CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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Please note that TCAC staff has revised Sections 10325(f)(7)(K) and 10325(g)(2) on pages 41 and 44 as follows. After numerous public comments received at the November 10 public hearing, staff is withdrawing the originally proposed change to reduce the number of accessible units, and for Section 10325(f)(7)(K) is now proposing to increase the required number of accessible units.

DATE: October 29, 2020 **with November 10, 2020 Revisions**

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: 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. Attached to this memorandum is the complete set of proposed changes with reasoning. TCAC anticipates the regulation change adoption to take place at a TCAC meeting scheduled for December 2020. TCAC staff will conduct a public hearing to explain, answer questions, and solicit comments regarding the proposals. The public hearing will take place on November 10, 2020 at 10:00am. The notice of public hearing will be published in a subsequent notice.

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 submit written comments by email to judith.blackwelll@treasurer.ca.gov and anthony.zeto@treasurer.ca.gov, or deliver to the TCAC office **no later Friday, November 20, 2020**. For email comments, it is preferable that they be in a Microsoft Word document or an electronic format that allows for copying. While TCAC welcomes public comments, staff encourages commenters to be sparing and brief given the short timeframe for staff to turn around responses. If you agree with some changes and disagree with others, please remember to make both sets of comments so that TCAC has a record of both favorable and unfavorable reactions. In the interest of consistency, TCAC prefers that commenters either provide comment at the public hearing or submit written comments, as opposed to both. If you feel it is necessary to provide both, please provide consistent comments in both forums. Thank you.

Proposed Regulation Changes with Reasons
October 29, 2020 (Updated November 2, 2020)

Section 10302(a)

a) Adaptive reuse. Adaptive reuse means retrofitting and repurposing of existing buildings that create new residential rental units, and expressly excludes any project that involves rehabilitation of any construction affecting existing residential rental units. Adaptive reuse may include retrofitting and repurposing of existing hotels or motels if the hotel or motel is not a place of residence for the current occupants.

[section renumbering continues through the end of 10302]

Reason: Staff proposes to define adaptive reuse to provide clarity and consistency in evaluating these applications. Staff receives numerous inquiries related to what constitutes adaptive reuse and which application documents are applicable. Other corresponding changes are in Sections 10322(h)(9) and (26)(B).

Section 10302(e)

e) Bedroom. A bedroom be at least 70 square feet, must include an interior door, a window or an exterior door, a closet, and at least one receptacle outlet.

[section renumbering follows]

Reason: Staff regularly receives inquiries asking for a definition of a bedroom. This proposed change seeks to provide a basic defined term, understanding that localities may have additional requirements for a bedroom.

Section 10302(f)

f) Bath or bathroom. A bath or bathroom must be and must be equipped with an exhaust fan, a toilet, a sink, a shower or bathtub, and a receptacle outlet.

[section renumbering follows]

Reason: In conjunction with defining a bedroom, this proposed change seeks to provide a basic defined term, understanding that localities may have additional requirements for a bathroom.

Section 10302(l)

~~l~~o) Developer Fee. All Funds paid at any time as compensation for developing the proposed project, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders. Development consultant fees include but are not limited to: financial modeling or consulting, application preparation, assistance or review, specialized financing consultant services such as HUD, FHA, or AHP financing, entitlement consulting or services, building permit expediting, and tenant file review.

[section renumbering follows]

Reason: In reviewing placed-in-service applications, staff has noted that the development budgets (final cost certifications) include fees and compensation for developer functions in addition to the maximum developer fee. The proposed change further defines consultant fees to clarify the intent of what is included in a developer fee.

Section 10302(p)

~~p~~s) Farmworker Housing. A development of permanent housing ~~exclusively~~ for agricultural workers (as defined by California Labor Code Section 1140.4(b)) in which at least 50 percent of the units are available to, and occupied by, farmworkers and their households. The Committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, such emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency ~~that is available to, and occupied by, only farmworkers and their households~~.

Reason: The proposed change updates the definition of farmworker housing which was previously changed in state statute.

Section 10302(z)

z) Hybrid project or development. A new construction development constructed with separate 9% and 4% Federal Credit Allocations. The development must meet the conditions set forth in section 10325(c)(9)(A).

Reason: Staff proposes to add hybrid projects to the defined terms section. Hybrid projects are cited in various regulation sections, and adding the term to Section 10302 provides further clarity for this type of development.

Section 10302(y)

~~y~~cc) Local Reviewing Agency. An agency designated by the local government having jurisdiction~~,~~ that will perform evaluations of proposed projects in its locale according to criteria set forth by the Committee.

Reason: This proposed change was suggested to remove an erroneous comma.

Section 10302(ll)

~~ll~~pp) Scattered Site Project. A project in which the parcels of land are not contiguous except for the interposition of a road, street, stream or similar ~~property~~interposition.

Reason: The meaning of the term "interposition" has caused confusion on several occasions for applicants. Staff proposes a more precise term to eliminate confusion and misunderstanding.

Section 10305(d)

(d) Tax Credit Limitations. No applicant shall be eligible to receive Tax Credits if, together with the amount of Federal or State Tax Credits being requested, the applicant would have, in the capacity of individual owner, corporate shareholder, general partner, sponsor, or developer ~~or housing consultant~~, received a reservation or allocation greater than fifteen percent (15%) of the total Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year.

Reason: Staff proposes to remove housing consultants from the limitation of receiving no more than 15% of 9% federal credit per year. The list of entities in this section is comprised of owner and developer parties, plus housing consultants. Housing consultants do not receive a reservation of credit and staff finds their inclusion in this list inconsistent.

Section 10305(h)

(h) Notwithstanding any other provision of these regulations, the State Tax Credits allocated pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code shall be awarded to applicants for eligible projects receiving an allocation of State Ceiling from CDLAC and the applicant criteria shall be applied in accordance with Section 10326. Projects shall begin construction within 180 days of award pursuant to Section 10317(j). Up to two hundred million dollars ($200,000,000) ~~shall~~ may be allocated for housing financed by CalHFA's Mixed-Income Program, and this amount may be reduced if requested by CalHFA and subject to agreement of the Executive Directors of CalHFA and CTCAC.

Reason: The proposed change conforms this section with the language of enacted Assembly Bill 83 (AB 83) for CalHFA's Mixed-Income Program and allows TCAC to determine the amount allocated each year. The change also cross-references existing language in Section 10326(b).

Section 10310(b)

(b) Credit Ceiling available. The approximate amount of Tax Credits available in each reservation cycle ~~shall~~ may be established by the Committee at a public meeting designated for that purpose as of February first of the calendar year, in accordance with the following provisions:

Reason: TCAC practice is to publish the federal and state credit ceiling availability as of February 1 of each calendar year pursuant to the existing apportionments outlined in TCAC regulation Sections

10315 and 10317. The proposed change makes clear the date by which TCAC will publish and allows staff to continue to provide this information without scheduling a public meeting.

Section 10317(i)

(i) State Tax Credit Allocations pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code to bond financed projects. The following parameters apply:

(1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for acquisition and/or rehabilitation bond financed projects. ~~In the first round of each year,~~ CTCAC shall make reservations~~,~~ up to the 15% limit~~,~~ beginning with the first application review period of a calendar year for tax-exempt bond financed projects ~~for all projects receiving maximum point scores in order of final tiebreaker scores. CTCAC shall make reservations of any remaining State Tax Credits within this set-aside during the second round~~;

(2) The project will be competitively scored by CDLAC ~~under~~ according to the CDLAC scoring and ranking system delineated in Section ~~10325(c)(1) through (4)(A) and (B), (6), (7) and (9),~~5230 of the CDLAC Regulations ~~except that the only tie breaker shall be the final tiebreaker enumerated at Section 10325(c)(9) of these regulations and the maximum points available to a project under section 10325(c)(6)(A) shall be 30~~. Notwithstanding the foregoing, existing tax credit projects must comply with the requirements of Section 10326(g)(8)(A);

~~(3) The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credits, without regard to any set-asides or geographic areas, provided they meet the threshold requirements of Sections 10326;~~

(~~4~~3) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;

(~~5~~4) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for the last funded tax-exempt bond financed acquisition and/or rehabilitation ~~projects~~ project if that project requires more than the State Tax Credits remaining in this set-aside if (1) fewer than half of the State Tax Credits annually available for the credit ceiling competition are reserved in the first competitive credit round, or (2) if State Credits remain available after funding of competitive projects in the second TCAC funding round.

(~~6~~5) 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(d), except that the amount of developer fee in basis that exceeds the project's deferral/contribution threshold described in Section 10327(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 changes modify the way the 15% of state credit ceiling (<u>not</u> the $500 million tranche) is allocated and scored. First, since state statute now provides for a separate tranche of state tax credits to be allocated to new construction projects paired with tax-exempt bond financing, the 15% of these state credits are proposed to be reserved for rehabilitation project applications with tax-exempt bond financing. To eliminate two separate scoring and ranking systems being applied to these state credits, the applications are proposed to be scored only under the CDLAC scoring and ranking system. Because the applications would no longer be held to the TCAC point scoring system, they would be accepted during any application period.

Section 10317(j)

(j) State Tax Credit Allocations pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code. For calendar year<u>s beginning in</u> ~~2020~~<u>2021</u>, an amount ~~equal~~ <u>up</u> to five hundred million dollars ($500,000,000) in total State Tax Credit authority will be available <u>(if authorized in the California Budget Act or related legislation)</u> for new construction Tax Exempt Bond Projects subject to the ~~minimum~~ requirements ~~set forth in Sections 5033, 5190, 5010(c), and 5230~~ of the California Debt Limit Allocation Committee regulations~~,~~ and the ~~minimum~~ requirements of Section 10326 <u>of these regulations</u>, for projects that can begin construction within 180 days from award. Failure to begin construction within 180 days of award shall result in rescission of the Tax Credit Reservation and may result in assessment of negative points.

Readiness to begin construction within 180 days from award shall be evidenced in the application as set forth in Sections 10325(c)(7)(A) and (B) of these regulations. Within 180 days of the award the applicant must submit to CTCAC 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.

Failure to begin construction within 180 days of award shall result in rescission of the Tax Credit Reservation and may result in assessment of negative points.

Reason: The proposed changes conform this section to state statute updates made by AB 83.

Section 10320(b)(1)(B)

(B) The entity replacing a party or acquiring ownership or Tax Credits shall be subject to a "qualifications review" by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee. Any general partner change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(1)(A) as the exiting general partner. At a minimum this must be three (3) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the three projects must be Low Income Housing Tax Credit projects in California. If the new general partner does not meet these experience requirements, then substitution of general partner shall not be permitted. The requirements of this paragraph apply to a change to any general partner, member, or equivalent responsible party where an exiting party meets the experience capacity and the remaining party does not have experience equal to the minimum stated above.

Reason: The proposed change to this section clarifies that the qualifications review is applicable to a remaining general partner when there are two general partners and the exiting general partner is the only entity that has the minimum level of required experience.

Section 10320(b)(6)

(6) If a project seeks to receive a new reservation of 9% or 4% tax credits, any uncorrected Form(s) 8823 for life and safety violations (life-threatening and non-life threatening) and for Uniform Physical Condition Standards violations that are in existence at the time of the TCAC application must be corrected by the project owner that received the Form(s) 8823. The resyndication application shall not include any costs to correct these Form(s) 8823.

Reason: The proposed change requires a project owner to correct life and safety and physical conditions violations for which they are responsible prior to selling a project that will be resyndicated. Most resyndications are sold with net equity distributions, and often to related parties. TCAC staff proposes that selling entities be financially responsible for curing existing deficiencies that occurred under their ownership.

Sections 10320(b)(7), (8)

(7) An applicant seeking to (1) demolish or similarly alter any of the existing structures when seeking a new reservation of 9% and/or 4% tax credits; and/or (2) separate an existing project into multiple projects must request and receive prior written approval of the Executive Director. Projects that involve the demolition of existing residential units or separating an existing project must increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater.

(8) A project owner seeking to sell a portion of vacant or unused land must request and receive prior written approval of the Executive Director. The sale proceeds must either: 1) be contributed (not loaned) to a new multifamily affordable housing restricted project; or 2) reduce rents at the existing property by the aggregate amount of the proceeds. The project owner must request and receive prior written approval of the Executive Director.

Reason: A number of owners of projects with existing TCAC restrictions have approached TCAC staff requesting to demolish all or a portion of the site and rebuild rather than rehabilitate the existing buildings, and in other cases, to utilize small vacant portions of land for adjacent projects. Many of these projects are well within a 55 year regulatory agreement. Under certain conditions this has been permitted. As this trend appears to be increasing, staff proposes to provide a threshold for which this practice will be permitted and basic parameters for an approval process. The Executive Director retains the ability approve or deny a request.

Section 10320(c)

(c) CTCAC shall initially subordinate its regulatory contract to a permanent lender but thereafter shall not subordinate existing regulatory contracts to acquisition or refinancing debt, except in relation to new Deeds of Trust for rehabilitation loans, FHA-insured loans, restructured public loans, or as otherwise permitted by the Executive Director. For resyndication projects TCAC will subordinate to loans that are funding rehabilitation only in cases where there are no distributions of Net Project Equity.

At the request of the owner, CTCAC shall enter into a stand-still agreement permitting the acquisition or refinance lender 60 days to work with the owner to remedy a breach of the regulatory contract prior to CTCAC implementing any of the remedies in the regulatory contract, except that CTCAC shall not enter into a stand-still agreement related to a Transfer Event requested on or after October 21, 2015 unless the conditions of Section 10320(b)(2) have been satisfied. If CTCAC enters into a stand-still agreement related to a Transfer Event, Sections 10320(b)(2), (b)(3) and (b)(4) shall apply to the project.

Reason: In addition to the subordination policies outlined in this section, TCAC has published guidance for subordination on the TCAC website: https://www.treasurer.ca.gov/ctcac/inservice/consent-agreements-memo.pdf. Staff proposes to incorporate this guidance into TCAC regulations, which requires no distributions of equity in a resyndication in order for TCAC to subordinate to rehabilitation loans.

Section 10322(h)(3)

(3) Organizational documents. ~~All applicable proposed or executed organizational documents of the applicant entity~~, ~~including~~ An organization chart and a detailed plan describing the ownership role of the applicant throughout the low-income use period of the proposed project, and the California Secretary of State certificate for the project owner. An executed limited partnership agreement may be submitted as documentation that the project ownership entity is formed. If the project owner entity is not yet formed, provide the certificate for the managing general partner or the parent company of the proposed project owner. A reservation of credit cannot be made to a to-be-formed entity.

Reason: Staff proposes to reduce the application requirements for organizational documents. The organizational documents currently provided in the application include articles of incorporation, bylaws, and resolutions, many of which have been submitted multiple times over many years. Ownership agreements are typically not provided in the original application but are reviewed when the placed-in-service application is submitted. Staff proposes that the original requirement be modified to require basic organizational documents since final ownership documents are provided and reviewed in the placed-in-service application.

Section 10322(h)(9)

(9) Appraisals. Appraisals are required for 1) all rehabilitation applications except as noted in (A), 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, 3) all applications seeking tiebreaker credit for donated or leased land, and 4) 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.

Appraisals must be 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, and include, 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) for rehabilitation and new construction applications, the Sales Comparison Approach and Income Approach valuation methodologies shall be used; for adaptive reuse applications, the Cost Approach valuation methodology shall be used for adaptive reuse of office buildings, retail buildings, and similar, and the Sales Comparison and Income Approaches may be used for hotels, motels, and similar;

(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" for rehabilitation or adaptive reuse applications);

(v) an on site inspection; and

(vi) a purchase contract verifying the sales price of the subject property.

(A) Rehabilitation applications. An "as-is" appraisal is required ~~prepared~~ with a date of value that is within 120 days before or after the execution of: a purchase contract; ~~(or,~~ for leased land, an executed development agreement negotiated between the land owner and the applicant or developer~~) or~~; an option agreement; any other site control document pursuant to Section 10325(f)(2); 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 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 either:

(i) 120 days before or after the execution of: a purchase contract; ~~(or,~~ for leased land, an executed development agreement negotiated between the land owner and the applicant or developer~~) or~~; an option agreement; any other site control document pursuant to Section 10325(f)(2); the transfer of ownership by all the parties, or

(ii) ~~within~~ one year of the application date if the latest purchase contract, development agreement, option agreement, or any other site control document pursuant to Section 10325(f)(2) 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~~.

An amendment to an agreement does not constitute any of the agreements listed in (i) or (ii) above.

(C) Adaptive reuse applications. All adaptive reuse applications must submit an appraisal using an "as-is" appraisal date of value as stated in (B) above. For applications required to use the Cost Approach, the appraisal must consider the age, condition, and depreciated value of the existing building(s) when utilizing newly constructed "shell" sales comparisons and must include these calculations in the report.

For applications with existing project-based rental subsidy, the Income Approach shall not include post-rehabilitation contract rent(s). Rent(s) used in the Income Approach, if not the existing approved contract rent, must be supported by a rent comparable study or similar and must be approved by the subsidy provider or contract administrator. For applications with existing affordability restrictions, the Income Approach must be based on the affordability restrictions and restricted rents encumbering the property (a "restricted value") unless all affordability restrictions will expire within five years.

CTCAC may contract with an appraisal reviewer who may review submitted appraisals. If it does so, CTCAC shall commission an appraisal review. 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.

Reason: Changes proposed to this section include the re-ordering of existing text, further explanation of appraisal requirements related to rental subsidies, and clarification of: applicable methodologies, adaptive reuse appraisal requirements, the list of documents accepted for appraisal timing. Proposed changes also include expanding TCAC's ability to use appraisal review.

Staff proposes to move the appraisal methodologies list to subsection (9) to clarify that these apply to all construction types. Proposed changes also clarify the timing of appraisals in relation to various purchase or acquisition documents for each construction type.

Proposed changes to this section include incorporating more specificity to permitted "as-is" appraisal approaches when there is a rental subsidy that will be increased in the near future. Appraisers take a variety of approaches to prospective rental subsidies, including considering future increases that a buyer would take into account in evaluating the value of a property with long-term rental subsidies. These approaches have a direct impact on the acquisition value, eligible basis, and tax credits requested. Staff has provided guidance regarding these various scenarios with increasing complexity over the past few years when the majority of 4% credit applications were for rehabilitation projects. In proposing these changes, staff seeks to put specific parameters and rules into the regulations for valuation of current and prospective rental subsidies.

Staff proposes to add a subsection that addresses appraisal provisions that are specific to adaptive reuse in order to provide guidance, previously given to questioners, within regulations.

Finally, staff proposes to allow TCAC to employ an appraisal review process. Appraisals establish values that have direct effect on the cost of a project and the amount of tax credits requested. Often, particularly in rehabilitation applications, appraisals with high values generate more tax credits. Examples of potential misuse include: appraisals for related party sales with values significantly higher than recent third party sales of the same property, and use of comparables that appear inappropriate for a property type and result in a higher appraised value. Since no TCAC staff hold appraisal licensing or certification, disputing these types of issues during an application review is a challenge for staff. TCAC staff does not anticipate use of an appraisal review without reasonable cause.

Section 10322(h)(10)

(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 ten percent (10%) for special needs units and non-special needs SRO units without a significant project-based public rental subsidy and five percent (5%) for all other units at the time of the tax credit application.

Reason: Staff proposes to eliminate the "build and fill" limitation in rural areas. After several years of evaluating waiver requests, and with an affordable housing crisis affecting all regions of California, staff believes that the provision is not necessary at this time. Market studies document the demand for the proposed housing. Developers and investors also carefully consider the location of housing developments to ensure there is need and demand sufficient to ensure long-term viability.

Section 10322(h)(17)

(17) Eligible basis certification. A certification from a third party certified public accountant or tax attorney that project costs included in applicant's calculation of eligible basis are allowed by IRC Section 42, as amended, and are presented in accordance with standard accounting procedures. This must be delivered on the tax professional's corporate letterhead, in the prescribed CTCAC format and must include a statement that the Sources and Uses Budget was reviewed and that the accountant or attorney discussed the budget with the applicant as needed.

Reason: A number of eligible basis certifications provided in applications do not specifically state that the CPA or tax attorney reviewed the development budget for which the certification is given, but instead provide imprecise language that generally addresses costs allocated to eligible basis. TCAC staff proposes to clarify in regulations the basic requirements of this certification.

Section 10322(h)(26)(B)

(B) A Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline (except as provided in section 10322(h)(35)) that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment shall also include a pre-rehabilitation 15-year reserve study, indicating anticipated dates and costs of future replacements of all current major building components. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. An adaptive reuse application is not required to submit a CNA.

Reason: Adaptive reuse often results in "gutting" a building and removing much of the existing interior and systems. For this reason, staff proposes to eliminate the requirement to provide an assessment of the current physical conditions of a buildings which, in most cases, will be removed or significantly altered. The proposed changes also include a cross-reference to a proposed change below.

Section 10322(h)(35)

(35) Reapplication documents. Notwithstanding the time sensitive document requirements, the Committee may permit the site control title report and the capital needs assessment report of an unsuccessful application to be submitted, only once, in the reapplication cycle immediately following the unsuccessful application.

Reason: The proposed change allows re-applications to use existing title reports and physical assessment reports for one additional application cycle. This change adopts a practice similar to what is permitted for 9% re-applications in a calendar year. With the increased competition for tax-exempt bond financing and the over-subscription of that program, multiple reapplications in a calendar year have increased. Staff proposes to help reduce application costs by allowing re-use of some documents with expiring timing where the condition evidenced by the document is unlikely to change during the reapplication cycle.

Section 10322(i)

(i) Placed-in-service application. Within ~~one year~~nine months of completing construction or rehabilitation of the proposed project, the project owner shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs or changes to the services amenities, must be explained by the project owner in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax

Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:

Reason: Staff proposes to reduce the time permitted for submitting a placed-in-service application from one year to nine months. Many project owners utilize the full year to submit the application and request the tax forms, and TCAC often receives requests for extensions beyond one year to submit the application. This delays TCAC's ability to start a process that has tax and financial implications for tax credit investors and affects when investors are able to receive tax credit Form(s) 8609.

Section 10322(i)(2)

(2) an audited certification, prepared and signed by an independent Certified Public Accountant identified by name, under generally accepted auditing standards, with all disclosures and notes. The Certified Public Accountant (CPA) or accounting firm shall not have acted a manner that would impair independence as established by the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct Section 101 and the Securities and Exchange Commission (SEC) regulations 17 CFR Parts 210 and 240. Examples of such impairing services, when performed for the final cost certification client, include bookkeeping or other services relating to the accounting records, financial information systems design and implementation, appraisal or evaluation services, actuarial services, internal audit outsourcing services, management functions or human resources, investment advisor, banking services, legal services, or expert services unrelated to the audit. Both the referenced SEC and AICPA rules shall apply to all public and private CPA firms providing the final audited cost certification. In order to perform audits of final cost certifications, the auditor must have a peer review of its accounting and auditing practice once every three years consistent with the AICPA Peer Review Program as required by the California Board of Accountancy for California licensed public accounting firms (including proprietors); and make the peer review report publicly available and submit a copy to CTCAC along with the final cost certification. If a peer review reflects systems deficiencies, CTCAC may require another CPA provide the final cost certification. This certification shall:

(A) as identified by the certified public accountant, reflect all costs, in conformance with 26 CFR § 1.42-17, and expenditures for the project up to the funding of the permanent loan as well as all 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;

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

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

The project owner must request approval from CTCAC if the final cost certification includes a prospective permanent loan or other source amount to be reduced at the time of the final tax credit equity installment, occurring after the Form(s) 8609 are issued. The equity must be used to pay principal balances and shall not be used to pay accrued interest. As a condition of accepting the projected equity, CTCAC will require documentation of the final equity payment and the reduction of the principal balance. A project owner must provide this documentation to CTCAC within 20 days of the loan payment. If the documentation does not support the equity amount or the projected loan or source reduction, the tax credits will be recalculated, the Form(s) 8609 will be amended, and the fee of section 10335(g) will be assessed.

Reason: Staff proposes two changes to the requirements of cost certifications (the final development cost document, which includes financing source amounts). Cost certifications require preparation by a CPA that includes disclosures and notes, which staff review as part of the placed-in-service application. Many certifications received are identified by accounting firm name only and do not include information regarding the CPA that conducted the audit and prepared the certification. Staff proposes that this record, which is also often utilized by TCAC compliance staff to resolve questions related to eligible basis, include the individual who is certifying to the requirements of this TCAC section.

The second proposed change is related to the project financing. TCAC is required by 26 CFR 1.42-17 to determine the reasonableness of the development costs of the project, financing source amounts, and to confirm that the tax credits allocated to a project not exceed the amount necessary for financial feasibility. An increasing number of project owners are using the final tax credit equity installment (which occurs after Form(s) 8609 are issued) to repay or pay down existing debt. The cost certification must include the full amount of the tax credit equity and all final financing source amounts. TCAC staff verifies the financing sources through loan documents before issuing tax credits. In these cases, the current loan amount is greater than reflected in the cost certification because the projected payment has not yet occurred. Because this occurs after the placed-in-service application is approved and the tax forms have been issued, it is necessary to confirm that the actual projected amount was paid and the full allocation of tax credits is warranted. If less than the projected amount is paid, the project is over-sourced and too many tax credits were issued. Staff has developed a process to verify the financing source pay-down and proposes to include the requirements of this process in TCAC regulations.

Section 10322(i)(21)

(21) Evidence that the subject property is within the control of the project owner in the form of an executed lease agreement, a current title report ~~(~~within 90 days of application except as provided in section 10322(h)(35) (or preliminary title report, but not title insurance or commitment to insure) showing the project owner holds fee title, a grant deed, or, for tribal trust land, a title status report or an attorney’s opinion regarding chain of title and current title status.

Reason: The proposed change aligns TCAC’s accepted title reports to the standard in CDLAC regulation. It is typical for TCAC applications to include a preliminary title report, which is what TCAC has historically accepted.

Section 10322(i)(23)

(23) if the application includes legal separation or subdivision of a building that is not a condominium plan:

(A) a legal opinion of how the legal separation meets the IRS definition of a building. The opinion must include a summary of the common area and building access ownership structure and any shared use agreements; and

(B) if the project owners are proposing any kind of proportionate cost where there is a single common area owner, a tax attorney or CPA must provide an opinion of how proportioning a cost and corresponding eligible basis to an entity that does not own the space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were proportioned and is subject to review and approval by CTCAC;

Reason: TCAC received applications for affordable housing developments that include various types of building configurations, including applications that legally separate a single building, resulting in multiple owners and multiple tax credit allocations to a single building. The LIHTC program issues tax credits on a per building basis. The Internal Revenue Service (IRS) defined term "qualified low-income building" allows condominiumizing of a building, but the IRS has not provided a published ruling or guidance applicable to all buildings that addresses air rights subdivisions (reliance on private letter rulings is not equivalent to IRS published revenue rulings or procedures). TCAC has published guidance on the TCAC website: https://www.treasurer.ca.gov/ctcac/2020/applications/2020-Application-Guidance.pdf that requires a legal opinion on air rights divisions and also documentation of how common area ownership and use within the building are treated. Staff proposes to incorporate this guidance into TCAC regulations.

Section 10322(i)(24)

(24) for multiphase projects proposing to share use of common areas and community space, a joint use agreement must be provided in the placed in service application. In addition, if there is any kind of proportionate cost for common area and community space to a project that does not own the area/space, a tax attorney or CPA must provide an opinion of how apportioning a cost and corresponding eligible basis to an entity that does not own the area/space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were apportioned and is subject to review and approval by CTCAC;

Reason: TCAC received applications for affordable housing developments that include adjacent, multi-phase developments that share common areas, community buildings, and sometimes service amenities. TCAC has published guidance on the TCAC website: https://www.treasurer.ca.gov/ctcac/2020/applications/2020-Application-Guidance.pdf that requires a joint use agreement for this space, and also documentation of how shared common area use and costs are allocated between separately owned, legally divided projects. Staff proposes to incorporate this guidance into TCAC regulations.

Section 10322(j)

(j) Revisions to 4% Reservations at Placed in Service. Proposals submitted under Section 10326 of these regulations do not require new applications for changes in costs or Tax Credits alone. Committee staff will adjust the Credit amount when the placed-in-service package is received and reviewed. Approval of the Executive Director is required for any change in unit mix or income targeting after reservation except for changes that decrease income targeting. It is the applicant's responsibility to notify CTCAC of any unit mix or income targeting change. Projects at placed-in-service that are requesting additional Tax Credits will be required to submit a fee equal to one percent (1%) of the increase from reservation in the annual federal tax credits allocated. This section shall apply to all projects for which TCAC issues tax forms after December 31, 2017.

Reason: This section recognizes that after a reservation of credit, an applicant may adjust the income targeting proposed in the application, including decreases in the proposed rents for some of the units. Since decreases to income targeting make rent more affordable for prospective tenants, TCAC has not rejected any requests for this type of change. As a result, staff proposes to allow this change to be made after the tax credit reservation without pre-approval. Staff will continue to review the final unit targeting in the placed-in-service application.

Section 10325(a)

(a) General. All applications not requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4)(b) and Section 10326 of these Regulations (for buildings financed by tax-exempt bonds) shall compete for reservations of Credit Ceiling amounts during designated reservation cycles. Further, no project that has a pending application for a private activity bond allocation or that has previously received a private activity bond allocation will be eligible to compete under the Credit Ceiling competition for Federal Tax Credits ~~unless it receives a waiver from the Executive Director~~.

Reason: Staff proposes to eliminate a waiver provision that allows multiple, concurrent applications for the same housing development. In recent years, no waiver request has been approved, and with the increasing competition for both 9% and 4% credit, requests have increased. Allowing multiple financing versions of the same application increases competition for limited resources and utilizes additional staff resources. The proposed change reflects the current practice of not allowing concurrent 9% and 4% credit applications.

Section 10325(c)(1)(A) first paragraph only

(A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, ~~the~~ a proposed general partner~~s~~, or a key person within the proposed general partner organization, must meet the following conditions:

Reason: The proposed change clarifies that only one general partner is required to have the requisite experience in order for a project to receive general partner experience points.

Section 10325(c)(1)(A)(i)

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

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

5 or more projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be California Low Income Housing Tax Credit projects ~~6~~ 7 points

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

3 Special Needs projects in service more than 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the 3 special needs projects ~~4~~ 5 points

4 or more Special Needs projects in service more than 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the 4 special needs projects
~~6~~ 7 points

Reason: There are two proposed changes to the general partner experience points section. The first proposed change allows same year re-applications to use existing certifications from the first round application that may exceed the timing requirement. This change recognizes a practice that has been permitted for 9% re-applications in a calendar year and helps reduce re-application costs.

The second change alters the scoring amounts for the subcategories to align with proposed CDLAC scoring and increases the maximum general partner experience points from 6 to 7.

Section 10325(c)(1)(B)(ii)

(i) 6-10 projects managed over 3 years, of which 2 shall be California Low Income Housing Tax Credit projects 2 points

11 or more projects managed over 3 years, of which 2 shall be California Low Income Housing Tax Credit projects 3 points

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

2-3 Special Needs projects managed over 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the special needs projects 2 points

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

~~Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a low income housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.~~

Reason: The proposed change eliminates a point category that is never used by applicants.

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 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, with the exception of the transit pass option of subcategory 1. Amenities may include:

Reason: The proposed change corrects the statement that only one point award is available in each site amenity option category. Transit points can be received for proximity to transit and for providing transit passes to tenants.

Section 10325(c)(4)(A)1. transit pass point option only

1. In addition to meeting one of the 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 at the time a Low-Income Unit is leased to the tenant and shall be made available 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

Reason: Staff proposes to clarify that transit passes must be available to tenants beginning with the initial lease-up of the units, at the beginning of the TCAC regulatory period.

Section 10325(c)(4)(A)5.

5. For a development wherein at least 25 percent (25%) of the Low-Income Units (or, for Special Needs housing type, at least 25% of the Large Family Low-Income Units) shall be three-bedroom or larger units, the site is within 1/4 mile of a public elementary school; 1/2 mile of a public middle school; or one (1) mile of a public high school, (an additional 1/2 mile for each public school type for Rural setaside projects) and that the site is within the attendance area of that school. Public schools demonstrated, at the time of application, to be under construction and to be completed and available to the residents prior to the housing development completion are considered in place at the time of application for purposes of this scoring factor. 3 points

   or within an additional 1/2 mile for each public school type (an additional 1 mile for Rural set-aside projects) 2 points

Reason: Staff proposes to permit a special needs housing type project with less than 75% special need units (the remaining balance being large family units) to qualify for points for proximity to a school. Most often this would be a project that has 50% special needs units and 50% family units.

Section 10325(c)(4)(A)10.

10. High speed internet service, with a minimum average download speed of ~~1.5~~50 megabits/second must be made available to each Low-Income Unit for a minimum of 15 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. ~~Will serve letters or other documentation~~ Documentation of internet availability must be ~~documented within~~included in the application. If internet is selected as an option in the application it must be provided even if it is not needed for points.

Reason: The proposed changes update the minimum internet speed and reduce the required application documentation. Based on staff research the current speed is below the slowest speed available in California, and staff estimates the proposed speed is available in most regions of California. Staff proposes to eliminate the requirement of a will-serve letter. The general availability of internet service in California makes this document unnecessary. Applications are sometimes received without complete documentation for this requirement, resulting in point reductions that are reinstated upon appeal. Staff seeks to eliminate this unnecessary process. Placed-in-service applications confirm that the required internet is being provided free of charge to tenants.

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

11. The project is a new construction ~~large family~~Large Family housing type 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

Reason: Staff proposes clarifying language that the resource area points apply only to a 100% large family housing type project.

Section 10325(c)(4)(B)

(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.

No more than 10 points will be awarded in this category. The number of hours per year for a full time-equivalent (FTE) will be calculated as follows: 1) the number of bedrooms X 0.0017 = FTE multiplier; 2) FTE Multiplier X 2,080 = number of hours per year (up to a maximum of 2,080 hours).

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:

1. Service Coordinator. Responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.).

   Minimum ratio of 1 Full Time Equivalent (FTE) Service Coordinator to 600 bedrooms.
   5 points

   ~~Minimum ratio of 1 FTE Service Coordinator to 1,000 bedrooms 3 points~~

2. Other Services Specialist. Must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor.

   Minimum ratio of 1 FTE Services Specialist to 600 bedrooms. 5 points

   ~~Minimum ratio of 1 FTE Services Specialist to 1,000 bedrooms 3 points~~

3. Instructor-led ~~A~~adult educational, health and wellness, or skill building classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Drop-in computer labs, monitoring or technical assistance shall not qualify.

   84 hours of instruction per year (42 for small developments) 7 points

   60 hours of instruction per year (30 for small developments) 5 points

   ~~36 hours of instruction per year (18 for small developments) 3 points~~

4. Health and wellness services and programs. Such services and programs shall provide individualized support to tenants (not group classes) and need not be provided by licensed individuals or organizations. Includes, but is not limited to visiting nurses programs, intergenerational visiting programs, or senior companion programs. The application must describe in detail the services to be provided.

   100 hours of services per year for each 100 bedrooms 5 points

   60 hours of services per year for each 100 bedrooms 3 points

   ~~40 hours of services per year for each 100 bedrooms 2 points~~

5. Licensed child care. Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 25% of Low-Income Units are three bedrooms or larger). 5 points

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

   10 hours per week, offered weekdays throughout school year 5 points

   6 hours per week, offered weekdays throughout school year 3 points

   ~~4 hours per week, offered weekdays throughout school year 2 points~~

For Special Needs 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:

7. Case Manager. Responsibilities must include (but are not limited to) working with tenants to develop and implement an individualized service plan, goal plan or independent living plan.

   Ratio of 1 FTE case manager to 100 bedrooms 5 points

   ~~Ratio of 1 FTE case manager to 160 bedrooms 3 points~~

8. Service Coordinator or Other Services Specialist. Service coordinator responsibilities shall include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.). Other services specialist must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor.

   Ratio of 1 FTE service coordinator or specialist to 360 bedrooms 5 points

   ~~Ratio of 1 FTE service coordinator or specialist to 600 bedrooms 3 points~~

9. Adult educational, health and wellness, or skill building classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes.

   84 hours of instruction per year (42 for small developments) 5 points

   ~~60 hours of instruction per year (30 for small developments) 3 points~~

   ~~36 hours of instruction per year (18 for small developments) 2 points~~

10. Health or behavioral health services provided by appropriately-licensed organization or individual. Includes but is not limited to: health clinic, adult day health center, medication management services, mental health services and treatment, substance abuse services and treatment. 5 points

11. Licensed child care. Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 25% of Low-Income Units are three bedrooms or larger). 5 points

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

   10 hours per week, offered weekdays throughout school year 5 points

   ~~6 hours per week, offered weekdays throughout school year 3 points~~

   ~~4 hours per week, offered weekdays throughout school year 2 points~~

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. Proportionate scoring means for a project to score the maximum 10 points, nonspecial needs units and special needs units must independently score 10 points for service amenities. For special needs projects with less than 75% special needs units that provide the same service amenity for the special needs and non-special needs tenants, the applicant must select the amenity from 1-6 and from 7-12 in the application form. 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~~.~~ : ~~O~~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; and name the project to which the services are being committed.

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).

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 must align 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 will fund service amenities, the application's Service Amenities Sources and Uses Budget must be consistent with the application's fifteen year pro forma. Services costs contained in the project's pro forma operating budget 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.

Reason: The proposed changes clarify current requirements, simplify the service amenity point categories, and assist in alignment with the proposed CDLAC scoring system. Clarification includes how to calculate full time equivalent hours that are applicable to some service categories and further clarification of proportionate scoring. Staff is proposing to reduce a number of point options that award 2 and 3 points within a 10 point category. Applicants requesting service amenities always request the full 10 points, making 2 point categories unnecessary and unused. Also, with only one point option for 7 points, staff is proposing to eliminate redundant 3 point categories that cannot be combined with the 7 point category. This results in primarily 5 point options, which is more consistent with the current CDLAC service amenity point options. Proposed changes to the CDLAC scoring system reference the TCAC service amenity options, and these proposed TCAC changes assist in alignment between CDLAC and TCAC.

Section 10325(c)(5)

(5) Reserved~~Sustainable building methods. Maximum 5 points~~

~~Sustainable building methods points shall be awarded to applicant projects committing to the following applicable standards. Except where 90 percent (90%) or more of the proposed units consist of either new construction or rehabilitation, projects consisting of both (i) new construction or adaptive reuse and (ii) rehabilitation of existing units shall be scored on meeting applicable standards for both construction types. In such cases, points shall be awarded based upon the lowest score achieved by each construction type. The application shall include a statement committing the property owner to at least maintain the installed energy efficiency and sustainability features' quality when replacing any such feature.~~

~~(A) New Construction and Adaptive Reuse Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); Green~~

~~Communities; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; National Green Building Standard ICC / ASRAE – 700 silver or higher rating; or the GreenPoint Rated Program.~~ ~~5 points~~

~~WELL (when not combined with the program above)~~ ~~1 point~~

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

~~(i) Energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the 2019 Title 24, Part 6, of the California Building Code (the 2019 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:~~

~~**Low-Rise Multifamily**~~		~~**High-Rise Multifamily**~~	
~~5 Total EDR Pts.~~	~~3 points~~	~~7 percent~~	~~3 points~~
~~8 Total EDR Pts.~~	~~5 points~~	~~12 percent~~	~~5 points~~

~~If the local building department has determined that building permit applications submitted on or before December 31, 2019 are complete, then energy efficiency beyond the requirements in the 2016 Title 24, Part 6, of the California Building Code (the 2016 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:~~

~~9 percent~~	~~3 points~~
~~15 percent~~	~~5 points~~

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

~~**Offset of Tenants' Load**~~	~~**Low-Rise Multifamily**~~	~~**High-Rise Multifamily**~~
~~40 percent~~	~~3 points~~	~~4 points~~
~~60 percent~~	~~4 points~~	~~5 points~~
~~80 percent~~	~~5 points~~	

~~The percentage Zero Net Energy (ZNE) solar offset of a project's tenant energy loads is to be calculated using the California Utility Allowance Calculator (CUAC) with kilowatt hours (kWh) consumed to be balanced by kilowatts generated on-site. Gas use is to be converted to kWh for percentage ZNE offset calculations, assuming 1 Therm = 29.3 kWh, and 100,100 British Thermal Units (BTUs) = 29.3 kWh. Residential energy loads modeled by the CUAC shall include all energy~~

~~used by tenants, both gas and electric, regardless of whether the energy load is billed to the owner or the tenants. This calculation excludes non-residential energy uses associates with the community building, elevators, parking lot lighting, and similar end uses, but includes domestic hot water and Heating, Ventilation, and Air Conditioning (HVAC) loads, regardless of whether they are central or distributed. For purposes of this paragraph, "High-Rise Multifamily" is defined consistently with the California Energy Code.~~

~~(C) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; National Green Building Standard ICC / ASRAE – 700 silver or higher rating; or 2015 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points~~

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

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

~~**Improvement Over Current**~~

~~15 percent 3 points~~

~~20 percent 5 points~~

~~(E) Additional Rehabilitation Project Measures. For projects receiving points under section 10325(c)(5)(D) applicants may be awarded points for committing to developing, and/or managing, their project with one or more of the following:~~

~~1. Projects shall include either:~~

~~a. Photovoltaic (PV) generation that offsets 30% of tenant loads (if the combined available roof area of the project structures, including carports, is insufficient for provision of 30% of annual tenant electricity use, then the project shall~~

~~have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area; or~~

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

~~c. Solar hot water for all tenants who have individual water meters.~~
~~2 points~~

~~2. Project shall implement sustainable building management practices including:~~

~~Develop a project-specific maintenance manual including replacement specifications and operating information of all energy and green building features, and~~

~~Undertake formal building systems commissioning, retro-commissioning or re-commissioning as appropriate (continuous commissioning is not required).~~
~~2 points~~

~~3. Projects shall individually meter or sub-meter currently master-metered gas, electricity, or central hot water systems for all tenants.~~ ~~2 points~~

~~(F) Water efficiency:~~
~~Use no irrigation at all, irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), or irrigate with reclaimed water, greywater, or rainwater in an amount that annually equals or exceeds 10,000 gallons or 150 gallons per unit, whichever is less.~~
~~5 points~~

~~(G) Compliance and Verification:~~
~~1. For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building methods of Section 10325(c)(5) have been incorporated into the project, if applicable. For rehabilitation applications incorporating the requirements of subsection (C) Green Communities or WELL option, and for all applications incorporating the requirements of subsections (B), (D), or (E)1.a above, applicants must include a completed Sustainable Building Method Workbook.~~

~~2. For placed-in-service applications to receive points under section 10325(c)(5)(A) and section 10325(c)(5)(C), the applicant must submit the appropriate required third party verification documentation showing the project has met the requirements for the relevant program.~~

~~3. For low-rise new construction project placed-in-service applications to receive points under the 2019 Standards in section 10325(c)(5)(B)(i), the applicant must submit a completed Sustainable Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the necessary Total EDR score better than the appropriate Standards. For high-rise new construction project placed-in-service applications to receive points under section 10325(c)(5)(B)(i), the applicant must submit a completed Sustainable~~

~~Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the Regulations necessary percentage improvement better than the appropriate Standards. This compliance form must be the output from the building(s) modeled "as built" and reflect all relevant changes that impact the building(s) energy efficiency that were made after the preliminary reservation application. The compliance form must be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA). Documentation for measures that require verification by California Home Energy Rating System (HERS) Raters must also be submitted.~~

4. ~~New Construction placed-in-service applications for projects that received points under section 10325(c)(5)(B)(ii), the applicant must submit a completed Sustainable Building Method Workbook, a completed CUAC analysis establishing the total tenant energy load, and documentation of the PV output using the Expected Performance Based Buydown (EPBB) calculator with TCAC approved monthly scalars. These compliance forms must reflect all relevant changes that impact building(s) energy efficiency that were made after the preliminary reservation application. The CUAC analysis and other required forms must be signed by a CABEC certified CEA. Documentation for the solar PV installation and other measures that require verification by California HERS Raters must also be submitted.~~

5. ~~For rehabilitation project placed-in-service applications to receive points under section10325(c)(5)(D), the applicant must submit a completed Sustainable Building Method Workbook and the energy consumption and analysis report from the Nonresidential (High-Rise Residential) performance module of CEC approved software, completed by a CABEC certified CEA, which shows the pre- and post-rehabilitation estimated TDV energy use demonstrating the required improvement. The pre-rehabilitation conditions shall be established using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report Template, signed by a qualified HERS Rater.~~

6. ~~For rehabilitation project placed-in-service applications to receive points under section 10325(c)(5)(E) the applicants must submit the following documentation:~~

   ~~(i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a completed Sustainable Building Method Workbook, a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project's solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter. The applicant shall use the Expected Performance Based Buydown (EPBB) calculator with CTCAC approved monthly scalars to determine the solar values to be input into the CUAC calculator.~~

   ~~(ii) For projects including photovoltaic generation that offsets common area load, the energy analyst shall provide documentation of the load serving the common area and the output calculations of the photovoltaic generation.~~

   ~~(iii) For sustainable building management practices, the applicant must submit a copy of the energy management and maintenance manual and submit the building commissioning plan drafted in accordance with the California~~

~~Commissioning Collaborative's best practice recommendations for existing buildings or the GreenPoint Rated Multifamily Commissioning requirements.~~

~~(iv) For sub-metered central hot water systems, the applicant must demonstrate compliance with CPUC regulations for hot water sub-metering and billing by submitting a copy of the Utility Service Agreement from project's local utility provider.~~

~~7. For placed in service applications to receive points under Section 10325(c)(5)(F), the project architect, landscape architect, water system engineer, HERS Rater, GreenPoint Rater, NGBS Green Verifier, or LEED for Homes Green Rater shall certify that the project has been designed and constructed to achieve the standards and that, if applicable, reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property to meet the standards under normal conditions.~~

~~8. Failure to produce the appropriate documentation for (2) through (7) of this subsection may result in an award of negative points for the development team.~~

Reason: The proposed change eliminates the Sustainable Building Methods point category. With the emphasis on unit production and cost containment, and that energy efficiency standards required California Building Code (CBC), which now includes a requirement for solar photovoltaic systems, requires a higher standard than the nation, the requirement to only meet CBC requirements will further accelerate the development of affordable housing projects. This aligns with the CDLAC proposed removal of the Sustainable Building Methods point category.

Section 10325(c)(7)

(7) Readiness to Proceed. 10 points will be available to projects that document ~~items (A) through (B) below,~~ enforceable financing commitment(s) as defined in Section 10325(f)(3) for all construction financing and commit to begin construction within 180 days of the Credit Reservation as documented by the requirements below (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)~~,~~.

No later than the 180/194 day deadline, CTCAC must receive~~as evidenced by submission, within that time, of~~:

(A) a completed updated application form along with a detailed explanation of any changes from the initial application,

(B) an executed construction contract,

(C) 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,

(D) a limited partnership agreement executed by the general partner and the investor providing the equity,

(E) an updated CTCAC Attachment 16, ~~payment of all construction lender fees,~~

(F) 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

(G) notice to proceed delivered to the contractor.

Failure to meet the 180-day or 194-day due date, if applicable, shall result in rescission of the Tax Credit Reservation or negative points.

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.

~~For projects that are federal funding recipients and receiving competitive reservations in the second round of 2018, the 180-day or 194-day references in the preceding paragraph shall be extended by sixty (60) days. The extension is only provided to projects that demonstrate to CTCAC prior to the original 180-day or 194-day deadline, in the form of a written timetable and an explanation, that the federal government shutdown impacted their ability to meet Readiness to Proceed requirements.~~

~~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 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:~~

~~(A) enforceable financing commitment, as defined in Section 10325(f)(3), for all construction financing;~~

~~(B) evidence, as verified by the appropriate officials on a Committee-provided form signed by an appropriate local government planning official of the applicable local jurisdiction, that all applicable local land use approvals have been obtained as described in Section 10325(f)(4).~~

~~For paragraph (B) a final appeal period may run up to 30 days beyond the application due date as described in Section 10325(f)(4). 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 to move existing text within this section to increase ease of understanding. When the requirement to document environmental clearance was eliminated in 2019, the required land use approvals for this point category became essentially identical to the threshold requirements, and caused some confusion to applicants. As a result, the current changes also clarify that readiness to proceed is a ten point category that has two components, both of which are committed to when requesting readiness points: commitments for all construction financing included in the application, and committing to providing the listed documents 180/194 days after a reservation of credit. Staff will review local land use approval application attachments for 2021 to further clarify land entitlement requirements (see also proposed changes to section 10325(f)(4) below).

Section 10325(c)(9)

(9) Tie Breakers If multiple applications receive the same score, the following tie breakers shall be employed:

For applications for projects within single-jurisdiction regional competitions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence within the submitted application of a formal letter of support for the project from either the San Francisco Mayor's Office of Housing or the Los Angeles Housing + Community Investment Department respectively. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped (unless the application to be skipped is the highest ranked in the set-aside or geographic region) if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and Second, the highest of the sum of the following:

(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, except that outstanding principal balances for projects subject to an existing CTCAC regulatory agreement shall not be considered public funds if such loans were funded less than 30 years prior to the application deadline. 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.

In addition, public funds include 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 and improvements donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement negotiated between a public entity and an unrelated private developer. The value of land leased by a public entity shall be discounted by the sum of upfront lease pre-payments and all mandatory lease payments in excess of $100 per year over the term of the lease, exclusive of residual receipt payments. 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 operating 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, must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(h)(9). 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 condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property. Public funds shall be allocated to off-site costs and shall be reduced for tie breaker scoring purposes.

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; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 40 percent (40%) AMI levels (30% AMI for units subject to the 40% average AMI requirement of Section 10325(g)(3)(A)) from the committed 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 USDA Basic rents. The committed contract rent income for units with existing project-based Section 8 rental subsidy shall be documented by the current monthly contract rent in place at the time of the application or by contract rent committed to and approved by the subsidy source (HUD); rent from a rent comparable study or post-rehabilitation rent shall not be permitted. The rent differential for projects with public operating 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 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, except for the value of donated land and improvements in the case of a rehabilitation project subject to an existing regulatory agreement with CTCAC or a federal, state, or local public entity or with greater than 25% of the units receiving project-based rental assistance unless the land and improvements are wholly donated. 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 nonprofit 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.

(v) For 4% credit applications, recycled private activity bonds (whether they be used for construction or permanent financing, or both) shall be considered leveraged soft resources so long as the loan terms are consistent with market standards.

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 this 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% applications:

(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 Section 10327(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 maximum housing type points in combination with the 9% project. Under each exception, the 9% project shall also be scored in the corresponding point category in combination with the 4% project; 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).

(B) One (1) minus the ratio of requested unadjusted eligible basis to total residential project development costs~~, with the resulting figure divided by three~~.

(C) Except as provided below, a new construction ~~large-family~~Large Family housing type project ~~applying in 2019 or later~~ (excluding a Special Needs project with non-special needs Low-Income Units meeting Large Family housing type requirements) 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.

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

Reason: The following changes are proposed to this section: a change to the first tie-breaker allowing the highest ranked project in a set-aside or region to be funded regardless of whether that housing type goal has been met; a limitation on public funds scoring for resyndication application existing public funds funded less than 30 years prior to the application date; a clarification of

TCAC's current process for ineligible off-site calculation; additional language explaining staff's current standard for rental subsidy commitments; a reduction from a higher standard of 55 year loans for non-public soft loans to a standard equal to term of 15 years; addition of recycled private activity bonds as a public funding source for CDLAC scoring purposes; a change to the second ratio of the tie-breaker removing the requirement to divide the ratio by 3; and a clarification that the bonus percentage points apply only to a 100% large family housing type project.

Staff is recommending that housing type goals be exceeded to allow the highest ranked project in a set-aside or region to be funded. Skipping of a high ranking project occurs most often in geographic regions and staff is proposing the change to allow projects to be funded that often have a high level of commitment from local jurisdictions.

The proposed changes include a limitation on public funds scoring for resyndication applications. Existing public loans funded less than 30 years prior to the application date would not count as public funds for scoring purposes and is proposed as part of the alignment with the proposed CDLAC scoring system.

The proposed changes include a clarification of TCAC's current process for ineligible off-site calculation. This has been in place since the addition of the off-site language to the tie-breaker, it has been published in guidance and reviewed at every annual application workshop. Staff proposes to also more clearly state this in regulations now as other clarifying changes are also being made to this section.

The value of rental subsidies in the tie-breaker is tied to the contract rent amounts for each unit type. Staff has provided guidance regarding various scenarios that have increased in variety and complexity over the past few years, and staff's evaluations of rental subsidy amounts in self-scored tie-breakers have at times been appealed. In proposing these changes, staff seeks to put specific parameters and rules into the regulations for rental subsidy amounts to make applicants more fully aware of how rental subsidies are evaluated in terms of acceptable contract rent amounts for tie-breaker scoring purposes.

The reduction from a standard of 55 year loans for non-public soft loans to a standard equal to term of 15 years is proposed to increase the use of this funding source by making the option more attractive to prospective lenders.

Addition of recycled private activity bonds as a public funding source is proposed as part of the alignment with the proposed CDLAC scoring system.

A change is proposed to the second ratio of the tie-breaker, removing the requirement to divide the second numerator ratio by 3. The second ratio was put in place to encourage cost efficiency and removing the division strengthens the ratio within the tie-breaker calculation.

Finally, staff proposes clarifying language that the bonus percentage points apply only to a 100% large family housing type project.

Section 10325(f)(1)

(1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located, with evidence including a market study that meets the current market study guidelines distributed by the Committee. Market studies will be assessed thoroughly. Meeting the requirements of subsection (B) below is essential, but because other elements of the market study will also be considered, meeting those requirements in subsection (B) will not in itself show adequate need and demand for a proposed project or ensure approval of a given project. Evidence shall be conclusive, and include the most recent documentation available (prepared within one year of the application date and updated, if necessary). Evidence of housing need and demand shall include, but is not limited to:

(A) evidence of public housing waiting lists, by bedroom size and tenant type, if available, from the local housing authority; and

(B) except as provided in Section 10322(h)(10), a market study as described in Section 10322(h)(10) of these regulations, which provides evidence that:

(i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below the weighted average rent for the same unit types in comparable market rate rental properties;

(ii) Except for special needs rehabilitation projects in which at least 90% of the total units are SRO units, the proposed unit value ratio stated as dollars per square foot ($/s.f.) will be no more than the weighted average unit value ratios for comparable market rate units;

(iii) In rural areas without sufficient three- and four-bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at least 20% below the rents for single family homes and the $/s.f. ratio will not exceed that of the single family homes; and

(iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy – 90% occupancy for Special Needs projects and 95% for all other projects – within six months of being placed in service for projects of 150 units or less, and within 12 months for projects of more than 150 units and senior projects.

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

Reason: The proposed change clarifies that market studies provide evidence of housing need and demand and in doing so reorders existing language. Evidence of housing need and demand is required in all applications, and the proposed change further clarifies the requirement how this is demonstrated in application documents.

Section 10325(f)(2)

(2) Demonstrated site control. Applicants shall provide evidence that the subject property is within the control of the applicant.

(A) Site control may be evidenced by:

(i) a current title report ~~(~~within 90 days of application except as provided in section 10322(h)(35) (or preliminary title report, but not title insurance or commitment to insure) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;

(ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program connecting the applicant and the owner of the subject property;

(iii) an executed disposition and development agreement connecting the applicant and a public agency; or,

(iv) a valid, current, enforceable contingent purchase and sale agreement or option agreement connecting the applicant and the owner of the subject property. Evidence must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.

(B) A current title report ~~(~~within 90 days of application except as provided in Section 10322(h)(35) (or preliminary title report, but not title insurance or commitment to insure) or for tribal trust land a title status report or an attorney's opinion regarding chain of title and current title status, shall be submitted with all applications for purposes of this threshold requirement.

(C) The Executive Director may determine, in her/his sole discretion, that site control has been demonstrated where a local agency has demonstrated its intention to acquire the site, or portion of the site, through eminent domain proceedings.

Reason: The proposed change aligns TCAC's accepted title reports to the standard in CDLAC regulation. It is typical for TCAC applications to include a preliminary title report, which is what TCAC has historically accepted.

Section 10325(f)(4)

(4) Local approvals and Zoning. Applicants shall provide evidence, at the time the application is filed, that the project as proposed is zoned for the intended use, and has obtained all applicable local land use approvals which allow the discretion of local elected officials to be applied, except that an appeal period may run 30 days beyond that application due date. ~~The applicant must provide proof that either no appeals were filed, or that any appeals filed during that time period were resolved within that 30-day period and the project is ready to proceed.~~ Examples of such approvals include, but are not limited to, general plan amendments, rezonings, and conditional use permits. Notwithstanding the first sentence of this subsection, local land use approvals not required to be obtained at the time of application include, design review, initial environmental study assessments, variances, and development agreements. The evidence must describe the local approval process, the applicable approvals, and whether each required approval is "by right,"

ministerial, or discretionary. When the appeal period, if any, is concluded, the applicant must provide proof that either no appeals were filed, or that any appeals filed during that time period were resolved within that 30-day period and the project is ready to proceed.

The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction, including acknowledgment of any zoning or land use approvals pursuant to a state streamlined approval requirement.

Reason: Staff proposes to require evidence of local land use approvals to include explanations of the local process for land use entitlements. Local jurisdictions have unique processes and TCAC staff is unable to uniformly and consistently apply the requirements of this section without a better understanding of those local processes and requirements. The proposed change also includes reordering of existing text for better ease of understanding and readability.

Section 10325(f)(7)

(7) Minimum construction standards. For preliminary reservation applications, applicants shall provide a statement that the following minimum specifications will be incorporated into the project design for all new construction and rehabilitation projects. In addition, a statement shall commit the property owner to at least maintaining the installed energy efficiency and sustainability features' quality when replacing each of the following listed systems or materials:

(A) Energy Efficiency. ~~New construction and rehabilitation non-competitive applicants shall consult with the design team, a CABEC certified 2019 Certified Energy Analyst, and a LEED AP homes (low-rise and mid-rise), LEED AP BD+C (high-rise), NGBS Green Verifier, or GreenPoint Rater (one person may meet both of these latter qualifications) early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency, generation measures, and energy storage beyond those required by this subsection. Prior to the meeting, the energy analyst shall complete an initial energy model based on either current Title 24 standards or, if the project is eligible, the California Utility Allowance Calculator using best available information on the project. All non-competitive applications to CTCAC shall include a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting.~~ All rehabilitated buildings, both competitive and non-competitive, shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report template. Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for the project as a whole, except that Scattered Site applications shall also document at least a 5% post-rehabilitation improvement over existing conditions energy efficiency achieved for each site. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. Furthermore, rehabilitation applicants must submit a completed Sustainable Building Method Workbook with their ~~preliminary reservation~~placed-in-service application unless they are developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED), Passive House Institute US (PHIUS), Passive House, Living

Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating or GreenPoint Rated Program. ~~In addition, all applicants who will receive points from CDLAC pursuant to Sections 5230(k)(7) or (8) (for energy efficiency only) of the CDLAC regulations must submit a completed Sustainable Building Method Workbook with their preliminary reservation application.~~

(B) Landscaping. If landscaping is to be provided or replaced, a variety of plant and tree species that require low water use shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs. Projects shall follow the requirements of the state Model Water Efficient Landscape Ordinance (http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) unless a local landscape ordinance has been determined to be at least as stringent as the current model ordinance.

(C) Roofs. Newly installed roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty.

(D) Exterior doors. If exterior doors are to be provided or replaced, insulated or solid core, flush, paint or stain grade exterior doors shall be made of metal clad, hardwood faces, or fiberglass faces, with a standard one-year guarantee and all six sides ~~factory~~ primed.

(E) Appliances. All Low-Income Units shall provide a refrigerator. All non-SRO Low-Income Units shall provide a ~~stove~~range (cooktop and oven), and all SRO Low-Income Units shall include a cooking facility (at least a cooktop or microwave). The Executive Director may waive the refrigerator and cooking facility requirement for SRO units if the project includes a common area kitchen facility for tenants. Refrigerators, dishwashers, clothes washers and dryers provided or replaced within Low-Income Units and/or in on-site community facilities shall be ENERGY STAR rated appliances, unless waived by the Executive Director.

(F) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blind.

(G) Water heater. If water heaters are to be provided or replaced, for Low-Income Units with individual tank-type water heaters, minimum capacities are to be 28 gallons for one- and two-bedroom units and 38 gallons for three-bedroom units or larger.

(H) Floor coverings. If floor coverings are to be provided or replaced, a hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Any carpet provided or replaced shall comply with U.S. Department of Housing and Urban Development/Federal Housing Administration UM44D.

(I) All fiberglass-based insulation provided or replaced shall meet the Greenguard Gold Certification (http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSch ools.aspx).

(J) Consistent with California State law, projects with 16 or more Low-Income and Market-Rate Units must have an on-site manager's unit. Projects with at least 161 Low-Income and Market-Rate Units shall provide a second on-site manager's unit for either another on-site manager or other maintenance personnel, and there shall be one additional on-site manager's unit for either another on-site manager or other maintenance personnel for each 80 Low-Income and Market-Rate Units beyond 161 units, up to a maximum of four on-site manager's units.

Scattered site projects totaling 16 or more Low-Income and Market-Rate Units must have at least one onsite manager's unit for the entire project, and at least one manager's unit at each site where that site's building(s) consist of 16 or more Low-Income and Market-Rate Units. Scattered sites within 100 yards of each other shall be treated as a single site for purposes of the on-site manager rule only.

If an applicant or project owner proposes to utilize a low-income unit to meet California and CTCAC manager unit requirements, the following applies: (1) the unit is considered a low-income restricted unit and must comply with all requirements associated with low-income restricted units; (2) the unit is included in the applicable fraction; and (3) the tenant cannot be evicted upon employment termination. If employment is terminated, the project owner is responsible for continuing to meet California and CTCAC onsite manager unit requirements. Any application proposing to utilize a low-income unit to meet California and CTCAC manager unit requirements must include a description in the application of how the project will meet those requirements if employment is terminated.

In lieu of on-site manager units, a project may commit to employ an equivalent number of on-site full-time property management staff (at least one of whom is a property manager) and provide an equivalent number of desk or security staff who are not tenants and are capable of responding to emergencies for the hours when property management staff is not working. All staff or contractors performing desk or security work shall be knowledgeable of how the property's fire system operates and be trained in, and have participated in, fire evacuation drills for tenants. CTCAC reserves the right to require that one or more on-site managers' units be provided and occupied by property management staff if, in its sole discretion, it determines as part of any onsite inspection that the project has not been adequately operated and/or maintained.

(K) All new construction projects shall adhere to the provisions of California Building Code (CBC) Chapter 11(B) regarding accessibility to privately owned housing made available for public use in all respects except as follows: instead of the minimum requirements established in 11B 233.3.1.1 and 11B 233.3.1.3, all new construction projects must provide a minimum of ~~ten~~ fifteen percent (~~10~~15%) of the Low-Income Units with mobility features, as defined in CBC 11B 809.2 through 11B 809.4, and a minimum of ~~four~~ ten percent (~~4~~10%) of the Low-Income Units with communications features, as defined in CBC 11B 809.5. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.

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

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

Compliance and Verification: For placed-in-service applications, applicants with rehabilitation projects, with the exception of applicants developing a project in accordance with the minimum requirements of LEED, PHIUS, Passive House, Living Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating, or GreenPoint Rated Program ~~who will not receive points pursuant to Section 5230(k)(8) (for energy efficiency only) of the CDLAC regulations, or applicants with new construction projects that will receive points from CDLAC pursuant to Section 5230(k)(6) or (7) of the CDLAC regulations~~ must submit a completed Sustainable Building Method Workbook for subsection (A). For subsections (B) through (I) applicants shall submit LEED, PHIUS, Passive House, Living Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating, or GreenPoint Rated Program certification or third party certification confirming compliance from one of the following: a certified HERS Rater, a certified GreenPoint rater, a US Green Building Council certification, or the project architect. For Subsection (K), the project architect shall provide third party documentation confirming compliance. Failure to produce appropriate and acceptable third party documentation may result in negative points.

Reason: The first proposed change in subsection (A) is to remove the requirement for new construction projects to conduct a meeting with the design team and energy analysts to evaluate a building energy model analysis and identify and consider energy efficiency, generation measures, and energy storage beyond those required. With the emphasis on unit production and cost containment, and that energy efficiency standards required California Building Code (CBC), which now includes a requirement for solar photovoltaic systems, requires a higher standard than the nation, the requirement to only meet CBC requirements will further accelerate the development of affordable housing projects. The next proposed change requires that the Sustainable Building Methods Workbook be provided at placed in service rather than their initial preliminary reservation application. This reduces the upfront costs incurred associated with the preparation and analysis of the Sustainable Building Methods Workbook for an application that may not ultimately receive an award of tax credits. The last proposed change in the subsection removes the references to CDLAC regulations relating to the Sustainable Building Methods Workbook in subsection (A) and in the "Compliance and Verification" section to align with the CDLAC's proposed removal of the Sustainable Building Methods point category.

Staff was requested to update the exterior door priming standard in subsection (D). It is staff's understanding that priming by the contractor is a preferable and standard practice, and also that this priming is often a higher quality than factory prime.

Staff proposes to clarify the definition of a stove and define a cooking facility in subsection (E). The proposed change clarifies the requirement of a cooktop and oven for all non-SRO units which is consistent with current practice. Furthermore, the proposed changed clarifies that all SRO units are required to provide at least a cooktop or microwave. With regard to the waiver to the requirement, staff propose to only permit a waiver to the requirement where the project includes a common area kitchen facility for the tenants.

The proposed changes in subsection (J) focus on the on-site management unit and staff. Staff proposes to add language specifically addressing projects where the on-site management unit is also a low income unit. In those cases, the proposed change requires: (1) the unit is considered a low-income restricted unit and must comply with all requirements associated with low-income restricted units; (2) the unit is included in the applicable fraction; and (3) the tenant cannot be evicted upon employment termination. The proposed change clarifies that the project owner is responsible for continuing to meet California and CTCAC onsite manager unit requirements even if the employment of the on-site manager has been terminated. In cases where an application is proposing to utilize a low-income unit to meet California and CTCAC manager unit requirements, staff is proposing that the application include a description in the application of how the project will meet those requirements if employment is terminated to ensure the project owner is aware of the requirements associated. Finally, staff proposes that the equivalent number of desk or security staff in lieu of on-site manager units not be tenants at the project for the same reasons noted above. The proposed regulation changes codify guidance currently in place.

After numerous public comments received at the November 10 public hearing, staff is withdrawing the originally proposed change to reduce the number of accessible units. Instead, staff proposes to increase the minimum percentage of accessible units that new construction projects must provide, from 10% to 15% with mobility features and from 4% to 10% with communication features. Staff proposes no change to the existing requirement for rehabilitation projects to provide a minimum percentage of accessible units (10% with mobility features and 4% with communication features).

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: The proposed change eliminates reference to an outdated requirement. A corresponding change is proposed to Section 10326(g)(9) below.

Section 10325(g)(1)(G)

(G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 10 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each unit;

Reason: The proposed change reduces the ratio of washer/dryers per unit requirement by 25% in case where hook-ups for washers and dryers are provided in all units. For example, an 80 unit project would currently be required to provide at least 8 washers/dryers. With the proposed change, the project would only be required to provide at least 6 washers/dryers if hook-ups for washers and dryers are being provided in all units. The 25% reduction shall always be rounded up to the nearest washer/dryer count.

Section 10325(g)(1)(H)

(H) Dishwashers shall be provided in all Low-Income Units except for studio and SRO units. ~~unless a~~A waiver for one and two bedroom units in rehabilitation projects may be ~~is~~ granted ~~by~~ at the sole discretion of the Executive Director ~~because~~ due to~~of~~ planning or financial impracticality;

Reason: Staff proposes to exclude studio and SRO units from the requirement to provide dishwashers and to clarify that a waiver to the dishwasher requirement may only be considered for rehabilitation projects. The expectation is that residents occupying studio or SRO units are less likely to use the dishwasher frequently enough to justify the cost to install and maintain them. However, for all remaining units, the expectation is that the dishwasher is an amenity that will benefit units where a larger number of residents are likely to occupy. Staff is aware that in some cases, specifically existing projects, there are challenges to installing dishwashers in the units. For that reason, staff proposes to only accept waiver requests for one and two bedroom units in rehabilitation projects.

Section 10325(g)(2)

(2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements;

(A) All units shall be restricted to ~~residents who are 62 years of age or older~~ households eligible under applicable provisions of California Civil Code Section 51.3 and the federal Fair Housing Act (except for projects utilizing a federal funding source specifically for senior housing and the program definition of senior prohibits a restriction of 62 years of age or older), and further be subject to state and federal fair housing laws with respect to senior housing;

(B) For new construction projects, one half of all Low-Income Units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of California Building Code (CBC) Chapter 11(B). For rehabilitation projects, 25% of all Low-Income Units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of CBC Chapter 11(B). All projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators. All project owners must provide adequate and visible notice to tenants of their ability to request conversion of their adaptable unit to an accessible unit. 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. The Executive Director may approve a waiver in advance for a rehabilitation project, provided that the applicant and architect demonstrate that full compliance would be impractical or create an undue financial burden;

(C) ~~Projects~~ Buildings over two stories shall have an elevator;

(D) No more than twenty percent (20%) of the Low-Income Units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study;

(E) 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. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director, prior to application submission;

(F) Emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring system is approved by the Executive Director;

(G) Common areas shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall include all interior amenity space, such as the rental office, community room, service space, computer labs, and gym, but shall not include laundry rooms or manager living units. 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;

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

(I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units;

(J) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Reason: Staff proposes to revert the senior housing type age to the standard that preceded the current requirement that all members of a household be at least 62 years of age. The current standard's exception for an alternate, younger age related to federal funding sources continues to create issues in the understanding and enforcement of this provision. Many project owners believe that a federal subsidy of any kind exempts them from the age 62+ requirement, and then lease units based on their interpretation of this section. With the great need for affordable housing for people of all ages and the continued demand for using the 55+ age standard for senior housing, staff proposes to expand the minimum age for senior-restricted housing, consistent with California state law.

After numerous public comments received at the November 10 public hearing, staff is withdrawing the originally proposed change to reduce the number of accessible units. Staff is continuing to recommend the noticing proposal to ensure tenants are aware that they have the ability to request an adaptable unit be converted to an accessible unit.

Staff is also proposing a clarifying change that all buildings greater than two stories in senior-restricted housing must have an elevator.

In subsection (I), the proposed change reduces the ratio of washer/dryers per unit requirement by 25% in case where hook-ups for washers and dryers are provided in all units. For example, a 60 unit project would currently be required to provide at least 4 washers/dryers. With the proposed change, the project would only be required to provide at least 3 washers/dryers if hook-ups for washers and dryers are being provided in all units. The 25% reduction shall always be rounded up to the nearest washer/dryer count.

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. A development that is less than 75% special needs shall meet one of the following criteria: (i) the non-special needs Low-Income Units meet the large family or senior housing type requirements; (ii) the non-special needs Low-Income Units consist of at least 20% one-bedroom units and at least 10% larger than one-bedroom units; or (iii) at least 90% of all Low-Income Units (both special needs and non-special needs) are SRO units. The application shall meet the following additional threshold requirements:

(A) Average targeted income for the special needs and non-special needs SRO units is no more than forty percent (40%) of the area median income;

~~(B) Third party verification from a federal, state or local agency of the availability of services appropriate to the targeted population;~~

(~~C~~B) The units/building configurations (including community space) shall meet the specific needs of the population, including kitchen needs for SRO units without full kitchens;

(~~D~~C) If the project does not have a public rental or operating subsidy committed for all special needs and non-special needs SRO units, the applicant shall demonstrate for these unsubsidized units that the target population(s) will not experience rent overburden, as supported by the market study. Rent overburden means the targeted rent is more than 30% of the target population(s) income~~ of special needs units and non-special needs SRO units can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that those receiving such assistance are willing to pay rent at the level proposed~~;

(~~E~~D) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;

(~~F~~E) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers;

(~~G~~F) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land);

(~~H~~G) 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;

(~~I~~H) SRO units are efficiency units that may include a complete private bath and kitchen but generally do not have a separate bedroom, unless the configuration of an already existing building being proposed to be used for an SRO dictates otherwise. The minimum size for SRO Low-Income Units shall be 200 square feet, and the size shall not exceed 500 square feet. 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. A project that includes SRO units without complete private baths shall provide at least one bath for every eight SRO units;

(~~J~~I) A signed contract or memorandum of understanding between the developer and the service provider~~, together with the resolution of the service provider(s) identified in the preliminary service plan described in paragraph (L),~~ must accompany the Tax Credit application; and

~~(K) A summary of the experience of the developer and the service provider(s) in providing services to the project's special needs populations must accompany the Tax Credit application; and~~

(~~L~~J) A preliminary service plan that specifically identifies: the service needs of the projects special needs population; the organization(s) that would be providing the services to the residents; the services to be provided to the special needs population; how the services would support resident stability and any other service plan objectives; a preliminary budget displaying anticipated income and expenses associated with the services program. The Executive Director shall, in his/her sole discretion, determine whether the plan is adequate to qualify the project as a special needs project.

(~~M~~K) 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).

(~~N~~L) 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: Staff proposes to further define how an applicant demonstrates that the proposed tenant population is able to afford the targeted rent by linking this requirement to rent overburden as evidenced by the application market study.

In subsection (F), to be subsection (E), the proposed change reduces the ratio of washer/dryers per unit requirement by 25% in case where hook-ups for washers and dryers are provided in all units. For example, a 60 unit project would currently be required to provide at least 4 washers/dryers. With the proposed change, the project would only be required to provide at least 3 washers/dryers if hook-ups for washers and dryers are being provided in all units. The 25% reduction shall always be rounded up to the nearest washer/dryer count.

In addition, staff also proposes to eliminate other requirements in this section that are repetitive or imprecise and lead to ambiguous interpretation. Staff proposes to eliminate as unnecessary the requirement for a resolution in addition to a signed contract or MOU, and proposes to eliminate a summary of developer experience. The current language for developer experience provides no standard for a minimum level of experience, and presumably would permit no experience; without a measurement standard, this requirement is problematic to enforce. The service provider and the service plan provide evidence of the services that will be made available to the tenants. Staff also proposes to eliminate the requirement for third party verification of services. Applications are sometimes received without complete documentation for this requirement, resulting in point reductions that are reinstated upon appeal. Staff seeks to eliminate this unnecessary process.

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 any affordability restrictions on at least 50% of the restricted units ~~due to market or other conditions~~ that result in an increase to actual tenant rent of more than 10%;

(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
- loans or grants programs administered by the Department of Housing and Community Development (HCD); 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; or
- be currently subject to, or have been subject to, within five years preceding the application deadline, California Debt Limit Allocation Committee (CDLAC) bond regulatory agreement 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 CDLAC restrictions;

Reason: The proposed changes include defining "at risk of losing affordability restrictions" as losing any affordability restrictions on at least 50% of the restricted units that result in an increase to actual tenant rent of more than 10%. Staff believes that the current regulation's reference to losing affordability "due to market or other conditions" considers market-driven changes that would result in an owner increasing rents, making them less affordable to existing tenants. As such, staff is proposing to clarify the existing language. An example is the loss of one of multiple affordability restrictions that allows an owner to increase the maximum rent charged to tenants.

The proposed changes also add a reference to HCD programs to be consistent with state statute, and add expiring tax-exempt bond restrictions to the list of at-risk eligibility. There are some existing housing developments whose only affordability restriction is a CDLAC bond regulatory agreement.

Section 10325(g)(5)(G)

(G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers;

Reason: The proposed change reduces the ratio of washer/dryers per unit requirement by 25% in case where hook-ups for washers and dryers are provided in all units. For example, a 60 unit project would currently be required to provide at least 4 washers/dryers. With the proposed change, the project would only be required to provide at least 3 washers/dryers if hook-ups for washers and dryers are being provided in all units. The 25% reduction shall always be rounded up to the nearest washer/dryer count.

Section 10326(a)

(a) General. All applications requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of Federal Tax Credits. ~~However, those~~ Those projects requesting State Tax Credits pursuant to subsection (g)(1)(A) and (B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will also be ~~competitively scored as described in Section 10317(i). The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of this section~~subject to the applicable requirements of Section 10317. All applicants requesting Tax Credits for projects financed with tax-exempt bonds shall apply simultaneously to the California Debt Limit Allocation Committee (CDLAC) and CTCAC and shall use the CDLAC-TCAC Joint Application. Applications will be eligible for a reservation of tax credits only if receiving a bond allocation pursuant to a joint application.

Reason: The proposed changes include a conforming change related to the proposal for Section 10317(i) above that eliminates two separate scoring and ranking systems being applied to applications. Staff also proposes to require a joint application for projects applying for both tax-exempt bond financing and tax credits (also in Sections 10326(h) and (j) below) and to clarify that a bond allocation is required in order to receive a tax credit reservation. Currently the great majority of applications are submitted as joint applications, and with limited resources for both bond financing and state tax credits, having these two awards determined concurrently streamlines the CDLAC and TCAC financing approval process and eliminates the unnecessary process of applying first to one agency and then to the other agency.

Section 10326(b)

(b) Applicable criteria. Selection criteria for applications reviewed under this Section shall include those required by IRC Section 42(m), this Section 10326, and Sections 10300, 10302, 10305, 10320, 10322, 10327, 10328(e), 10330, 10335, and 10337 of these regulations. Other sections of these regulations shall not apply. The first funding round shall be the first application review period of a calendar year for tax-exempt bond financed projects.

(1) ~~If the applications received requesting State Tax Credits pursuant to Section 10317(j) of these Regulations exceed an established State Tax Credit allocation amount per application review period as described in Section 10326(c) of these Regulations, applications will be ranked in order of Tax Credit Units per State Tax Credit.~~ Subject to conditions described in these Regulations, reservations of Federal and State Tax Credits shall be made for those applications ~~of highest rank~~that receive a bond allocation from CDLAC until the established State Tax Credit allocation amount is exhausted. If the last application requires more ~~than the~~ State Tax Credits ~~remaining~~than remain for the calendar year, that application will not be funded and the remaining credits will be ~~added to the next funding round~~either funded through the Waiting List or carried forward into the next calendar year.

(2) For State Tax Credits pursuant to Section 10317(j) of these Regulations, ~~at least two (2) funding rounds shall be established.~~ an amount up to $200,000,000 in a calendar year may be allocated for housing financed by CalHFA's Mixed-Income Program (MIP) that also receives a bond allocation from CDLAC. Applications with financing by CalHFA~~'s Mixed-Income Program~~(MIP) will be accepted in any funding round~~,~~. The amount allocated for

CalHFA MIP may be reduced subject to request by CalHFA and agreement of the Executive Directors of CalHFA and CTCAC~~, until the reserved amount of $200,000,000 is exhausted~~. ~~The first funding round shall be for a reservation of Tax Credits in January 2020 following an application review period pursuant to subsection (c). For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the first funding round. For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the second funding round. Any remaining State Tax Credits shall be allocated in subsequent funding rounds during calendar year 2020.~~

At the conclusion of the final funding round of a calendar year, the Committee may establish a Waiting List of pending applications in anticipation of utilizing any State Tax Credits that may be returned to the Committee, and/or that have not been allocated to projects for which they were intended. The Waiting List shall expire on December 31 of the year the list is established.

Reason: The proposed changes modify the allocating process for the $500 million state tax credits for 4% credit new construction projects. To eliminate two separate scoring and ranking systems being applied to these projects, the applications are proposed to be ranked only under the CDLAC scoring and ranking system. Additionally, with CDLAC pool amounts limiting bond allocation by round and a requirement to apply and receive bond and tax credits jointly, staff proposes to eliminate establishing a fixed amount of state tax credits per round as unnecessary. Applications would be accepted during any application period. This section also continues the apportionment of state tax credits for CalHFA MIP financing and clarifies the process for any agreed-upon reduction to that amount. Finally, a waiting list process is established in the event that this becomes necessary to fund any remaining state tax credits.

Section 10326(c)

(c) Application review period. The Committee may require up to ~~forty-five~~sixty (~~45~~60) days to review an application, and an additional ~~fifteen~~ thirty (~~15~~30) days to consider the application for a reservation of Tax Credits. Applicants must deliver applications no less than ~~sixty~~ ninety (~~60~~90) days prior to the CTCAC Committee meeting in which they wish to obtain a decision. Applications not expected to receive a bond allocation from CDLAC due to relatively low CDLAC scores may or may not be fully evaluated by the TCAC.

Applications requesting State Tax Credits allocated pursuant to subsections (g)(1)(A) and (B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and not in compliance with the application completeness requirements of Sections 10322(d) and (e) of these Regulations shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete.

Reason: With the re-introduction of CDLAC competitive scoring in 2020, a longer review period was necessary to complete CDLAC scoring for a high volume of applications. The proposed change aligns TCAC's review period with CDLAC's review period. The proposed change also allows TCAC to a utilize a process in existence for 9% credit applications, to not complete reviews for projects with relatively low scores with CDLAC. Within the time constraints of a review period, spending staff resources on reviews of applications that will not receive a bond allocation is not a wise use of time or resources and jeopardizes staff's ability to complete those application reviews that will ultimately receive a bond allocation.

Section 10326(g)(9)

(9) A non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 60% AMI. 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~~60% 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: The proposed change corrects a reference to 60% area median income targeting and eliminates reference to an outdated requirement. A corresponding change is proposed to Section 10325(f)(13) above.

Section 10326(h)

(h) ~~Except as provided in Section 10317(g)(4), if not currently possessing a bond allocation for the proposed project, the applicant shall have either applied for a bond allocation from the California Debt Limit Allocation Committee (CDLAC) prior to or concurrently with submitting an application to CTCAC, or shall have received an initial loan commitment from the California Housing Finance Agency (CalHFA)~~Reserved.

Reason: The proposed change corresponds to the proposal to require joint applications submitted concurrently to CDLAC and TCAC (see Sections 10326(a) and (j)).

Section 10326(j)

(j) Additional conditions on reservations. The following additional conditions shall apply to reservations of Tax Credits pursuant to this Section:

(1) ~~CDLAC allocation. The applicant shall receive a bond allocation from CDLAC for the proposed project within 90 days of receiving a reservation;~~

~~(2)~~ Bonds issued. Bonds shall be issued within the time limit specified by CDLAC, if applicable; and,

(~~3~~2) Projects shall maintain at least 10% of the total Low-Income Units at rents affordable to tenants earning 50% or less of the Area Median Income, and shall maintain a minimum 30 year affordability period.

(~~4~~3) Projects proposing new construction shall provide CTCAC with an updated development timetable by December 31 of the second year following the year the project received its reservation of Tax Credits.

(i) The report shall include the actual placed-in-service date or the anticipated placedin-service date for the last building in the project and the date the project achieved full occupancy. The report shall detail the causes for any change from the original date.

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

Other conditions, including cancellation, disqualification and other sanctions imposed by the Committee in furtherance of the purposes of the Credit programs.

(~~5~~4) Projects intended for eventual tenant homeownership must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

Reason: The proposed change corresponds to the proposal to require joint applications submitted concurrently to CDLAC and TCAC (see Sections 10326(a) and (h) above).

Section 10327(c)(2)

(2) Developer fee.

(A) The maximum developer fee that may be included in project costs and eligible basis for ~~a~~ 9% competitive credit new construction, rehabilitation only, or adaptive reuse applications applying under Section 10325 of these regulations is the sum of the lesser of 15% of the project's unadjusted eligible basis ~~plus~~ and 15% of the basis for non-residential costs included in the project ~~and~~ allocated on a pro rata basis ~~or~~up to two million two hundred thousand ($~~2,000,000~~2,200,000) dollars. The maximum developer fee that may be included in project costs and eligible basis for a 9% competitive credit acquisition/rehabilitation application is the sum of the lesser of 15% of the project's unadjusted eligible construction related basis plus 5% of the project's unadjusted eligible acquisition basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis up to two million two hundred thousand ($2,200,000) dollars. ~~If acquisition Tax Credits are not requested, any unadjusted eligible acquisition basis shall be excluded from the developer fee calculation. The~~

~~maximum developer fee that may be included in project costs for a 9% competitive credit new construction application shall be calculated as follows: The base fee limit shall be the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million two hundred thousand ($2,200,000) dollars. At placed in service, the maximum developer fee shall be re-calculated where the application base fee limit shall be multiplied by the difference between 2 and the project's high-cost test factor in the placed in service application, which equals the project's total eligible basis divided by its total adjusted threshold basis limits. In no case shall the base fee limit be increased from initial application. For purposes of this subparagraph, at placed in service TCAC shall use the higher of the unadjusted threshold basis limit from application or the year the project places in service.~~

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

~~(i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or the developer fee amount allowed in project costs ; or~~

~~(ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or the developer fee amount allowed in project costs.~~

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

(i) for new construction, ~~or~~ rehabilitation only, or adaptive reuse projects, the maximum developer fee ~~that may be included in project costs and eligible basis~~is the sum of the lesser of ~~is~~ 15% of the project's unadjusted eligible basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $~~10,000~~20,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.

(ii) ~~the maximum developer fee that may be included in project costs and eligible basis~~ for acquisition/rehabilitation projects, the maximum developer fee is 15% of the unadjusted eligible construction related basis and 5% ~~percent~~ of the unadjusted eligible acquisition basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $~~10,000~~20,000 per unit for each Tax Credit Unit in excess of 100 shall be deferred or contributed as equity to the project. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(4) or for other acquisition/rehabilitation projects, except for existing tax credit projects applying for a new reservation of tax credits for acquisition (i.e., resyndication), whose hard construction costs per unit in rehabilitation expenditures are at least $~~25,000~~50,000 or where the development will restrict at least 30% of its Low Income Units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

(C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. With exception of 4% projects with a 2016 or later reservation, ~~Once established by a reservation of Tax Credits,~~ the developer fee in cost and in basis ~~for a 9% Tax Credit project or for a 4% Tax Credit project with a 2015 or earlier reservation cannot~~ shall not be increased once established by a reservation of Tax Credits but may be decreased in the event of a modification in basis~~, except that the adjustment factor related to costs described in paragraph (A) shall be recalculated at placed in service where applicable~~. Once established by a reservation of Tax Credits, the developer fee in cost and in basis for a 4% project with a 2016 or later reservation may increase or decrease in the event of modification in basis, and in the case it is increased, ~~provided that an~~ the entire increase ~~in the developer fee in cost shall only be allowed if the sum total of all permanent funding sources from related parties included in the initial application is maintained at placed in service and the entire increase is~~ shall be additionally deferred or contributed as equity to the project. The ~~provisions~~ maximum developer fees above apply to projects developed as multiple simultaneous phases using the same credit type: ~~of~~ (2)(A) applies to all simultaneous phases using all 9% credits and (2)(B) above ~~apply~~ applies to ~~projects developed as~~all ~~multiple~~ simultaneous phases using ~~the same credit type (all 9% or~~ all 4% credits~~) in both phases, except for an all 9% credit phased project in which the immediately preceding phase includes 150 or more total units~~. Only when the immediately preceding phase of an all 9% credit phased project equals or exceeds 150 units or when any other phased project is using both credit types shall the provision of (2)(A) and (2)(B) apply to each phase independently. For purposes of this limitation, "simultaneous" refers to projects consisting of a single building, or projects on the same parcel or on parcels within ¼ mile of each other and with construction start dates within ~~six~~ twelve months of each other, or completion dates that are within ~~six~~ twelve months of each other.

Deferred developer fee notes and/or agreements must be included in the placed-in-service application and the interest rates of such notes shall not exceed eight percent (8%).

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

(E) Persons of Color / Woman-Owned Business Enterprise (PCWBE) Projects. For projects which qualify for general partner experience pursuant to Section 5230(f)(1)(B) of the CDLAC Regulations, the 15% of project's unadjusted eligible basis limit stated in Section 10327(c)(2)(B) shall be increased to 20% of the project's unadjusted eligible basis.

Reason: The first proposed change clearly defines subsection (A) for 9% projects and subsection (B) for 4% projects. In subsection (A), the proposed change extends the 9% project new construction maximum developer of $2,200,000 million to acquisition and/or rehabilitation projects from the original limit of $2,000,000 million. The proposed change also removes the high cost test factor in the calculation of the developer fee, which historically has not provided the impact expected when originally introduced.

For 4% projects, the proposed change raises the $10,000 for each Tax Credit unit in excess of 100 to $20,000 in an effort to incentivize more units in a project. The proposed change will reduce the amount of developer fee required be deferred or contributed as equity to the project. For acquisition and rehabilitation projects, the proposed change increases the per unit hard construction cost required to qualify the project for the 15% of the unadjusted eligible acquisition basis from $25,000 to $50,000. Staff's experience has shown that the hard construction cost per unit typically exceeds the $25,000 currently required. An increase in hard construction cost per unit would require significant rehabilitation work be done on the project to benefit the residents in order for the project to access the 15% on the unadjusted eligible acquisition basis. Staff proposes to exclude existing tax credit projects applying for a new reservation of tax credits for acquisition (i.e., resyndication) from accessing the 15% on the acquisition portion. Staff review of applications has shown that these projects are typically related party transfers and do not justify the additional increase in developer fee on the acquisition portion.

Staff proposes to clarify the language relating to increases and decreases to the developer fee once established at preliminary reservation. In all cases, the developer fee may be reduced due to modification in basis. The developer fee may be increased for 4% projects with a 2016 or later reservation following preliminary reservation on the condition that the eligible basis justifies the increased developer fee and the entire increase is deferred or contributed as equity to the project. In addition, staff proposes to simplify the language relating to simultaneous phases and broaden what constitutes simultaneous phases relating to construction start dates by increasing six months to twelve months. Staff believes that projects on the same parcels or on parcels within ¼ mile of each other and with construction start dates within twelve months constitutes simultaneous phases.

Staff review of placed-in-service applications has found a range of developer fee note interest rates. Staff proposes to limit the interest rate to an amount consistent with market standards. Based on staff reviews, the majority of developer fee notes utilize 8% and some as high as 10%. Staff believes an interest rate limit of 8% is appropriate for developer fee note.

The final proposed change in the new subsection (E) proposes to increase the maximum developer fee for PCWBE projects from the 15% of unadjusted eligible basis (or 15% of unadjusted eligible construction related basis for acquisition/rehabilitation projects) to 20% in conjunction with the proposed change in Section 5230(f)(1)(B) of the CDLAC regulations. Adding an increase to the maximum developer fee incentivizes the joint venture between an entity which received maximum general experience points and a PCWBE.

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.

<u>Once established in the initial application, the acquisition cost of a new construction site shall not increase except as provided below for land and improvements donated or leased.</u> 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, 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.

If land or land and improvements (real property) are donated to the general partner or member of the project owner and if approved by CTCAC in advance, the general partner or member may sell the real property to the project for an amount equal to the donated value established in the application provided that: there must be a seller carryback loan for the full amount of the sale, the loan must be "soft," having a term of at least 15 years, a below market interest rate and interest accrual, and be either fully deferred or require only residual receipts payments for the loan term. Alternatively, the value may be a capital contribution of a general partner or member. Once established in the initial application, the donated value of the real property shall not increase.

If land or land and improvements (real property) are donated or are leased for a mandatory lease payment of $100 per year or less, and if approved by CTCAC in advance, the donation value established in the application may be a capital contribution of a general partner or member. Once established in the initial application, the donated value of the real property/lease shall not increase.

Reason: Staff is proposing two changes to this section. The first change clarifies that the agreed-upon purchase price for a new construction site reflected in the original application shall not increase. When a seller and buyer agree upon a price, the buyer should be motivated to hold the seller to that price. Staff has seen multiple instances where related parties renegotiate purchase agreements and increase the land cost to a project.

The second proposed change recognizes that when a project owner or developer receives a donation of land (or improvements), the donated property is a partnership asset and its value must be established. This results in an immediate gain to the partnership that is detrimental to the tax credit investor. One way this tax consequence is avoided is for a non-profit general partner to acquire the donated property and sell it to the partnership for the appraised value. TCAC staff proposes to recognize this process with the proposed change. Similarly, staff proposes that the fair market value of a long-term ground lease can be considered a capital contribution of the general partner.

Section 10327(c)(7)

(7) Reserve accounts. ~~All unexpended funds in project reserve~~ All reserve accounts shall ~~remain with the project to~~ be used ~~for the benefit of~~to maintain the property (which does not include repayment of loans) and/or benefit its residents, and shall remain with the project except as provided in subparagraph (B) below. If ownership of a project is transferred, the reserve accounts may be purchased by the purchaser(s) or transferee(s) for an amount equal to the reserve account(s) balance(s).

Reason: The proposed changes clarify and further define reserve account uses and limitations. TCAC has issued guidance on two separate occasions related to use of reserve accounts (August 2, 2018 Memo, October 16, 2019 Memo). Staff proposes to incorporate some of this guidance into TCAC regulations.

Section 10327(c)(5)(A)

(A) Increases in the threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations.

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

A ~~seven~~ ten percent (~~7~~10%) increase to the limits for a new construction development where parking is required to be provided beneath the residential units (but not "tuck under" parking) or through construction of an on-site parking structure of two or more levels;

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

A two percent (2%) increase to the limits where 100% of the Low Income Units are for special needs populations;

A ten percent (10%) increase to the limits for a development wherein at least 95% of the project's upper floor units are serviced by an elevator.

A fifteen percent (15%) increase to the limits for a development wherein at least 95% of the building(s) is constructed as Type I as defined in the California Building Code, in which case, the Type III increase below (10%) shall not be allowed.

A ten percent (10%) increase to the limits for a development wherein at least 95% of the building(s) is constructed as (1) a Type III as defined in the California Building Code, or (2) a Type III/Type I combination, in which case, the Type I increase above (15%) shall not be allowed.

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

Reason: The proposed change with regard to the parking basis limit increase is more reflective of the current costs associated with this type of parking and aligns with the proposed change in Section 5230(l) of the CDLAC regulations. The parking basis limit has not been increased since being added as a standalone basis limit increase in 2003.

The next proposed change in the section provides a 15% basis limit increase to projects with at least 95% of the building(s) constructed as Type I as defined in the California Building Code. Alternatively, a 10% basis limit increase is provided to projects with at least 95% of the building(s) constructed as either Type III as defined in the California Building Code or a combination of Type III and Type I construction. The basis limit increase accounts for additional costs associated with Type I and Type III construction and aligns with the proposed change in Section 5230(l) of the CDLAC regulations. A project shall not be eligible for both proposed basis limit increases.

Section 10327(c)(10)

(10) Limits to fees and loans by related entities, and non-arm's length relationships ("related entities"). The following limits apply to a project applicant, developer, sponsor, owner, general partner, member, and to parent companies, principals of entities, and family members, as well as selling entities and individuals. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint-control over an entity, having significant influence over an entity, or participating as key management of an entity. Related disclosure is required at the time of application.

(A) If not included in the developer entity fee, related entities are prohibited from charging fees or being reimbursed for preparing relocation plans, service plans, due diligence, or other similar work typically prepared by professional third parties. All related entity fees must be disclosed and described in the placed-in-service application and final cost certification.

(B) Related entities to the buyer and seller are prohibited from charging broker commissions for purchase of the project site. All broker commissions must be disclosed and described in the placed-in-service application and final cost certification.

Reason: The proposed changes limit additional fees that related parties may collect in addition to the developer fee. Staff review of placed-in-service applications has found various instances of fees charged by related parties for reports or services that are typically prepared by third parties specializing in those services.

Section 10327(f)

(f) Determination of feasibility. To be considered feasible, a proposed project shall exhibit positive cash flow after debt service for a 15-year minimum term beginning at stabilized occupancy, or in the case of acquisition/rehabilitation projects, at the completion of rehabilitation. "Cash flow after debt service" is defined as gross income (including (1) all rental income generated by proposed initial rent levels contained within the project application and (2) committed federal, state, and local rental subsidies; excluding income generated by tenant-based rental subsidies) minus vacancy, operating expenses, property taxes, service and site amenity expenses, operating and replacement reserves and must pay debt service (not including residual receipts debt payments). Expenses that do not continue through all 15 years of the pro forma shall be excluded from the evaluation of feasibility as well as from the minimum debt service coverage ratio and cash flow parameters pursuant to Section 10327(g)(6). For ~~Applications~~ applications that qualify for a reservation of Tax Credits: (1) from the Nonprofit set-aside homeless assistance apportionment, ~~or~~ (2) ~~from the Special Needs set-aside as described in subsections 10315(b) and (e),~~with special needs units comprising at least 25% of the low-income units, or (3) with an average targeted affordability of 40% of Area Median Income or less, capitalized operating reserves in excess of the 3-month minimum amount may be added to gross income for purposes of determining "cash flow after debt service." In addition, applications with a committed capitalized operating subsidy reserve from HCD, CalHFA, or another public entity approved by the Executive Director may add withdrawals from this reserve to gross income for purposes of determining "cash flow after debt service."

Reason: The first proposed change clarifies that TCAC does not accept tenant-based rental subsidies for purposes of the 15-year cash flow pro forma. These vouchers are portable and the subsidy is only available to the project for the period of time that an individual tenant resides at the property. In application reviews, staff has consistently required removal of this income when are identified in the application and is proposing to clarify this in regulations as well.

The second proposed change permits additional projects to utilize a capitalized operating reserve. The language of the current regulation limits this to 9% applications only. With increased housing for homeless and special needs tenants being developed using 4% credits, staff proposes to allow operating subsidies to be utilized for projects providing a deeper level of affordability (40% average targeted AMI).

Section 10327(g)(1)

(1) The fifteen year pro forma revenue and expense projection calculations shall utilize a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts), and a two percent (2%) increase in property taxes.

(A) Where a private conventional lender and project equity partner use a 2% gross income and 3% operating expense increase underwriting assumption, CTCAC shall accept this methodology as well.

(B) For projects with a HUD rental subsidy that will receive a subsidy layering review from CTCAC, CTCAC shall accept 2% gross income, 3% operating expense increase, and 7% vacancy underwriting assumptions.

For purposes of the pro forma projections only, the application form Subsidy Contract Calculation may utilize post-rehabilitation rental subsidy contract rent assumptions when applicable.

Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published by the Committee staff annually. The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to CTCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting when the equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, compliance monitoring or lender fees, or the costs of any site or service amenities. ~~Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts), and a two percent (2%) increase in property taxes. However, where a private conventional lender and project equity partner use a 2% gross income and 3% operating expense increase underwriting assumption, CTCAC shall accept this methodology as well.~~

~~(A)~~ Special needs projects that are less than 100% special needs shall prorate the operating expense minimums, using the special needs operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units.

Reason: Staff proposes to reorganize the order of this section to clarify that it includes requirements for project operations revenue and expense projections and for minimum operating expenses. Additionally, the changes propose to allow HUD underwriting parameters for projects that will require a subsidy layering review and clarify that prospective rental subsidy amounts are generally permitted for the pro forma projections.

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. Scattered site applications and resyndication applications shall be required to pay an application filing fee of $1,500. 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 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 $1,000 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. $1,000 of the initial application filing fee shall be provided to each official LRA which completes a project evaluation for the Committee. A LRA may waive its portion of the application filing fee. Such waiver shall be evidenced by written confirmation from the LRA, included with the application.

(3) Every project owner submitting an incomplete or inaccurate placed-in-service application shall be required to pay a non-refundable application filing fee of $1,000 within 20 days of notification by CTCAC staff.

Reason: Currently no fee is charged for the review of a placed-in-service application. For most applications, staff spends a significant amount of time reviewing the application, communicating issues to the developer staff, and tracking corrections. To assist with the application preparation, TCAC staff has developed many resources that are available on the TCAC website. In addition, staff is available to answer questions as placed-in-service applications are being prepared. Unfortunately, placed-in-service application errors continue. In recognition of the increased costs to TCAC related to extended review periods, the proposed change imposes a $1,000 application fee for incomplete or inaccurate applications. Staff is developing a process for determining a level of inaccuracy that will prompt this fee.

Section 10335(e)

(e) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State (including State Farmworker), Tax Credits shall submit a performance deposit equal to four percent (4%) of the first year's Federal Credit amount reserved, but not to exceed $100,000, including applicants with a reservation of credit on or after October 14, 2020. Notwithstanding the other provisions of this subsection, an applicant requesting Federal Tax Credits not subject to the Federal housing Credit Ceiling and requesting State Tax Credits or State Farmworker Tax Credits, shall be required to submit a performance deposit in an amount equal to two percent (2%) of the first year's State Credit amount reserved for the project, but not to exceed $100,000~~, including applicants with a January 15, 2020 reservation of State Credit.~~ Notwithstanding the other provisions of this Section, an applicant requesting only Federal Tax Credits not subject to the Federal Credit Ceiling, shall not be required to submit a performance deposit.

Reason: Staff proposes to align performance deposit fees for 9% federal and state tax credits, and limit any performance deposit fee to no more than $100,000. The proposed change retroactively extends the $100,000 limit to those applicants who received reservations at the October 14, 2020 Committee meeting.

Section 10335(g)

(g) Tax form ~~amendment~~ revision fee. An owner who requests an amendment to 8609 or 3521A tax forms, including a request that occurs after CTCAC completes the drafting of these forms, shall pay a fee of $1000 unless the Executive Director determines that the amendment is necessary due to a CTCAC error.

Reason: Staff has noticed an increased practice of developer staff providing revisions to placed-in-service applications at the time that the tax forms are being drafted. This occurs after staff work and approvals have been completed and is the result of developer staff waiting until then to share the final figures with the CPA and/or tax credit investor. Prior to this, a significant amount of time has been spent preparing, reviewing, and correcting most placed-in-service applications. These requested revisions require a recalculation of the credits, involve revision to various documents, and often require an amendment to the regulatory agreement. This takes significant staff time away from other placed-in-service reviews. With more due diligence and communications between owners and investors at the time of the place-in-service application submission, these changes could be avoided. In recognition of the increased costs to TCAC to process such changes, the proposed change imposes a $1000 fee. Staff will also be revising the Form B template to require review by the project CPA as another way to alleviate this problem.

Section 10337(d)

(d) Change in ownership and property management. It is the project owner's responsibility to comply with the requirements of Section 10320(b) and to inform the Committee of any change in the project owner's mailing address.

(1) Any property management change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(1)(A) as the exiting property management company. At a minimum this must be six (6) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the six projects must be Low Income Housing Tax Credit projects in California. If the new property management company does not meet these experience requirements, then substitution of property management shall not be permitted.

Reason: The proposed change to this section clarifies that when there is an exiting property management company, the replacement company must have a minimum level of required experience.

Section 10337(f)(5)

(5) If a fine assessed against a property owner is not paid within six months from the date when the fine was initially assessed and after reasonable notice has been provided to the property owner, the Committee may record a lien against the property. If the violation(s) for which the fine(s) is assessed is not corrected within 90 days of the assessed fine, the Committee may record a lien against the property.

Reason: This change proposes that in addition to unpaid fines becoming liens against a property, uncorrected violations may also result in a lien.
