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EXECUTIVE DIRECTOR
JUDITH BLACKWELL

DATE: June 5, 2020

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: Final Proposed Regulation Changes and Responses to Comments

On January 22, 2020, the California Tax Credit Allocation Committee (“TCAC” or “Committee”) released proposed regulation changes. TCAC staff subsequently held four (4) public hearings in Sacramento, Oakland, San Diego and Los Angeles between January 27, 2020 and January 31, 2020. TCAC accepted written comments on these initial proposed regulation changes through Wednesday, February 12, 2020. Numerous individuals, organizations, and groups formally commented on the proposed regulation changes. TCAC staff carefully considered all comments received, and due to the volume and nature of the comments, TCAC decided to bifurcate the proposed regulation changes into two sets based on comments received to expedite those proposed changes with a small volume of comments. The first set of changes were ultimately adopted by the Committee on April 3, 2020 and April 14, 2020.

Following meetings with stakeholders, elected officials, and local entities, as well as review of comments received, the second set of changes primarily focusing on the Further Consolidated Appropriations Act, 2020 (“FCAA” or “Disaster”) credits and the draft 2020 Opportunity Maps were re-released on April 24, 2020. TCAC staff held a public hearing in Sacramento on May 7, 2020 and accepted written comments on the second set of proposed regulation changes through Monday, May 18, 2020. TCAC staff again carefully considered all comments received and has finalized the recommendations to the Committee for consideration and adoption on Wednesday, June 17, 2020.

This memo includes the final proposed regulation changes, staff’s responses to comments including an explanation of the proposed revisions, in which revisions to the initially proposed changes are highlighted in **yellow**. TCAC will publish a matrix summarizing the public comments in a subsequent document.

**Proposed Regulation Changes, Comments Received, and Responses to Comments
June 5, 2020**

Section 10310(b)(1)

Initial Proposed Change:

- (b) Credit Ceiling available. The approximate amount of Tax Credits available in each reservation cycle shall be established by the Committee at a public meeting designated for that purpose, in accordance with the following provisions:
 - (1) Amount of Federal Tax Credits. The amount of Federal Tax Credits available for reservation in a reservation cycle shall be equal to the sum of:
 - (A) the per capita amount authorized by law for the year, plus or minus the unused, Federal Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
 - (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;
 - (C) the amount of Federal Credit Ceiling returned, and available, as of the date that is thirty days following the application deadline for said cycle; and,
 - (D) additional amounts of Federal Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations.

For calendar year 2020, the amount of the Federal Credit Ceiling established by the Further Consolidated Appropriations Act, 2020 shall be allocated pursuant to Section 10325(d)(1).

Comments Received: Two commenters noted that since the FCAA credits will be allocated over two years (2020 and 2021), both years should be referenced in the regulation language.

Response to Comments: TCAC staff concurs with the comments received.

Final Proposed Change: Proceed with changes as initially proposed with the addition of calendar year 2021.

- (b) Credit Ceiling available. The approximate amount of Tax Credits available in each reservation cycle shall be established by the Committee at a public meeting designated for that purpose, in accordance with the following provisions:
 - (1) Amount of Federal Tax Credits. The amount of Federal Tax Credits available for reservation in a reservation cycle shall be equal to the sum of:
 - (A) the per capita amount authorized by law for the year, plus or minus the unused, Federal Credit Ceiling balance from the preceding

calendar year, multiplied by a percentage amount established by the Committee for said cycle;

- (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;
- (C) the amount of Federal Credit Ceiling returned, and available, as of the date that is thirty days following the application deadline for said cycle; and,
- (D) additional amounts of Federal Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations.

For calendar years 2020 and 2021, the amount of the Federal Credit Ceiling established by the Further Consolidated Appropriations Act, 2020 shall be allocated pursuant to Section 10325(d)(1).

Section 10315(h)

Initial Proposed Change:

- (h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below, exclusive of the Acquisition and/or Rehabilitation and Large Family New Construction located in a Highest or High Resource Area housing types which are listed here solely for purposes of the tiebreaker, and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(9) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

Housing Type	Goal
Large Family	65%
Large Family New Construction receiving the tiebreaker increase for being located in census tracts, <u>or census block groups as applicable,</u> designated on the TCAC/HCD Opportunity Area Map as Highest or High Resource Areas (effective for 2019 and later reservations)	30%
Special Needs	30%
Single Room Occupancy (SRO)	15%
At-Risk	15%
Seniors	15%
Acquisition and/or Rehabilitation within the rural set-aside only	30% of the credits available in the rural set-aside

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

A large family new construction project that receives a tiebreaker increase for being located in a Highest or High Resource census tract shall count against both that housing type and the general Large Family housing type.

Comments Received: Three commenters support the draft methodology, specifically the proposed change from census tracts to block groups in Rural areas. Other comments were received with regard to the draft methodology but do not affect the language in the regulation section above.

Response to Comments: TCAC staff will address the comments received to the draft methodology separately in the Final Proposed Changes to the 2020 Draft Opportunity Map Methodology on the TCAC website at: <https://www.treasurer.ca.gov/ctcac/opportunity.asp>

Final Proposed Change: Proceed with changes as initially proposed.

Section 10317(c) and (d)

Initial Proposed Change:

- (c) Limit on Credit amount. Except for applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area (DDA). [Notwithstanding paragraph \(d\) below, applications for the Federal Credit established by the Further Consolidated Appropriations Act, 2020 are not eligible for State Tax Credits.](#)

An applicant requesting state credits shall not reduce basis related to federal tax credits except to reduce requested basis to the project's threshold basis limit or the credit request to the amount available in the project's geographic region or the limits described in Section 10325(f)(9)(C). CTCAC shall revise the basis and credit request if the applicant fails to meet this requirement.

In the event that reservations of state credits to credit ceiling applications exceed the amount of state credits available, CTCAC post-reservation shall designate applications for which there are insufficient state credits as difficult development area (DDA) projects pursuant to Section 10327(d)(3) and exchange state credits for federal credits in an amount that will yield equal equity based solely on the tax credit factors stated in the application.

- (1) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(ii), 17058(b)(2)(E)(ii), and 23610.5(b)(2)(E)(ii), applications for Special Needs projects with at least 50% special needs units and within a

QCT or DDA may request the federal 130% basis boost and may also request State credits, provided that the applicant does not reduce basis related to federal tax credits except to reduce requested basis to the project's threshold basis limit or the credit request to the amount available in the project's geographic region or the limits described in Section 10325(f)(9)(C). CTCAC shall revise the basis and credit request if the application fails to meet this requirement. Under authority granted by Internal Revenue Code Section 42(d)(5)(B)(v), CTCAC designates Special Needs housing type applicants for credit ceiling credits as Difficult Development Area projects, regardless of their location within a federally-designated QCT or DDA.

- (2) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(iii), 17058(b)(2)(E)(iii), and 23610.5(b)(2)(E)(iii), applications for 4% federal tax credits plus State Farmworker Credits within a QCT or DDA may request the federal 130% basis boost and may also request State credits.
- (3) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(iii), 17058(b)(2)(E)(iii), and 23610.5(b)(2)(E)(iii), new construction applications for 4% federal tax credits plus State Credits pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code within a QCT or DDA may request the federal 130% basis boost and may also request State credits.

[Applications for the Federal Credit established by the Further Consolidated Appropriations Act, 2020, including Special Needs projects described in this section \(d\), are not eligible for State Tax Credits.](#)

Comments Received: Six commenters support the proposed change where applications received for FCAA credits are not eligible for state tax credits. One commenter stated that given that state tax credits are limited and already over-allocated in the regular 9% competition, there simply are not available state credits to employ for FCAA projects. Two commenters stated that applicants for the regular 9% federal credits are counting on the state tax credits to be available.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10317(g)

Initial Proposed Change:

- (g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:
 - (1) the project is comprised of 100% Tax Credit Units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to those programs' use restrictions. Projects under those circumstances may propose a lesser percentage of

Tax Credit Units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;

- (2) 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 referenced in Section 10317(d);
- (3) ~~the project has or will have a current year's tax-exempt bond allocation: That is, that~~ State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and
- (4) the applicant must demonstrate, by no later than 10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for.

~~For Projects-projects~~ financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations applying for State Tax Credits, ~~must have or will have a current year's tax-exempt bond allocation: That is, that~~ State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year.

Comments Received: Two commenters support the proposed change prohibiting projects reserved 4% credit from a previous year from being eligible for state tax credits. Two (2) commenters stated that this was a good change that cleans-up ambiguous language, but suggested replacing “the” in the last sentence of this section with “a” to avoid a situation where a project could technically be allowed to come in for state tax credits if it received a 4% award prior to the previous year. The commenters also recommended that TCAC consider adding to the end of this sentence “unless the reservation has previously been surrendered” to allow for situations in which a project was infeasible and has to re-apply. One (1) commenter understood the concept of not wanting projects to reapply for resources already secured, stated that there are instances where the original financing structure is insufficient and a project may need to re-apply to TCAC under a different program to gain access to additional resources. The commenter recommended instead of prohibiting a reapplication, clarify that reapplying under a different program means that if awarded the previous allocation would need to be returned.

Response to Comments: TCAC staff finds merit in the edit to the language provided by the commenters as it relates to replacing “the” with “a”. Given 4% projects may request additional 4% credits at placed in service, TCAC staff encourages applicants to take that path to additional equity rather than surrendering their reservation or return their credits in order to apply again for 4% federal credits and state tax credits.

Final Proposed Change: Proceed with changes as initially proposed with one of the suggested edits noted above.

- (g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:

- (1) the project is comprised of 100% Tax Credit Units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to those programs' use restrictions. Projects under those circumstances may propose a lesser percentage of Tax Credit Units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;
- (2) 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 referenced in Section 10317(d);
- (3) ~~the project has or will have a current year's tax exempt bond allocation: That is, that~~ State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and
- (4) the applicant must demonstrate, by no later than 10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for.

~~For Projects-projects~~ financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations applying for State Tax Credits, ~~must have or will have a current year's tax exempt bond allocation: That is, that~~ State Tax Credits will not be available to projects that have already received a reservation of 4% credit in ~~the a~~ previous year.

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

Initial Proposed Change:

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, or census block group as applicable, 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, or census block group as applicable, 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.

Comments Received: Three commenters support the draft methodology, specifically the proposed change from census tracts to block groups in Rural areas. Other comments were received with regard to the draft methodology but do not affect the language in the regulation section above.

Response to Comments: TCAC staff will address the comments received to the draft methodology separately in the Final Proposed Changes to the 2020 Draft Opportunity Map Methodology on the TCAC website at: <https://www.treasurer.ca.gov/ctcac/opportunity.asp>

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(9)(C)

Initial Proposed Change:

- (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 or census block group as applicable is a Highest Resource area 10 percentage points

The project is rural and the project's census tract or census block group as applicable 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, or census block group as applicable, 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.

Comments Received: Three commenters support the draft methodology, specifically the proposed change from census tracts to block groups in Rural areas. Other comments were received with regard to the draft methodology but do not affect the language in the regulation section above.

Response to Comments: TCAC staff will address the comments received to the draft methodology separately in the Final Proposed Changes to the 2020 Draft Opportunity Map Methodology on the TCAC website at: <https://www.treasurer.ca.gov/ctcac/opportunity.asp>

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(d)(1)

Initial Proposed Change:

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315, with the exception of the Federal Credit amount established by the Further Consolidated Appropriations Act, 2020 (“FCAA”). If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.
 - (A) For an application to receive a reservation within a set-aside, or within a rural set-aside apportionment, there shall be at least one dollar of Credit not yet reserved in the set-aside or apportionment.

- (B) Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary State credits shall be reserved from the subsequent year's aggregate annual State credit allotment.
- (C) Except for projects competing in the rural set-aside, which shall not be eligible to compete in geographic area, unless the projects are located within a Geographic Region and no other projects have been funded within the Project's region during the year in question, after a set-aside is reserved all remaining applications competing within the set-aside shall compete in the Geographic Region.

Federal Credit established by the FCAA application selection. Applications for projects located in the counties designated as qualified 2017 and 2018 California disaster areas by the FCAA, FCAA Federal Credit shall only be reserved for (1) new construction projects; or (2) reconstruction or rehabilitation of an existing project located in within a FCAA disaster area fire perimeter and directly damaged by the fire, and -that apply for the FCAA Federal Credit. Applications shall meet all program eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba.

CTCAC shall not recommend a project applying for FCAA Federal Credit for credits if the Local Reviewing Agency Project Evaluation Form submitted for that project opposes or strongly opposes the project.

Applications for projects applying for FCAA Federal Credit shall be competitively scored within the county apportionment under the system delineated in Sections 10325(c)(1) through (3), (4)(B), and (6). In the cases where applications receive the same score, the application with the greatest number of proposed Tax Credit Units shall be selected.

FCAA Federal Credit shall be made available starting in the 2020 second funding round in the amounts shown below:

<u>ANNUAL FEDERAL TAX CREDIT BASE + LOST UNIT ALLOCATION</u>	<u>COUNTY</u>
<u>\$33,466.820</u>	<u>Butte</u>

<u>\$14,554,703</u>	<u>Sonoma</u>
<u>\$5,995,809</u>	<u>Los Angeles</u>
<u>\$5,828,994</u>	<u>Shasta</u>
<u>\$5,473,978</u>	<u>Ventura</u>
<u>\$4,783,192</u>	<u>Napa</u>
<u>\$4,171,538</u>	<u>Mendocino</u>
<u>\$4,105,239</u>	<u>Lake</u>
<u>\$3,807,966</u>	<u>Yuba</u>
<u>\$3,752,361</u>	<u>San Diego</u>
<u>\$3,566,298</u>	<u>Santa Barbara</u>
<u>\$3,564,160</u>	<u>Nevada</u>
<u>\$3,549,189</u>	<u>Orange</u>
<u>\$2,000,000</u>	<u>Supplemental</u>
<u>\$98,620,247</u>	<u>TOTAL</u>

The funding order shall be followed by funding the highest scoring application, if any, in each of the 13 counties. After each county has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each county, if any, and continue cycling through the counties, filling each county's apportionment.

For an application to receive a FCAA Federal Credit reservation, there shall be at least one dollar of Credit not yet reserved in the county apportionment so long as the county's last award does not cause the county's aggregate award amount to exceed 125 percent (125%) of the amount originally available for that county. FCAA Federal Credit allocated in excess of the county's apportionment by the application of the 125% rule described above will be deducted from the Supplemental apportionment. If the last application requires more than 125% of the county apportionment, that application will not be funded. Any FCAA Federal Credit remaining in a county apportionment at the end a funding round will be available in the subsequent round. For the final funding round of 2021 for FCAA Federal Credits, if the aggregate amount of Federal Credit requested does not exceed the amount available, the 125% county limit above shall not apply. If all FCAA Federal Credit in a funding round has been awarded, all remaining FCAA applications shall compete in the applicable set-aside or geographic region, provided the application meets the requirements of the set-aside or geographic region.

At the conclusion of the 2021 second round, all unallocated FCAA Federal Credit within the county apportionments will be combined and available to

remaining projects requesting FCAA Federal Credits not previously awarded, starting with highest ranking project within those counties not fully subscribed in the order listed above. Subsequent to the above selection ranking, any unused FCAA Federal Credit shall be designated for projects where at least fifty percent (50%) of the Low-Income Units within the project are designated for homeless households as described in Sections 10315(b)(1) through (4) starting with the highest ranking project pursuant to Section 10325(c).

The FCAA Federal Credit amount shall not be counted towards the set-asides of Section 10315, the housing type goals of Section 10315(h), or the geographic apportionments of Section 10315(i). Applications for FCAA Federal Credit shall not counted towards the four (4) awards limit of Section 10325(c). The maximum annual Federal Tax Credits available for award to any one project in any funding round applying for FCAA Federal Credit shall not exceed Five Million Dollars (\$5,000,000). Applications for FCAA Federal Credit are not eligible for State Tax Credits.

Comments Received: TCAC received a large volume of comments with regard to the FCAA federal credits, specifically in Section 10325(d)(1) and they are summarized based on topic.

Allocation Rounds and Timing

Three commenters support the availability of FCAA credits on July 1, 2020 as they have shovel ready projects ready. One commenter added that the second wave of projects not ready can use the CDBG-DR funds and apply for 9% credits at a future round. Another commenter stated that splitting the credits over rounds is not efficient.

Two commenters recommended making the FCAA credits available over a series of rounds. One commenter recommended that half of the county apportionment available on July 1, 2020 with the remaining half available the first round of 2021 with any remaining credits pooled with the supplemental allocation and made available with a first tiebreaker of lost units from high to low. The commenter added that this would allow for projects who aren't ready, and coupled with CDBG-DR to be able to apply for credit. Another commenter added that it can benefit projects that are already in the pipeline.

Five commenters recommended postponing July 1, 2020 application deadline. Four commenters explained that it would provide more time to adjust to the adopted regulation changes and possible application/tiebreaker changes given the adoption date and COVID-19. Three commenters recommended July 17, 2020 and one commenter recommended August 1, 2020. One commenter recommended postponing deadline in order to pair with CDBG-DR funds.

Construction Type

Two commenters support limiting the FCAA federal credits to new construction projects. One commenter recommended adding "uninhabitable" to the language applying to the reconstruction/rehabilitation projects as properties that remain occupied after the fires had relatively minimal damage and should not be able to access FCAA credits. Three commenters suggested clarifying that adaptive reuse projects would be eligible as new construction projects for purposes of applying for FCAA

credits. Two commenters recommended adopting CDLAC's "New Construction Pool" definition eligibility for FCAA federal credits as new construction.

Local Review Agency (LRA)

Six commenters do not support the proposed change where TCAC would not recommend a project if the LRA opposes or strongly opposes the project. One commenter stated that it would raise serious fair housing concerns and would set a dangerous precedent. Nor does this provision give local governments the power they seek to determine FCAA awardees in their jurisdiction, making it unnecessary. Two commenters supported some degree of local government control for disaster area projects, but did not feel a city or county should have the right to veto a project in possible violation of state law, especially since the local jurisdiction already has some discretion through the land-use approval process. Instead, the commenters suggested letter of support as a first tie-breaker which is well-established and seems appropriate for disaster area projects. One commenter suggested to use the local jurisdiction to prioritize projects rather than provide letters either supporting or opposing projects.

One commenter supports the regulation change as proposed.

Two commenters do not oppose incorporating some level of positive local review and suggested that the local jurisdiction be provided the opportunity to rank proposed projects within its jurisdiction. The commenters are also in support of convening a local committee should countywide applications exceed the available credit, but do not support designating the County Board of Supervisors as the LRA.

Three commenters support requiring an LRA letter of support for a project to receive an allocation rather than TCAC not recommending it based on a LRA opposing it. Two commenters recommended a two-prong approach with the first being a local authority to prioritize projects. For counties that were declared major disaster-impacted counties by the President (Butte, Sonoma, and Ventura), allow each county's Board of Supervisors to request to be the lead agency to prioritize projects for awards. They added that this could replace the tiebreaker in those counties to help ensure that projects still score full points under the narrower scoring system. Secondly, the commenters recommended a local letter of support. One commenter stated that of the 13 counties, Butte, Sonoma, and Ventura counties were designated "major disaster areas" in acknowledgment of the widespread, extensive damage they suffered and proposed that local Boards of Supervisors be given the opportunity to prioritize which projects should be funded and in which order. The commenter believes that the counties in each of these circumstances are best positioned to determine which projects are best situated to support recovery efforts and would also allow the counties to leverage the tax credits with other disaster funding that they may be receiving, including CDBG-DR funding.

Point Scoring Exemptions

Seven commenters support the point score exemptions as proposed. One commenter suggested providing up to 180 days from an award of tax credits to finalize these entitlements if readiness is ultimately required.

Three commenters do not support exempting the Readiness to Proceed category. One commenter explained that they have "shovel ready" projects and another commenter stated that as projects may be

awarded credits but will never receive their environmental or city approvals thereby taking credits away from other projects that are ready to begin construction. The commenter added that if projects without the readiness approvals are awarded, and they do get their approvals, they will likely deliver units far after those projects which will delay units getting to the market. One commenter stated that priority should be given to projects that have local approved discretionary approvals.

Two commenters recommended modifying the threshold requirements regarding entitlements in conjunction with the exemption to the readiness to proceed point category.

Tiebreaker

Six commenters support the proposed change. Three commenters recommend a two-tier system where first priority should be given to those projects that are in the burn scar area and with the remaining credits to projects based on the highest number of tax credit units produced. One commenter suggested adding a priority for permanent supportive housing. One commenter recommended that first tiebreaker be project size with preference to projects requesting more than \$2.5 million in annual federal credits since larger projects requesting over \$2.5 million are not permitted to compete in the regular 9% geographic region competition, and a second tiebreaker based on credit efficiency similar to 4% projects applying for the \$500 million in state tax credits.

Four commenters recommended using the credits per unit ratio consistent with the 4% projects applying for the \$500 million in state tax credits.

One commenter recommends a tie-breaker should consider both the number and efficiency of credits per unit.

Five commenters recommended using the traditional 9% tiebreaker for the FCAA credit applications. Two commenters stated that leveraging soft financing will spread the credits out to more projects. One commenter suggested giving two bonus points to projects located in the most-impacted disaster areas identified by HCD and further limited in Los Angeles County. One commenter stated that it values leveraging and credit efficiency and large projects sometimes are not feasible. One commenter recommended TCAC introduce an additional point category in Section 10325(c) or add a first tie breaker under Section 10325(d)(1) for projects being developed on sites damaged by fire. The commenter added that this tie-breaker priority is consistent with the original intent of the FCAA Federal Credits and appropriately reflects the importance of addressing the devastation caused by fire. One commenter did not support using the current 9% tiebreaker given the lack of local funds.

One commenter recommended that the tie breaker should consider the extent of the impact instead of the number of units proposed to ensure that the fire impacted communities can recover and rebuild the affordable homes needed.

One commenter suggested a two-tier system. First, projects that can demonstrate a clear and unambiguous nexus to fire-damaged and lost units, and second the highest number of tax credit units produced.

One commenter recommended a tiebreaker that considers a measure of FCAA credits requested per bedroom for the affordable units only. Alternatively, the commenter stated that TCAC's current 9% second tiebreaker would also be a better measure than simply using the gross number of units

produced. In addition, the commenter recommend an additional point category or add a first tie breaker for projects being developed on sites damaged by fire.

One commenter recommended that additional points or a first tie breaker preference be given to projects located on fire-damaged sites or within fire-damaged areas designated by zip code.

One commenter recommended a local authority, like the county's Board of Supervisors, to prioritize projects as a tie breaker.

County Allocation Amounts

A total of 12 commenters supported the county allocations as proposed.

A total of 21 commenters opposed the county allocations as proposed. These 21 comments are grouped as follows:

11 commenters recommended reducing the \$3.5 million base allocation. Two commenters recommended \$3 million, six commenters recommended \$2.5 million, one commenter recommended a range of \$1.75 million to 2 million, and one (1) commenter recommended to \$2 million and require that a proposed housing project be located within 20 miles of at least one home that was actually destroyed by one of the specified disasters.

Two commenters suggested allocating credits to groups of counties using a base of \$3.5 million in annual credits to each group and the remainder of credits based on the percentages of lost units for each group: (1) Butte, Sonoma, Shasta, Napa, (2) Mendocino, Lake, Nevada, Yuba, (3) Ventura and Santa Barbara, (4) Los Angeles, and (5) San Diego and Orange.

Two commenters recommend allocating the annual federal tax credit base based on a lost unit allocation, while one commenter suggested targeting these tax credits to the areas in each county that were most impacted by disaster as identified by HCD.

Three commenters recommended TCAC to adopt an allocation that flows specifically from the relative wildfire destruction suffered by each county rather than the equal base amount.

One commenter proposed alternative county allocations where it would allocate federal credits proportionally based on housing unit loss. All counties that have less than a 2% housing loss are grouped into one small-county pool and will compete in that pool and can access further credits remaining after the third round. Further, San Diego and Orange already have county specific regional apportionments, and it is proposed that the proportionate FCAA credit should be added to the July 2020 regular credit competition.

One commenter does not support the county allocation for Butte County stating that it is too large and another commenter stated that the current allocation for Sonoma County will not meet the needs of the county.

Supplemental Allocation

Two commenters supported the proposed changes to include the 125% test. One commenter had some minor recommendations to the regulatory language. One commenter also supported the \$1 rule.

Two commenters suggested using 105% rather than 125% for balancing purposes as the Supplement Allocation would be quickly depleted.

Competing in the General 9% Competition

One commenter stated there is an inherent advantage to smaller deals since they get two opportunities to compete by being allowed to compete first in the FCAA set aside and then in the 9% geographic region. Larger deals requesting over \$2.5 million in credits are only eligible to compete in the FCAA set aside due to the \$2.5 million per project award limit in the regular 9% competition. The current proposed tiebreaker gives an advantage to larger deals and rectifies this problem, but if the proposed tiebreaker changes, TCAC needs to be mindful of the impact.

Unallocated Credits/Homeless Assistance Projects

One commenter recommended to add second round 2021 credits to the regular 9% homeless apportionment and subject projects to the standard homelessness apportionment rules, except that for-profit developers would be eligible.

One commenter recommended prioritizing rehabilitation projects within the impacted counties for any unused FCAA Federal Credit in the second round of 2021 prior to making those credits available to other counties or homeless assistance projects.

Two commenters suggested prioritizing the hardest hit areas as opposed to counties that are undersubscribed for the final round. The commenters added that this will more directly address the actual damage from the wildfires.

Two commenters recommended prioritizing projects in the final round with Priority 1 - exhausts the original allocations by county, Priority 2 - pools any remaining disaster credits and allows projects to compete for the remaining credits in order of disaster impact, and Priority 3 uses any remaining disaster credits to fund critical homeless assistance projects as outlined in the proposed regulations.

Two commenters suggested the following language for the final round in order to provide additional clarity: "At the conclusion of the 2021 second round, all unallocated FCAA Federal Credit within the county apportionments will be combined and made available to remaining projects requesting FCAA Federal Credits and which meet the threshold and underwriting requirements, starting with highest ranking project within those counties in the order listed above until the FCAA credits are exhausted. If unallocated FCAA Federal Credits remain, they will be added to the 2021 Homeless set-aside and will increase the set-aside by that amount."

Per Project Award Limit/Four (4) Award Limit/Other

Nine commenters supported increasing the per project award limit for projects receiving FCAA federal credit to \$5 million in annual federal credit. Two commenters recommended adding “Notwithstanding Section 10325(f)(9)(C)” to the proposed regulation language.

Two commenters supported the exemption to the four award limit of Section 10325(c) for FCAA projects as it will allow project sponsors, especially local housing authorities and non-profits, to freely secure financing to rebuild disaster areas without worry that such efforts will conflict with their normal development pipelines. One commenter did not support the exemption to the four award limit of Section 10325(c) for FCAA projects and instead recommended maintaining the four award limit for FCAA projects and six overall for a given round.

Two commenters recommended an exemption to requirement for entitlements in addition to the readiness to proceed deadline for FCAA projects. Another commenter specifically noted entitlement delays due to COVID-19.

Three commenters suggested exemptions to the 80 unit project size limit for rural set aside projects in Section 10325(f)(9)(A). One commenter also recommended an exemption to the “build and fill” requirement referenced in Section 10322(h)(10) for FCAA projects.

Response to Comments: TCAC staff has carefully considered all of the comments received. Based on responses and the multiple calls with the counties and local officials, TCAC was informed that there was a high volume of projects ready to apply for a July 1, 2020 deadline. There was consensus among the group to make the credits available as soon as possible in order to expedite the development of housing projects in the 13 California counties devastated by the disasters. TCAC is sympathetic to the comments regarding the timing of the rounds and splitting the credits over rounds, but given the urgency to deploy the FCAA federal credits and move projects along, TCAC maintains that all of the FCAA federal credits be available starting on July 1, 2020.

With that said, TCAC staff agrees with comments regarding the use of CDBG-DR funds and FCAA credits and seeks to accommodate the timing of the CDBG-DR Action Plan timelines to the extent possible, within TCAC’s federal credit allocation deadlines. The proposed change permits jurisdictions with a CDBG-DR allocation from HCD to provide a letter of intent to commit a specified amount of CDBG-DR. A commitment letter that complies with TCAC regulation requirements must be provided no later than the TCAC placed-in-service application deadline.

TCAC appreciates the comments received with regard to the eligibility of FCAA federal credits as it relates to the new construction. TCAC agrees that adaptive reuse projects would qualify as new construction as it would provide new housing and has made clarifying change to the proposed language. While using CDLAC new construction definition may have merit, the definition for new construction was still in the regulatory process. TCAC staff maintains that the eligibility for the FCAA federal credits be limited to true new construction projects, adaptive reuse projects, and reconstruction/rehabilitation of an existing project located in within a FCAA disaster area fire perimeter and directly damaged by the fire. TCAC staff also considered the comment with regard to limiting the reconstruction/rehabilitation of existing projects to those that are uninhabitable. TCAC staff found the comment to be compelling, but there is not a clear way to distinguish if the projects were uninhabitable due to direct damage from the fire.

In response to the number of comments received with regard to the Local Reviewing Agency (LRA) input, TCAC agreed that requiring letter of support from the LRA was a more appropriate way to garner local jurisdiction input. TCAC staff is proposing the first tiebreaker for applications within a given county be the presence within the submitted application of a formal letter of support for the project from LRA to ensure the jurisdiction supports the project in the recovery efforts for that jurisdiction. The letter of support is currently used in the City of Los Angeles and City and County of San Francisco as an initial tiebreaker and seems appropriate for the FCAA projects.

TCAC staff noted support relating to the exemptions to the point scoring categories, but also noted a few comments in opposition to the exemption of the readiness to proceed point category. TCAC staff finds there is merit to the comment, but TCAC staff finds convincing the comments that some local jurisdictions impacted by the wildfires of 2017 and 2018 are currently changing existing zoning to build affordable housing in areas or at sites previously not zoned for multifamily residential housing. In addition to exempting projects to the readiness to proceed point category, TCAC staff also proposes to allow the first two rounds of FCAA credits additional time to comply with TCAC's zoning and local approvals requirements, but also seeks to ensure that all FCAA credits are reserved no later than December 2021, after which these credits are no longer available to California. As a result, staff proposes to allow zoning and local approvals documentation to be submitted until June 1, 2021, after which awarded credits will be rescinded and made available to award in the final round.

Most of the comments received with regard to the proposed tiebreaker were either in support, support with modification, inclusion of credit efficiency, consideration of units lost or most impacted areas, or the use of the current 9% tiebreaker. As mentioned above, TCAC proposes to employ a letter of support from the LRA as the first tiebreaker. The current 9% tiebreaker emphasizes leveraging soft financing sources which in turn correlates to fewer credits needed, or credit efficiency. Given the limited local resources available in some of these communities and the need for housing units in these communities, TCAC staff maintains the emphasis on housing unit production. TCAC staff proposes to employ a second tiebreaker of the greatest number of Tax Credit Units as originally proposed. In the event a third tiebreaker, TCAC staff proposes a third tiebreaker of greatest number of bedrooms within the proposed Tax Credit Units.

Most of the comments received either supported the county allocations as proposed or recommended a reduction to the base allocation amount in order to provide more emphasis on percentage of lost units.

The suggestion to lower the base allocation amount has merit and appears to be a good balance in emphasizing the percentage of lost units while ensuring each county is allocated an amount of federal credit that could be utilized. TCAC proposes to reduce the base allocation amount from \$3.5 million to \$3 million.

Furthermore, TCAC believes that the county allocations is the more appropriate way to fairly deploy these resources to ensure that each county affected by the disasters will receive at least one project. Grouping the allocations by regions or pools could result in certain counties receiving no allocations. Similarly, sizing a county's allocation based on percentage of lost units alone without including any base amount results in certain counties receiving a negligible allocation of credits, and thus no projects.

The following table provides how the revised county allocations were calculated:

BASE FEDERAL CREDIT PER COUNTY	ANNUAL FEDERAL TAX CREDIT BASE + LOST UNIT ALLOCATION	COUNTY	PERCENTAGE OF LOST UNITS
\$3,000,000	\$36,777,137	Butte	58.62%
\$3,000,000	\$15,460,321	Sonoma	21.62%
\$3,000,000	\$5,813,154	Los Angeles	4.88%
\$3,000,000	\$5,625,129	Shasta	4.56%
\$3,000,000	\$5,224,971	Ventura	3.86%
\$3,000,000	\$4,446,352	Napa	2.51%
\$3,000,000	\$3,756,924	Mendocino	1.31%
\$3,000,000	\$3,682,196	Lake	1.18%
\$3,000,000	\$3,347,124	Yuba	0.60%
\$3,000,000	\$3,284,449	San Diego	0.49%
\$3,000,000	\$3,074,728	Santa Barbara	0.13%
\$3,000,000	\$3,072,318	Nevada	0.13%
\$3,000,000	\$3,055,443	Orange	0.10%
	\$2,000,000	Supplemental	
\$39,000,000	\$98,620,246	TOTAL	100.00%

Upon further review and in response to comments, TCAC staff agrees that the 125% test may result in an amount too large to be absorbed by the supplemental allocation. As a result, TCAC staff is proposing to reduce the 125% amount to 105%. TCAC staff also proposes to make some minor technical changes to the language.

TCAC staff reviewed the comment regarding smaller projects requesting no more than \$2.5 million in annual federal credits and being provided the opportunity to compete in regular 9% competition if they are unsuccessful in receiving FCAA credit. While projects requesting more than \$2.5 million are unable to compete in the regular 9% competition, TCAC staff is not proposing to provide any priority to those projects requesting more than the \$2.5 million in annual federal credits limit competing for FCAA federal credit. Given the current established 9% geographic regional apportionments, TCAC proposing language to clarify that FCAA projects competing in the regular 9% competition are held to the requirements of Section 10325, which includes the \$2.5 million in annual federal credits per project award.

Regarding the unallocated credits remaining in the final round of 2021, TCAC staff finds some of the comments compelling. TCAC staff proposes to add language to clarify that any remaining FCAA federal credit available for projects designated for homeless households as described in Sections 10315(b)(1) through (4) will be based on the ranking without regard to the set aside or geographic regions, which would include both for profit and nonprofit developers.

Given timeframe to allocate the FCAA federal credits, TCAC staff believes that by waiving the four award limit on the FCAA federal credits, it could impede projects from moving forward. It is unknown what the demand will be in a given FCAA round. If undersubscribed, TCAC staff would not want to prevent worthy projects from procuring tax credit awards as a result of the four award limit.

TCAC staff find the comments received regarding exemptions to the 80 unit project size limit for rural set aside projects in Section 10325(f)(9)(A) and the “build and fill” requirement referenced in Section 10322(h)(10) for FCAA projects have merit, but as one of the commenters stated, the regulations currently provide avenues to request waivers to these requirements in advance of the application filing deadline.

Final Proposed Change: Proceed with changes as initially proposed with the changes noted above and highlighted in the text below.

- (2) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315, with the exception of the Federal Credit amount established by the Further Consolidated Appropriations Act, 2020 (“FCAA”). If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.
- (C) For an application to receive a reservation within a set-aside, or within a rural set-aside apportionment, there shall be at least one dollar of Credit not yet reserved in the set-aside or apportionment.
- (D) Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary State credits shall be reserved from the subsequent year’s aggregate annual State credit allotment.
- (D) Except for projects competing in the rural set-aside, which shall not be eligible to compete in geographic area, unless the projects are located within a Geographic Region and no other projects have been funded within the Project’s region during the year in question,

after a set-aside is reserved all remaining applications competing within the set-aside shall compete in the Geographic Region.

Federal Credit established by the FCAA application selection. Applications for projects located in the counties designated as qualified 2017 and 2018 California disaster areas by the FCAA, FCAA Federal Credit shall only be reserved for (1) new construction projects; (2) adaptive reuse projects; or (23) reconstruction or rehabilitation of an existing project located in within a FCAA disaster area fire perimeter and directly damaged by the fire, and that apply for the FCAA Federal Credit. Applications shall meet all program eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba.

CTCAC shall not recommend a project applying for FCAA Federal Credit for credits if the Local Reviewing Agency Project Evaluation Form submitted for that project opposes or strongly opposes the project.

Applications for projects applying for FCAA Federal Credit shall be competitively scored within the county apportionment under the system delineated in Sections 10325(c)(1) through (3), (4)(B), and (6). In the cases where applications receive the same score, the following tiebreakers shall be employed: First, the presence within the submitted application of a formal letter of support for the project from LRA; Second, the application with the greatest number of proposed Tax Credit Units; Third, the application with the greatest number of proposed bedrooms within the proposed Tax Credit Units shall be selected.

For projects applying for FCAA Federal Credit in the 2020 second funding round and the 2021 first funding round, local approvals and zoning requirements of Section 10325(f)(4) must be evidenced to CTCAC no later than June 1, 2021. Failure to do so shall result in rescission of the Tax Credit Reservation on June 2, 2021. For the 2021 second funding round, local approvals and zoning requirements shall be evidenced in the application as stated in Section 10325(f)(4).

The deferred-payment financing commitment requirements of Section 10325(f)(8) are modified for FCAA Federal Credit applications with 2017 and 2018 HCD Community Development Block Grant – Disaster Recovery (CDBG-DR) Multifamily financing as follows: a letter from an HCD-identified jurisdiction stating the intent to commit a portion of that jurisdiction's HCD allocation. The letter must provide the dollar amount and the estimated date which the jurisdiction will provide TCAC a written commitment in compliance with the requirements of Section 10325(f)(8). Projects must receive these CDBG-DR funds prior to the TCAC placed-in-service application deadline.

FCAA Federal Credit shall be made available starting in the 2020 second funding round in the amounts shown below:

ANNUAL FEDERAL TAX CREDIT BASE + LOST UNIT ALLOCATION	COUNTY
\$33,466,820 \$36,777,137	Butte
\$14,554,703 \$15,460,321	Sonoma
\$5,995,809 \$5,813,154	Los Angeles
\$5,828,994 \$5,625,129	Shasta
\$5,473,978 \$5,224,971	Ventura
\$4,783,192 \$4,446,352	Napa
\$4,171,538 \$3,756,924	Mendocino
\$4,105,239 \$3,682,196	Lake
\$3,807,966 \$3,347,124	Yuba
\$3,752,364 \$3,284,449	San Diego
\$3,566,298 \$3,074,728	Santa Barbara
\$3,564,160 \$3,072,318	Nevada
\$3,549,189 \$3,055,443	Orange
\$2,000,000	Supplemental
\$98,620,246	TOTAL

The funding order shall be followed by funding the highest scoring application, if any, in each of the 13 counties. After each county has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each county, if any, and continue cycling through the counties, filling each county's apportionment.

For an application to receive a FCAA Federal Credit reservation, there shall be at least one dollar of Credit not yet reserved in the county apportionment allocation so long as the county's last award does not cause the county's aggregate award amount to exceed 125105 percent (125105%) of the amount originally available for that county. FCAA Federal Credit allocated in excess of the county's apportionment allocation by the application of the 125105% rule described above will be deducted from the Supplemental apportionment allocation. If the last application requires credits in excess of 105% of the county's allocation more than 125% of the county apportionment, that application will not be funded. Any FCAA Federal Credit remaining in a county apportionment at the end a funding round will be available in the subsequent round. For the final funding round of 2021 for FCAA Federal Credits, if the aggregate amount of Federal Credit requested does not exceed the amount available, the 125%105% county limit above shall not apply. If all FCAA Federal Credit in a funding round has been awarded, all remaining FCAA applications shall compete in the applicable set-aside or geographic region, provided the application meets the requirements of the set-aside or geographic region, and the requirements of Section 10325.

At the conclusion of the 2021 second round, all unallocated FCAA Federal Credit within the county apportionments allocations will be combined and available to remaining projects requesting FCAA Federal Credits and which meet the threshold and underwriting requirements, not previously awarded, starting with highest ranking project within those counties not fully subscribed in the order listed above. Subsequent to the above selection ranking, any unused FCAA Federal Credit shall be designated for projects where at least fifty percent (50%) of the Low-Income Units within the project are designated for homeless households as described in Sections 10315(b)(1) through (4) starting with the highest ranking project pursuant to Section 10325(c) without regard to the set aside or geographic region for which the application applied.

The FCAA Federal Credit amount shall not be counted towards the set-asides of Section 10315, the housing type goals of Section 10315(h), or the geographic apportionments of Section 10315(i). Applications for FCAA Federal Credit shall not counted towards the four (4) awards limit of Section 10325(c). Notwithstanding Section 10325(f)(9)(C), the maximum annual Federal Tax Credits available for award to any one project in any funding round applying for FCAA Federal Credit shall not exceed Five Million Dollars (\$5,000,000). Applications for FCAA Federal Credit are not eligible for State Tax Credits.

Section 10327(c)(5)(F)

Initial Proposed Change:

(F) In a county that has an unadjusted 9% threshold basis limit for a 2-bedroom unit equal to or less than \$400,000, a ten percent (10%) increase to the project's threshold basis limit for a development located in a census tract, or census block group as applicable, designated on the TCAC/HCD Opportunity Area Map as Highest or High Resource.

An applicant may choose to utilize the census tract, or census block group as applicable, 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.

Comments Received: Three commenters support the draft methodology, specifically the proposed change from census tracts to block groups in Rural areas. Other comments were received with regard to the draft methodology but do not affect the language in the regulation section above.

Response to Comments: TCAC staff will address the comments received to the draft methodology separately in the Final Proposed Changes to the 2020 Draft Opportunity Map Methodology on the TCAC website at: <https://www.treasurer.ca.gov/ctcac/opportunity.asp>

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(d)(4)

Initial Proposed Change:

(4) Pursuant to authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications for the Federal Credit established by the Further Consolidated Appropriations Act, 2020 as a difficult development area (DDA).

Comments Received: 12 commenters support the proposed change where applications received for FCAA credits are designated as a difficult development area (DDA). One commenter added that this is a helpful designation and also reduces the need for state tax credits and other subsidies while accounting for the difficulty of finding sufficient labor as these areas rebuild.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10328(g)(3)

Initial Proposed Change:

- (g) Reservation Exchange. A project with a reservation of Federal Credit pursuant to Section 10325 and a carryover allocation pursuant to Section 10328(d) and IRC Code § 42(h)(1)(E) that meets either of the following criteria may elect to return all of the Federal Credit in exchange for a new reservation and allocation of Federal Credits from the year immediately following the year in which the initial reservation and carryover allocation were made. The reservation and carryover allocation of the Federal Credits returned pursuant to this subdivision shall be deemed cancelled by mutual consent pursuant to a written agreement executed by the Committee and the applicant specifying the returned credit amount and the effective date on which the credits are deemed returned. The Committee shall concurrently issue a new reservation of Federal Credits to the project in the amount of the Federal Credits returned by the project to the Committee.
- (1) A High-Rise Project that returns all of the Federal Credit only during January of the year immediately following the year in which the initial reservation and carryover allocation were made.
 - (2) A project which prior to the placed in service deadline the Executive Director finds, in his or her sole discretion, merits additional time to place in service because development was significantly delayed due to damage directly cause by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the extent of the damage, the length of the delay, the time remaining until the project's placed in service deadline, and the circumstances causing the damage.
 - (3) A project reserved Federal credit established by the Further Consolidated Appropriations Act, 2020

Comments Received: Seven commenters support the proposed change permitting projects reserved FCAA federal credits to exchange their reservations, thereby permitting them one additional year to place in service. Two commenters stated that this provision may end up extremely useful given the deadlines for allocating disaster area tax credits and the potential capital market absorption challenges of so many tax credits in some of these rural areas. One commenter stated that many, if not all, of these deals funded under the FCAA set aside will not be able to be placed in service within 2 years of receiving the allocation and will need extra time.

Response to Comments: In reviewing the proposed language, TCAC staff wants to ensure that all FCAA federal credit be allocated prior to the end of 2021. As a result, TCAC staff is proposing to clarify that the reservation exchange is only eligible to projects awarded FCAA federal credit in 2020 and that the request for the reservation exchange be made in January 2021 similar to High-Rise Projects.

Final Proposed Change: Proceed with changes as initially proposed with the changes noted above and highlighted in the text below.

- (g) Reservation Exchange. A project with a reservation of Federal Credit pursuant to Section 10325 and a carryover allocation pursuant to Section 10328(d) and IRC Code § 42(h)(1)(E) that meets either of the following criteria may elect to return all of the Federal Credit in

exchange for a new reservation and allocation of Federal Credits from the year immediately following the year in which the initial reservation and carryover allocation were made. The reservation and carryover allocation of the Federal Credits returned pursuant to this subdivision shall be deemed cancelled by mutual consent pursuant to a written agreement executed by the Committee and the applicant specifying the returned credit amount and the effective date on which the credits are deemed returned. The Committee shall concurrently issue a new reservation of Federal Credits to the project in the amount of the Federal Credits returned by the project to the Committee.

- (1) A High-Rise Project that returns all of the Federal Credit only during January of the year immediately following the year in which the initial reservation and carryover allocation were made.
- (2) A project which prior to the placed in service deadline the Executive Director finds, in his or her sole discretion, merits additional time to place in service because development was significantly delayed due to damage directly cause by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the extent of the damage, the length of the delay, the time remaining until the project's placed in service deadline, and the circumstances causing the damage.
- (3) A project reserved Federal credit established by the Further Consolidated Appropriations Act, 2020 in 2020 that returns all of the Federal Credit in January 2021.