CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: September 4, 2018

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 12, 2018. TCAC staff will conduct public hearings to explain, answer questions, and solicit comments regarding the proposals at the following times and locations:

Monday, September 24, 2018
Oakland, 1:30 pm
Elihu M. Harris State Building
1515 Clay Street, Room 1
Oakland, CA 94612

Tuesday, September 25, 2018
Sacramento, 9:30 am
State Treasurer's Office Building
915 Capitol Mall, Room 587
Sacramento, CA 95814

Thursday, September 27, 2018
Los Angeles, 9:30 am
Ronald Reagan State Building
300 South Spring Street, Auditorium
Los Angeles, CA 90013

Wednesday, October 3, 2018
San Diego, 1:30 pm
San Diego Housing Commission
1122 Broadway, 4th Floor Conference Room
San Diego, CA 92101

Please see the public notice for additional information regarding public comments on these 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 29, 2018. In the interests of consistency, TCAC prefers that commenters comment at a public hearing or submit written comments, as opposed to both.

Summary of Changes Proposed

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

1. Require projects funded under the homeless assistance priorities within the Nonprofit Set-Aside to follow the statutorily mandated Housing First criteria. Section 10315(b). Page 1.
2. Apply the existing requirement for first priority homeless assistance projects to reserve homeless units for persons referred by specified coordinated entry systems to second priority homeless assistance projects as well. Section 10315(b). Page 1.
3. Add San Benito County to the Central Coast Region in the event Hollister becomes non-rural. Section 10315(i). Page 2.
4. Clarify that a project that has one or more buildings ineligible for the federal basis boost may apply for state tax credits. Section 10317(g)(2). Page 3.
5. Reflect the new state law allow State Farmworker Credit projects to receive both the federal basis boost and state credits. Section 10317(g)(2). Page 3.
6. Update a cross-reference. Section 10317(i)(6). Page 4.
7. Impose a $5 million cap on the amount of state credits a single project may receive. Section 10317(l). Page 4.
8. Correct a grammatical error. Section 10322(e). Page 4.
9. Update a cross-reference. Section 10322(f). Page 5.
10. In conformance to a proposed change in Section 10325(c)(9)(A), require an appraisal for any competitive application that includes the demolition of existing buildings. Section 10322(h)(9). Page 5.
11. Codify TCAC's long-standing practice of excluding the value of favorable financing from appraised value. Section 10322(h)(9). Page 5.
12. Clarify that the appraisal of an existing property should take into account the nature and length of on-going rent restrictions in the valuation of the improvements. Section 10322(h)(9). Page 5.
13. Replace an incorrect term. Section 10322(h)(9). Page 5.
14. Allow applicants subject to the build and fill rule due to a higher ranking project in the same round to receive a waiver up to two weeks after the application deadline. Section 10322(h)(10). Page 6.
15. Make clarifying edits. Section 10322(h)(10). Page 6.
16. Conform the vacancy rate requirements relating to eligibility for the streamlined market study to the vacancy rate requirements in the underwriting section of the regulations. Section 10322(h)(10). Page 6.
17. Eliminate the requirement for market analysts to compute the project's lifetime rental benefit. Section 10322(h)(10). Page 6.
18. Delete the requirement for a non-profit applicant to provide proof of state non-profit status. Section 10322(h)(30). Page 8.
19. Revise the language relating to the documentation for establishing eligibility for the RHS Section 514/515/HOME apportionment in the Rural Set-Aside. Section 10322(h)(32). Page 8.
20. Remove an obsolete provision and renumber subsequent paragraphs. Section 10322(h)(33)-(35). Page 9.
21. Clarify the existing requirement that the final cost certification include the sources and amounts of all permanent financing. Section 10322(i)(2)(A). Page 9.
22. Remove an obsolete reference. Section 10322(k). Page 10.

23. Make a conforming change to the proposal in Section 10325(c)(4)(A)8. Section 10325(c)(4)(A). Page 10.
24. Clarify that projects proposing van services may not receive points for transit passes and allow transit pass points for projects with dial-a-ride service only for free or discounted dial-a-ride passes. Section 10325(c)(4)(A)1. Page 11.
25. Clarify that parks do not include greenbelts and pocket parks and that open space preserves and biking parkways are included only if there is a trailhead or designated access point within a specified distance. Section 10325(c)(4)(A)2. Page 12.
26. Allow hospitals to be under construction at the time of application provided they are completed and available to the residents prior to the housing development completion. Section 10325(c)(4)(A)8. Page 12.
27. Make a conforming change to the proposal in Section 10325(c)(9)(C). Section 10325(c)(4)(A)11. Page 13.
28. Eliminate duplicative language relating to service provide experience requirements. Section 10325(c)(4)(B). Page 13.
29. Clarify that a Special Needs Project with less than 75% Special Needs Units will be proportionately scored using for the Special Needs service options for the Special Needs units and the Large Family, Senior, and At-Risk service options for the non-Special Needs units. Section 10325(c)(4)(B). Page 13.
30. Simplify the documentation from the service provider that the application must include. Section 10325(c)(4)(B). Page 13.
31. Make a number of non-substantive edits. Section 10325(c)(4)(B). Page 13.
32. Allow projects to score Lowest Income points for units targeted at 20% AMI and explicitly state that applicants utilizing the income averaging election must select targeting in 10% AMI increments. Section 10325(c)(6)(A). Page 15.
33. Eliminate the requirement that an applicant receiving full readiness points provide a construction lender trade payment breakdown of approved construction costs by the 180- or 194-day deadline. Section 10325(c)(7). Page 16.
34. With respect to projects that have no construction lender and that are subject to the requirement to provide evidence that the equity partner has been admitted to the ownership entity and that an initial disbursement of funds has occurred, clarify that this evidence shall be submitted by the 180- or 194-day deadline as applicable. Section 10325(c)(7). Page 16.
35. Eliminate the requirement for projects receiving any readiness points to submit an executed letter of intent from the equity partner within 90 days and instead require the applicant to submit an updated TCAC Attachment 16 by the 180- or 194-day deadline. Section 10325(c)(7). Page 16.
36. Make non-substantive edits. Section 10325(c)(7). Page 16.
37. Require applicants additionally to accept exchanges of state credits for extra federal credits in order to receive credit substitution points and clarify that either type of exchange shall be made in a manner that yields equal equity based solely on the tax credit factors stated in the application. Section 10325(c)(8)(A). Page 17.
38. Simplify the requirements to receive Enhanced Accessibility and Visitability points. Section 10325(c)(8)(B). Page 18.
39. Discount the tiebreaker value of soft leveraged financing by the value of buildings that will be demolished. Section 10325(c)(9)(A). Page 18.

40. Remove the reference to local community foundations in the public funds definition and subject them to the requirements relating to soft loans from unrelated private entities. Section 10325(c)(9)(A). Page 18.
41. Disallow tiebreaker credit for land and improvement donations from either a public or private entity unless the land and improvements are wholly donated. Section 10325(c)(9)(A). Page 18.
42. Codify TCAC's long-standing practice of giving donation credit for leased land only if the lease payments do not exceed $100 per year. Section 10325(c)(9)(A). Page 18.
43. Clarify that applicants may receive donation credit for land donated pursuant to either an inclusionary housing ordinance or development agreement negotiated between a public entity and an unrelated private developer and eliminate the requirement that the inclusionary housing ordinance have been in effect for at least one year. Section 10325(c)(9)(A). Page 18.
44. Clarify that public land loans to a project that are replacing affordable housing within the footprint of the original developments are not exempt from the seller carryback exclusion from tiebreaker credit and that in the cases of projects including both new construction and rehabilitation or replacement housing TCAC will pro-rate the value of the land loan on a unit count basis. Section 10325(c)(9)(A). Page 18.
45. Clarify the Tranche B tiebreaker credit provisions such that only those units within a Special Needs Project that are subject to the 40% average AMI requirement may use the 30% AMI rent as the TCAC rent and that in the case of USDA rental assistance the contract rent shall be the higher of the 60% AMI rent or the committed contract rent. Section 10325(c)(9)(A). Page 18.
46. Clarify that a non-public entity providing a soft loan or grant may not receive funds from a related party to the project. Section 10325(c)(9)(A). Page 18.
47. Allow the Executive Director to approve an exception to the 5-year hold rule for private land donations in a case where a non-profit entity is acting solely as a pass-through, provided that the donor to the non-profit organization held the contributed asset for at least 5 years and that both the original donor and non-profit donor meet current requirements. Section 10325(c)(9)(A). Page 18.
48. Allow a 9% project to receive the hybrid tiebreaker benefits if the Large Family multiple-bedroom unit requirement is met across the two components in the aggregate. Section 10325(c)(9)(A). Page 18.
49. Eliminate the add-back to the second tiebreaker ratio. Section 10325(c)(9)(B). Page 23.
50. Apply the exclusion from the higher resource area tiebreaker bonus to inclusionary projects for which the inclusionary obligation is the result of a development agreement negotiated between a public entity and a private developer. Section 10325(c)(9)(C). Page 24.
51. Eliminate the size limit on 9% new construction and adaptive reuse projects. Section 10325(f)(9)(A). Page 24.
52. Require 9% resyndication projects to have no uncorrected compliance violations relating to over-income tenants or rent overcharges and no unpaid fines prior to receiving a tax credit reservation. Section 10325(f)(11)(D). Page 25.
53. Require 9% income averaging projects to select "Yes" on line 8b of the IRS Form 8609. Section 10325(f)(13). Page 25.
54. Clarify that lobbies and hallways do not count towards the common area size requirement. Section 10325(g)(1)(E). Page 26.
55. Clarify that lobbies and hallways do not count towards the common area size requirement. Section 10325(g)(2)(G). Page 26.
56. Clarify how to calculate the requirements for Special Needs projects with less than 75% special needs units. Section 10325(g)(3). Page 27.

57. Require a minimum of 900 square feet of living space in any 3-bedroom units contained in a Special Needs project. Section 10325(g)(3)(H). Page 27.
58. Require Special Needs projects reserved for seniors to provide an elevator in 3 or more story buildings and meet the TCAC accessibility requirements for Senior projects. Section 10325(g)(3)(M). Page 28.
59. Requiring Special Needs projects designating units for individuals who are homeless to follow the statutory Housing First criteria. Section 10325(g)(3)(N). Page 28.
60. Require a 3rd party legal opinion to verify additional eligibility criteria for the At-Risk housing type. Section 10325(g)(4)(B). Page 28.
61. Allow projects to be placed on the waiting list prior to application review but state that staff shall review and recommend applications according to the established order. Section 10325(h). Page 29.
62. Establish the waiting list expiration date as December 31. Section 10325(h). Page 29.
63. Allow TCAC to forward allocate enough credits from the subsequent year's general allocation to fully fund a waiting list project for which some but insufficient federal credits are available. Section 10325(h). Page 29.
64. Allow a waiting list applicant who identifies an alternative funding source to offset the unavailability of state credits to substitute a new hard or soft source at a later date with the approval of the Executive Director and extend from November 1 to December 1 the general deadline by which projects may substitute state tax credits with other funds. Section 10325(h). Page 29.
65. Make non-substantive edits. Section 10325(h). Page 29.
66. Require 4% income averaging projects to select "Yes" on line 8b of the IRS Form 8609. Section 10326(g)(9). Page 31.
67. Allow for the allocation of the purchase price among land and improvements to vary at placed in service, provided that neither the overall purchase price increases nor the basis associated with existing improvements increases. Section 10327(c)(6). Page 32.
68. For projects with a purchase price in excess of appraised value, prohibit an applicant from reducing the project's permanent financing in the application's basis and credits page with any amount of developer fee already required to be deferred or contributed. Section 10327(c)(6). Page 32.
69. Require an owner to continue funding replacement reserves in the required amount for the duration of the rental agreement and to maintain replacement reserves in a segregated account. Limit the use of replacement reserves to capital improvements or repairs. Section 10327(c)(7). Page 33.
70. Make non-substantive edits. Section 10327(c)(7). Page 33.
71. Increase the minimum tax credit factor in the case of self-certification from $.65 to $.79. Section 10327(c)(9). Page 34.
72. For purposes of the pro forma, require a 10% vacancy rate for special needs units and non-special needs SRO units without a significant project-based public rental subsidy, unless waived by the Executive Director; allow a range of vacancy rates between 5-10% for special needs units and non-special needs SRO units with a significant project-based public rental subsidy; and require a vacancy rate of 5% for all other units. Section 10327(g)(3). Page 34.
73. Clarify that the existing exception to the 1.15 DCR requirement applies to CalHFA loans only if they are hard loans. Section 10327(g)(6). Page 35.
74. Provide that commercial net income that exceeds specified cash flow limits shall count towards the residential cash flow limits and require applicants with commercial space to include in the placed in

service package a letter from the hard lender specifying the portion of the loan underwritten with commercial income. Section 10327(g)(7). Page 35.

75. Correct an outdated reference to the maximum points available in the Readiness to Proceed category. Section 10328(c). Page 36.
76. Correct a grammatical error. Section 10330(b)(1). Page 36.
77. Eliminate the LRA review for non-competitive applications and reduce the application fee accordingly. Section 10335(a). Page 36.
78. For scattered site projects in differing jurisdictions, require a competitive applicant to pay an extra $1000 application fee for each additional LRA that does not waive its portion of the application fee. Section 10335(a). Page 36.
79. Explicitly prohibit owners from requiring tenants to participate in services. Section 10337(b)(4) and (5). Page 37.
80. Codify HUD guidance on the application of the Fair Housing Act to the use of criminal records. Section 10337(b)(4) and (5). Page 37.

2018 Proposed Regulation Change with Reason
September 4, 2018

Section 10315(b)

(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)(3) 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, Mental Health Services Act (MHSA), CalHFA Local Government Special Needs Housing Program, Governor's Homeless Initiative, Housing for a Healthy California, or HCD No Place Like Home development capital funding committed for which the amount of development capital funding committed shall be at least $500,000 or $10,000 per unit for all Low-Income Units in the project (irrespective of the number of units assisted by the referenced programs), whichever is greater; or 2) 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 Low-Income 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. ~~For all projects seeking this first priority, the applicant shall commit to reserving vacant homeless assistance units for 60 days for occupancy by persons or households referred, where such systems or lists exist, by either 1) the relevant coordinated entry or access system, 2) the relevant county health department from a list of frequent health care users; or 3) the relevant behavioral health department from a list of persons with chronic behavioral health conditions who require supportive housing. The applicant shall enter into a memorandum of understanding with the relevant department or system administrator prior to placing in service unless a reasonable memorandum is refused by the department or administrator.~~

- Second, other qualified homeless assistance projects.

To compete as a homeless assistance project, at least fifty percent (50%) of the Low-Income 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.

For projects receiving a reservation under the first or second priority, owners, property managers, and service providers shall comply with the core components of Housing First, as defined in Welfare and Institutions Code Section 8255(b). For projects receiving a reservation under the first or second priority, the applicant also shall commit to reserving vacant homeless assistance units for 60 days for occupancy by persons or households referred, where such systems or lists exist, by either 1) the relevant coordinated entry or access system, 2) the relevant county health department from a list of frequent health care users; or 3) the relevant behavioral health department from a list of persons with chronic behavioral health conditions who require supportive housing. The applicant shall enter into a memorandum of understanding with the relevant department or system administrator prior to placing in service unless a reasonable memorandum is refused by the department or administrator.

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.

Reason: SB 1380 of 2016 requires TCAC to incorporate the core components of Housing First, as defined by statute, with respect to units designated for persons experiencing homelessness or at risk of homelessness. The proposed changes meet this mandate by requiring projects funded under the homeless assistance priorities within the Nonprofit Set-Aside to follow the statutory Housing First criteria. The requirement applies to project owners, property managers, and service providers.

The proposed changes further apply the existing requirement for first priority homeless assistance projects to reserve homeless units for persons referred by specified coordinated entry systems to second priority homeless assistance projects as well.

Section 10315(i)

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

Geographic Area	Apportionments
City of Los Angeles	17.6%

Balance of Los Angeles County	17.2%
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%
East Bay Region (Alameda and Contra Costa Counties)	7.4%
Orange County	7.3%
South and West Bay Region (San Mateo, Santa Clara Counties)	6.0%
Capital Region (El Dorado, Placer, Sacramento, Sutter, Yuba, Yolo Counties)	5.7%
Central Coast Region (Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5.2%
Northern Region (Butte, Marin, Napa, Shasta, Solano, and Sonoma Counties)	4.4%
San Francisco County	3.7%

Reason: Historically, all of San Benito County has met the rural definition. In the event that Hollister becomes a non-rural area, projects from that city need to fall into some geographic region. The proposed changes add San Benito County to the Central Coast Region to account for this eventuality.

Section 10317(g)(2)

(2) ~~the project~~ one or more buildings is not eligible for the 130% basis adjustment, in which case the State Tax Credits shall be available only for the buildings not eligible for the 130% basis adjustment. This paragraph shall not apply to projects ~~unless~~ proposing a Special Needs housing type or applying for State Farmworker Credits;

Reason: Staff proposes two changes to this section. First, as a result of smaller Difficult Development Areas and the increase in scattered site projects, TCAC more frequently is seeing projects in which some buildings qualify for the federal basis boost and some do not. The proposed change clarifies that a project that has one or more buildings ineligible for the federal basis boost may apply for state tax credits. However, the state credits will only be available for the buildings that do not receive the federal basis boost.

Second, state law and TCAC regulations generally prohibit a 4% tax credit project from seeking state credits unless it is ineligible for the 130% federal basis boost that comes with being located in a Difficult Development Area or Qualified Census Tract. State law and the TCAC regulations do, however, allow a special needs project to receive both the federal basis boost and state credits (i.e., "double dip"). Whereas the Legislature recently amended the statute to also allow applicants for the State Farmworker Credit to double dip, the proposed change reflects this new law.

Section 10317(i)(6)

Staff shall identify high cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits, excluding any increase for deeper targeting pursuant to Section 10327(c)(5)(C). CTCAC shall calculate total eligible basis consistent with the method described in Section 10325~~(c)(1)(A)~~(d), except that the amount of developer fee in basis that exceeds the project's deferral/contribution threshold described in Section10327(c)(2)(B) shall be excluded. A project will be designated "high cost" if a project's total eligible basis exceeds its total adjusted threshold basis limit by 30%. Staff shall not recommend such project for credits. Any project 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%.

Reason: The proposed change updates a cross-reference.

Section 10317(l) [as in Linda]

(l) The maximum State Tax Credits available for award to any one project in any funding round shall not exceed Five Million ($5,000,000) Dollars.

Reason: TCAC has overallocated state tax credits to 9% projects in a major way for the last few years. The overallocation was $35 million in 2015 and $20 million in 2016. In 2017, TCAC deployed two new strategies to reduce the overallocation by requiring double dipping projects to maximize their federal basis request and by exchanging extra federal credits for overallocated state credits. Nonetheless, the 2017 over-allocation was still $21 million. Part of the problem is that a few projects are receiving extremely large state credit awards. Whereas TCAC has a cap on the amount of federal credits a single project can receive, it has no cap on the amount of state credits a project may receive. As a result, the proposed changes impose a $5 million cap on the amount of state credits a single project may receive. Over 2017 and the first round of 2018, 14 of 43 projects receiving state credits exceeded $5 million. The majority were in the $5-6 million range, but a few received awards between $8-11 million. Most projects receiving a large state credit award are not requesting the maximum amount of federal credits, which effectively gives them an undue tiebreaker advantage over projects that are ineligible for state credits. In addition, because the set-asides are calculated only based on the federal credit amount (as required by federal and state law in most cases), the lack of limit on state credit awards unduly enlarges the set-asides which reduces the credits available in the regions in future rounds. Staff believes that a cap on state credits awards, akin to the cap on federal credit awards, is appropriate.

Section 10322(e)

Complete application. 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 scanning error in which no more than half of the pages in a document are missing 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 application omissions, 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 third party sources shall certify that all evidentiary documents deemed to be missing from the application had been executed, and were in the third-party source's possession, 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 proposed changes corrects a grammatical error.

Section 10322(f)

(f) Application changes. Only the Committee may change an application as permitted by Sections 10317(d), 10325(c)(~~7~~6)(B), and 10327(a). Any changes made by the Committee pursuant to those sections shall never increase the score or credit amount of the application as submitted, and may reduce the application's score and/or credit amount.

Reason: The proposed changes update a cross-reference.

Section 10322(h)(9)

(9) Appraisals. Appraisals are required for 1) all rehabilitation applications except as noted in (A), ~~for~~ 2) all competitive applications except for new construction projects that are on tribal trust land or that have submitted a third party purchase contract with, or evidence of a purchase from, an unrelated third party, ~~for~~ 3) all applications seeking tiebreaker credit for donated or leased land, 4) all competitive applications involving the demolition of existing buildings, and ~~for~~ 5) all new construction applications involving a land sale from a related party. For purposes of this paragraph only, a purchase contract or sale with a related party shall be deemed to be a purchase contract or sale with an unrelated party if the applicant demonstrates that the related party is acting solely as a pass-through entity and the tax credit partnership is only paying the acquisition price from the last arms-length transaction, plus any applicable and reasonable carrying costs. Appraisals shall not include the value of favorable financing.

(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, taking into account any on-going recorded rent restrictions;
(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.

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 and use an acquisition ~~basis~~ value 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. Projects for which an appraisal is required above shall provide 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.

Reason: Staff proposes four distinct changes to this section. First, conforming to the proposal in Section 10325(c)(9)(A) to discount the tiebreaker credit for public funds by the value of existing building that will be demolished, the proposed changes require an appraisal for any competitive application that includes the demolition of existing buildings. An appraisal is required even if the project would otherwise be exempt from the appraisal requirement due to having a third party purchase contract with an unrelated party.

Second, the proposed changes codify TCAC's long-standing practice of excluding the value of favorable financing from appraised value. Whereas not all buyers may be able to assume existing financing, it is inappropriate to include that in the project valuation.

Third, on-going recorded rent restrictions are applicable to any buyer. The proposed changes clarify that the appraisal of an existing property should take into account the nature and length of on-going rent restrictions in the valuation of the improvements.

Fourth, staff further proposes to replace an incorrect term. In the context of a rehabilitation project transferred for the amount of assumed debt, the value of the debt is the acquisition value (i.e., purchase price), which is the concept employed in this provision. The acquisition basis is a subset of the acquisition value and limited to the value of the improvements. The acquisition basis is not relevant to this provision.

Section 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 new construction hybrid 9% and 4% tax credit development may combine information for both component projects into one report and, if not, shall reflect the other component project as a development in the planning or construction stages.

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, or within two weeks of the application date for applications received in the same funding round, 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 and within the same market area 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 units and non-special needs SRO units without a significant project-based public rental subsidy~~Special Needs projects)~~ and five percent (5%) for all other units 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. A project that fails to provide this calculation at application shall not be disqualified, provided that the applicant provides the calculation prior to reservation.~~

Reason: Staff proposes four changes to this section. First, the current regulations prohibit TCAC from awarding credits to a rural new construction project if another tax credit or other publicly-assisted new construction project housing the same population and within the same market area 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. This is known as the "build and fill" rule. The Executive Director may approve a waiver under certain circumstances, but an applicant must obtain this waiver in advance of the application deadline. In the case of two applications received in the same round, this would require advance knowledge of a competitor's intent to submit an application in that round, which may not be known to the person interested in a waiver. The proposed changes allow applicants in that particular circumstance to

receive a waiver up to two weeks after the application deadline. Applicants seeking waivers in all other instances must still obtain the waiver prior to application.

Second, staff proposes to move the "in the same market area" reference in the build and fill rule up ahead in the sentence to clarify that it applies to situations (a), (b), and (c).

Third, staff proposes to conform the vacancy rate requirements relating to eligibility for the streamlined market study to the vacancy rate requirements in the underwriting section of the regulations. This clarifies that, in order to be eligible for the streamlined market study, the project must not have a vacancy rate of more than 10% for special needs or SRO units without significant project-based rental subsidy and more than 5% for all other units.

Fourth, in 2017 TCAC began requiring that market analysts compute the project's lifetime rental benefit. The intent was to highlight one part of the project's public benefit. Over the last 1.5 years, TCAC has found this calculation to be of negligible value and, in the case of projects with rental subsidy, downright misleading. Staff proposes to eliminate this requirement and discontinue the collection of this data.

Section 10322(h)(30)

(30) Nonprofit Set-Aside application. Applicants requesting Tax Credits from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:

(A) IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;

(B) ~~proof of designation as a nonprofit corporation under Health and Safety Code Section 50091;~~

~~(C)~~ proof that one of the exempt purposes of the corporation is to provide low-income housing;

(~~D~~C) a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;

(~~E~~D) a third party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,

(~~F~~E) a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).

Reason: Federal law requires TCAC to award 10% of tax credits to projects in which each developer and general partner is a 501(c)(3) or (c)(4) corporation. The TCAC regulations further require proof that each developer and general partner meets a state definition of nonprofit corporation. This requirement is unnecessary, redundant, and creates additional potential for error in the competitive application process. The proposed changes delete the requirement for a non-profit applicant to provide proof of state non-profit status.

Section 10322(h)(32)

(32) RHS Section 514, 515 or ~~538~~ HOME program applications. Rural housing applicants requesting Tax Credits ~~from amounts made available~~ for projects financed by the RHS Section 514~~,~~ or 515~~, or 538~~ program or from a HOME Participating Jurisdiction shall submit evidence from RHS or the HOME Participating Jurisdiction that such funding has been ~~requested, obligated or~~ committed, and such evidence shall meet the requirements of Section 10325(f)(8) ~~as defined by RHS~~.

Reason: Section 10315(c)(1) creates an apportionment within the Rural Set-Aside for projects with specified funding commitments from the RHS Section 514 or 515 programs or from the HOME program. Section 10322(h)(32) relates to documents that an applicant must submit with an application and contains an outdated reference to RHS Section 538 loans which are no longer eligible for the apportionment. In addition the language incorrectly refers to funds requested or obligated, whereas Section 10315(c)(1) now clearly requires funding to be committed. The proposed changes update this section to refer correctly to documentation that is required to establish eligibility for the apportionment. The proposed changes further move the HOME funding commitment documentation from Section 10322(h)(33) to this paragraph.

Section 10322(h)(33)-(35)

(33) ~~HOME funds match. Applicants requesting State Tax Credits to match HOME funds shall provide a letter from the local jurisdiction stating why local matching funds are not being provided.~~

~~(34)~~ Community service facility. An applicant requesting basis for a community service facility shall submit a third party tax attorney's opinion stating that the community service facility meets the requirements of IRC Section 42(d)(4)(C). CTCAC may use its discretion in determining whether the community service facility meets the qualifications.

(~~35~~34) Mixed housing types. An applicant proposing a project to include senior housing in combination with non-senior housing shall provide a third party legal opinion stating that the project complies with fair housing law.

Reason: Section 10315(c)(1) creates an apportionment within the Rural Set-Aside for projects with specified funding commitments from the RHS Section 514 or 515 programs or from the HOME program. The language of that provision does not require or even refer to local matching funds. Section 10322(h)(33) incorrectly requires documentation in the application stating why local matching funds are not being provided. Staff proposes to eliminate this erroneous documentation requirement. The proposed changes further renumber the subsequent paragraphs.

Section 10322(i)(2)(A)

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

Reason: The proposed changes clarify the existing requirement that the final cost certification include the sources and amounts of all permanent financing, as identified by the certified public accountant.

Section 10322(k)

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

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

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

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

Reason: In 2017, TCAC folded the Single Room Occupancy housing type into the Special Needs Housing Type. The proposed change reflects the elimination of the stand-alone Single Room Occupancy housing type.

Section 10325(c)(4)(A)

(A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application except as specified in ~~paragraph (A)(1) and (A)(5)~~paragraphs 1, 5, and 8 below. In addition, an amenity to be operated by a public entity that is (i) being constructed within the project as part of the tax credit development, (ii) is receiving development funding for the amenity from the public entity, and (iii) has a proposed operations budget from the operating public entity, would be considered "in place" at the time of application. Distances must be measured using a standardized radius from the development site to the target amenity, unless that line crosses a significant physical barrier or barriers. Such barriers include highways, railroad tracks, regional parks, golf courses, or any other feature that significantly disrupts the pedestrian walking pattern between the development site and the amenity. The radius line may be struck from the corner of development site nearest the target amenity, to the nearest corner of the target amenity site. However, a radius line shall not be struck from the end of an entry drive or on-site access road that extends from the central portion of the site itself by 250 feet or more. Rather, the line shall be struck from the nearest corner of the site's central portion. Where an amenity such as a grocery store resides within a larger shopping complex or commercial strip, the radius line must be measured to the amenity exterior wall, rather than the site boundary. The resulting distance shall be reduced in such instances by 250 feet to account for close-in parking.

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

Reason: This is a conforming change to the proposal in Section 10325(c)(4)(A)8. below.

Section 10325(c)(4)(A)1.

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~~ point 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 Low-Income Unit for at least 15 years. These points are not available for projects with van service. These points are only available to Rural set-aside projects with dial-a-ride service for free or discounted dial-a-ride passes.

At least one pass per Low-Income Unit 3 points
At least one pass per each 2 Low-Income 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 intent of the points for transit passes is to maximize the impact of proximity to transit by making it easier (i.e., less expensive) for tenants to utilize the transit. For rural projects that provide free van service as an alternative to transit, transit passes add minimal public benefit. The proposed changes clarify that projects proposing van services may not receive points for transit passes. Likewise, dial-a-ride service is meant to be an alternative to transit. In that case, points for transit passes are only relevant to the extent that they make the dial-a-ride service itself less expensive and therefore more accessible. The proposed changes allow transit pass points for projects with dial-a-ride service only for free or discounted dial-a-ride passes.

Section 10325(c)(4)(A)2.

2. The site is within 1/2 mile of a public park or a community center accessible to the general public (1 mile for Rural set-aside projects). A public park shall not include 1) ~~(not including~~ school grounds unless there is a bona fide, formal joint use agreement between the jurisdiction responsible for the parks/recreational facilities and the school district or private school providing availability to the general public of the school grounds and/or facilities, 2) greenbelts or pocket parks, or 3) open space preserves or biking parkways unless there is a trailhead or designated access point within the specified distance~~) or a community center accessible to the general public~~ 3 points

or within 3/4 mile (1.5 miles for Rural set-aside projects) 2 points

Reason: The recent competition highlighted the lack of clarity with what constitutes a public park. Given the countless varieties of public parks, staff will continue to exercise its judgment in determining what qualifies for points. Nonetheless staff proposes to provide some additional clarification on what does not qualify. The proposed changes exclude greenbelts and pocket parks completely. The proposed changes further include open space preserves and biking parkways (such as the American River Parkway) only if there is a trailhead or designated access point within the specified distance.

Section 10325(c)(4)(A)8.

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

The site is within 1 mile (for Rural set-aside projects, 1.5 miles) of a qualifying medical clinic with a physician, physician's assistant, or nurse practitioner onsite for a minimum of 40 hours each week, or hospital 2 points

A hospital demonstrated at the time of application to be under construction and to be completed and available to the residents prior to the housing development completion is considered in place at the time of application for purposes of this scoring factor.

Reason: The current scoring factors for rail stations, ferry stations, and public schools allow for such facilities to be under construction at the time of application, provided they will be in service by or shortly after

completion of the housing development. Given the long time frame involved in construction a hospital, the proposed changes create a similar under construction allowance for hospitals. This allowance does not apply to medical clinics.

Section 10325(c)(4)(A)11.

11. The project is a new construction large family project, except for an inclusionary project as defined in Section 10325(c)(9)(C), and the site is located in a census tract designated on the TCAC/HCD Opportunity Area Map as Highest or High Resource: 8 points

An application for a large family new construction project located in a High or Highest Resource area shall disclose whether or not the project includes any Low-Income Units which satisfy the obligations of an inclusionary housing ordinance or development agreement and, if so, the number of such units and whether the inclusionary obligations derive solely from the Low-Income Units themselves.

An applicant may choose to utilize the census tract resource designation from the TCAC/HCD Opportunity Maps in effect when the initial site control was obtained up to seven calendar years prior to the application.

Reason: In Section 10325(c)(9)(C), staff proposes an amendment to clarify that an inclusionary project is one in which affordable units are required either by ordinance or development agreement. As a result, the obligation to disclose is also extended to inclusionary units required by a development agreement. The proposed changes to this section constitute a conforming change.

Section 10325(c)(4)(B)

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

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

The amenities must be available within 6 months of the project's placed-in-service date. Applicants must commit that services shall be provided for a period of 15 years.

All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development (1½ miles for Rural set-aside projects) provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. ~~All organizations providing services for which the project is claiming service amenities~~

~~points must have at least 24 months experience providing services to one of the target populations to be served by the project.~~

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

For Large Family, Senior, and At-Risk Projects or for the non-Special Needs units in a Special Needs Project with less than 75% Special Needs units, amenities may include, but are not limited to:

[Point categories remain unchanged]

For Special Needs ~~projects~~Projects with 75% or more Special Needs units or for the Special Needs units in a Special Needs Project with less than 75% Special Needs Units, amenities may include, but are not limited to:

[Point categories remain unchanged.]

Special needs projects with less than 75% special needs units shall be scored proportionately in the service amenity category based upon (i) the services provided to special needs and non-special needs units, respectively; and (ii) the percentage of units represented by special needs and non-special needs units, respectively. Special needs projects with 75% or more but less than 100% special needs units shall demonstrate that all tenants will receive an appropriate level of services.

Items 1 through 12 are mutually exclusive. One proposed service may not receive points under two different categories, except in the case of proportionately-scored scored services pursuant to the previous paragraph.

Documentation must be provided for each category of services for which the applicant is claiming service amenities points and must state the name and address of the organization or entity that will provide the services; describe the services to be provided and the number of hours services will be provided; ~~state the annual dollar value of the services; commit that services will be provided for a period of at least one (1) year; commit that services will be available to tenants of the project free of charge (except for child care services or other charges required by law);~~and name the project to which the services are being committed. ~~Organizations providing in-kind or donated service must estimate the value of those services. Volunteer time may be valued at $10 per hour.~~

Documentation shall take the form of a contract for services, Memorandum of Understanding (MOU), or commitment letter on agency letterhead.

For projects claiming points for items 1, 2, 7, or 8, a position description must be provided. Services delivered by the on-site Property Manager or other property management staff will not be eligible for points under any category (items 1 through 12).

~~Applications must include a services sources and uses budget clearly describing~~ The application's Service Amenity Sources and Uses Budget page must clearly describe all anticipated income and expenses associated with the services program(s) and ~~that~~ must align~~s~~ with the services commitments provided (i.e. contracts, MOUs, letters, etc.). Applications shall receive points for services only if the proposed services budget adequately accounts for the level of service. The budgeted amount must be reasonably expected to cover the costs of the proposed level of service. If project operating income ~~would~~ will fund service amenities, the application's Service Amenities Sources and Uses Budget must be consistent with the application's ~~Annual Residential Operating Expenses chart~~fifteen year pro forma. Services costs contained in the project's pro forma operating budget ~~are not to be counted toward~~do not count towards meeting CTCAC's minimum operating expenses required by Section 10327(g)(1).

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

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

Reason: Staff proposes a few independent changes to this section. First, the proposed changes eliminate duplicative language relating to service provide experience requirements. The requirements remain that all organizations providing services for which the project is claiming points must document that they have at least 24 months of experience providing services to the project's target population and that experience of individuals may not be substituted for organizational experience.

Second, in the context of a Special Needs project with less than 75% Special Needs units, the proposed changes clarify that the project will be proportionately scored using for the Special Needs service options for the Special Needs units and the Large Family, Senior, and At-Risk service options for the non-Special Needs units. This is advisable because Special Needs Projects with less than 75% Special Needs units have an alternative to selecting a second Housing Type.

Third, the proposed changes simplify the documentation from the service provider that the application must include. Specifically, the changes eliminate the need for the service provider to state the annual dollar value of the services, commit that services will be provided for a period of at least one year (the applicant still must commit to providing services for 15 years), and commit that services will be available to tenants of the project free of charge (again the applicant still must make this commitment). The changes further clarify that the service provider must state the number of hours services will be provided. Lastly, the changes eliminate the requirement for organizations providing in-kind or donated service to estimate the value of those services.

Fourth, the proposed changes make a number of non-substantive phrasing alterations and move the service space evidence requirement closer to the service space requirement.

Section 10325(c)(6)(A)

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

Only projects competing in the Rural set aside may use the 55% of Area Median Income column.

Projects electing the average income federal set-aside must choose targeting in 10% increments of Area Median Income (i.e. 20% AMI, 30% AMI, 40% AMI, etc.).

Lowest Income Points Table (maximum 50 points):

	Percent of Area Median Income						
Percent of Low-Income Units	**55%**	**50%**	**45%**	**40%**	**35%**	**30%**	**20%**
50%		25.0*	37.5				
45%		22.5*	33.8				
40%	10.0*	20.0	30.0				
35%	8.8*	17.5	26.3	35.0		50.0	
30%	7.5*	15.0	22.5	30.0	37.5	45.0	
25%	6.3*	12.5	18.8	25.0	31.3	37.5	50.0
20%	5.0*	10.0	15.0	20.0	25.0	30.0	40.0
15%	3.8*	7.5	11.3	15.0	18.8	22.5	30.0
10%	2.5*	5.0	7.5	10.0	12.5	15.0	20.0

*Available to Rural set-aside projects only

Reason: Under the new federal income averaging election option, projects may target units between 20% and 80% of the area median income in increments of 10%. TCAC further requires that a competitive project electing the income averaging option maintain an average AMI of 50%. The current scoring chart, however, gives no additional benefit to a unit targeted below 30% AMI. The proposed changes allow projects to score points for units targeted at 20% AMI and explicitly state that applicants utilizing the income averaging election must select targeting in 10% AMI increments consistent with federal law.

Section 10325(c)(7)

(7) Readiness to Proceed. 10 points will be available to projects that document items (A) through (B) 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, an updated CTCAC Attachment 16, 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 or 194 days, as applicable, 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.~~ The 180-day or 194-day requirements shall not apply to projects that do not obtain the maximum points in this category. 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 10 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 financing commitment, as defined in Section 10325(f)(3), for all construction financing~~:~~.

(B) evidence, as verified by the appropriate officials, that all environmental review clearances (CEQA, NEPA, and applicable tribal land environmental reviews) necessary to begin construction, except for clearances related to loans with must pay debt service for which the applicant is not seeking tiebreaker benefit, are either finally approved or unnecessary~~; and~~.

For paragraph (B) a final 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: Staff proposes a few changes to this section. First, the proposed changes eliminate the requirement that an applicant receiving full readiness points provide a construction lender trade payment breakdown of approved construction costs by the 180- or 194-day deadline. Staff sees no value to obtaining this documentation.

Second, with respect to projects that have no construction lender and that are subject to the requirement to provide evidence that the equity partner has been admitted to the ownership entity and that an initial disbursement of funds has occurred, the proposed changes clarify that this evidence shall be submitted by the 180- or 194-day deadline as applicable, as opposed to within 180 days even if the project has been assigned the 194-day deadline.

Third, the proposed changes eliminate the requirement for projects receiving any readiness points to submit an executed letter of intent from the equity partner within 90 days. While finalizing terms with an equity partner within 90 days is helpful to keep projects on track to meet the later 180- or 194-day deadline, staff believes that owners can manage their progress without this additional TCAC 90-day deadline. Moreover, the severe consequences for missing the 180- or 194-day deadline provide ample incentive for owners to keep on track. The proposed changes further require the applicant to submit an updated TCAC Attachment 16 by the 180- or 194-day deadline. This ensures that TCAC continues to receive the equity investor information previously provided at the 90-day deadline, albeit at a later date.

Fourth, the proposed changes make some grammatical and stylistic changes that are non-substantive.

Section 10325(c)(8)(A)

(A) ~~State~~ Credit Substitution. For applicants ~~that~~ who agree to both 1) exchange Federal Tax Credits for State Tax Credits pursuant to Section 10317(e) and 2) exchange State Tax Credits for Federal Tax Credits pursuant to Section 10317(c) ~~in an amount that will yield equal equity as if only Federal Credits were awarded~~. 2 points

Applicants receiving these points agree to make the exchange in a manner that yields equal equity based solely on the tax credit factors stated in the application.

Reason: Since 2017 TCAC has sought to reduce its overallocation of state credits by exchanging additional federal credits for state credits once it has exceeded the amount of state credits available. To date, TCAC has asked eligible projects to make the exchange on a voluntary basis, which has not been particularly successful. The proposed change incentivizes applicants to accept such exchanges by adding it into the point system. The proposed changes further clarify that any type of exchange, whether federal to state or state to federal, shall be made in a manner that yields equal equity based solely on the tax credit factors stated in the application. This provides clarity on how the exchange will be calculated.

Section 10325(c)(8)(B)

(B) Enhanced Accessibility and Visitability. ~~Project design incorporates California Building Code Chapter 11(B) and the principles of Universal Design in at~~At least half of the project's Low-Income Units shall meet the minimum requirements of California Building Code Chapter 11(B) and also include~~by including~~:

- Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34” clear width for all doors on an accessible path.
- ~~Interior doors with lever hardware and~~ 42" minimum width hallways.
- ~~Fully accessible bathrooms complying with California Building Code (CBC) Chapter 11(A) and 11(B). In addition, a 30”x48” clearance parallel to and centered on the bathroom vanity.~~
- ~~Accessible kitchens with 30”x48” clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and sink)~~
- ~~Accessible master bedroom size shall be at least 120 square feet (excluding the closet),~~The master bedroom shall accommodate a queen size bed ~~, shall provide~~with 36” in clearance around three sides of the bed~~, and shall provide required accessible clearances, free of all furnishings, at bedroom and closet doors. The master bedroom closet shall be on an accessible path~~.
- Wiring for audio and visual doorbells ~~required by UFAS shall be installed~~.
- ~~Closets and balconies shall be located on an accessible route.~~
- These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.
- Applicant must commit to obtaining confirmation from a Certified Accessibility Specialist that the above requirements have been met. 2 points

Reason: Whereas the regulations, in order to obtain points for enhanced accessibility, already require that half of the Low-Income Units comply with California Building Code Chapter 11(B) and Chapter 11(B) now includes many of the items listed in the bullet points, staff proposes to simplify the bullet points by maintaining only those items that go beyond Chapter 11(B). Staff also proposes to eliminate the reference to the principles of universal design, as those principles are subjective and non-specific. Chapter 11(B) and the remaining bullets provide more direct guidance as to what is required and obtain the same objective.

Section 10325(c)(9)(A)

(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. "Public funds" include federal, tribal, 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 shall include assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note. Public funds shall be discounted for the value of existing buildings that will be demolished.

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, local government fee reductions established in ordinance and not required by federal or state law that are available only to rental affordable housing for lower-income households and affordable ownership housing for moderate income households, or the value of land wholly donated or leased for no more than $100 per year by a public entity or wholly donated as part of an inclusionary housing ordinance or other development agreement negotiated between a public entity and an unrelated private developer ~~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 counted as public funds, unless the loans have a designated repayment commitment from a public source other than rental or operation subsidies, such as the HUD Title VI Loan Guarantee Program involving Native American Housing Assistance and Self Determination Act (NAHASDA) funds. 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 agreement~~s negotiated between public entities and private developers~~, must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(h)(9). Building values shall be considered only 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. For Tribal apportionment applications, donated land value and land-purchase funding shall not be eligible. However, unsuccessful Tribal apportionment applicants subsequently competing within the rural set-aside or tribal applicants competing in a geographic region shall have such donated land value and land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

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 tiebreaker purposes shall be the greater of four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt in spite of a debt service requirement. Further, 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. Seller carryback financing and any portion of a loan from a public seller or related party that is less than or equal to sale proceeds due the seller, except for a public land loan to a new construction project that is not replacing affordable housing within the footprint of the original development, shall be excluded for purposes of the tiebreaker. Projects that include both new construction and rehabilitation or affordable housing replacement shall have the land loan value prorated based on units.

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 conditional of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property.

The capitalized value of rent differentials attributable to public rent or public operating subsidies shall be considered public funds based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; and 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 40 percent (40%) AMI levels (30% AMI for ~~Special Needs projects or for Special Needs units within a mixed-population project~~units subject to the 40% average AMI requirement of Section 10325(g)(3)(A)) from the anticipated contract rent income documented by the subsidy source or, in the case of a USDA rental subsidy only, the higher of 60% AMI rents or the committed contract rents. The rent differential for projects with public operation subsidies shall equal the annual subsidy amount in year 1, provided the subsidy will be of a similar amount in succeeding years, or the aggregate subsidy amount of the contract divided by the number of years in the contract if the contract does not specify an annual subsidy amount.

(ii) soft loans that meet the criteria described in subparagraph (i) (except that terms shall be of at least 55 years), or grants, from unrelated non-public 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 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 or funds 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 or funds 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. Seller carryback financing and any portion of a loan from a non-public 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 wholly donated land and improvements that are not covered by subparagraph (i), that meet the criteria described in subparagraph (i), 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. For a case in which the donor is a non-profit organization acting solely as a pass-through entity, the Executive Director may in advance of the application date approve an exception to the 5-year hold rule provided that the donor to the non-profit organization held the contributed asset for at least 5 years and that both the original donor and non-profit donor meet the requirements of, and are included in the certifications required by, this paragraph. 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). The application shall include a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the donation is from an unrelated entity and that the unrelated entity shall not receive any benefit from a related party to the project.

(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.

The numerator of projects of 50 or more newly constructed or adaptive reuse Tax Credit Units shall be multiplied by a size factor equal to seventy five percent plus the total number of newly constructed or adaptively reused Tax Credit Units divided by 200 (75% + (total new construction/adaptive reuse units/200)). The size factor calculation shall be limited to no more than 150 Tax Credit Units.

In the case of a new construction hybrid 9% and 4% tax credit development which meets all of the following conditions, the calculation of the size factor for the 9% application shall include all of the Tax Credit Units in the 4% application up to the limit described above, the leveraged soft resources ratio calculated pursuant to the subparagraph (A) shall utilize the combined amount of leveraged soft resources defraying residential costs and the combined total residential project development costs from both the 9% and 4% applications, and the ratio calculated pursuant to subparagraph (B) shall also utilize the combined total residential project development costs from both the 9% and 4% application:

(i) the 4% application shall have been submitted to CTCAC and CDLAC by the 9% application deadline;
(ii) the 4% and 9% projects are simultaneous phases, as defined in Section10327(c)(2)(C);
(iii) the 4% application is eligible for maximum points under Sections 10325(c)(3), (4)(B), (5), and (6), except that 1) the 4% application may be eligible for maximum points in the lowest income category in combination with the 9% project, and 2) the 4% application may be eligible for the Large Family housing type points if the combined Low-Income Units in the 4% and 9% components meet the requirements of Section 10325(g)(1)(A) and the 4% component otherwise meets the requirements of Section 10325(g)(1)(B)-(I) by itself; and
(iv) developers shall defer or contribute as equity to the project any amount of combined 4% and 9% developer fees in cost that are in excess of the limit pursuant to Section 10327(c)(2)(A) plus $10,000 per unit for each Tax Credit Unit in excess of 100, using (a) the combined Tax Credit Units of the 9% and 4% components, (b) the combined eligible basis of the 9% and 4% components, and (c) the high-cost test factor calculated using the eligible basis and threshold basis limits for the 9% component.

In the event that the 4% component of a hybrid project that receives an increase to its size factor pursuant to this paragraph is not placed in service within 6 months of the 9% component, both applicants shall be subject to negative points.

If the project's paid purchase price exceeds appraised value, the leveraged soft resources amount shall be discounted by the overage, unless the Executive Director has granted a waiver pursuant to Section 10327(c)(6).

Reason: Staff proposes ten independent changes to this section. First, the current regulations provide tiebreaker credit for the donation of existing improvements on a piece of property only to the extent that those existing buildings are retained for the project. There is no tiebreaker credit for the value of donated buildings that will be demolished. The proposed changes apply this concept to other public funds as well. TCAC will discount the tiebreaker value of any public funds by the value of buildings that will be demolished, regardless of which funding source is designated as paying for the buildings. To implement this, staff proposes a conforming change in Section 10322(h)(9) to require an application that will include the demolition of buildings to submit an appraisal for the property.

Second, now that the tiebreaker gives credit for soft loans from unrelated private entities under paragraph (ii) generally, there is no need to include funds from a local community foundation within the definition of public funds in paragraph (i). Moreover, the standards of paragraph (ii) which require the parties to be unrelated are more appropriate for community foundations. The tiebreaker would continue to give credit for eligible soft loans from unrelated community foundations but under a different paragraph.

Third, the proposed changes disallow tiebreaker credit for land and improvement donations from either a public or private entity unless the land and improvements are wholly donated. In other words, partial donations in which the donor receives any sale proceeds will not receive credit. Staff is concerned that some applicants are entering into purchase agreements with arms-length sellers for market-rate purchases and then obtaining an appraisal showing a higher value in order to count the difference as tiebreaker credit. Staff believes that such manipulations are inappropriate and convey an unfair competitive advantage. By disallowing credit when there is any level of sales proceeds, staff is aware that the proposal may also deny tiebreaker credit to legitimate situations in which a seller may donate some portion of value, but that is extremely rare and staff believes the difficulty in distinguishing between legitimate and illegitimate partial donations is problematic.

Fourth, the proposed changes codify TCAC's long-standing practice of giving donation credit for leased land only if the lease payments do not exceed $100 per year.

Fifth, the proposed changes resolve an inconsistency with respect to land donated pursuant to an inclusionary requirement. In the current regulations, one phrase refers to land donated pursuant to an inclusionary housing ordinance only, and a second phrase refers to land donated pursuant to an inclusionary housing ordinance or other development agreement negotiated between a public entity and private developer. The proposed changes clearly give donation credit for land donated pursuant to either an inclusionary housing ordinance or development agreement negotiated between a public entity and an unrelated private developer. The proposed changes further eliminate the requirement that the inclusionary housing ordinance have been in effect for at least one year.

Sixth, the current regulations give tiebreaker credit for public land loans for new construction projects, even when the lender is the land seller and would otherwise be subject to the exclusion for seller carryback financing. Land loans for rehabilitation projects do not receive this credit. Whereas some projects are technically new construction but in reality are replacing existing affordable housing, this is more akin to a rehabilitation project for this tiebreaker purpose. The proposed changes exclude from tiebreaker credit public land loans, up to the amount of the seller proceeds, made to a project that is replacing affordable housing within the footprint of the original development that included the units to be replaced. Likewise, some projects include both new construction and rehabilitation or replacement housing. The proposed changes clarify that in such cases TCAC will pro-rate the value of the land loan on a unit count basis.

Seventh, the proposed changes clarify the capitalized value of rent differential tiebreaker credit provisions. They clarify that only those units within a Special Needs Project that are subject to the 40% average AMI

requirement may use the 30% AMI rent as the TCAC rent. They further clarify that in the case of USDA rental assistance, the contract rent shall be the higher of the 60% AMI rent or the committed contract rent.

Eighth, the current regulations require that, in order for the applicant to receive tiebreaker credit, a non-public entity providing soft loans or grants shall not be a partner or proposed partner in the limited partnership or receive any benefit from a related party to the project. This is meant to ensure that these sources are truly independent of the development team and its partners. The proposed changes clarify that the entity providing the soft loan or grant also may not receive funds from a related party to the project. In other words, a related party can not provide funds to an entity that in turn makes those or other funds available to the project. Staff interprets the current benefit language to preclude this but believes clarity on this point is helpful. The proposed changes also clarify that the attorney or CPA certification must address this prohibition.

Ninth, the current regulations require that land donations from non-public entities have been held by the donor for at least five years in order to obtain tiebreaker credit. In some cases, a donor may wish to pass the donated land through a non-profit organization before it ends up in the hands of the applicant. Unless the non-profit entity holds the land for five years, the applicant currently would receive no donation credit. The proposed changes allow the Executive Director in advance of the application date to approve an exception to the 5-year hold rule in a case where the non-profit entity is acting solely as a pass-through, provided that the donor to the non-profit organization held the contributed asset for at least 5 years and that both the original donor and non-profit donor meet the requirements of, and are included in the certifications required by, the current regulations.

Tenth, in order for a 9% project to receive the tiebreaker benefits available to a hybrid project, the current regulations require the 4% component to score maximum points in the Housing Type category among others. To the extent that the 4% component seeks points for the Large Family Housing Type, 25% of the units must have three or more bedrooms and an additional 25% of the units must have two or more bedrooms. This may result in an unwieldy or unnecessarily complicated division of the project between the 4% and 9% components. The proposed changes allow a 9% project to receive the hybrid tiebreaker benefits if the multiple-bedroom unit requirement is met across the two components in the aggregate.

Section 10325(c)(9)(B)

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

Reason: The Fall 2015 regulations change altered the second tiebreaker ratio related to credit efficiency to include an "add-back" of basis that was reduced as a result of specified leveraged soft resources. The idea was to discontinue double credit for leveraged soft resources, both in the first tiebreaker ratio and indirectly in the second ratio. Staff has since been convinced that the add-back reduces the incentive for applicants to minimize their credit request and may be a factor in the recent increase in credit requests per unit. Moreover, applicants are now incentivized to get a local government to acquire land and donate it in order to avoid the addback, which adds complication with little additional public benefit. Staff finds the benefits of the add-back are outweighed by these concerns. The proposed changes eliminate the add-back and revert the second ratio formula to its 2015 state.

Section 10325(c)(9)(C)

Except as provided below, a new construction large-family project applying in 2019 or later shall receive a higher resource area bonus as follows based on the designation of the project's location on the TCAC/HCD Opportunity Area Map:

The project is non-rural and the project's census tract is a Highest Resource area	20 percentage points
The project is non-rural and the project's census tract is a High Resource area	10 percentage points
The project is rural and project's census tract is a Highest Resource area	10 percentage points
The project is rural and the project's census tract is a High Resource area	5 percentage points

This bonus shall not apply to projects competing in the Native American apportionment, unless such projects fall into the rural set-aside competition. In addition, this bonus shall not apply to an inclusionary project, which for purposes of this subparagraph shall mean a project in which any of the Low-Income Units satisfy the obligations of an inclusionary housing ordinance or other development agreement negotiated between a public entity and private developer, unless the obligations derive solely from the Low-Income Units themselves or unless the project includes at least 40 Low-Income Units that are not counted towards the obligations of the inclusionary housing ordinance or development agreement. An application for a large family new construction project located in a High or Highest Resource area shall disclose whether or not the project includes any Low-Income Units which satisfy the obligations of an inclusionary housing ordinance or development agreement and, if so, the number of such units and whether the inclusionary obligations derive solely from the Low-Income Units themselves.

An applicant may choose to utilize the census tract resource designation from the TCAC/HCD Opportunity Maps in effect when the initial site control was obtained up to seven calendar years prior to the application.

Reason: Generally consistent with the changes proposed in Section 10325(c)(9)(A), these proposed changes apply the exclusion from the higher resource area tiebreaker bonus to inclusionary projects for which the inclusionary obligation is the result of a development agreement negotiated between a public entity and a private developer. For the purpose of this section, the proposed change does not refer to an unrelated private developer because staff intends to preclude any argument that a project should receive this bonus because the affordable housing developer happens to be the same entity as the master developer.

Section 10325(f)(9)(A)

(A) ~~Unit number limits are as follows:~~

~~i.~~ Rural set-aside applications ~~–~~shall be limited to a maximum of e~~E~~ighty (80) Low-Income Units~~ maximum~~
~~ii. Other than rural set-aside applications – One hundred fifty (150) Low-Income Units maximum~~.

Rehabilitation proposals are excepted from ~~the above size~~this limitation~~s~~. ~~In addition, rural set-aside proposals or non-rural HOPE VI or large neighborhood redevelopment proposals may request a size limitation waiver from the Executive Director. Such waiver requests for non-rural proposals must include a plan for the HOPE VI redevelopment, or a specific neighborhood revitalization plan. In granting a size limitation waiver for rural~~

~~projects, the~~ The Executive Director may grant a waiver if she or he ~~shall~~ determines that the rural community is unusual in size or proximity to a nearby urban center~~,~~ and that exceptional demand exists within the market area.

Reason: The proposed changes eliminate the size limit on 9% new construction and adaptive reuse projects. While staff sees value to maintaining the size limit in rural areas where demand is generally limited and a single new project can negatively affect nearby projects, staff is not concerned about project size in non-rural areas. Project size is already limited by the amount of credits available, such that 9% projects larger than 150 units are exceedingly rare. Moreover, staff believes that a local government is in a better position to determine the appropriateness of a project's size and that TCAC should not impose further limitations.

Section 10325(f)(11)(D)

(D) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall not have any uncorrected compliance violations relating to over-income tenants or rent overcharges and shall not have any unpaid fines pursuant to Section 10337(f).

Reason: The proposed changes require 9% resyndication projects to have no uncorrected compliance violations relating to over-income tenants or rent overcharges and no unpaid fines prior to receiving a tax credit reservation. Staff believes that it is inappropriate to award new tax credits to a project that has not complied with major program requirements.

Section 10325(f)(13)

(13) A project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI.

A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to accommodate existing over-income tenants, provided that the average targeting does not exceed 50% AMI. All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI.

A project including Low-Income Units targeted at greater than 60% AMI shall make the "Yes" election on line 8b of the IRS Form 8609.

Reason: If a project makes a "No" election on line 8b of the IRS Form 8609, each building is treated as a separate project. Given than the new income averaging option is calculated at the project level, this means that for a project with a "No" election the relevant income averaging would have to be calculated at the building level. This is overly cumbersome and complicated and likely to lead to errors at the project. Moreover, failure to meet the income average requirement jeopardizes the credits for all units, not just the unit that is over-income. As a result, staff proposes to require income averaging projects to select "Yes" on line 8b of the IRS Form 8609.

Section 10325(g)(1)(E)

(E) The project shall provide an appropriately sized common area~~(s)~~. For purposes of this part, common areas shall include all interior ~~common areas~~amenity space, such as the rental office, community room, service space, computer labs, and gym ~~and meeting rooms~~, but shall not include laundry rooms or manager living units~~,~~. ~~and~~ Common areas 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 least1000 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. An existing project without common area may request a waiver from this requirement if the site is classified as a non-conforming use under its respective current zoning designation and the addition of the new facilities would trigger an entitlement process;

Reason: The proposed changes clarify TCAC's interpretation of the current regulations that certain interior spaces, such as lobbies and hallways, do not count towards the common area size requirement. The proposed changes refer to interior amenity space and explicitly include the rental office, community room, service space, computer labs, and gym while continuing to exclude laundry rooms and manager living units. These square footage requirements apply to the interior floor area and do not include the extra area covered by exterior walls.

Section 10325(g)(2)(G)

(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~~amenity space, such as the rental office, community room, service space, computer labs, and gym~~and meeting rooms~~, but shall not include laundry rooms or manager living units~~,~~. ~~and~~ Common areas 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: Consistent with the changes to Section 10325(g)(1)(E), the proposed changes clarify TCAC's interpretation of the current regulations that certain interior spaces, such as lobbies and hallways, do not count towards the common area size requirement. The proposed changes refer to interior amenity space and explicitly include the rental office, community room, service space, computer labs, and gym while continuing to exclude laundry rooms and manager living units. These square footage requirements apply to the interior floor area and do not include the extra area covered by exterior walls.

Section 10325(g)(3)

(3) Special Needs projects. To be considered Special Needs housing, at least 45% of the Low-Income 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 12957(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~~A development that is less than 75% special needs shall meet one of the following criteria: (i) the non-special needs Low-Income U~~u~~nits ~~must~~ meet the large family or senior housing type requirements; (ii) the non-special needs Low-Income Units ~~or~~ consist of ~~either (i)~~ at least 20% one-bedroom units and at least 10% larger than one-bedroom units ~~as a percentage of Low-Income Units;~~ or (ii) at least 90% ~~SRO units as a percentage~~ of all Low-Income Units (both special needs and non-special needs) are SRO units. The application shall meet the following additional threshold requirements:

Reason: The current regulations are unclear as to how to calculate the requirements for Special Needs projects with less than 75% special needs units. For projects electing the first option, the proposed changes make clear that only the non-special needs Low-Income Units must meet the large family or senior housing type. Market rate units are not included in the calculation. For projects electing the second option, the proposed changes make clear that the numbers in both the numerator and denominator refer only to non-special needs Low-Income Units. For projects electing the third option, the proposed changes make clear that a different universe of units is relevant. In this case, 90% of all units must be SRO units. Both the numerator and denominator include both special needs and non-special needs units. This allows a project with SRO special needs units to count those units towards the threshold. It also prohibits a project with all 1-bedroom or larger special needs units from having a relatively small portion of SRO units in the project as a whole. This is also consistent with the requirement under the old SRO set-aside that 90% of all units in the project consist of SRO units.

Section 10325(g)(3)(H)

(H) One-bedroom Low-Income Units must include at least 450 square feet, and two-bedroom Low-Income Units must include at least 700 square feet of living space. Three-bedroom Low-Income Units shall include at least 900 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;

Reason: Special Needs projects need only reserve 45% of low-income units for special needs residents, and the remaining units may serve a variety of household types. To the extent an applicant wishes to include 3 bedroom units in a Special Needs project, no size requirements applies as it does for Large Family Projects. Consistent with the Large Family unit size requirements, the proposed changes require a minimum of 900 square feet of living space in any 3-bedroom units contained in a Special Needs project.

Section 10325(g)(3)(M)

(M) If the project will be operated as senior housing for persons 62 years of age and older pursuant to fair housing laws, then the project shall have an elevator for any building over two stories and shall meet the accessibility requirements of Section 10325(g)(2)(B).

Reason: In some cases Special Needs projects are reserved for seniors. Where that is the case, the proposed changes require the project to provide an elevator in 3 or more story buildings and meet the TCAC accessibility requirements for Senior projects. Staff believes that these amenities are important to meet the needs of an older population.

Section 10325(g)(3)(N)

(N) With respect to Special Needs units designated for individuals who are homeless, owners, property managers, and service providers shall comply with the core components of Housing First, as defined in Welfare and Institutions Code Section 8255(b).

Reason: SB 1380 of 2016 requires TCAC to incorporate the core components of Housing First, as defined by statute, with respect to units designated for persons experiencing homelessness or at risk of homelessness. The proposed changes meet this mandate by requiring Special Needs projects designating units for individuals who are homeless to follow the statutory Housing First criteria. The requirement applies to project owners, property managers, and service providers.

Section 10325(g)(4)(B)

(B) Project application eligibility criteria include:

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

(ii) the project, as verified by a third party legal opinion, must currently possess or have had within the past five years from the date of application, either federal mortgage insurance, a federal loan guarantee, federal project-based rental assistance, or, have its mortgage held by a federal agency, or be owned by a federal agency or be currently subject to, or have been subject to, within five years preceding the application deadline, the later of Federal or State Housing Tax Credit restrictions whose compliance period is expiring or has expired within the last five years and at least 50% of whose units are not subject to any other rental restrictions beyond the term of the Tax Credit restrictions;

(iii) as of the date of application filing, the applicant shall have sought available federal incentives to continue the project as low-income housing, including, direct loans, loan forgiveness, grants, rental subsidies, renewal of existing rental subsidy contracts, etc.;

(iv) subsidy contract expiration, mortgage prepayment eligibility, or the expiration of Housing Tax Credit restrictions, as verified by a third party legal opinion, shall occur no later than five calendar years after the year in which the application is filed, except in cases where a qualified nonprofit organization acquired the property within the terms of (i) above and would otherwise meet this condition but for: 1) long-term use restrictions imposed by public agencies as a condition of their acquisition financing; or 2) HAP contract renewals secured by the qualified nonprofit organization for the maximum term available subsequent to acquisition;

(v) the applicant agrees to renew all project based rental subsidies (such as Section 8 HAP or Section 521 rental assistance contracts) for the maximum term available and shall seek additional renewals throughout the project's useful life, if applicable;

(vi) at least seventy percent (70%) of project tenants shall, at the time of application, have incomes at or below sixty percent (60%) of area median income;

(vii) the gap between total development costs (excluding developer fee), and all loans and grants to the project (excluding Tax Credit proceeds) must be greater than fifteen percent (15%) of total development costs; and,

(viii) a public agency shall provide direct or indirect long-term financial support of at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost.

Reason: The current regulations lay out various eligibility requirements for a project seeking the At-Risk Housing Type designation. Only the first of these criteria must be verified by an attorney. The proposed changes require a 3rd party legal opinion to verify the second and fourth criteria as well.

Section 10325(h)

(h) Waiting List. At the conclusion of the last reservation cycle of any calendar year, and at no other time, the Committee may establish a Waiting List of pending ~~Eligible Project~~ applications ~~already scored, ranked and evaluated~~ in anticipation of utilizing any Tax Credits that may be returned to the Committee, and/or that have not been allocated to projects with the Set-Asides or Geographic Regions for which they were intended. The Waiting List shall expire ~~on the date specified in the Committee's resolution establishing the Waiting List. If no date is specified, the Waiting List shall expire~~ at midnight on December 31 of the year the list is established. During periods without awaiting list, complete credit awards returned by successful geographic apportionment competitors shall be returned to the apportionment of origin.

Staff shall score, rank and evaluate applications ~~Selections~~ from the Waiting List ~~will be made as follows~~and make recommendations to the Committee based on the following order:

Selections from the Waiting List will be made as follows:

(1) If Credits are returned from projects originally funded under Set-Asides or Geographic Apportionments, applications qualifying under the same Set-Aside or Geographic Region will be selected in the order of their ranking.

(2) Next, ~~Eligible~~ Waiting List projects in Set Asides or Geographic Apportionments that are not yet fully subscribed will be selected from the Waiting List for reservations. These will be selected first from the Set Asides in order of their funding sequence, and then from the Geographic Apportionments in the order of the highest to the lowest percentage by which each Apportionment is undersubscribed. (This will be calculated by dividing the unreserved Tax Credits in the apportionment by the total Apportionment.)

(3) Finally, after all Set-Asides and Geographic Apportionments for the current year have been achieved, or if no further projects are available for such reservations, the unallocated Tax Credits will be ~~transferred to the Supplemental Set-Aside and~~ used for projects selected from the Waiting List, in the order of their score and tie breaker performance ranking, without regard to Set-Aside or Geographic Region. All Waiting List project reservations, except for Rural projects, will be counted toward the projects' Geographic Apportionments.

(4) If there are not sufficient Tax Credits to fully fund the next ranked application on the Waiting List, a reservation of all remaining Tax Credits and a binding commitment of the following year Tax Credits may be made to that application~~, and any first recaptured or otherwise available Tax Credits in the following year may be reserved for that application up to the maximum amount previously approved by the Committee~~.

(5) If the rules described above result in selection of a Waiting List application requesting both Federal and State Tax Credits, and State Tax Credits are not at that time available, the Committee shall allow said applicant to substitute other funds from any source in an amount equivalent to the amount of funds anticipated from the sale of requested State Tax Credits. In no case shall the tax ~~Credit~~ credit factor, loan and grant interest rates and terms, or the total project development cost in any way be altered from that in the application for purposes of achieving project feasibility through the option to substitute State Tax Credits. At the earlier of the date upon which a request is made for a carryover allocation or tax forms, the applicant shall evidence the availability of said funds according to application requirements of these regulations pertaining to the type of fund source.

[Note: the remaining language of this section is indented to come under paragraph (5).] The option to substitute State Tax Credits with other funds shall be limited to applications receiving an offer of Federal Tax Credits that are returned to the Committee on or before ~~November~~ December 1 of the year of the applicable ~~waiting list~~Waiting List. For purposes of this subsection, Federal Tax Credits returned prior to ~~November~~ December 1, and offered to, but not accepted by, an applicant may be offered to the next eligible ~~waiting list~~Waiting List project after ~~November~~ December 1. Any such offer after ~~November~~ December 1 shall be limited to only the next eligible ~~waiting list~~Waiting List project and the Federal Tax Credits shall not be available thereafter to other ~~waiting list~~Waiting List projects under the option to substitute State Tax Credits with other funds. After being offered a reservation of Federal Tax Credits, the applicant shall be allowed ten (10) days to provide the Committee with evidence of the availability and willingness of a financing source, that ~~shall~~ may ~~not~~ be substituted at a later date with another source only with the approval of the Executive Director, to cover the financing gap remaining due to the absence of State Tax Credits (e.g. a letter of interest). At such time as is required for filing of a carryover allocation, the availability of funds to cover said financing gap shall be evidenced ~~in accordance with subsection 10325(f)(8)~~by an enforceable financing commitment, as defined in Section 10325(f)(3). Once a reservation of Federal Tax Credits has been accepted for an application pursuant to this subsection, the application shall not be eligible for State Tax Credits should additional State Tax Credits become available for ~~waiting list~~Waiting List applications.

Reason: The proposed changes alter the waiting list provisions in a number of ways. First, the proposed changes allow projects to be placed on the waiting list prior to application review but state that staff shall review and recommend applications according to the established order. This will facilitate the creation of the waitlist and focus staff time on those projects that are in line to receive a reservation from the waitlist.

Second, the proposed changes establish the waiting list expiration date as December 31, as opposed to a date to be established via resolution.

Third, with respect to a waitlist project for which some but not enough federal credits are available, the current regulations only allow TCAC to forward commit federal credits from a subsequent year that may be recaptured or returned. This is unknowable at the time the reservation to the waitlist project would be made and therefor problematic. Staff does not support making reservations to projects that are dependent on the return or recapture of credits in the subsequent year. The proposed changes allow TCAC to forward allocate enough

credits from the subsequent year's general allocation to fully fund such a project. TCAC is likely to make such forward commitment only if necessary to maintain eligibility for the national pool, by which unused credits in other states are redistributed.

Fourth, the proposed changes allow an applicant who identifies an alternative funding source to offset the unavailability of state credits to substitute a new hard or soft source at a later date with the approval of the Executive Director. Ten days is a very short window to identify a source that is likely in the millions of dollars. While the applicant will be held to his or her ability to bring in the newly identified source, staff believes that greater flexibility on allowing substitutions is fair and will facilitate the implementation of the waiting list. The proposed changes further extend from November 1 to December 1 the general deadline by which projects may substitute state tax credits with other funds.

Fifth, the proposed changes make a few non-substantive clarifying or stylistic edits.

Section 10326(g)(9)

(9) For all applications received on or after March 26, 2018, a non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 59% AMI. For all applications received on or after March 26, 2018, a competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI.

A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to increase the number of Low-Income Units or to accommodate existing over-income tenants, provided that the average targeting does not exceed 59% AMI for non-competitive projects or 50% AMI for competitive projects. All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI.

A project including Low-Income Units targeted at greater than 60% AMI shall make the "Yes" election on line 8b of the IRS Form 8609.

Reason: If a project makes a "No" election on line 8b of the IRS Form 8609, each building is treated as a separate project. Given than the new income averaging option is calculated at the project level, this means that for a project with a "No" election the relevant income averaging would have to be calculated at the building level. This is overly cumbersome and complicated and likely to lead to errors at the project. Moreover, failure to meet the income average requirement jeopardizes the credits for all units, not just the unit that is over-income. As a result, staff proposes to require income averaging projects to select "Yes" on line 8b of the IRS Form 8609.

Section 10327(c)(6)

(6) Acquisition costs. All applications must include the cost of land and improvements in the Sources and Uses budget, except that (i) competitive projects with donated land and/or improvements shall include the appraised value of the donated land and improvements that is not nominal, and (ii) 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. Except as allowed pursuant to Section 10322(h)(9)(A) or by a waiver pursuant to this section below for projects basing cost 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~~neither the purchase price nor the basis associated with existing improvements, if any, shall 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 cost 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 current purchase price or appraised value pursuant to Section 10322(h)(9). If the purchase price exceeds appraised value, the applicant shall, within the shortfall calculation section of the basis and credits page of the application only, reduce the project cost and the soft permanent financing by the overage. For all other purposes, the project cost shall include the overage.

For competitive projects, 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). For non-competitive projects, the value of donated land shall be zero.

(B) Rehabilitation. Except as noted below, the applicant shall provide a sales agreement or purchase contract in additional to the appraisal. 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 Section10322(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. If the purchase price exceeds appraised value, the applicant shall (i) limit improvements acquisition basis to the amount supported by the appraisal and (ii) within the shortfall calculation section of the basis and credits page of the application only, reduce the project cost and the soft permanent financing, exclusive of any developer fee that must be deferred or contributed pursuant to Section 10327(c)(2)(B), by the overage. For all other purposes, the project cost shall include the overage.

The Executive Director may approve a waiver to underwrite the project with a purchase price in excess of the appraised value where (i) a local governmental entity is purchasing, or providing funds for the purchase of land for more than its appraised value in designated revitalization area when the local governmental entity has determined that the higher cost is justified, or (ii) the purchase price does not exceed the sum of third party debt encumbering the property that will be assumed or paid off.

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), no sales agreement or purchase contract is required, and TCAC shall approve a reasonable proration of land and improvement value consistent with similar projects in the market area.

Reason: Staff proposed two distinct changes to this section, First, the current regulations prohibit not just the overall purchase price of a property from increasing after reservation but also, in the context of a rehabilitation project, prohibit either component of purchase price, land and existing improvements, from increasing after reservation. Staff recently has encountered a number of cases that makes the latter prohibition problematic. In one case, the original appraisal contained a significant error. In another, the investor was uncomfortable with a

zero land value. The proposed changes maintain the prohibition against increases in purchase price after reservation (except in eligible cases where the purchase price is the assumed debt) but allows for the allocation of the price among land and improvements to vary, provided that the basis associated with existing improvements does not increase.

Second, the current regulations essentially require any excess purchase price over appraised value to be covered by soft financing. Staff believes that developers should not be able to meet this condition with developer fee deferrals or contributions that TCAC already requires. Instead, developers should meet this condition with additional developer fee deferral or contribution or from another source. To accomplish this, the proposed changes do not allow a developer to reduce the project's permanent financing in the application's basis and credits page with any amount of developer fee already required to be deferred or contributed.

Section 10327(c)(7)

(7) Reserve accounts. All unexpended funds in project reserve accounts shall remain with the project to be used for the benefit of the property and/or its residents, except as provided in subparagraph (B) below ~~for amounts designated to be used to pay deferred developer fees, which may be released as stated below~~. ~~The Committee shall allow operating reserve amounts in excess of industry norms to be considered "reasonable costs," for purposes of this subsection, only for applications requesting a reservation of Tax Credits under the Nonprofit set-aside homeless assistance apportionment, as described in Section 10315(b), Special Needs, or HOPE VI, or project based Section 8 projects. The original Sources and Uses budget, the pro forma balance sheet and pro forma income/expense statement, and the final cost certification should demonstrate the initial and subsequent funding of the replacement and operating reserves.~~

(A) The Minimum replacement reserve for projects shall be three hundred dollars ($300) per unit per year~~;~~, or for new construction or senior projects, two hundred fifty dollars ($250) per unit per year. The on-going funding of the replacement reserve in this amount shall be a requirement of the regulatory agreement during the term of the agreement, and the owner shall maintain these reserves in a segregated account. Funds in the replacement reserve shall only be used for capital improvements or repairs.

(B) ~~For new construction or senior projects, two hundred fifty dollars ($250) per unit per year.~~

~~(C)~~ An operating reserve ~~will~~ shall be funded in an amount equal to three months of estimated operating expenses and debt service under stabilized occupancy. Additional funding will be required only if withdrawals result in a reduction of the operating reserve account balance to 50% or less of the originally funded amount. An equal, verified operating reserve requirement of any other debt or equity source may be used as a substitute, and the reserve may be released following achievement of a minimum annual debt service ratio of 1.15 for three consecutive years following stabilized occupancy only to pay deferred developer fee. The Committee shall allow operating reserve amounts in excess of industry norms to be considered "reasonable costs," for purposes of this subsection, only for homeless assistance projects under the Non-Profit Set-Aside, as described in Section 10315(b), Special Needs projects, HOPE VI projects, or project based Section 8 projects. The original Sources and Uses budget and the final cost certification shall demonstrate the initial and subsequent funding of the operating reserves.

Reason: Staff proposes a number of changes to this section. First, the proposed changes require an owner to continue funding replacement reserves in the required amount for the duration of the rental agreement and to maintain replacement reserves in a segregated account. Setting aside replacement reserves is standard practice and required by all lenders. Staff believes formalizing this commitment in the TCAC regulatory agreement will

contribute to continued upkeep of tax credit properties. In addition, the proposed changes limit the use of replacement reserves to capital improvements or repairs.

Second, the proposed changes move various sentences and phrases to better order this section.

Section 10327(c)(9)

(9) Self-syndication. If the applicant or a Related Party intends to be the sole or primary tax credit investor in a project, the project shall be underwritten using a tax credit factor (i.e., price) of $1 for each dollar of federal tax credit and ~~$.65~~$.79 dollars for each dollar of State Tax Credit, unless the applicant proposes a higher value.

Reason: With the reduction in the federal corporate tax rate to 21%, state credits are now more valuable because they have less of a negative effect on the taxpayer's federal tax liability. The proposed change reflects this effect by increasing the minimum tax credit factor in the case of self-certification from $.65 to $.79.

Section 10327(g)(3)

(3) Vacancy and collection loss ~~minimums~~ rates shall be ten percent (10%) for special needs units and non-special needs SRO units without a significant project-based public rental subsidy, unless waived by the Executive Director based on vacancy data in the market area for the population to be served. Vacancy and collection loss rates shall be between five and ten percent (5-10%) for special needs units and non-special needs SRO units with a significant project-based public rental subsidy. Vacancy and collection loss ~~minimums~~ rates shall be five (5%) for all other units.

Reason: Staff believes it is appropriate to standardize vacancy rate assumptions as much as possible. Whereas the current regulations only set minimum rates, the proposed changes fix or set a range for these rates. Specifically, the proposed changes 1) fix a 10% vacancy rate for special needs units and non-special needs SRO units without a significant project-based public rental subsidy, unless waived by the Executive Director; 2) allow a range of vacancy rates between 5-10% for special needs units and non-special needs SRO units with a significant project-based public rental subsidy; and 3) fix a vacancy rate of 5% for all other units.

Section 10327(g)(6)

(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 with hard debt 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. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

Reason: The current exception to the 1.15 to 1 debt coverage ratio requirement goes back to a time when CalHFA only provided hard debt. Now, under the Mental Health Services Act Program and the Special Needs Housing Program, CalHFA sometimes makes soft loans. The proposed change clarifies that the existing exception only applies to projects with hard loans from CalHFA.

Section 10327(g)(7)

(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. Applicants must provide an analysis of the anticipated commercial income and expenses. At placed in service, any commercial cash flow after debt service, including commercial income to a partner or related entity through a master lease, during each of the first three years of project operation that exceeds the higher of eight percent (8%) of gross commercial income or twenty-five percent (25%) of the annual must pay debt service payment supported by commercial income shall be included in the residential cash flow after debt service calculation of Section 10327(g)(6). At placed in service, an applicant with commercial space shall provide a letter from the hard lender specifying the portion of the loan that is underwritten with commercial income.

Reason: The purpose of the cash flow limits on residential income is to ensure that projects leverage as much debt as possible, which reduces the need for tax credits or other public subsidies. This same principle should apply to commercial income, including commercial income to a partner or related entity through a master lease of the commercial space. Projects with bankable commercial income should be leveraging debt to the maximum extent possible. Moreover, owners should not be able to undermine TCAC's residential cash flow limits by distributing commercial cash flow that can support debt. Staff is aware, however, that not all commercial income is bankable. In some cases, the income is minimal. In other cases, the commercial space is not very marketable. In light of these dynamics, the proposed changes provide that at placed in service commercial net income, including income to a partner or related entity through a master lease, that exceeds the same cash flow limits that currently apply to residential income shall count towards the residential cash flow limits (but not the residential debt service coverage ratio requirement). As a result, owners will have to leverage their commercial income or reduce their residential cash flow to reflect the commercial income and remain within the cash flow limits.

In addition, to the extent that commercial income can be leveraged, it should pay for its portion of the debt service. The proposed changes require applicants with commercial space to include in the placed in service package a letter from the hard lender specifying the portion of the loan underwritten with commercial income. Given the risks associated with commercial space, TCAC understands that the portion of the loan underwritten with commercial income may be zero. If a portion of the loan in underwritten with commercial income, TCAC will expect the commercial income to pay for that portion of the debt service.

Section 10328(c)

(c) Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation but who did not receive ~~all 15~~maximum points in the Readiness to Proceed point category shall provide the Committee with a completed updated application form no later than 180 days or 194 days, as applicable, following Credit reservation.

Upon receipt of the updated application form, the Committee shall conduct a financial feasibility and cost reasonableness analysis for the proposed project, and determine if all conditions of the preliminary reservation

have been satisfied. Substantive changes to the approved application form, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee.

Reason: This corrects an outdated reference to the maximum points available in the Readiness to Proceed category.

Section 10330(b)(1)

(1) Procedure for application appeals. An appeal related to an application 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 seven (7) days after receipt of the appeal letter. If the applicant wishes to appeal the staff response, the applicant may appeal in writing to the Executive Director within five (5) days after receipt of the staff response letter. The Executive Director will respond in writing no more than five (5) days after receipt of the appeal. If the applicant wishes to appeal the Executive Director's decision, a final appeal may be submitted to the Committee no more than five (5) days following the date of receipt of the Executive Director's letter. An appeal to the Committee must be accompanied by a five hundred dollar ($500) non-refundable fee payment payable to CTCAC. No Committee 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. Any appeal or response due on a weekend or holiday shall be deemed to be due ~~the on~~on the following business day.

Reason: The proposed changes correct a grammatical error.

Section 10335(a)

(a) Application fee.

(1) Every applicant for non-competitive tax credits shall be required to pay an application filing fee of $1,000. This fee shall be paid to the Committee and shall be submitted with the application. This fee is not refundable.

(2) Every applicant for competitive tax credits~~, including tax-exempt bond project applicants,~~ shall be required to pay an application filing fee of $2,000, except for projects with sites within the jurisdictions of multiple Local Reviewing Agencies (LRA) for which applicants shall be required to pay an additional $1000 application fee for each additional LRA. This fee shall be paid 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~~$1000 of

the initial application filing fee shall be provided to ~~an~~ each official Local Reviewing Agency (LRA) which completes a project evaluation for the Committee. ~~The~~ A 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.~~

Reason: Staff proposes two changes to this section. First, with respect to competitive (9% credit and 4% plus state credit) applications, Local Reviewing Agency (LRA) reports help staff verify various project threshold and scoring criteria. These reports are less valuable in the context of the non-competitive 4% credit only applications. Staff proposes to eliminate the LRA review for non-competitive applications and reduce the application fee for such projects accordingly. The LRA review and additional fees remain applicable to competitive applications.

Second, whereas TCAC has recently allowed a greater number and variety of scattered site projects to apply under a single application, staff has encountered cases where multiple LRAs are involved and expect to be paid for their review of a project. TCAC has covered this additional expense to date. While staff supports the facilitation of scattered site projects within limits, it seems appropriate that such projects should cover their costs. The proposed changes require a competitive applicant to pay an extra $1000 application fee for each additional LRA that does not waive its portion of the application fee.

Section 10337(b)(4) and (5)

(4) Prohibition against requiring tenants to participate in services. All new and existing Tax Credit projects are prohibited from requiring tenants to participate in services.

(5) Prohibition on overbroad tenant screening practices. All new and existing Tax Credit projects are prohibited from employing policies or practices that deny housing based on prior arrests without conviction or based on criminal conviction without considering the nature, severity, and recency of the conviction.

Reason: TCAC has long maintained that owners of tax credit properties may not require tenants to participate in services. More, recently Senate Bill 1380 of 2016 prohibits projects with units designated for homeless households from requiring service participation. The proposed changes codify this prohibition generally and apply it to both new projects and to all existing projects in the TCAC portfolio.

Likewise, in 2016 HUD issued guidance on the application of the Fair Housing Act to the use of criminal records. The guidance states that tenant screening practices that deny housing based on arrests without conviction or based on convictions generally without taking into account the nature, severity, and recency of the conviction are violations of the Fair Housing Act. In order to promote compliance with this guidance and prevent undue denials of affordable housing to persons in need, the proposed changes codify this guidance and apply it as well to both new projects and to all existing projects in the TCAC portfolio.