an opportunity to correct the situation.

The proposed changes also eliminate the requirement for 9% projects receiving readiness points to pay one-half of the allocation fee within 90 days of the reservation. Whereas almost all projects seek a carryover allocation, TCAC sees no benefit to making first round projects whose 90 day deadline falls before the carryover allocation deadline to send two separate checks within a few months of each other. This change also relieves TCAC of the administrative burden of accepting two checks and accounting for remaining balances.

Section 10337(f)

Proposed Change:

10337(f)(1) CTCAC may establish a schedule of fines for violations of the terms and conditions, the regulatory agreement, other agreements, or program regulations. In developing the schedule of fines, CTCAC shall establish the fines for violations in an amount up to five hundred dollars ($500) per violation or double the amount of the financial gain because of the violation, whichever is greater. Except for serious violations, a first-time property owner violator shall be given at least 30 days to correct the violation before a fine is imposed. A violation that has occurred for some time prior to discovery is one violation, but fines may be a recurring amount if the violation is not corrected within a reasonable period of time thereafter, as determined by the Committee.

(2) CTCAC shall adopt and may revise the schedule of fines by resolution at a public general Committee meeting.

(3) A person or entity subject to a fine may appeal the fine to the Executive Director and, thereafter, to the Committee pursuant to Section 10330(b), except that CTCAC shall not collect a fee for the appeal to the Executive Director.

(4) The Executive Director may approve a payment plan for any fines.

(5) If a fine assessed against a property owner is not paid within six months from the date when the fine was initially assessed and after reasonable notice has been provided to the property owner, the Committee may record a lien against the property.

Reason: In the event that the Governor signs into law AB 1920, TCAC will have the authority to issue fines for violations of program terms and conditions, the regulatory agreement, other agreements, or program regulations. Many program elements are state requirements not enforced by the IRS. In addition, the IRS does not enforce federal requirements after year 15. TCAC has relied on negative points to enforce the elements of the program that the IRS does not. However, negative points are only effective if the owner plans to propose new applications.

TCAC also has the authority to bring a lawsuit to enforce compliance with the regulatory agreement, but this is expensive, time-consuming, and only appropriate for worst-case scenarios. Fine authority provides a more efficient and effective enforcement tool to ensure correction of violations that do not merit litigation or a receivership. Other public entities such as the Sacramento Housing and Redevelopment Agency have found that the authority to issue fines is an effective enough deterrent that compliance is achieved without having to impose fines.

The proposed change simply codifies the parameters of the new state statute into the TCAC regulations. In early 2017, staff intends to implement the authority by releasing for public comment and ultimately bringing before the committee a resolution creating the fine structure and elaborating other details. Stakeholders will have an opportunity to comment on the specifics of the proposed fine structure at that time.