

EXHIBIT A: Resolution No. 22/23-07, Adoption of an Emergency Rulemaking for Amendments to the Federal and State Low-Income Housing Tax Credit Programs  
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE REGULATIONS IMPLEMENTING THE  
FEDERAL AND STATE LOW INCOME HOUSING TAX CREDIT LAWS

CALIFORNIA CODE OF REGULATIONS  
TITLE 4, DIVISION 17, CHAPTER 1

~~January 18~~February 1, 2023

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**Section 10300. Purpose and Scope**

These regulations establish procedures for the reservation, allocation and compliance monitoring of the Federal and State Low-Income Housing Tax Credit Programs (“Housing Tax Credit Programs”, “Programs”, or individually, “Federal Program” or “State Program”) and establish policies and procedures for use of the Tax Credits to meet the purposes contained in Section 252 of Public Law No. 99-514 (October 22, 1986), known as the Federal Tax Reform Act of 1986, as amended, and Chapter 658, California Statutes of 1987, as amended, and Chapter 1138, California Statutes of 1987, as amended

Internal Revenue Code ("IRC") Section 42 provides for state administration of the Federal Program. California Health and Safety (H & S) Code Sections 50199.4 through 50199.22, and California Revenue and Taxation (R & T) Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5 establish the California State Program and designate the California Tax Credit Allocation Committee ("CTCAC") as the Housing Credit Agency to administer both the Federal and State Housing Tax Credit programs in California. These regulations set forth the policies and procedures governing the Committee's management of the Programs. In addition to these regulations, program participants shall comply with the rules applicable to the Federal Program as set forth in Section 42 and other applicable sections of the Internal Revenue Code. In the event that Congress, the California Legislature, or the IRS add or change any statutory or regulatory requirements concerning the use or management of the Programs, participants shall comply with such requirements.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10302. Definitions**

- a) Adaptive reuse. Adaptive reuse means retrofitting and repurposing of existing buildings that create new residential rental units, and expressly excludes a project that involves rehabilitation of any construction affecting existing residential units. Adaptive reuse may include retrofitting and repurposing of existing hotels or motels if the hotel or motel is not currently a place of residence for the occupants, and/or sites that have been received a Project Homekey allocation.
- b) AHP. The Affordable Housing Program of the Federal Home Loan Bank.
- c) Allocation. The certification by the Committee of the amount of Federal, or Federal and State, Credits awarded to the applicant for purposes of income tax reporting to the IRS and/or the California Franchise Tax Board ("FTB").
- d) Applicable Credit Percentage. The monthly rate, published in IRS revenue rulings pursuant to IRC Section 42(b)(1), applicable to the Federal Program for purposes of calculating annual Tax Credit amounts.
- e) Bath or bathroom. A bath or bathroom must be equipped with an exhaust fan, a toilet, a sink, a shower or bathtub, and a receptacle outlet.
- f) Bedroom. A bedroom be at least 70 square feet, must include an interior door, a closet or free-standing wardrobe provided by the project owner, and at least one receptacle outlet.
- g) Capital Needs Assessment or CNA. The physical needs assessment report required for all rehabilitation projects, described in Section 10322(h)(26)(B).
- h) Chairperson. The Chairperson of the California Tax Credit Allocation Committee.
- i) Committee. The California Tax Credit Allocation Committee ("CTCAC") or its successor.
- j) Community Foundation. A local foundation organized as a public charity under section 509(a)(1) of the Internal Revenue Code.
- k) Compliance Period. That period defined by IRC Section 42(i)(1) and modified by R & T Code Section 12206(h), and further modified by the provisions of these regulations.
- l) Credit(s). Housing Tax Credit(s), or Tax Credit(s).
- m) Credit Ceiling. The amount specified in IRC Section 42(h)(3)(C) for Federal Program purposes (including the unused credits from the preceding calendar year, the current year's population based

- n) credits, returned credits and national pool credits), and in R & T Code Section 17058(g) for State Program purposes.
- o) CTCAC. California Tax Credit Allocation Committee.
- p) Developer Fee. All Funds paid at any time as compensation for developing the proposed project, to include all 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.
- q) Development Team. The group of professionals identified by the applicant to carry out the development of a Tax Credit project, as identified in the application pursuant to subsection 10322(h)(5).
- r) Eligible Project. A proposed 9% Tax Credit project that has met all of the Basic Threshold Requirements and Additional Threshold Requirements described in Sections 10325(f) and (g) below.
- s) Executive Director. The executive director of the California Tax Credit Allocation Committee.
- t) Farmworker Housing. A development of permanent housing 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 non farmworkers 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.
- u) Federally Subsidized. As defined by IRC Section 42(i)(2).
- v) Federal Credit. The Tax Credit for low-income rental housing provided under IRC Section 42 and implemented in California by the Committee.
- w) Financial Feasibility. As required by, IRC Section 42(m)(2), and further defined by these regulations in Section 10327.
- x) FTB. State of California Franchise Tax Board.
- y) Hard construction costs. The amount of the construction contract, excluding contractor profit, general requirements and contractor overhead.
- z) High-Rise Project(s). A project which applies for a Credit reservation pursuant to Section 10325 in which 100 percent (100%) of the residential units are Tax Credit Units and for which the project architect has certified concurrently with the submission of an application to the Committee that (1) one or more of the buildings in the project would have at least six stories; and (2) the construction period for the project is reasonably expected to be in excess of 18 months.
- aa) Homeless. As defined by Section 10315(b)(1) through (4) below.
- bb) 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).
- cc) IRS. United States Internal Revenue Service.
- dd) Local Development Impact Fees. The amount of impact fees, mitigation fees, or capital facilities fees imposed by municipalities, county agencies, or other jurisdictions such as public utility districts, school districts, water agencies, resource conservation districts, etc.

- ee) 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.
- ff) Low-Income Unit. As defined by IRC Section 42(i)(3).
- gg) Market-Rate Unit. A unit other than a Tax Credit Unit as defined by these regulations.
- hh) MHP. Multifamily Housing Program of California's Department of Housing and Community Development.
- ii) "Net Project Equity" shall mean the total sale or refinancing proceeds resulting from a Transfer Event less the payment of all obligations and liabilities of the owner, including any secured and unsecured related and third-party debt thereof (including, without limitation, repayment of deferred developer fees and repayment of any advances made by a partner to fund operating and/or development deficits).
- jj) Net Tax Credit Factor. The estimated or actual equity amount raised or to be raised from a tax credit syndication or other instrument, not including syndication related expenses, divided by the total amount of Federal and State Tax Credits reserved or allocated to a project. The calculation must include the full ten-year amount of Federal Tax Credits and the total amount of State Tax Credits.
- kk) QAP. The "Low Income Housing Tax Credit Program Qualified Allocation Plan," as adopted in regulation Sections 10300 et. seq., and in accordance with the standards and procedures of IRC Section 42(m)(1)(B).
- ll) "Qualified Capital Needs Assessment" shall mean a capital needs assessment for a property subject to a Transfer Event dated within one hundred eighty (180) days of the proposed Transfer Event which (i) meets the requirements of (a) the Fannie Mae Multifamily Instructions for the PNA Property Evaluator, (b) Freddie Mac's Property Condition Report requirements in Chapter 14 of the Small Balance Loan Addendum, (c) HUD's Multifamily Capital Needs Assessment section in Appendix 5G of the Multifamily Accelerated Process Guide, or (d) Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Designation E 2018-08) utilizing a recognized industry standard to establish useful life estimates for the replacement reserve analysis, and (ii) clearly sets forth (a) the capital needs of the project for the next three (3) years (the "Short-Term Work") and the projected costs thereof, and (b) the capital needs of the project for the subsequent twelve (12) years (the "Long Term Work") and the projected contributions to reserves that will be needed to accomplish that work.
- mm) Qualified Nonprofit Organization. An organization that meets the requirements of IRC Section 42(h)(5), whose exempt purposes include the development of low-income housing as described in IRC Section 42, and which, if a State Tax Credit is requested, also qualifies under H & S Code Section 50091.
- nn) RHS. United States Rural Housing Service, formerly Rural Housing and Community Development Service or RHCDS, formerly Farmers Home Administration or FmHA
- oo) Related Party.
  - (1) the brothers, sisters, spouse, ancestors, and direct descendants of a person;
  - (2) a person and corporation where that person owns more than 50% in value of the outstanding stock of that corporation;
  - (3) two or more corporations, general partnership(s), limited partnership(s) or limited liability corporations connected through debt or equity ownership, in which

- (A) stock is held by the same persons or entities for
    - (i) at least 50% of the total combined voting power of all classes that can vote, or
    - (ii) at least 50% of the total value of shares of all classes of stock of each of the corporations or
    - (iii) at least 50% of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing that voting power or value, stock owned directly by that other corporation;
  - (B) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, or a separate entity from which income is derived;
  - (C) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, or a separate entity where a sale-leaseback transaction provides the parent or related entity with income from the property leased or that creates an undue influence on the separate entity as a result of the sale-leaseback transaction;
  - (D) concurrent ownership by a parent or related entity, regardless of the percentage of ownership, of a separate entity where an interlocking directorate exists between the parent or related entity and the separate entity.
- (4) a grantor and fiduciary of any trust;
  - (5) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
  - (6) a fiduciary of a trust and a beneficiary of that trust;
  - (7) a fiduciary of a trust and a corporation where more than 50% in value of the outstanding stock is owned by or for the trust or by or for a person who is a grantor of the trust;
  - (8) a person or organization and an organization that is tax-exempt under Subsection 501(c)(3) or (4) of the IRC and that is affiliated with or controlled by that person or the person's family members or by that organization;
  - (9) a corporation and a partnership or joint venture if the same persons own more than:
    - (A) 50% in value of the outstanding stock of the corporation; and
    - (B) 50% of the capital interest, or the profits' interest, in the partnership or joint venture;
  - (10) one S corporation or limited liability corporation and another S corporation or limited liability corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;
  - (11) an S corporation or limited liability corporation and a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation;
  - (12) a partnership and a person or organization owning more than 50% of the capital interest, or the profits' interest, in that partnership; or
  - (13) two partnerships where the same person or organization owns more than 50% of the capital interests or profits' interests.

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

- pp) Reservation. As provided for in H & S Code Section 50199.10(e) the initial award of Tax Credits to an Eligible project. Reservations may be conditional.
- qq) Resyndication: A project subject to an existing tax credit regulatory agreement that is awarded a new allocation of tax credits to preserve and extend the affordability of the project.
- rr) Rural. An area defined in H & S Code Section 50199.21.
- ss) 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 interposition.
- (1) For acquisition and/or rehabilitation projects with one pre-existing project-based Section 8 contract in effect for all the sites, there shall be no limit on the number or proximity of sites.
  - (2) For acquisition and/or rehabilitation projects with any of the following: (A) existing federal or state rental assistance or operating subsidies, (B) an existing CTCAC Regulatory Agreement, or (C) an existing regulatory agreement with a federal, state, or local public entity, the number of sites shall be limited to five, unless the Executive Director approves a higher number, and all sites shall be either within the boundaries of the same city, within a 10-mile diameter circle in the same county, or within the same county if no location is within a city having a population of five-hundred thousand (500,000) or more.
  - (3) For new construction projects and all other acquisition and/or rehabilitation projects, the number of sites shall be limited to five, and all sites shall be within a 1-mile diameter circle within the same county.
- tt) Single Room Occupancy (SRO)/Studio: A unit that may or may not include a complete private bath and kitchen but generally does not have a separate bedroom. A complete private bath consists of a toilet and shower, with a vanity sink that may or may not be in the same room. SRO units in projects with an existing regulatory agreement recorded with CTCAC or another government agency shall be deemed having met the requirements of an SRO/Studio. Projects containing units that do not have complete private baths shall provide at least one bath per eight units and at least one complete bath per floor. Common kitchen facilities shall be provided for units without complete kitchens. CTCAC uses SRO and Studio interchangeably but recognizes some jurisdictions may not, and the project shall comply with all local regulations.
- uu) State Credit. The Tax Credit for low-income rental housing provided by the Revenue and Taxation Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, including the State Farmworker Credit, formerly the Farmworker Housing Assistance Program provided by the Revenue and Taxation Code Sections 12206, 17058, and 23610.5 and by the Health and Safety Code Sections 50199.2 and 50199.7.
- vv) Tax Credit Units. Low-Income Units and manager units.
- ww) Tax-Exempt Bond Project. A project that meets the definition provided in IRC Section 42(h)(4).
- xx) Tax forms. Income tax forms for claiming Tax Credits: for Federal Tax Credits, IRS Form 8609; and, for State Tax Credits, FTB Form 3521A.
- yy) "Transfer Event" shall mean (i) a transfer of the ownership of a project, (ii) the sale or assignment of a partnership interest in a project owner and/or (iii) the refinancing of secured debt on a project. The following shall not be deemed a Transfer Event: (i) the transfer of the project or a partnership or membership interest in a project owner in which reserves remain with the project and the debt encumbering the project is not increased, refinanced or otherwise modified, (ii) the refinancing of project debt which does not increase the outstanding principal balance of the debt other than in the amount of the closing costs and fees paid to the project lender and third parties as transaction

costs, provided that reserves remain with the project, (iii) the replacement of a general partner by a limited partner upon the occurrence of a default by a general partner in accordance with partnership agreement of the project owner, (iv) a transfer pursuant to a foreclosure or deed in lieu of foreclosure to a non-related party, (v) a "Subsequent Transfer" pursuant to Section 10320(b)(4)(B) hereof, (vi) a transfer of the ownership of a project subject to an existing tax credit regulatory agreement with a remaining term of five (5) or less years if the transfer is made in connection with a new reservation of 9% or 4% tax credits, or (vii) the sale of a project, or the sale or assignment of a partnership interest in a project owner, to an unrelated party for which the parties entered into a purchase agreement prior to October 9, 2015. Notwithstanding the foregoing, the term "Transfer Event" shall be applicable only to projects in which at least 50% of the units are Tax Credit Units.

zz) **Threshold Basis Limit.** The aggregate limit on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Tax Credit amounts. These limits are published by CTCAC on its website, by unit size and project location, and are based upon average development costs reported within CTCAC applications and certified development cost reports. CTCAC staff shall use new construction cost data from both 9 percent and 4 percent funded projects, and shall eliminate extreme outliers from the calculation of averages. Staff shall publicly disclose the standard deviation percentage used in establishing the limits, and shall provide a worksheet for applicant use. CTCAC staff shall establish the limits in a manner that seeks to avoid a precipitous reduction in the volume of 9 percent projects awarded credits from year to year.

aaa) **Tribe.** A federally recognized Indian tribe located in California, or an entity established by the tribe to undertake Indian housing projects, including projects funded with federal Low Income Housing Tax Credits.

bbb) **Tribal Trust Land.** Real property located within the State of California that meets both the following criteria:

- (1) is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States.
- (2) the land may be leased for housing development and residential purposes under Federal law.

bbb) **Waiting List.** A list of Eligible Projects approved by CTCAC following the last application cycle of any calendar year, pursuant to Section 10325(h) below.

ccc) **CTCAC/HCD Opportunity Area Map.** A map or series of maps approved annually by the Committee as the CTCAC/HCD Opportunity Area Map.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10305. General Provisions**

- (a) **Meetings.** The Committee shall meet on the call of the Chairperson.
- (b) **Report.** At each meeting of the Committee at which Tax Credit reservations from the Credit Ceiling are made, the Executive Director shall make a report to the Committee on the status of the Federal and State Tax Credits reserved and allocated.
- (c) **Forms.** CTCAC shall develop such forms as are necessary to administer the programs and is authorized to request such additional information from applicants as is appropriate to further the

purposes of the Programs. Failure to provide such additional information may cause an application to be disqualified or render a reservation null and void.

- (d) **Tax Credit Limitations.** No applicant shall be eligible to receive Tax Credits if, together with the amount of Federal or State Tax Credits being requested, the applicant would have, in the capacity of individual owner, corporate shareholder, general partner, sponsor, or developer, received a reservation or allocation greater than fifteen percent (15%) of the total Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year.
- (e) **Notification.** Upon receipt of an application, CTCAC shall notify the Chief Executive Officer (e.g., city manager, county administrative officer, tribal chairperson) of the local jurisdiction within which the proposed project is located and provide such individual an opportunity to comment on the proposed project (IRC Section 42(m)(1)(ii)).
- (f) **Conflicting provisions.** These regulations shall take precedence with respect to any and all conflicts with provisions of the QAP or other guidance provided by the Committee. This subsection shall not be construed to limit the effect of the QAP and other guidance in cases where said documents seek to fulfill, without conflict, the requirements of federal and state statutes pertaining to the Tax Credit Programs.
- (g) **The Committee may, at its sole discretion, reject an application if the proposed project fails to meet the minimum point requirements established by the Committee prior to that funding round. The Committee may establish a minimum point requirement for competitive rounds under either Section 10325 or 10326.**
- (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. Up to two hundred million dollars (\$200,000,000) may be allocated for housing financed by CalHFA's Mixed-Income Program, and this amount may be reduced upon agreement of the Executive Directors of CalHFA and CTCAC.**

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10310. Reservations of Tax Credits**

- (a) **Reservation cycles.** The Committee shall reserve Tax Credits on a regular basis in accordance with H. & S Code Section 50199.14(a), pursuant to these regulations and the QAP, incorporated by reference in full.
- (b) **Credit Ceiling available.** The approximate amount of Tax Credits available in each reservation cycle 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:
  - (1) **Amount of Federal Tax Credits.** The amount of Federal Tax Credits available for reservation in a reservation cycle shall be equal to the sum of:
    - (A) the per capita amount authorized by law for the year, plus or minus the unused, Federal Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
    - (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;



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

For calendar year 2020, and 2021 if applicable, the amount of the Federal Credit Ceiling established by the Further Consolidated Appropriations Act, 2020 ("FCAA") shall be allocated pursuant to Section 10325(d)(1). For calendar year 2021, and 2022 if applicable, the amount of the Federal Credit Ceiling established by the Consolidated Appropriations Act, 2021 ("CAA") shall be allocated pursuant to Section 10325(d)(1).

- (2) Amount of State Tax Credits. The amount of State Tax Credits available for reservation in a reservation cycle shall be equal to:
  - (A) the amount authorized by law for the year, less any amount set-aside for use with certain tax-exempt bond financed projects, plus the unused State Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
  - (B) the amount of State Credit Ceiling returned, and available, by the date that is thirty days following the application deadline for said cycle; plus,
  - (C) additional amounts of State Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations and,
  - (D) five hundred thousand dollars (\$500,000) per calendar year in State Farmworker Credits to provide Farmworker Housing, plus any returned and unused State Farmworker Credit balance from the preceding calendar year.
- (3) Waiting List Tax Credits. Tax Credits returned (other than those returned pursuant to Section 10328(g), and Tax Credits allocated under IRC Section 42(h)(3)(D) during any calendar year, and not made available in a reservation cycle, shall be made available to applications on Committee Waiting Lists, pursuant to subsection 10325(h).

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10315. Set-asides and Apportionments**

CTCAC will accept applications from Qualified Nonprofit Organizations for the Nonprofit set-aside upon the request of the qualified applicant, regardless of the proposed housing type. Thereafter, CTCAC shall review each non-rural pending competitive application applying as an at-risk or special needs housing type under subsection (h) below, first, within that housing type's relevant set-aside. Non-rural applicants meeting the criteria for both the special needs and at-risk housing types pursuant to Section 10325(g) may request to be considered in both set-asides. Applicants receiving an award from either the At-Risk or Special Needs set-aside shall be considered as that housing type for purposes of paragraph (h).

- (a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).
- (b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a priority to projects that meet the requirements below and provide housing to Homeless households at affordable rents, consistent with Section 10325(g)(3) in the following priority order:

- First priority will be given to qualified Homeless projects with 1) McKinney-Vento Homeless Assistance Act, MHP-Supportive Housing Program, HCD Veterans Housing and Homeless Prevention Program, Mental Health Services Act (MHSA), CalHFA Local Government Special Needs Housing Program, Governor's Homeless Initiative, Housing for a Healthy California, or HCD No Place Like Home development capital funding committed for which the amount of development capital funding committed shall be at least \$500,000 or \$10,000 per unit for all Low-Income Units in the project (irrespective of the number of units assisted by the referenced programs), whichever is greater; or 2) projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the Low-Income Units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
- Second priority will be given to other qualified Homeless projects.

To compete as a Homeless assistance project, at least fifty percent (50%) of the Low-Income Units within the project must be designated for Homeless households as described in category (1) through (4) immediately below:

- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - (A) Has a primary nighttime residence that is a public or private place not meant for human habitation;
  - (B) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
  - (C) Is exiting an institution and resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
- (2) Individual or family who will imminently lose their primary nighttime residence, provided that:
  - (A) Residence will be lost within 14 days of the date of application for homeless assistance;
  - (B) No subsequent residence has been identified; and
  - (C) The individual or family lacks the resources or support networks needed to obtain other permanent housing.
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - (A) Are defined as homeless under the other listed federal statutes;
  - (B) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
  - (C) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and
  - (D) Can be expected to continue in such status for an extended period of time due to special needs or barriers.
- (4) Any individual or family who:
  - (A) Is fleeing, or is attempting to flee, domestic violence;
  - (B) Has no other residence; and
  - (C) Lacks the resources or support networks to obtain other permanent housing.

For all projects receiving a reservation under the first or second priority, owners, property managers, and service providers shall comply with the core components of Housing First, as defined in Welfare and Institutions Code Section 8255(b), with respect to the units designated for homeless households. For projects receiving a reservation under the first or second priority, the applicant also shall commit to reserving vacant homeless assistance units for 60 days for

occupancy by persons or households referred, where such systems or lists exist, by either 1) the relevant coordinated entry or access system, 2) the relevant county health department from a list of frequent health care users; or 3) the relevant behavioral health department from a list of persons with chronic behavioral health conditions who require supportive housing. The applicant shall enter into a memorandum of understanding with the relevant department or system administrator prior to placing in service unless a reasonable memorandum is refused by the department or administrator.

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

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. For purposes of implementing Section 50199.21(a), an area is eligible under the Section 515 program on January 1 of the calendar year in question if it either resides on the Section 515 designated places list in effect the prior September 30, or is so designated in writing by the USDA Multifamily Housing Program Director. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year. In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.

Within the rural set-aside competition, the first tiebreaker shall be applied as described in Section 10325(c)(9), except that the Seniors, Large Family New Construction in Highest or High Resource Tract, and Acquisition and/or Rehabilitation housing type goals established by Section 10315(h) shall be calculated relative to the rural set-aside dollars available each round, rather than against the total credits available statewide each round.

- (1) RHS and HOME program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available for new construction projects which have a funding commitment from RHS of at least \$1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, RHS's Section 515 Rural Rental Housing Loan Program, or a reservation from a Participating Jurisdiction or the State of California of at least \$1,000,000 in HOME funding.

All projects meeting the RHS and HOME program apportionment eligibility requirements shall compete under the RHS and HOME program apportionment. Projects that are unsuccessful under the apportionment shall then compete within the general rural set-aside described in subsection (c). Any amount reserved under this subsection for which RHS or HOME funding does not become available in the calendar year in which the reservation is made, or any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.

- (2) Native American apportionment. Starting in 2023 and each year thereafter, one million five hundred thousand dollars (\$1,500,000) in annual federal credits shall be available during the first round and, if any credits remain, in the second round for applications proposing projects on land to be owned by a Tribe, whether the land is owned in fee or in trust, and in which occupancy will be legally limited to tribal households, except that up to 20% of Low-Income Units may serve non-tribal households if required by the HOME Program. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by CTCAC under Section 10305(h). In addition, the application shall receive the minimum points available for both general partner and management company experience under Section 10325(c)(1), except that the management company minimum scoring cannot be obtained through the point category for a housing tax credit certification examination.

- (d) “At-Risk” set-aside. After accounting for the second supplemental set-aside described in (g), five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify and apply as an “At risk” housing type pursuant to subsection (h) below. Any proposed project that applies and is eligible under the Nonprofit set-aside but is not awarded credits from that set-aside shall be eligible to be considered under this At-Risk set-aside if the project meets the housing type requirements in Section 10325(g)(4).
- (e) Special Needs set-aside. After accounting for the second supplemental set-aside described in (g), four percent (4%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify and apply as a Special Needs housing type project pursuant to subsection (h) below. Any proposed project that applies and is eligible under the Nonprofit set-aside, but is not awarded credits from that set-aside, shall be eligible to be considered under this Special Needs set-aside if the project meets the housing type requirements in Section 10325(g)(3).
- (f) First supplemental set-aside. After accounting for the second supplemental set-aside described in (g), an amount equal to three percent (3%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be held back to fund overages that occur in the second funding round set-asides and/or in the Geographic Apportionments because of funding projects in excess of the amounts available to those Set Asides or Geographic Apportionments, the funding of large projects, such as HOPE VI projects, or other Waiting List or priority projects. In addition to this initial funding, returned Tax Credits and unused Tax Credits from Set Asides and Geographic Apportionments will be added to this Supplemental Set Aside, and used to fund projects at year end so as to avoid loss of access to National Pool credits.
- (g) Second supplemental set-aside. For each calendar year an amount of the Federal Credit Ceiling determined by the Executive Director, calculated as of February first of the calendar year, shall be held back to fund projects designated as DDA project pursuant to Section 10327(d)(3).
- (h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below, exclusive of the Acquisition and/or Rehabilitation and Large Family New Construction located in a Highest or High Resource Area housing types which are listed here solely for purposes of the tiebreaker, and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(9) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

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

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

A large family new construction project that receives a tiebreaker increase for being located in a

Highest or High Resource census tract shall count against both that housing type and the general Large Family housing type.

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

| <b>Geographic Area</b>  | <b>Apportionments</b> |
|---|-----------------------|
| City of Los Angeles   | 17.6%                 |
| Balance of Los Angeles County   | 17.2%                 |
| Central Valley Region (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)     | 8.6%                  |
| San Diego County  | 8.6%                  |
| Inland Empire Region (San Bernardino, Riverside, Imperial Counties)                                       | 8.3%                  |
| East Bay Region (Alameda and Contra Costa Counties)   | 7.4%                  |
| Orange County   | 7.3%                  |
| South and West Bay Region (San Mateo, Santa Clara Counties)   | 6.0%                  |
| Capital Region (El Dorado, Placer, Sacramento, Sutter, Yuba, Yolo Counties)                               | 5.7%                  |
| Central Coast Region (Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties) | 5.2%                  |
| Northern Region (Butte, Marin, Napa, Shasta, Solano, and Sonoma Counties)                                 | 4.4%                  |
| San Francisco County  | 3.7%                  |

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

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10317. State Tax Credit Eligibility Requirements**

- (a) General. In accordance with the R & T Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the "tax" (as defined by R & T Code Section 12201) a State Tax Credit for Federal Credit Ceiling projects pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Tax Exempt Bond Projects pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code in an amount equal to no more than 30 percent (30%) of the project's requested construction-related eligible basis. Except for State Farmworker Credits and projects meeting

subparagraphs (A) through (D) in subsection (c)(4) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, the maximum State Tax Credit award amount for a Tax Exempt Bond Project pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 13 percent (13%) of that project's requested eligible basis. The maximum State Farmworker Credit award amount for a Tax-Exempt Bond Project, or basis described in paragraph (f) below, is 75 percent (75%) of that project's requested eligible basis. The maximum State Credit award for a project meeting subparagraphs (A) through (D) in subsection (c)(4) of 12206 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 95 percent (95%) of that project's requested eligible basis. Insufficient credits due to a low appraised value as described in Subparagraph (C) shall be evidenced as defined in Section 10322(h)(9)(A) of these Regulations: the sum of third-party debt encumbering the seller's property exceeds the appraised value. Substantial rehabilitation as described in Subparagraph (D) shall be evidenced by Section 10326(g)(7) of these Regulations. Award amounts shall be computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.

- (b) Allocation of Federal Tax Credits required. State Tax Credit recipients shall have first been awarded Federal Tax Credits, or shall qualify for Tax Credits under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and the R & T Code Section 12206(b)(1)(A). State Farmworker Credits are exempt from this requirement.
- (c) Limit on Credit amount. Except for applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area (DDA). Notwithstanding paragraph (d) below, applications for the Federal Credit established by the Further Consolidated Appropriations Act, 2020 or the Consolidated Appropriations Act, 2021 are not eligible for State Tax Credits.

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

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

- (d) (1) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(ii), 17058(b)(2)(E)(ii), and 23610.5(b)(2)(E)(ii), applications for Special Needs projects with at least 50% special needs units and within a QCT or DDA may request the federal 130% basis boost and may also request State credits, provided that the applicant does not reduce basis related to federal tax credits except to reduce requested basis to the project's threshold basis limit or the credit request to the amount available in the project's geographic region or the limits described in Section 10325(f)(9)(C). CTCAC shall revise the basis and credit request if the application fails to meet this requirement. Under authority granted by Internal Revenue Code Section 42(d)(5)(B)(v), CTCAC designates Special Needs housing type applicants for credit ceiling credits as Difficult Development Area projects, regardless of their location within a federally designated QCT or DDA.
- (2) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(iii), 17058(b)(2)(E)(iii), and 23610.5(b)(2)(E)(iii), applications for 4% federal tax credits plus State Farmworker Credits within a QCT or DDA may request the federal 130% basis boost and may also request State credits

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

Applications for the Federal Credit established by the Further Consolidated Appropriations Act, 2020 or the Consolidated Appropriations Act, 2021, including Special Needs projects described in this section (d), are not eligible for State Tax Credits.

- (e) State Tax Credit exchange. Applications for projects not possessing one of the allocation priorities described in subsection (d) may also include a request for State Tax Credits. During any reservation cycle and/or following any reservation or allocation of State Tax Credits to all applications meeting the above allocation priorities, remaining balances of State Tax Credits maybe awarded to applicants having received a reservation of Federal Tax Credits during the same year, in exchange for the “equivalent” amount of Federal Tax Credits. Said exchanges shall be offered at the discretion of the Executive Director, who may consider and account for any fiscal or administrative impacts on the project or applicant pool when deciding to whom he/she will offer State Tax Credits.
- (f) Acquisition Tax Credits. State Tax Credits for acquisition basis are allowed only for projects meeting the definition of a project “at risk of conversion,” pursuant to Section 42 and R & T Code Section 17058(c)(4).
- (g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:
- (1) the project is comprised of 100% Tax Credit Units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to those programs’ use restrictions. Projects under those circumstances may propose a lesser percentage of Tax Credit Units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;
  - (2) one or more buildings is not eligible for the 130% basis adjustment, in which case the State Tax Credits shall be available only for the buildings not eligible for the 130% basis adjustment. This paragraph shall not apply to projects referenced in Section 10317(d);
  - (3) State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and
  - (4) the applicant must demonstrate, by no later than 10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for.

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

- (h) State Farmworker Credit. Applicants may request State Farmworker Credits for eligible Farmworker Housing in combination with federal credits, or they may request State Farmworker Credits only. If seeking a federal Credit Ceiling reservation, applicants may apply only during competitive rounds as announced by CTCAC and shall compete under the provisions of Section 10325(c) et. seq. If requesting federal credits for use with tax exempt bond financing, or State Farmworker Credits only, applicants may apply over the counter and shall meet the threshold requirements for projects requesting 4% federal credits.

- (1) If more than one applicant is requesting nine percent (9%) federal credits in combination with State Farmworker Credits during a competitive round, CTCAC shall award available State Farmworker Credits to the highest scoring Farmworker Housing application that will receive a reservation of federal credits.

If available State Farmworker Credits are inadequate to fully fund a pending request for eligible Farmworker Housing, CTCAC may reserve a forward commitment of subsequent year's State Farmworker Credits for that project alone.

- (i) 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) In calendar years where there are additional state tax credits available to bond financed projects, 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, with a ranking priority for projects meeting subparagraphs (A) through (D) in subsection (c)(4) of 12206 of the Revenue and Tax Code. In all other years, an amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects of any construction type. 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;
  - (2) The project will be competitively scored by CDLAC according to the CDLAC scoring and ranking system delineated in Section 5230 of the CDLAC Regulations. Notwithstanding the foregoing, existing tax credit projects must comply with the requirements of Section 10326(g)(8)(A);
  - (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;
  - (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 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 CTCAC funding round.
  - (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%.
- (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 years beginning in 2021, an amount up to five hundred million dollars (\$500,000,000) in total State Tax Credit authority will be available (if authorized in the California Budget Act or related legislation) for new construction Tax Exempt Bond Projects, including retrofitting or repurposing of existing nonresidential structures that were converted to residential use within the previous five years from the date of application subject to the requirements of the California Debt Limit Allocation Committee regulations.



No later than the CDLAC bond issuance deadline, 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 submit said documents to CTCAC by the CDLAC bond issuance deadline shall result in rescission of the Tax Credit Reservation and may result in assessment of negative points.

- (k) All projects that have received state credits shall comply with the limitations on cash distributions required pursuant to Sections 12206(d), 17058(d), and 23610.5(d) of the Revenue and Taxation Code.
- (1) In the initial application, applicants requesting state credits shall make an election to sell ("certificate") or not sell all or any portion of the state credit, as allowed pursuant to Revenue and Taxation Code Sections 12206(o), 17058(q), and 23610.5(r). The applicant for a certificated credit shall be a non-profit entity and the state credit price shall not be less than eighty (80) cents per dollar of credit. The applicant may, only once, revoke an election to sell at any time before CTCAC issues the Form(s) 3521A for the project, at which the point the election shall become irrevocable.
  - (2) An applicant who elects to sell any portion of the state credit and a buyer who later resells any portion of the credit shall report to CTCAC within 10 days of the sale of the credit, in a form specified by CTCAC, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the party or parties to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received for the sale of the credit. At the request of the owner, CTCAC shall reissue the Form(s) 3521A in the name of the buyer.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10320. Actions by the Committee**

- (a) Meetings. Except for reservations made pursuant to Section 10325(h) of these Regulations, Reservations of Tax Credits shall occur only at scheduled meetings of the Committee, which shall announce application-filing deadlines and the approximate dates of reservation meetings as early in the year as possible.
- (b) Approvals required by this Section 10320(b) shall not be unreasonably withheld if all of the following requirements, as applicable, are satisfied:
  - (1) No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(2)(M), in addition to other remedies. The following requirements apply to all ownership or Tax Credit transfers requested after January 31, 2014:
    - (A) Any transfer of project ownership (including changes to any general partner, member, or equivalent responsible party), or allocation of Tax Credits shall be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.
    - (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.

- (C) The transferor shall deliver all tenant files, inspection records, financial statements, and reserve balances to the transferee prior to or concurrent with the transfer. Failure to deliver such records may subject the transferor to negative points or a fine.
- (2) In addition to any applicable requirements set forth in Section 10320(b)(1), all Transfer Events shall be subject to the prior written approval of the Executive Director. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(2)(M), in addition to other remedies. The following requirements apply to all Transfer Events for which approval is requested on or after October 21, 2015:
- (A) Prior to a Transfer Event, the owner of the project shall submit to the Executive Director a Qualified Capital Needs Assessment. In the case of a Transfer Event in which a third-party lender is providing financing, the Qualified Capital Needs Assessment shall be commissioned by said third-party lender.
  - (B) The entity which shall own the project subsequent to the Transfer Event (the "Post Transfer Owner") shall covenant to the Committee (the "Capital Needs Covenant") that the Post Transfer Owner (and any assignee thereof) shall:
    - (i) set aside at the closing of the Transfer Event adequate funds to perform the Short Term Work (the "Short Term Work Reserve Amount");
    - (ii) perform the Short Term Work within three (3) years from the date of the Transfer Event;
    - (iii) make deposits to reserves as are necessary to fund the Long Term Work, taking into account any balance in replacement reserve accounts upon the conclusion of the Transfer Event beyond those required by clause (i). Notwithstanding the foregoing, the Post Transfer Owner shall have no obligation to fund any reserve amount from annual operations to the extent that the funding of the reserve causes the project to have a debt service coverage ratio of less than 1.00 to 1.00. In calculating the debt service coverage ratio for the purposes herein, the property management fee shall not exceed the greater of (a) 7% the project's effective gross income, or (b) such amount approved by HUD or USDA, as applicable. Any property management fee in excess of these limitations shall be subordinate to the funding of the required reserves and shall not be considered when calculating the debt service coverage ratio; and complete the Long Term Work when required, or prior thereto, pursuant to the Qualified Capital Needs Assessment.

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

- (3) The Capital Needs Covenant shall at all times be subordinate to any deed of trust given to any third party lender to a project. The owner of a project subject to a Capital Needs Covenant shall certify compliance with the terms of said Capital Needs Covenant to CTCAC annually for the term of the Capital Needs Covenant on a form to be developed by the Executive Director. Failure to comply with the terms of the Capital Needs Covenant may subject the owner to negative points and/or a ban on buying or receiving future properties.
- (4) If a project seeks to receive a new reservation of 9% or 4% tax credits concurrently with a Transfer Event or during the time that the project is subject to a Capital Needs Covenant, the following provisions shall apply in lieu of paragraph (2):
  - (A) The applicant shall submit a Qualified Capital Needs Assessment. In cases in which a third-party lender is providing financing, the Qualified Capital Needs Assessment shall be commissioned by said third-party lender.
  - (B) The rehabilitation scope of work shall include all of the Short Term Work. The applicant may receive eligible basis for the costs of the Short Term Work only if the applicant can demonstrate that the Short Term Work was funded by one of the following:
    - (i) a credit from the seller of the project equal to the costs of Short Term Work.
    - (ii) a reduction in the purchase price of the project as compared to the purchase price of the project had the project not been subject to the Transfer Event requirement, as shown by an appraisal that calculates the impact of the Short Term Work requirement on value.
    - (iii) general partner equity.
    - (iv) developer fee contributed to the project (a deferred developer fee does not qualify).
  - (C) After the Transfer Event giving rise to the covenant required pursuant to Section 10320(b)(2)(B) (the "Initial Transfer"), if the project will be subsequently transferred in connection with the closing of the new reservation of 9% or 4% credits (a "Subsequent Transfer"), any increase in acquisition price (if the Initial Transfer was a sale) or the project valuation (if the Initial Transfer was a refinancing) between the Initial Transfer and the Subsequent Transfer which is attributable to a reduction in the amount of annual deposits into the replacement reserve account from those required pursuant to Section 10320(b)(2)(B)(iii) because all or a portion of the Long Term Work will be performed in connection with the new reservation of 9% or 4% credits, must be evidenced in the form of (i) a seller carryback note or (ii) a general partner equity contribution.
  - (D) Upon the closing of the syndication of the new 9% or 4% credits reserved for the project, any Capital Needs Covenant shall automatically terminate without any further action of the project owner and/or the Committee.

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

Sections 10320(b)(4)(B) and 10320(b)(4)(C) shall not be applicable to any project with an existing tax credit regulatory agreement with a remaining term of five (5) or less years.

- (5) No management company of an existing or new tax credit project shall be replaced without prior written approval of the Executive Director. In the event that prior written approval is not obtained, the Executive Director may assess negative points or a fine. With respect to 4% tax credit projects, management companies ineligible for at least two management company experience points pursuant to Section 10325(c)(1)(B) shall obtain training in project operations, on-site certification, fair housing law, and manager certification in IRS Section 42 program requirements from CTCAC or a CTCAC-approved, nationally recognized entity. The out-going management company shall deliver all tenant files, inspection records, financial statements, and reserve balances to the in-coming management company prior to or concurrent with the transfer. Failure to deliver such records may subject the out-going management company to negative points or a fine.
  - (6) Except for resyndication applications without a distribution of Net Project Equity, 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 CTCAC 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.
  - (7) An applicant seeking to (1) demolish or similarly alter any of the existing structures currently subject to CTCAC regulatory restrictions when seeking a new reservation of 9% and/or 4% tax credits; and/or (2) separate an existing project currently subject to CTCAC regulatory restrictions 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 demolished 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 sales 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.
- (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. 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.

- (d) False information. Upon being informed, or finding, that information supplied by an applicant, any person acting on behalf of an applicant, or any team member identified in the application, pursuant to these regulations, is false or no longer true, and the applicant has not notified CTCAC in writing, the Committee may take appropriate action as described in H & S Code Section 50199.22(b) and in section 10325(c)(2) of these regulations. Additionally the Executive Director may assess negative points to any or all members of the development team as described in Section 10322(h)(5).
- (e) CTCAC shall not enter into a qualified contract, as defined in IRC Section 42(h)(6)(F).

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10322. Application Requirements**

- (a) Separate Application. A separate application is required for each project.
- (b) Application forms. Applications shall be submitted on forms provided by the Committee. Applicants shall submit the most current Committee forms and supplementary materials in a manner, format, and number prescribed by the Committee.
- (c) Late application. Applications received after an application-filing deadline shall not be accepted.
- (d) Incomplete application. Determination of completeness, compliance with all Basic and Additional Thresholds, the scoring of the application, and any application submission requirements pursuant to these regulations and the application form shall be based on the documents contained in the application as of the final filing deadline. Application omissions may be accepted after the application-filing deadline pursuant to Section 10322(e) at the sole discretion of the Executive Director, if determined that the deficiency is an application omission of either a document existing as of the application-filing deadline, or a document certifying to a condition existing at the time of the application-filing deadline. Applications not meeting these requirements shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete. An applicant shall be notified by the Committee should its application be deemed incomplete and the application will not be scored.
- (e) Complete application. No additional documents pertaining to: the Basic or Additional Threshold Requirements; scoring categories; and any application submission requirements pursuant to these regulations and the application form shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is an application omission of either a document existing as of the application-filing deadline, or a document certifying to a condition existing at the time of the application-filing deadline. In such cases, applicants shall be given up to five (5) business days from the date of receipt of staff notification, to submit said documents to complete the application. For application omissions, the Executive Director may request additional clarifying information from third party sources, such as local government entities, or the applicant, but this is entirely at the Executive Director's discretion. Upon the Executive Director's request, the information sources shall be given up to five (5) business days, from the date of receipt of staff notification, to submit said documents to clarify the application. The third-party sources shall certify that all evidentiary documents deemed to be missing from the application had been executed, and were in the third-party source's possession, on or prior to, the application-filing deadline.

If required documents are not submitted within the time provided, the application shall be considered incomplete and no appeal will be entertained.

- (f) Application changes. Only the Committee may change an application as permitted by Sections 10317(d), 10325(c)(6)(B), and 10327(a). Any changes made by the Committee pursuant to those

- (g) sections shall never increase the score or credit amount of the application as submitted, and may reduce the application's score and/or credit amount.
- (h) Applications not fully evaluated. Incomplete applications or others not expected to receive a reservation of Tax Credits due to relatively low scores, may or may not be fully evaluated by the Committee.
- (i) Standard application documents. The following documentation relevant to the proposed project is required to be submitted with all applications:
  - (1) Applicant's Statement. A completed and signed version of the CTCAC Applicant Statement signifying the responsibility of the applicant to:
    - (A) provide application related documentation to the Committee upon request;
    - (B) be familiar with and comply with Credit program statutes and regulations;
    - (C) hold the Committee and its employees harmless from program-related matters;
    - (D) acknowledge the potential for program modifications resulting from statutory or regulatory actions;
    - (E) acknowledge that Credit amounts reserved or allocated may be reduced in some cases when the terms and amounts of project sources and uses of funds are modified
    - (F) agree to comply with laws outlawing discrimination;
    - (G) acknowledge that the Committee has recommended the applicant seek tax advice;
    - (H) acknowledge that the application will be evaluated according to Committee regulations, and that Credit is not an entitlement;
    - (I) acknowledge that continued compliance with program requirements is the responsibility of the applicant;
    - (J) acknowledge that information submitted to the Committee is subject to the Public Records Act;
    - (K) agree to enter with the Committee into a regulatory contract if Credit is allocated; and,
    - (L) acknowledge, under penalty of perjury, that all information provided to the Committee is true and correct, and that applicant has an affirmative duty to notify the Committee of changes causing information in the application or other submittals to become false.
  - (2) The Application form. Completion of all applicable parts of Committee-provided application forms which shall include, but not be limited to:
    - (A) General Application Information
      - (i) Credit amounts requested
      - (ii) minimum set-aside election
      - (iii) application stage selection
      - (iv) set-aside selection
      - (v) housing type
    - (B) Applicant Information
      - (i) applicant role in ownership

- (ii) applicant legal status
  - (iii) developer type
  - (iv) contact person
  - (C) Development Team Information
  - (D) Subject Property Information
  - (E) Proposed Project Information
    - (i) project type
    - (ii) Credit type
    - (iii) building and unit types
  - (F) Land Use Approvals
  - (G) Development Timetable
  - (H) Identification and Commitment Status of Fund Sources
  - (I) Identification of Fund Uses
  - (J) Calculation of Eligible, Qualified and Requested Basis
  - (K) Syndication Cost Description
  - (L) Determination of Credit Need and Maximum Credit Allowable
  - (M) Project Income Determination
  - (N) Restricted Residential Rent and Income Proposal
  - (O) Subsidy Information
  - (P) Operating Expense Information
  - (Q) Projected Cash Flow Calculation
  - (R) Basic Threshold Compliance Summary
  - (S) Additional Threshold Selection
  - (T) Tax-exempt Financing Information
  - (U) Market Study
- (3) Organizational documents. An organizational 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 (if available). An executed limited partnership agreement may be submitted as documentation that the project ownership entity is formed. If the project owner 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.
- (4) Designated contact person. A contract between the applicant and the designated contact person for the applicant signifying the contact person's authority to represent and act on behalf of the applicant with respect to the Application. The Committee reserves its right to contact the applicant directly.

- (5) Identification of project participants. For purposes of this Section all of the following project participants, if applicable will be considered to be members of the Development Team. The application must contain the company name and contact person, address, telephone number, and fax number of each:
- (A) developer;
  - (B) general contractor;
  - (C) architect;
  - (D) attorney
  - (E) tax professional;
  - (F) property management company;
  - (G) consultant;
  - (H) market analyst and/or appraiser; and
  - (I) CNA consultant.

If any members of the Development Team have not yet been selected at the application filing deadline, each must be named and materials required above must be submitted at the 180 or 194 day deadline described in Section 10325(c)(7).

- (6) Identities of interest. Identification of any persons or entities (including affiliated entities) that plan to provide development or operational services to the proposed project in more than one capacity, and full disclosure of Related Parties, as defined.
- (7) Legal description. A legal description of the subject property.
- (8) Site Layout, Location, Unique Features and Surrounding Areas.
- (A) A narrative description of the current use of the subject property;
  - (B) A narrative description of all adjacent property land uses, the surrounding neighborhood, and identification and proximity of services, including transportation
  - (C) Labeled photographs, or color copies of photographs of the subject property and all adjacent properties;
  - (D) A layout of the subject property, including the location and dimensions of existing buildings, utilities, and other pertinent features.
  - (E) A site or parcel map indicating the location of the subject property and showing exactly where the buildings comprising the Tax Credit Project will be situated. (If a subdivision is anticipated, the boundaries of the parcel for the proposed project must be clearly marked; and
  - (F) A description of any unique features of the site, noting those that may increase project costs or require environmental mitigation.
- (9) Appraisals. Appraisals are required for: 1) all rehabilitation applications except as noted in subsection (A), below, 2) all adaptive reuse applications, 3) 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,



4) all applications seeking tiebreaker credit for donated or leased land, or land with a soft loan and 5) all new construction applications involving a land sale from a related party. For purposes of this paragraph only, a purchase contract or sale with a related party shall be deemed to be a purchase contract or sale with an unrelated party if the applicant demonstrates that the related party is acting solely as a pass-through entity and the tax credit partnership is only paying the acquisition price from the last arms-length transaction, plus any applicable and reasonable carrying costs. Appraisals shall not include the value of favorable financing.

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 of the proposed project as residential rental property, considering any on-going recorded rent restrictions;
  - (ii) for rehabilitation applications, the Sales Comparison Approach and Income Approach valuation methodologies shall be used; for new construction applications, the Sales Comparison Approach 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, in cases that require multiple methodologies;
  - (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.
- (A) Rehabilitation applications. An "as-is" appraisal is required with a date of value that is within 120 days before or after the execution of: a purchase contract; for leased land, an executed development agreement negotiated between the landowner and the applicant or developer; an option agreement; any other site control document pursuant to Section 10325(f)(2); or the transfer of ownership by all the parties

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; for leased land, an executed development agreement negotiated between the landowner and the applicant or developer; an option agreement; any other site control document pursuant to Section 10325(f)(2); the transfer of ownership by all the parties, or

- (ii) 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.

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. 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.

- (10) Market Studies. A full market study prepared or updated within 180 days of the filing deadline by an independent third-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 if the proposed project rents change by more than five percent (5%), or the distribution of higher rents increases by more than 5%, or more than 12 months have passed since the most recent site inspection date of the subject property and comparable properties. All market studies shall meet all of the requirements listed in the CTCAC Market Study Guidelines as listed on the CTCAC website. If the market study does not meet the guidelines, and support sufficient need and demand for the project, the application may be considered ineligible to receive Tax Credits and may be disqualified.

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 CTCAC 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.
- (11) Construction and design description. A detailed narrative description of the proposed project construction and design, including how the design will serve the targeted population.
- (12) Architectural drawings. Preliminary drawings of the proposed project, including a site plan, building elevations, and unit floor plans (including square footage of each unit). The project architect shall certify that the development will comply with building codes and the physical building requirements of all applicable fair housing laws. In the case of rehabilitation projects proceeding without an architect, the entity performing the Capital Needs Assessment shall note necessary fair housing improvements, and the applicant shall budget for and implement the related construction work. The site plan shall identify all areas or features proposed as project amenities, laundry facilities, recreation facilities and community space. Drawings shall be to a scale that clearly shows all requested information. Blueprints need not be submitted. A project applying as a High-Rise Project must include the project architect certification in accordance with the High-Rise Project definition in Section 10302.
- (13) Placed-in-service schedule. A schedule of the projected placed-in-service date for each building.
- (14) Identification of local jurisdiction. The following information related to the local jurisdiction within which the proposed project is located:
- (A) jurisdiction or tribe (e.g., City of Sacramento)
  - (B) chief executive officer or tribal chairperson and title (e.g., Susan Smith, City Manager)
  - (C) mailing address
  - (D) telephone number
  - (E) fax number
- (15) Sources and uses of funds. The sources and uses of funds description shall separately detail apportioned amounts for residential space and commercial space.
- (16) Financing plan. A detailed description of the financing plan, and proposed sources and uses of funds, to include construction, permanent, and bridge loan sources, and other fund sources, including rent or operating subsidies and reserves. The commitment status of all fund sources shall be described, and non-traditional financing arrangements shall be explained.
- (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.

- (18) Use of tax benefits description. If the Tax Credits are not to be offered to investors, a detailed explanation of how the tax benefits will be used by the applicant.
- (19) Terms of syndication agreement. Written estimate(s) from syndicator(s) or financial consultants on their corporate letterhead and in the prescribed CTCAC format, of equity dollars expected to be raised for the proposed project, based on the amount of Tax Credits requested, including gross and net proceeds, pay-in schedules, syndication costs (including syndicator consulting fees), and an estimated net tax Credit factor, for both Federal and State Tax Credits if both are to be used or if State Tax Credits exchange points are requested. The syndicator shall not pay any fees or provide any other financial or other substantive benefit to a partnership developer unless all such fees or benefits are fully and completely disclosed to CTCAC in the Executed Letter of Intent.
- (20) Tax Credit certification. If the Tax Credits are not to be syndicated, a letter from a third party certified public accountant establishing the Tax Credit factor.
- (21) Utility allowance estimates. Current utility allowance estimates consistent with 26 CFR Section 1.42-10. The applicant must indicate which components of the utility allowance schedule apply to the project. For buildings that are using an energy consumption model utility allowance estimate, the estimate shall be calculated using the most recent version of the California Utility Allowance Calculator (CUAC) developed by the California Energy Commission (CEC), with any solar values for new construction or adaptive reuse determined from the CEC's Photovoltaic Calculator and any solar values for existing residential buildings determined from the CEC's Photovoltaic Calculator or the Expected Performance Based Buydown (EPBB) calculator with monthly scalars to be determined by CTCAC. The CUAC estimate shall be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA). Measures that are used in the CUAC that require field verification shall be verified by a certified HERS Rater, in accordance with current HERS regulations. Use of CUAC is limited to (i) new construction projects, (ii) rehabilitation projects applying for tax credits for which the rehabilitation improves energy efficiency by at least 20%, as determined consistent with the requirements of Section 10325(c)(5)(D) and (G), or installs solar generation that offsets 50% of tenant loads, as determined consistent with the requirements of Section 10325(c)(5)(G), and (iii) existing tax credit projects with new photovoltaics installed through the Multifamily Affordable Solar Housing (MASH) program or a solar program administered by a municipal utility or joint powers authority, which offsets tenants' electrical load. All CUAC utility allowances require a quality control review and approval. CTCAC will submit modeled CUAC utility allowance estimates to a quality control reviewer and shall establish a fee to cover the costs of this review. Existing tax credit projects and rehabilitation projects converting to the CUAC shall provide tenants at least 90 days prior to the effective date with an informative summary about the current utility allowance and the proposed CUAC allowances, including notice of any actual rent increase to the tenant. Except for existing tax credit projects with active MASH program reservations dated prior to March 1, 2018, any decrease in tenant's utility allowance that results from conversion to the CUAC shall not exceed \$15 per month over any 12-month period. Such projects shall also provide CTCAC with the actual rent increases in the first year's CUAC update submittal. For existing projects requesting CUAC utility allowances, cash flow is limited to 15.0% or less of residential income and a debt service coverage ratio of 1.50 or less, as verified by audited financial statements.
- (22) Certification of subsidies. The applicant must certify as to the full extent of all Federal, State, and local subsidies which apply (or for which the taxpayer expects to apply) with respect to the proposed project. (IRC Section 42(m)(2)(C)(ii)) If rental assistance, operating subsidies or annuities are proposed, all related commitments that secure such funds must be provided. Tax-Exempt Bond Projects may receive a reservation of tax credits with the

condition to provide the applicable subsidy commitment no later than the CDLAC bond issuance deadline. The source, monthly contract rent, annual amount (if applicable), term, number of units receiving assistance, and expiration date of each subsidy must be included.

- (23) Cash flow projection. A 15-year projection of project cash flow. Separate cash flow projections shall be provided for residential and commercial space. If a capitalized rent reserve is proposed to meet the underwriting requirements of Section 10327, it must be included in the cash flow projections. Use of a capitalized rent reserve is limited to Special Needs projects, projects applying under the Non-profit Homeless Assistance set-aside, HOPE VI projects, and Section 8 project based projects.
- (24) Self-scoring sheet as provided in the application.
- (25) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:
  - (A) a chain of title report or, for tribal trust land, an attorney's opinion regarding chain of title; and
  - (B) if applicable, an applicant statement that the acquisition is exempt from, or a third-party tax attorney's opinion stating that the acquisition meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; or,
  - (C) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).
- (26) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:
  - (A) An independent, third-party appraisal prepared and submitted with the preliminary reservation application consistent with the guidelines in Section 10322(h)(9).
  - (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.
- (27) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide all existing income, rent and family size information for the current tenant population.
- (28) Tenant relocation plan. In addition to any other applicable relocation requirements, applicants proposing rehabilitation or demolition of occupied housing shall comply with the requirements of the California Relocation Assistance Law, California Government Code Section 7260 et seq, or, if the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 already applies to the project, pursuant to this federal law. Applicants shall provide an explanation of the relocation requirements that they are complying with, and a detailed relocation plan consistent with one of the above-listed relocation standards including an itemized relocation cost estimate that calculates the tenant relocation expenses required pursuant to the applicable California or federal relocation law. The relocation plan

must also address the potential displacement of current tenants who do not meet the CTCAC income eligibility requirements or who will receive a rent increase exceeding five percent (5%). The relocation plan must include: a detailed description of proposed temporary onsite or offsite relocation and any corresponding relocation payments for tenants who meet CTCAC income eligibility requirements; an estimate of the number of current tenants who do not meet CTCAC income eligibility requirements or will receive a rent increase exceeding five percent (5%), how this estimate was determined, and the estimated relocation cost; and a detailed description of how the current tenants will be provided notice and information about the required relocation assistance, including copies of such noticing document(s).

- (29) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).
- (30) Nonprofit Set-Aside application. Applicants requesting Tax Credits from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:
  - (A) IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;
  - (B) proof that one of the exempt purposes of the corporation is to provide low-income housing;
  - (C) a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;
  - (D) a third-party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,
  - (E) a third-party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).
- (31) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations, shall provide verification that the proposed project is located in an eligible rural area. Evidence that project is located in an area eligible for Section 515 financing from RHS may be in the form of a letter from RHS's California state office.
- (32) RHS Section 514, 515 or HOME program applications. Rural housing applicants requesting Tax Credits for projects financed by the RHS Section 514 or 515 program or from a HOME Participating Jurisdiction shall submit evidence from RHS or the HOME Participating Jurisdiction that such funding has been committed, and such evidence shall meet the requirements of Section 10325(f)(8).
- (33) Community service facility. An applicant requesting basis for a community service facility shall submit a third-party tax attorney's opinion stating that the community service facility meets the requirements of IRC Section 42(d)(4)(C). CTCAC may use its discretion in determining whether the community service facility meets the qualifications.
- (34) Mixed housing types. An applicant proposing a project to include senior housing in combination with non-senior housing shall provide a third-party legal opinion stating that the project complies with fair housing law.

- (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.
- (i) Placed-in-service application. Within one year of completing construction 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:
- (1) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Tax Credits are requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;
  - (2) an audited certification, prepared 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.
  - (3) an itemized breakdown of placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date(s) on the certificate(s) of occupancy, a detailed explanation is required;
  - (4) photographs of the completed building(s);
  - (5) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;

- (6) a certification from the investor or syndicator of equity raised and syndication costs in a Committee-provided format;
- (7) an updated application form;
- (8) an owner-signed certification documenting the services currently being provided to the residents, including identifying service provider(s), describing services provided, stating services dollar value, and stating services funding source(s) (cash or in-kind), with attached copies of contracts and MOUs for services;
- (9) a copy of the project owner limited partnership agreement;
- (10) a list of all amenities provided at the project site including any housing type requirements of Section 10325(h) committed to in the Tax Credit application, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided; housing type requirements must be completed. In addition, the project owner must provide a list of any project amenities not included in basis for which the property owner intends to charge an optional fee to residents;
- (11) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;
- (12) if applicable, a certification from a third-party tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
- (13) all documentation required pursuant to the Compliance and Verification requirements of Sections 10325(f)(7) and 10326(g)(6);
- (14) all documentation required pursuant to the Compliance and Verification requirements of Section 10327(c)(5)(B);
- (15) if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;
- (16) a certification from the project architect or, in the case of rehabilitation projects, from an architect retained for the purpose of this certification, that the physical buildings are in compliance with all applicable fair housing laws;
- (17) all documentation required pursuant to the Compliance and Verification requirements of Section 10325(c)(5), if applicable;
- (18) evidence that the project is in compliance with any points received under Section 10325(c)(8);
- (19) a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(21) of these regulations. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS rater, in accordance with current HERS regulations; and
- (20) for tribal trust land, the lease agreement between the Tribe and the project owner.
- (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.

- (22) Evidence that the project is in compliance with the provisions of the CDLAC resolution, if applicable.
- (23) If the application includes a 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 must provide an opinion on 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 approved by CTCAC.
- (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 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.

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

- (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 result in deeper 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 CTCAC issues tax forms after December 31, 2017.
- (k) Unless the proposed project is a Special Needs development, or within ten (10) years of an expiring tax credit regulatory agreement, applicants for nine percent (9%) Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall:
  - (1) certify that the property sales price is no more than the current debt balance secured by the property, and
  - (2) be prohibited from receiving any tax credits derived from acquisition basis.

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

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10323. The American Recovery and Reinvestment Act of 2009**

- (a) General. The American Recovery and Reinvestment Act of 2009 was administered by CTCAC under regulations adopted October 22, 2009. Awards made under those prior regulations remain bound by the terms of related executed funding agreements, and regulatory agreements.
- (b) Fees.
  - (1) No additional processing fees or performance deposits shall be collected from ARRA funding recipients beyond tax credit fees collected pursuant to Section 10335. Such tax credit fees must be paid by all ARRA fund recipients, including an allocation fee, even where an allocation of credits is not ultimately made. CTCAC may charge an ARRA funds recipient an asset management fee for such services. This fee may be in the form of an annual charge during the project's regulatory term, or may be charged at or about project completion. In the event CTCAC contracts out for asset management services, the contracted entity may charge the sponsor an asset management fee directly.
  - (2) Asset management fees shall be \$5,000 annually for projects of 30 units or fewer, and up to \$7,500 annually for projects of 31 to 75 units. Projects containing more than 75 units, will pay up to \$7,500 as a basic asset management fee annually, as well \$40 per unit of every unit over 75 units. Project owners may pay a one-time asset management fee equal to the total fee over the 15-year period, or a partial one-time upfront fee. If making a partial payment, the remaining annual payments shall be discounted accordingly to assure an equal total payment to a pure annual payment schedule. Where another State or federal housing entity is a project funding source, project sponsors may propose a plan to CTCAC wherein that source shares asset management information with CTCAC. Sponsors may also propose a plan to CTCAC where a syndicator or investor providing professional asset management services to the project shares asset management information with CTCAC. If CTCAC determines that those asset management functions meet federal requirements, CTCAC may agree to accept that information and discount or forgo a fee altogether

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10325. Application Selection Criteria - Credit Ceiling Applications**

- (a) General. All applications not requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4)(b) and Section 10326 of these Regulations (for buildings financed by tax-exempt bonds) shall compete for reservations of Credit Ceiling amounts during designated reservation cycles. Further, no project that has a pending application for a private activity bond allocation or that has previously received a private activity bond allocation will be eligible to compete under the Credit Ceiling competition for Federal Tax Credits.
- (b) Authority. Selection criteria shall include those required by IRC Section 42(m), H & S Code Section 50199.14, and R & T Code Sections 12206, 17058, and 23610.5.
- (c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case-by-case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a

project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.

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

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

## **SCORING**

### **(1) General Partner/Management Company Characteristics.**

No one general partner, party having any fiduciary responsibilities, or related parties will be awarded more than 15% of the Federal Credit Ceiling, calculated as of February first during any calendar year unless imposing this requirement would prevent allocation of all of the available Credit Ceiling.

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

- (i)** For projects in operation for more than 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 one 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.

Three to four projects in service more than three years, of which one shall be in service more than five years and two shall be California Low-Income Housing Tax Credit projects 5 points

Five or more projects in service more than three years, of which one shall be in service more than five years and two shall be California Low-Income Housing Tax Credit projects 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:

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

Four or more Special Needs projects in service more than three years and one California Low-Income Housing Tax Credit project which may or may not be one of the four special needs projects 7 points

- (ii) General partners with fewer than two (2) active California Low Income Housing Tax Credit projects in service more than three years, and general partners for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit projects in service more than three years, shall contract with a bona-fide management company currently managing two (2) California Low Income Housing Tax Credit projects in service more than three years and which itself earns a minimum total of two (2) points at the time of application.
- (iii) Tribal applicants may contract with a developer who will not be a general partner and receive points commensurate with the developer's experience pursuant to clauses (i) and (ii). The contract shall be in effect at least until the issuance of 8609 tax forms. Tribal applicants exercising this option, including the option in the next paragraph, shall also contract for asset management for at least the term of the 15-year federal compliance period with an entity that has asset managed at least two Low-Income Housing Tax Credit projects for more than three years.

For purposes of this clause only, a developer may include an entity pre-approved by CTCAC that has developed but not owned the requisite number of projects described in (i) and that provides the certification from a third party certified public accountant described above for the projects for which experience points are requested. If the projects for which the entity requests experience points do not include two (2) active California Low Income Housing Tax Credit projects in service more than three years, the applicant shall contract with a bona-fide management company pursuant to clause (ii). For this purpose only, "develop" shall mean developing the project scope and timeline, securing financing, hiring or performing the services of a general contractor, and overseeing completion of construction and placement in service as well as asset managing the project for at least three years after placed in service. When seeking pre-approval the entity shall provide copies of contracts demonstrating that the standards have been met.

In applying for and receiving points in this category, applicants assure that the property shall be operated by a general partner in conformance with Section 10320(b).

- (B) Management Company experience. To receive points under this subsection, the property management company must meet the following conditions. To obtain points for projects previously managed, the ending date of the property management role must be no more than 10 years from the application deadline. In addition, the property management experience with a project shall not pre-date the project's placed-in-service date.
- (i) Six to 10 projects managed more than three years, of which two shall be California Low-Income Housing Tax Credit projects 2 points
- 11 or more projects managed more than three years, of which two shall be California Low-Income Housing Tax Credit projects 3 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:
- Two to three Special Needs projects managed more than three years and one California Low-Income Housing Tax Credit project which may or may not be one of the special needs projects 2 points
- Four or more Special Needs projects managed more than three years and one California Low-Income Housing Tax Credit project which may or may not be one of the special needs projects 3 points
- (ii) Management companies managing less than two (2) active California Low-Income Housing Tax Credit projects for more than three years, and management companies for projects requesting points under the special needs categories of subparagraph (i) above and managing no active California Low-Income Housing Tax Credit projects for more than three years, shall contract with a bona-fide management company currently managing two (2) California Low Income Housing Tax Credit projects for more than three years and which itself earns a minimum combined total of two (2) points at the time of application.

When contracting with a California-experienced property management company under the terms of paragraph (A)(ii) or (B)(ii) above, the general partner or property co-management entity must obtain training in: CTCAC ownership/management, project operations, on-site certification training in federal fair housing law, and manager certification in IRS Section 42 program requirements from a CTCAC-approved, nationally recognized entity. Additionally, the experienced property management agent or an equally experienced substitute, must remain for a period of at least three years from the placed-in-service date (or, for ownership transfers, three years from the sale or transfer date) to allow for at least one (1) CTCAC monitoring visit to ensure the project is in compliance with IRC Section 42. Thereafter, the experienced property manager may transfer responsibilities to the remaining general partner or property management firm following formal written approval from CTCAC. In applying for and receiving points in these categories, applicants assure that the property shall be owned and managed by entities with equivalent experience scores for the entire 15-year federal compliance and extended use period, pursuant to Section 10320(b). The experience must include at least two (2) Low Income Housing Tax Credit projects in California in service more than three years.

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. For points to be awarded in subsection (B), an enforceable

management agreement executed by both parties for the subject application must be submitted at the time of application. "Projects" as used in subsections (A) and (B) means multifamily rental affordable developments of over 10 affordable units that are subject to a recorded regulatory agreement, or, in the case of housing on tribal lands, where federal HUD funds have been utilized in affordable rental developments. General Partner and Management Company experience points may be given based on the experience of the principals involved, or on the experience of municipalities or other nonprofit entities that have experience but have formed single-asset entities for each project in which they have participated, notwithstanding that the entity itself would not otherwise be eligible for such points. For qualifying experience, "principal" is defined as an individual overseeing the day-to-day operations of affordable rental projects as senior management personnel of the General Partner or property management company.

- (2) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(h)(5). Notwithstanding the foregoing and (B) below, failure to meet the requirements of Section 10325(c)(7) shall result in rescission of the Tax Credit Reservation or negative points. Negative points may be assessed for items including, but not limited to:
- (A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (B) failure to utilize Tax Credits within program time guidelines unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed;
  - (D) removal or withdrawal under threat of removal as general partner from a housing tax credit partnership;
  - (E) failure to provide physical amenities or services or any other item for which points were obtained (unless funding for a specific services program promised is no longer available);
  - (F) failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California;
  - (G) serious, after a notice and cure period, or repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;
  - (H) failure to perform a tenant income recertification upon the first anniversary following the initial move-in certification for all one hundred percent (100%) tax credit properties, or failure to conduct ongoing annual income certifications in properties with non-tax-credit units;
  - (I) material misrepresentation of any fact or requirement in an application;
  - (J) failure of a building to continuously meet the terms, conditions, and requirements received at its certification as being suitable for occupancy in compliance with state or local law, unless it is demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside the control of the owner;

- (K) failure to submit a copy of the owner's completed 8609 showing the first year filing;
- (L) failure to promptly notify CTCAC of a property management change or changing to a management company of lesser experience contrary to Section 10325(c)(1)(B);
- (M) failure to properly notify CTCAC and obtain prior approval of Transfer Events, general partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit;
- (N) certification of site amenities, distances or service amenities that were, in the Executive Director's sole discretion, inaccurate or misleading;
- (O) falsifying documentation of household income or any other materials to fraudulently represent compliance with IRC Section 42; or
- (P) failure of American Recovery and Reinvestment Act (ARRA) funded projects to comply with Section 42, CTCAC regulations, or other applicable program requirements;
- (Q) failure to provide required documentation of third-party verification of sustainable and energy efficient features.
- (R) failure to correct serious noncompliance, including incorrect rents or income qualification, incorrect utility allowance, or other overcharging of residents. In assigning negative points, CTCAC shall consider the most recent monitoring results for each of the parties' projects in the most recent three-year monitoring cycle. CTCAC shall allow affected parties a reasonable period to correct serious noncompliance before assigning negative points. Negative points may be warranted when more than ten percent (10%) of the party's total portfolio has Level 3 deficiencies under the Uniform Physical Conditions Standards established by HUD. In addition, negative points may be warranted when more than ten percent (10%) of the tenant files most recently monitored resulted in findings of either household income above regulated income limits upon initial occupancy, or findings of gross rent exceeding the tax credit maximum limits.
- (S) the project's total eligible basis at placed in service exceeding the revised total adjusted threshold basis limits for the year the project is placed in service by 40%.
- (T) where CDLAC has determined that a person or entity is subject to negative points under its regulations, CTCAC will deduct an equal amount of points for an equal period of time from tax credit applications involving that person or entity or a Related Party.
- (U) failure to comply with a requirement of the regulatory agreement or of a covenant entered into 10320(b)(2)(B) or Section 10337(a)(3)(B).
- (V) Submitting a check which CTCAC, after reasonable efforts to correct, cannot deposit.

Negative points given to general partners, co-developers, management agents, consultants, or any other member or agent of the Development Team may remain in effect for up to two calendar years, but in no event will they be in effect for less than one funding round. Furthermore, they may be assigned to one or more Development Team members, but do not necessarily apply to the entire Team. Negative points assigned by the Executive Director may be appealed to the Committee under appeal procedures enumerated in Section 10330.

- (3) Housing Needs. (Points will be awarded only in one category listed below except that acquisition and/or rehabilitation Scattered Site Projects may, at the applicant's election, be scored either in the aggregate or proportionately based upon (i) each site's score, and (ii) the percentage of units represented by each site.) The category selected hereunder (which shall be the category represented by the highest percentage of Low-Income Units in a proportionally scored project) shall also be the project category for purposes of the tie-breaker described in subsection 10325(c)(9) below.

|                        |           |
|------------------------|-----------|
| Large Family Projects  | 10 points |
| Special Needs Projects | 10 points |
| Seniors Projects       | 10 points |
| At-Risk Projects       | 10 points |
| SRO Projects           | 10 points |

- (4) Amenities beyond those required as additional thresholds

- (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 exception of the transit pass option of subcategory 1. Amenities may include:

1. Transit Amenities

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



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

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

The site is located within 1/3 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop. (For Rural set-aside projects, full points may be awarded where van or dial-a-ride service is provided to tenants, if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided) 4 points

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

In addition to meeting one of the 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

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

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

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

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

3. The site is within 1/2 mile of a book-lending public library that also allows for inter-branch lending (when in a multi-branch system) (1 mile for Rural set-aside projects) 3 point  
or within 1 mile (2 miles for Rural set-aside projects) 2 points
4. The site is within 1/2 mile of a full-scale grocery store/supermarket of at least 25,000 gross interior square feet where staples, fresh meat, and fresh produce are sold (1 mile for Rural set-aside projects). A large multi-purpose store containing a grocery section may garner these points if the application contains the requisite interior measurements of the grocery section of that multipurpose store. The “grocery section” of a large multipurpose store is defined as the portion of the store that sells fresh meat, produce, dairy, baked goods, packaged food products, delicatessen, canned goods, baby foods, frozen foods, sundries, and beverages. 5 points  
or within 1 mile (2 miles for Rural set-aside projects) 4 points  
or within 1.5 miles (3 miles for Rural set-aside projects) 3 points  

The site is within 1/4 mile of a neighborhood market of 5,000 gross interior square feet or more where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural Set-aside projects). A large multi-purpose store containing a grocery portion may garner these points if the application contains interior measurements of the grocery section of that multi-purpose store. The “grocery section” of a large multipurpose store is defined as the portion of the store primarily devoted to food stuffs that sells fresh meat, produce, dairy, baked goods, packaged food products, delicatessen, canned goods, baby foods, frozen foods, sundries, and beverages. 4 points  
or within 1/2 mile (1 mile for Rural Set-aside projects) 3 points  

The site is within 1/2 mile of a weekly farmers’ market on the list of Certified Farmers’ Markets maintained by the California Department of Food and Agriculture and operating at least 5 months in a calendar year 2 points  
or within 1 mile 1 point
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, adult education campus of a school district, or community college (an additional 1/2 mile for each public school type for Rural set-aside projects) and that the site is within the attendance area of that school or campus. 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
6. For a Senior Development, the site is within 1/2 mile of a daily operated senior center or a facility offering daily services specifically designed for seniors (not on the development site) (1 mile for Rural set-aside projects) 3 points  
or within 3/4 mile (1.5 miles for Rural set-aside projects) 2 points

7. For a Special Needs development, the site is located within 1/2 mile of a facility that operates to serve the population living in the development 3 points  
or within 1 mile 2 points

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

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

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

9. The site is within 1/2 mile of a pharmacy (for Rural projects, 1 mile) 2 points  
or within 1 mile (2 miles for Rural projects) 1 point

10. High speed internet service, with a minimum average download speed of 25 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. Documentation of internet availability must be 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. 2 points (3 points for Rural projects)

11. The project is a new construction 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 CTCAC/HCD Opportunity Area Map as Highest or High Resource: 8 points

An application for a large family new construction project located in a High or Highest Resource area shall disclose whether or not the project includes any Low-Income Units that satisfy the obligations of an affordable housing ordinance or development agreement with the jurisdiction in which the project will be built and, if so, the number of such units and whether the contractual 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 CTCAC/HCD Opportunity Maps in effect when the initial site control was obtained up to seven calendar years prior to the application.

- (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 six 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 multiplied by 2080 = FTE numerator; 2) FTE numerator divided by base number of bedrooms = number of required 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 one Full Time Equivalent (FTE) Service Coordinator to 600 bedrooms. 5 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 one FTE Services Specialist to 600 bedrooms. 5 points

3. Instructor-led 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

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

5. Licensed childcare. 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

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 one FTE case manager to 100 bedrooms 5 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 one FTE service coordinator or specialist to 360 bedrooms 5 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

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 childcare. 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

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: one proposed service may not receive points under two different categories, except in the case of proportionately-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.

- (5) Reserved.
- (6) Lowest Income in accordance with the table below Maximum 52 points
  - (A) The "Percent of Area Median Income" category may be used only once. For instance, 50% of Low-Income Units at 50% of Area Median Income cannot be used twice for 100% at 50% and receive 50 points, nor can 50% of Low-Income Units at 50% of Area Median Income for 25 points and 40% of Low-Income Units at 50% of Area Median Income be used for an additional 20 points. However, the "Percent of Low-Income Units" may be used multiple times. For example, 50% of Low-Income Units at 50% of Area Median Income for 25 points may be combined with another 50% of Low-Income Units at 45% of Area Median Income to achieve the maximum points. All projects must score at least 45 points in this category to be eligible for 9% Tax Credits.

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

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

Lowest Income Points Table (maximum 50 points):

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

\*Available to Rural set-aside projects only

- (B) A project that agrees to have at least ten percent (10%) of its Low-Income Units available for tenants with incomes no greater than thirty percent (30%) of area median, and to restrict the rents on those units accordingly, will receive two points in addition to other points received under this subsection. The 30% units must be spread across the various bedroom-count units, starting with the largest bedroom-count units (e.g. four bedroom units), and working down to the smaller bedroom-count units, assuring that at least 10% of the larger units are proposed at 30% of area median income. So long as the applicant meets the 10% standard project-wide, the 10% standard need not be met among all of the smaller units. The CTCAC Executive director may correct applicant errors in carrying out this largest-to-smallest unit protocol. (These points may be obtained by using the 30% section of the matrix.)

All projects, except those applying under section 10326 of these regulations, will be subject to the minimum low income percentages chosen for a period of 55 years (50 years for projects located on tribal trust land), unless they receive Federal Tax Credits only and are intended for eventual tenant homeownership, in which case they must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

- (7) Readiness to Proceed. 10 points will be available to projects that document enforceable financing commitment(s) as defined in Section 10325(f)(3) for all construction financing and demonstrate construction can commence within 180 days or 194 days of the Credit Reservation as assigned by the Executive Director and documented by the requirements below.

No later than the assigned deadline, CTCAC must receive:

- (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,
- (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.

The Executive Director shall either rescind the Tax Credit Reservation, assess negative points, or both for failure to meet the assigned due date.



If no construction lender is involved, evidence must be submitted no later than the assigned due date, after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

In the event of a federally declared emergency by the President of the United States, a state declared emergency by the Governor of the State of California, or similar event determined by the Committee, and at the sole discretion of the Executive Director, extensions may be granted.

- (8) Miscellaneous Federal and State Policies Maximum 2 points
- (A) Credit Substitution. For applicants who agree to both 1) exchange Federal Tax Credits for State Tax Credits pursuant to Section 10317(e) and 2) exchange State Tax Credits for Federal Tax Credits pursuant to Section 10317(c). 2 points
- Applicants receiving these points agree to make the exchange in a manner that yields equal equity based solely on the tax credit factors stated in the application.
- (B) Enhanced Accessibility and Visitability. Project design incorporates California Building Code Chapter 11(B) and the principles of Universal Design in at least half of the project's Low-Income Units by including:
- Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34" clear width for all doors on an accessible path.
  - Interior doors with lever hardware and 42" minimum width hallways. Fully accessible bathrooms complying with California Building Code (CBC) Chapter 11(A) and 11(B). In addition, a 30"x48" clearance parallel to and centered on the bathroom vanity.
  - Accessible kitchens with 30"x48" clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and sink)
  - Accessible master bedroom size shall be at least 120 square feet (excluding the closet), shall accommodate a queen size bed, shall provide 36" in clearance around three sides of the bed, and shall provide required accessible clearances, free of all furnishings, at bedroom and closet doors. The master bedroom closet shall be on an accessible path.
  - Wiring for audio and visual doorbells required by UFAS shall be installed.
  - Closets and balconies shall be located on an accessible route.
  - These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.
  - Applicant must commit to obtaining confirmation from a Certified Accessibility Specialist that the above requirements have been met. 2 points
- (C) Smoke Free Residence. The proposed project commits to having at least one nonsmoking building and incorporating the prohibition into the lease agreement for the affected units. If the proposed project contains only one building, the proposed project shall commit to prohibiting smoking in designated contiguous units and incorporating the prohibition into the lease agreement for the affected units. 2 points
- (D) Historic Preservation. The project proposes to use Historic Tax Credits 1 point

- (E) Revitalization Area Project. The project is located within one of the following: a Qualified Census Tract (QCT), a census tract in which at least 50% of the households have an income of less than 60% of the area median income, or a federal Promise Zone. Additionally, the development must contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 2 points
- (F) Eventual Tenant Ownership. The project proposes to make Tax Credit Units available for eventual tenant ownership and provides the information described in Section 10325(c)(6) of these regulations. 1 point
- (G) Utilizing Excess State-Owned Land: Projects located on land designated as excess state land pursuant to Executive Order N-06-19. 2 points

(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 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 affordable housing ordinance, development agreement or legally enforceable mandate that is 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 up-front 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. For new construction applications, only the vacant land value may be counted for tiebreaker credit. The value of improvements to be demolished does not qualify as a leveraged soft resource. 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 affordable housing ordinance, development agreement or legally enforceable mandate, 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 reduced for tie breaker scoring purposes by an amount equal to the off-sites not meeting the requirements noted in this paragraph.

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 five 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 five-year hold rule provided that the donor to the non-profit organization held the contributed asset for at least five years and that both the original donor and non-profit donor meet the requirements of, and are included in the certifications required by, this paragraph. The party providing the donation shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. In addition, the land shall not have been owned previously by a related party or a partner or proposed partner (unless the partner has no ownership interest and only the right to complete construction). The application shall include a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the donation is from an unrelated entity and that the unrelated entity shall not receive any benefit from a related party to the project. For new construction applications, only the vacant land value may be counted for tiebreaker credit. The value of improvements to be demolished does not qualify as a leveraged soft resource.

- (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, 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 ( $75\% + (\text{total new construction/adaptive reuse units}/200)$ ). 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 \$20,000 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 six months of the 9% component, both applicants may 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 two.
- (C) Except as provided below, a new construction Large Family housing type project (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 CTCAC/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 a project supported by affordable housing ordinances, which for purposes of this subparagraph shall mean a project in which any of the Low-Income Units satisfy the obligations of any affordable housing ordinance, development agreement or legally enforceable mandate 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 affordable housing ordinance, development agreement, or legally enforceable mandate. 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 affordable housing ordinance, development agreement or legally enforceable mandate and, if so, the number of such units and whether the affordable 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 CTCAC/HCD Opportunity Maps in effect when the initial site control was obtained up to seven calendar years prior to the application.

- (D) For Rural set aside projects applying in counties where no tax credit applications have been received within five years of the application filing date, the tiebreaker shall be increased by five percentage points.

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

- (d) Application selection for evaluation. Except where CTCAC staff determines a project to be high cost, staff shall score and rank projects as described below. Staff shall identify high-cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits. CTCAC shall calculate total eligible basis by using all project costs listed within the application unless those costs are not includable in basis under federal law as demonstrated by the shaded cells in the application sources and uses budget itself or by a letter from the development team's third-party tax professional. 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 that receives a reservation on or after January 1, 2016 may be subject to negative points if the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limit by 40%. For purposes of calculating the high-cost test at placed in service, CTCAC shall use the higher of the unadjusted threshold basis limit from application or the year the project places in services.

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

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At-Risk set-aside, and the Special Needs set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315, with the exception of the Federal Credit amount established by the Further Consolidated Appropriations Act, 2020 and the Consolidated Appropriations Act, 2021. If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round, they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to

the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.

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

Federal Credit established by the FCAA application selection. Applications for projects located in the counties designated as qualified 2017 and 2018 California disaster areas by the FCAA, FCAA Federal Credit shall only be reserved for (1) new construction projects also including projects that involve the demolition or rehabilitation of existing residential units that increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater, and adaptive re-use of non-residential structures, or (2) reconstruction or rehabilitation of an existing project located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website <https://www.treasurer.ca.gov/ctcac/>, and directly damaged by the fire, and that apply for the FCAA Federal Credit. Applications shall meet all program eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba.

Applications for projects applying for FCAA Federal Credit shall be competitively scored within the county apportionment under the system delineated in Sections 10325(c)(1) through (3), (4)(B), and (6). In the cases where applications receive the same score, the following tiebreakers shall be employed: First, a formal letter of support for the specific project from the Local Reviewing Agency (LRA) outlining how the project will contribute to the community's recovery efforts submitted in the application or received by CTCAC no later than 14 days following the application filing deadline; Second, the application with the greatest number of proposed Tax Credit Units per annual Federal Tax Credit amount requested; and Third, the application with the greatest number of proposed bedrooms within the proposed Tax Credit Units.

For projects located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website <https://www.treasurer.ca.gov/ctcac/>, applying for FCAA Federal Credit in the 2020 funding round, local approvals and zoning requirements of Section 10325(f)(4) must be evidenced to CTCAC no later than June 1, 2021. Failure to do so shall result in rescission of the Tax Credit Reservation on June 2, 2021. The deadline in this paragraph may be extended if the Executive Director finds, in his or her sole discretion, a project merits additional time due to delays directly caused by fire, war, or act of God. In considering a request, the Executive Director may consider, among other things, the length of the delay and the circumstances relating to the delay.

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



requirements of Section 10325(f)(8). Projects must receive these CDBG-DR funds prior to the CTCAC placed-in service application deadline.

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

| <b>ANNUAL FEDERAL TAX CREDIT<br/>BASE + LOST UNIT ALLOCATION</b> | <b>COUNTY</b> |
|--|---------------|
| \$40,087,453   | Butte         |
| \$16,365,940   | Sonoma        |
| \$5,630,499  | Los Angeles   |
| \$5,421,263  | Shasta        |
| \$4,975,965  | Ventura       |
| \$4,109,511  | Napa          |
| \$3,342,311  | Mendocino     |
| \$3,259,153  | Lake          |
| \$2,886,283  | Yuba          |
| \$2,816,537  | San Diego     |
| \$2,583,158  | Santa Barbara |
| \$2,580,476  | Nevada        |
| \$2,561,698  | Orange        |
| \$2,000,000  | Supplemental  |
| <b>\$98,620,247</b>  | <b>TOTAL</b>  |

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

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

At the conclusion of the funding round, if less than 10% of the total FCAA Federal Credit remains, all unallocated FCAA Federal Credit within the county allocations will be combined and available to remaining projects requesting FCAA Federal Credits, and which meet the threshold and underwriting requirements through a waiting list. The award selection will be

made from the waiting list to the counties in the order listed above. Within each county, the award selection will start with the highest-ranking project located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website <https://www.treasurer.ca.gov/ctcac/> first and continue within that county in rank order until no eligible applications remain. Subsequent to the above selection ranking, any unused FCAA Federal Credit shall be designated for projects where at least fifty percent (50%) of the Low-Income Units within the project are designated for homeless households as described in Sections 10315(b)(1) through (4) starting with the highest-ranking project pursuant to Section 10325(c) without regard to the set aside or geographic region for which the application applied.

All projects awarded FCAA Federal Credit in 2020 may return their allocation to the Committee without assessment of negative points if the formal written notification from the applicant of the return is received by the Committee no later than September 1, 2021. Any returned credits following September 1, 2021 will be made available to projects from the FCAA Federal Credit waiting list as previously stated. Any new application received for a project on the waiting list shall result in that project's removal from the waiting list.

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

Federal Credit established by the CAA application selection. Applications for projects located in the counties designated as qualified 2020 California disaster areas by the CAA, CAA Federal Credit shall only be reserved for (1) new construction projects also including projects that involve the demolition or rehabilitation of existing residential units that increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater, and adaptive re-use of nonresidential structures, or (2) reconstruction or rehabilitation of an existing project located within a CAA or FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website <https://www.treasurer.ca.gov/ctcac/>, and directly damaged by the fire, and that apply for the CAA Federal Credit. Applications shall meet all program eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Fresno, Lake, Lassen, Los Angeles, Madera, Mendocino, Monterey, Napa, San Bernardino, San Diego, San Mateo, Santa Clara, Santa Cruz, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Trinity, Tulare, and Yolo.

Applications for projects applying for CAA Federal Credit shall be competitively scored within the county/regional apportionment under the system delineated in Sections 10325(c)(1) through (8). At the sole discretion of the Executive Director, an extension of up to 90 days may be granted to the 180/194-day readiness deadline. In the cases where applications receive the same score, the following tiebreakers shall be employed: First, projects located within a CAA or FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website <https://www.treasurer.ca.gov/ctcac/>, and not opposed or strongly opposed by the Local Reviewing Agency (LRA); Second, the presence of an enforceable financing commitment to the specific project of at least \$1,000,000 from the State of California Department of Housing and Community Development ("HCD") and assuming a 4% tax credit financing structure such that the Federal Tax Credit request divided by the total eligible basis does not exceed 7.5%; and Third, the application with the greatest number of proposed bedroom-adjusted Tax Credit Units per annual Federal Tax Credit amount requested. To calculate the bedroom-adjusted units, each Tax Credit Unit will be multiplied by the adjustment factor for units of that bedroom count. A project's adjusted units shall be the sum of each of these products. The adjustment factors shall be:

- .9 for a studio unit.
- 1 for a one-bedroom unit.
- 1.25 for a two-bedroom unit.
- 1.5 for a three-bedroom unit up to no more than 30% of the total units, then such additional units shall be counted as 2-bedroom units.
- 1.75 for a four-bedroom or larger unit up to no more than 10% of the total units, then such additional units shall be counted as 2-bedroom units.

The deferred-payment financing commitment requirements of Section 10325(f)(8) are modified for CAA Federal Credit applications with HCD Community Development Block Grant – Disaster Recovery (CDBG-DR) Multifamily financing as follows: a letter from an HCD identified jurisdiction stating the intent to commit a portion of that jurisdiction’s HCD allocation. The letter must provide the dollar amount and the estimated date which the jurisdiction will provide CTCAC a written commitment in compliance with the requirements of Section 10325(f)(8). Projects must receive these CDBG-DR funds prior to the CTCAC placed-in service application deadline. CAA Federal Credit shall be made available starting in the 2021 second funding round in the amounts shown below:

| <b>ANNUAL FEDERAL TAX CREDIT BASE + LOST UNIT ALLOCATION</b> | <b>COUNTY/ REGION</b>  |
|--|--|
| \$17,261,698   | Butte County   |
| \$12,058,293   | Santa Cruz County  |
| \$9,395,477  | Napa County  |
| \$8,714,494  | North Region (San Mateo, Santa Clara, Shasta, Solano, Stanislaus, and Yolo Counties)         |
| \$8,609,728  | Fresno County  |
| \$8,408,925  | Sonoma County  |
| \$7,553,332  | South Region (Madera, Monterey, Los Angeles, San Bernardino, San Diego, and Tulare Counties) |
| \$6,741,391  | Rural (Lake, Lassen, Mendocino, Siskiyou, & Trinity Counties)                                |
| \$2,000,000  | Supplemental   |
| <b>\$80,743,338</b>  | <b>TOTAL</b>   |

The funding order shall start with applications selected in rank order within each county/region in the order above. For an application to receive a CAA Federal Credit reservation, there shall be at least one dollar of Credit not yet reserved in the county/region allocation so long as the county/region’s last award does not cause the county/region aggregate award amount to exceed 105 percent (105%) of the amount originally available for that county/region. CAA Federal Credit allocated in excess of the county/region’s allocation by the application of the 105% rule described above will be deducted from the Supplemental allocation. If the last application selected requires credits in excess of 105% of the county/region’s allocation, that application will not be funded. Any CAA Federal Credit remaining in a county/region apportionment at the end of a funding round will be available in the subsequent round. For the final funding round of 2022 for CAA Federal Credits, if the aggregate amount of Federal Credit requested does not exceed the amount available, the 105% county limit above shall not apply. If all CAA Federal Credit in a funding round has been awarded, all remaining CAA applications shall compete in the applicable set-aside or geographic region, provided the application meets the requirements of the set-aside or geographic region, and the requirements of Section 10325.

At the conclusion of the funding round, if less than 10% of the total CAA Federal Credit remains, all unallocated CAA Federal Credit within the county/region allocations will be combined and available to remaining projects requesting CAA Federal Credits, and which meet the threshold and underwriting requirements through a waiting list. The award

selection will be made from the waiting list to the counties in order number of lost homes highest to lowest. Within each county, the award selection will start with the highest-ranking project located within a CAA or FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website <https://www.treasurer.ca.gov/ctcac/> first and continue within that county in rank order until no eligible applications remain.

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

- (2) Geographic Areas selection. Tax Credits remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round. The funding order shall be followed by funding the highest scoring application, if any, in each of the regions. After each region has had the opportunity to fund one project, CTCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. Projects will be funded in order of their rank so long as the region's aggregate award amount does not exceed 125 percent (125%) of the amount originally available for that region in that funding round. Credits allocated in excess of the Geographic Apportionments by the application of the 125% rule described above will be drawn from the second-round apportionments during the first round, and from the Supplemental Set Aside during the second round. However, all Credits drawn from the Supplemental Set Aside will be deducted from the Apportionment in the subsequent round.

When the highest-ranking project or next highest-ranking project(s) do not meet the 125% rule then the Committee shall skip over that project to fund a project requesting a smaller credit award that does not exceed the 125% requirement. However, no project may be funded by this skipping process unless it (a) has a point score equal to that of the first project skipped, and (b) has a final tiebreaker score equal to at least 75% of the first skipped project's final tiebreaker score.

To the extent that there is a positive balance remaining in a geographic area after a funding round, such amount will be added to the amount available in that geographic area in the subsequent funding round. Similarly, to the extent that there is a deficit in a geographic area after a funding round, such amount will be subtracted from the funds available for reservation in the next funding round. Any unused credit from the geographic areas in the second funding round will be added back into the Supplemental Set-Aside. Tax credits reserved in all geographic areas shall be counted within the housing type goals.

- (e) Application Evaluation. To receive a reservation of Tax Credits, applications selected pursuant to subsection (d) of this Section, shall be evaluated, pursuant to IRC Section 42, H & S Code Sections 50199.4 through 50199.22, R & T Code Sections 12206, 17058, and 23610.5, and these regulations to determine if; eligible, by meeting all program eligibility requirements; complete, which includes meeting all basic threshold and additional threshold requirements; and financially feasible. In scoring and evaluating project applications, the Executive Director shall have the discretion to interpret the intent of these regulations and to score and evaluate applications accordingly. Applicants understand that there is no "right" to receive Tax Credits under these regulations. The Committee shall make available to the general public a written explanation for any allocation of Tax Credits that is not made in accordance with the established priorities and selection criteria of these Regulations.
- (f) Basic Thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements, among other tests. All basic thresholds shall be met at

the time the application is filed through a presentation of conclusive, documented evidence to the Executive Director's satisfaction.

- (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located, 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.
- (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.
- (3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:
- (A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;
  - (B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;
  - (C) have a term of at least fifteen (15) years if it is permanent financing;
  - (D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,
  - (E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and
  - (F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds after a Reservation of Tax Credits may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique and may not be substituted for or foregone if committed to within the application. After a Reservation of Tax Credits an applicant may substitute Affordable Housing Program (AHP) funds provided pursuant to a program of the Federal Home Loan Bank for any other source.

Projects awarded under a Nonprofit set-aside homeless assistance priority or a Rural set-aside RHS or HOME apportionment pursuant to a funding commitment may not substitute other funds for this commitment after application to CTCAC. Failure to retain the funding may result in an award of negative points.

For projects using FHA-insured debt, the submission of a letter from a Multifamily Accelerated Processing (MAP) lender stating that they have underwritten the project and that it meets the requirements for submittal of a multifamily accelerated processing firm commitment application to HUD.

- (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. 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.

- (5) Financial feasibility. Applicants shall provide the financing plan for the proposed project and shall demonstrate the proposed project is financially feasible and viable as a qualified low income housing project throughout the extended use period. A fifteen-year pro forma of all revenue and expense projections, starting as of the planned placed in service date for new construction projects, and as of the rehabilitation completion date for acquisition/rehabilitation projects, is required. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327 of these regulations.
- (6) Sponsor characteristics. Applicants shall provide evidence that proposed project participants, as a Development Team, possess all of the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee may conduct an investigation into an applicant's background that it deems necessary, in its sole discretion, and may determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional Development Team members need be added to appropriately perform all program requirements.
- (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 applicable Building Energy Efficiency Standards (Energy Code, California Code of Regulations, Title 24) adopted by the California Energy Commission (CEC) as well as maintaining the installed energy efficiency and sustainability features' quality when replacing each of the following listed systems or materials:
  - (A) Energy Efficiency. 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 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.

- (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 primed.
- (E) Appliances. All Low-Income Units shall provide a refrigerator. All non-SRO Low-Income Units shall provide a 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\\_childrenSchools.aspx](http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSchools.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 on-site 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 on-site 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 fifteen percent (15%) of the Low-Income Units with mobility features, as defined in CBC 11B 809.2 through 11B 809.4, and a minimum of ten percent (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 and not in conflict with federal or state law. 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 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.

- (8) Deferred-payment financing, residual receipts payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, residual receipts payment financing, grants and subsidies shown in the application are “committed” at the time of application.
- (A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant’s acceptance in the case of privately committed loans.
  - (B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Tax Credits.
  - (C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.
  - (D) Substantiating evidence of the value of local fee waivers, exemptions or land write-downs is required.
  - (E) Substitution or an increase of such funds after a Reservation of Tax Credits may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. AHP funds may be substituted for any funding source after a Reservation of Tax Credits if an AHP commitment is obtained after the CTCAC application due date.
  - (F) A project is exempt from the provisions of this subsection if it has funds anticipated and publicly published with provisional awardee names but not yet officially awarded in the capacity required above with the following entities that administer multifamily

financing programs: the Department of Housing and Community Development (HCD); Strategic Growth Council (SGC); Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; United States Department of Agriculture (USDA) Rural Housing Service (RHS) Section 514, 515 or 538 programs; the Department of Housing and Urban Development (HUD); a Reservation of HOME funds from the applicable participating jurisdiction.

- (9) Project size and credit amount limitations. Project size limitations shall apply to all applications filed, pursuant to this Section.
- (A) Rural set-aside applications shall be limited to a maximum of eighty (80) Low-Income Units.
- Rehabilitation proposals are excepted from this limitation. The Executive Director may grant a waiver if she or he determines that the rural community is unusual in size or proximity to a nearby urban center, and that exceptional demand exists within the market area.
- (B) The total "units" in one or more separate applications, filed by Related Parties, proposing projects within one-fourth (1/4) mile of one another, filed at any time within a twelve (12) month period, shall, for purposes of this subsection be subject to the above project size limitations, except when specifically waived by the Executive Director in unusual circumstances such as HOPE VI or large neighborhood redevelopment proposals pursuant to a specific neighborhood plan. HOPE VI and other large projects will generally be directed towards the tax-exempt bond program
- (C) The maximum annual Federal Tax Credits available for award to any one project in any funding round shall not exceed Two Million Five Hundred Thousand (\$2,500,000) Dollars.
- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of \$40,000 in hard construction costs per unit or 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).
- (11) (A) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.
- (B) If the regulatory agreement for an existing tax credit project applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) contains a requirement to provide service amenities, even if that requirement has expired, the project shall provide a similar or greater level of services for a period of at least 15 years under the new regulatory agreement. A project obtaining maximum CTCAC points for services shall be deemed to have met this requirement. If the project has exhibited cash flow of less than \$20,000 for at least each of the last three years, will have no hard debt and fail to break even in year 15 with services, or within the next five years will lose a rental or operating subsidy that was factored into the

project's initial feasibility, the Executive Director may alter this requirement, provided that the service expenditures shall be the maximum that project feasibility allows.

- (C) For existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication), the pre-rehabilitation reserve study in the CNA shall demonstrate a rehabilitation need of at least \$5,000 per unit over the first three years. Projects for which the Executive Director has waived the requirements of Section 10320(b)(4) and projects with ten years or less remaining on the CTCAC regulatory agreement are exempt from this requirement.
  - (D) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall not have any uncorrected compliance violations relating to over-income tenants or rent overcharges and shall not have any unpaid fines pursuant to Section 10337(f).
- (12) CTCAC shall not accept an application from any party that is disqualified from applying to CDLAC.
- (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.

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.

- (g) Additional Threshold Requirements. To qualify for Tax Credits as a Housing Type as described in Section 10315(h), to receive points as a housing type, or to be considered a "complete" application, the application shall meet the following additional threshold requirements. A scattered site more than 1 mile from the nearest other site shall meet the requirements related to common areas, play/recreational facilities, and laundry facilities independently.
- (1) Large Family projects. To be considered large family housing, the application shall meet the following additional threshold requirements.
    - (A) At least twenty-five percent (25%) of the Low-Income Units in the project shall be three-bedroom or larger units, and for projects that receive land use entitlements on or after January 1, 2016 at least an additional twenty-five percent (25%) of the Low-Income Units in the project shall be two-bedroom or larger units, except that for projects qualifying for and applying under the At-risk set-aside, the Executive Director may grant a waiver from this requirement if the applicant shows that it would be cost prohibitive to comply;
    - (B) One-bedroom 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 and four-bedroom Low-Income Units shall include at least 1,100 square feet of living space, unless these restrictions conflict with the requirements of another governmental agency to which the project is subject to approval. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director prior to the application submission. Bedrooms shall be large enough to accommodate two persons each and living areas shall be adequately sized to accommodate families based on two persons per bedroom;

- (C) Four-bedroom and larger Low-Income Units shall have a minimum of two full bathrooms;
- (D) The project shall provide play/recreational facilities suitable and available to all tenants, including children of all ages, except for small developments of 20 units or fewer. Play/recreational area for children ages 2-12 years shall be outdoors, and the minimum square footage is 600 square feet and must include an accessible entrance point. For projects with more than 100 total units this square footage shall be increased by 5 square feet for each additional unit. Outdoor play/recreational space must be equipped with reasonable play equipment for the size of the project, and the surface must be natural or synthetic protective material. The outdoor play area of an onsite day care center may qualify as a play area for children 2-12 years for purposes of this section if it is available to children when the day care center is not open. The application must demonstrate the availability of play or recreational facilities suitable for children ages 13-17. Square footage of a community building cannot be included for the play/recreational area for children ages 13-17 unless that square footage is accessible to minors at all times between 6 a.m. and 10 p.m. except when the area is reserved for service amenities or special events.

Rehabilitation projects with existing outdoor play/recreational facilities may request a waiver of the minimum square footage requirement if outdoor play/recreational facilities of a reasonable size and type currently exist onsite. An existing project without outdoor play/recreational facilities may request a waiver from this requirement if the site is classified as a non-conforming use under its respective current zoning designation and the addition of the new facilities would trigger an entitlement process. The written waiver must be approved prior to the application submission.

The Executive Director has the sole discretion to waive this requirement upon demonstration of nearby, readily accessible, recreational facilities;

- (E) The project shall provide an appropriately sized common areas. 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 1000 square feet; projects from 61 to 100 total units, at least 1400 square feet; projects over 100 total units, at least 1800 square feet. Small developments of 20 units or fewer are exempt from this requirement. At the discretion of the Executive Director, these limits may be waived for rehabilitation projects with existing common area prior to the application submission. An existing project without common area may request a waiver from this requirement if the site is classified as a non-conforming use under its respective current zoning designation and the addition of the new facilities would trigger an entitlement process;
- (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
- (G) Adequate laundry facilities shall be available on the project premises, with at least one washer and one dryer for every 10 units in the project. This requirement shall be reduced by 25% for projects where all units in the project 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 in the project;

- (H) Dishwashers shall be provided in all Low-Income Units except for studio and SRO units. A waiver for one and two bedroom units in rehabilitation projects may be granted at the sole discretion of the Executive Director due to planning or financial impracticality;
  - (I) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).
- (2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements;
- (A) All units shall be restricted to households eligible under applicable provisions of California Civil Code Section 51.3 and the federal Fair Housing Act, 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) 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 at least one washer and one dryer for every 15 units in the project. This requirement shall be reduced by 25% for projects where all units in the project 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 in the project;
  - (J) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).
- (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) The units/building configurations (including community space) shall meet the specific needs of the population, including kitchen needs for SRO units without full kitchens;
  - (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;
  - (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;
  - (E) Adequate laundry facilities shall be available on the project premises, with at least one washer and one dryer for every 15 units in the project. This requirement shall

be reduced by 25% for projects where all units in the project include hook-ups for washers and dryers;

- (F) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land);
  - (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;
  - (H) SRO units (as defined in Section 10302) 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;
  - (I) A signed contract or memorandum of understanding between the developer and the service provider must accompany the Tax Credit application; and
  - (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.
  - (K) If the project will be operated as senior housing 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).
  - (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).
- (4) At-risk projects. To be considered At-risk housing, the application shall meet the requirements of R & T Code subsection 17058(c)(4), except as further defined in subsection (B)(i) below, as well as the following additional threshold requirements, and other requirements as outlined in this subsection:
- (A) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land); and
  - (B) Project application eligibility criteria include:
    - (i) before applying for Tax Credits, the project must meet the At-risk eligibility requirements under the terms of applicable federal and state law as verified by a third party legal opinion, except that a project that has been acquired by a qualified nonprofit organization within the past five years of the date of



application with interim financing in order to preserve its affordability and that meets all other requirements of this section, shall be eligible to be considered an "at-risk" project under these regulations. A project application will not qualify in this category unless it is determined by the Committee that the project is at-risk of losing affordability on at least 50% of the restricted units due to market or other conditions. A project will not be deemed at-risk of losing affordability if the project is subject to a rent restriction with a remaining term of at least five years that restricts incomes and rents on the restricted units to an average no greater than 60% of area median income;

- (ii) the project, as verified by a third-party legal opinion unless the exception in B(i) above applies, 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 program 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;
- (iii) as of the date of application filing, the applicant shall have sought available federal incentives to continue the project as low-income housing, including, direct loans, loan forgiveness, grants, rental subsidies, renewal of existing rental subsidy contracts, etc.;
- (iv) subsidy contract expiration, mortgage prepayment eligibility, or the expiration of Housing Tax Credit restrictions, as verified by a third party legal opinion, shall occur no later than five calendar years after the year in which the application is filed, except in cases where a qualified nonprofit organization acquired the property within the terms of (i) above and would otherwise meet this condition but for: 1) long-term use restrictions imposed by public agencies as a condition of their acquisition financing; or 2) HAP contract renewals secured by the qualified nonprofit organization for the maximum term available subsequent to acquisition;
- (v) the applicant agrees to renew all project based rental subsidies (such as Section 8 HAP or Section 521 rental assistance contracts) for the maximum term available and shall seek additional renewals throughout the project's useful life, if applicable;
- (vi) at least seventy percent (70%) of project tenants shall, at the time of application, have incomes at or below sixty percent (60%) of area median income;

- (vii) the gap between total development costs (excluding developer fee), and all loans and grants to the project (excluding Tax Credit proceeds) must be greater than fifteen percent (15%) of total development costs; and,
  - (viii) a public agency shall provide direct or indirect long-term financial support of at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost.
- (5) SRO projects. To be considered Single Room Occupancy (SRO) housing, the application shall meet the following additional threshold requirements:
- (A) Average targeted income is no more than forty percent (40%) of the area median income;
  - (B) At least 90% of all units shall be SRO units (as defined Section 10302). SRO units are efficiency or studio 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 units shall be 200 square feet, and the size shall not exceed 500 square feet. These bedroom size requirements may be waived for rehabilitation projects, at the discretion of the Executive Director;
  - (C) At least one bath shall be provided for every eight units;
  - (D) If the project does not have a rental subsidy committed, the application shall demonstrate that the target population can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that for those receiving General Assistance are willing to pay rent at the level proposed;
  - (E) The project configuration, including community space and kitchen facilities, shall meet the needs of the population, and comply with Section 10325(f)(7)(E);
  - (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total development cost;
  - (G) Adequate laundry facilities shall be available on the project premises, with at least one washer and one dryer for every 15 units in the project. This requirement shall be reduced by 25% for projects where all units in the project include hook-ups for washers and dryers;
  - (H) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land);
  - (I) A ten percent (10%) vacancy rate shall be used unless otherwise approved by the Executive Director. Justification of a lower rate shall be included;
  - (J) New construction projects for seniors shall not qualify as SRO housing.

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

Staff shall score, rank and evaluate applications on the Waiting List and make selections from the Waiting List as follows:

- (1) If Credits are fully returned from projects originally funded under Set-Asides or Geographic Apportionments, applications qualifying under the same Set-Aside or Geographic Region will be selected in the order of their ranking. With respect to such a Set-Aside, one or more projects shall receive a reservation until all Credits in a Set-Aside are reserved. With respect to such Geographic Regions in which credits remain available, projects will be funded in order of their rank so long as the region's last award does not cause the region's aggregate award amount to exceed 125 percent (125%) of the amount originally available for that region in that funding round. When the next highest-ranking project does not meet the 125% rule, the Committee shall not fund a project requesting a smaller credit award.
  - (2) Next, Waiting List projects in Set Asides or Geographic Apportionments that are not yet fully subscribed will be selected from the Waiting List for reservations. These will be selected first from the Set Asides in order of their funding sequence, and then from the Geographic Apportionments in the order of the highest to the lowest percentage by which each Apportionment is undersubscribed. (This will be calculated by dividing the unreserved Tax Credits in the apportionment by the total Apportionment.)
  - (3) Finally, after all Set-Asides and Geographic Apportionments for the current year have been achieved, or if no further projects are available for such reservations, the unallocated Tax Credits will be used for projects selected from the Waiting List, in the order of their score and tie breaker performance ranking, without regard to Set-Aside or Geographic Region. All Waiting List project reservations, except for Rural projects, will be counted toward the projects' Geographic Apportionments.
  - (4) If there are not sufficient federal Tax Credits to fully fund the next ranked application on the Waiting List, a reservation of all remaining federal Tax Credits and a binding commitment of the following year federal Tax Credits may be made to that application.
- (i) Carry forward of Tax Credits. Pursuant to Federal and state statutes, the Committee may carry forward any unused Tax Credits or Tax Credits returned to the Committee for allocation in the next calendar year.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10326. Application Selection Criteria - Tax-exempt bond applications**

- (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. Those projects requesting State Tax Credits pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will also be 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.
- (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) Subject to conditions described in these Regulations, reservations of Federal and State Tax Credits shall be made for those applications that receive a bond allocation from CDLAC until the established State Tax Credit allocation amount is exhausted. If the last application requires more State Tax Credits than remain for the calendar year, that application will not be funded, and the remaining credits will be either funded through the Waiting List or carried forward into the next calendar year. If there is not sufficient State Tax Credits to allocate to applications recommended for tax-exempt bonds by CDLAC, the State Tax Credits will be allocated based on ranking within the CDLAC pools and set asides in the following order:
  - (A) Black, Indigenous, or Other People of Color (BIPOC) Project Pool;
  - (B) Rural Project Pool;
  - (C) New Construction Pool, Homeless Projects Set Aside;
  - (D) New Construction Pool, ELI/VLI Project Set Aside;
  - (E) New Construction Pool, Mixed-Income Project Set Aside; and
  - (F) All remaining New Construction Pool Projects

- (2) For State Tax Credits pursuant to Section 10317(j) of these Regulations, 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 (MIP) will be accepted in any funding round. The amount allocated for CalHFA MIP may be reduced upon agreement of the Executive Directors of CalHFA and CTCAC.

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.

- (c) Application review period. The Committee may require up to sixty (60) days to review an application, and an additional thirty (30) days to consider the application for a reservation of Tax Credits. Applicants must deliver applications no less than ninety (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 CTCAC.

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.

- (d) Issuer determination of Credit. The issuer of the bonds may determine the Federal Tax Credit amount, with said determination verified by the Committee and submitted with the application. The issuer may request the Committee determine the Credit amount by including such request in the application.
- (e) Additional application requirements. Applications submitted pursuant to this Section shall provide the following additional information:
  - (1) the name, phone number and contact person of the bond issuer; and,
  - (2) verification provided by the bond issuer of the availability of the bond financing, the actual or estimated bond issuance date, and the actual or estimated percentage of aggregate basis (including land) financed or to be financed by the bonds, and a certification provided by a third-party tax professional as to the expected or actual aggregate basis (including land) financed by the proceeds of tax-exempt bonds;

- (3) the name, phone number and contact person of any entity providing credit enhancement and the type of enhancement provided.
- (f) Application evaluation. To receive a reservation of Tax Credits, applications submitted under this Section shall be evaluated, pursuant to IRC Section 42, H & S Code Sections 50199.4 through 50199.22, R & T Code Sections 12206, 17058, and 23610.5, and these regulations to determine if: eligible, by meeting all program eligibility requirements; complete, which includes meeting all basic threshold requirements; and financially feasible.
- (g) Basic thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements. All basic thresholds shall be met at the time the application is filed through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. Further, in order to be eligible to be considered for Tax Credits under these regulations, the general partner(s) and management companies must not have any significant outstanding noncompliance matters relating to the tenant files or physical conditions at any Tax Credit properties in California, and any application submitted by an applicant with significant outstanding compliance matters will not be considered until the Committee has received evidence satisfactory to it that those matters have been resolved.
  - (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. Evidence shall be conclusive and include the most recent documentation available (prepared within one year of the application date). Evidence of housing need and demand shall include:
    - (A) evidence of public housing waiting lists by bedroom size and tenant type, if available, from the local housing authority; and
    - (B) a market study as described in Section 10322(h)(10) of these regulations, which provides evidence that the items set forth in Section 10325(f)(1)(B) have been met for the proposed tax-exempt bond project.

Market studies will be assessed thoroughly. Meeting the requirements of Section 10325(f)(1)(B) is essential, but because other elements of the market study will also be considered, meeting those requirements in Section 10325(f)(1)(B) will not in itself show adequate need and demand for a proposed project or ensure approval of a given project.

- (2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission as set forth in Section 10325(f)(2).
- (3) Local approvals and Zoning. Applicants shall provide evidence 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. Applicants requesting competitive state credits shall provide this evidence at the time the application is filed, except that an appeal period may run 30 days beyond the application due date, in which case 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, conditional use permits. Notwithstanding the first sentence of this subsection, applicants need not have obtained design review approval at the time of application. The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction.
- (4) Financial feasibility. Applicants shall provide the financing plan for the proposed project consistent with Section 10325(f)(5).

- (5) Sponsor characteristics. Applicants shall provide evidence that as a Development Team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Tax Credit Programs, or if additional Development Team members need be added to appropriately perform all program requirements. General partners and management companies lacking documented experience with Section 42 requirements using the minimum scoring standards at Section 10325(c)(1)(A) and (B) shall be required to complete training as prescribed by CTCAC per Section 10325(c)(1) prior to a project's placing in service. The minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(1). Applicants need not submit the third-party public accountant certification that the projects have maintained a positive operating cash flow.

The State Tax Credit allocation pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code received by individuals, entities, affiliates, and related entities is limited to no more than thirty-three percent (33%) of any amount established per application review period as described in Section 10326(c) of these Regulations. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint control over an entity, having significant influence over an entity, or participating as key management of an entity. Related entity disclosure is required at the time of application. This 33% limit is not applicable for reservations of State Tax Credits made after the month of May in each calendar year.

- (6) Minimum construction standards. Applicants shall adhere to minimum construction standards as set forth in Section 10325(f)(7).
- (7) Minimum Rehabilitation Project Costs. Projects involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:
- (A) \$15,000 in hard construction costs per unit; or
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).
- (8) (A) Existing tax credit projects applying for additional tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.
- (B) If the regulatory agreement for an existing tax credit project applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) contains a requirement to provide service amenities, even if that requirement has expired, the project shall provide a similar or greater level of services for a period of at least 15 years under the new regulatory agreement. A project obtaining maximum CDLAC points for services shall be deemed to have met this requirement. If the

project has exhibited cash flow of less than \$20,000 for at least each of the last three years, has no hard debt and fails to break even in year 15 with services, or within the next five years will lose a rental or operation subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the service expenditures shall be the maximum that project feasibility allows.

- (C) For existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication), the pre-rehabilitation reserve study in the CNA shall demonstrate a rehabilitation need of at least \$5,000 per unit over the first three years. Projects for which the Executive Director has waived the requirements of Section 10320(b)(4) and projects with ten years or less remaining on the CTCAC regulatory agreement are exempt from this requirement.
- (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. Projects electing the average income federal set-aside must choose targeting in 10% increments of Area Median Income (i.e. 20% AMI, 30% AMI, 40% AMI, etc.).

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 60% AMI for non-competitive projects or 50% AMI for competitive projects.

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.

- (h) Reserved.
- (i) Tax-exempt bond reservations. Reservations of Tax Credits shall be subject to conditions as described in this Section and applicable statutes. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the reservation fee described in Section 10335 and an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant of the reservation.
- (j) Additional conditions on reservations. The following additional conditions shall apply to reservations of Tax Credits pursuant to this Section:
  - (1) Bonds issued. Bonds shall be issued within the time limit specified by CDLAC, if applicable; and,
  - (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.
  - (3) Projects proposing the rehabilitation of existing structures shall provide CTCAC with an updated development timetable by December 31 of the year following the year the project received its reservation of Tax Credits.
    - (i) The report shall include the actual placed-in-service date or the anticipated placed-in-service date for the last building in the project and the date the project achieved full occupancy. The report shall detail the causes for any change from the original date.

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

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

- (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.
- (k) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by Section 10322(i).

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10327. Financial Feasibility and Determination of Credit Amounts**

- (a) General. Applicants shall demonstrate that the proposed project is financially feasible as a qualified low-income housing project. Development and operational costs shall be reasonable and within limits established by the Committee, and the Committee may adjust these costs and any corresponding basis at any time prior to issuance of tax forms. Approved sources of funds shall be sufficient to cover approved uses of funds, except that initial application errors resulting in a shortage of sources up to the higher of \$100,000 or 50% of the contingency line item shall be deemed covered by the contingency line item. If it is determined that sources of funds are insufficient, an application shall be deemed not to have met basic threshold requirements and shall be considered incomplete. Following its initial and subsequent feasibility determinations, the Committee may determine a lesser amount of Tax Credits for which the proposed project is eligible, pursuant to the requirements herein, and may rescind a reservation or allocation of Tax Credits in the event that the maximum amount of Tax Credits achievable is insufficient for financial feasibility.
- (b) Limitation on determination. A Committee determination of financial feasibility in no way warrants to any applicant, investor, lender or others that the proposed project is, in fact, feasible.
- (c) Reasonable cost determination. IRC Section 42(m) requires that the housing Credit dollar amount allocated to a project not exceed the amount the housing Credit agency determines is necessary for the financial feasibility of the project. The following standards shall apply:
  - (1) Builder overhead, profit and general requirements. An overall cost limitation of fourteen percent (14%) of the cost of construction shall apply to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of builder overhead and profit, the cost of construction includes offsite improvements, demolition and site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages. Project developers shall not enter into fixed-price contracts that do not account for these restrictions and shall disclose any payments for services from the builder to the developer.



- (2) Developer fee.
- (A) The maximum developer fee that may be included in project costs and eligible basis for 9% competitive credit new construction, rehabilitation only, or adaptive reuse applications applying under Section 10325 of these regulations is the lesser of 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 or two million two hundred thousand (\$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 lesser of 15% of the project's unadjusted eligible construction related basis plus 5% of the project's unadjusted eligible acquisition basis and 15% for the basis for non-residential costs included in the project allocated on a pro rata basis or two million two hundred thousand (\$2,200,000) dollars.
- (B) For 4% credit 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, rehabilitation only, or adaptive reuse projects, the maximum developer fee is the sum of 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 \$20,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.
- (ii) For acquisition/rehabilitation projects, the maximum developer fee is 15% of the unadjusted eligible construction related basis and 5% 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 \$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 \$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, the developer fee in cost and in basis shall not be increased once established by a reservation of Tax Credits but may be decreased in the event of a modification in basis. 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 cases it is increased, the entire increase shall be additionally deferred or contributed as equity to the project. The maximum developer fees above apply to projects developed as multiple simultaneous phases using the same credit type: (2)(A) applies to all simultaneous phases using all 9% credits and (2)(B) above applies to all simultaneous phases using all 4% credits. 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, unless waived by the Executive Director, "simultaneous" refers to projects consisting of a single

building, or projects on the same parcel or on parcels within  $\frac{1}{4}$  mile of each other and with construction start dates within six months of each other, or completion dates that are within six months of each other.

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

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%).

- (E) Black, Indigenous, or Other People of Color (BIPOC). For projects that qualify for general partner experience pursuant to Section 5230(f)(1)(B) of the CDLAC Regulations, the 15% of project's unadjusted eligible construction related basis stated in Section 10327(c)(2)(B) shall be increased to 20% of the project's unadjusted eligible construction related basis and the two million five hundred thousand (\$2,500,000) dollars in subsection (c)(2)(B) above, is increased to three million (\$3,000,000) dollars.
- (3) Syndication expenses. A cost limitation on syndication expenses, excluding bridge loan costs, shall be twenty percent (20%) of the gross syndication proceeds, if the sale of Tax Credits is through a public offering or private Securities and Commission Regulation D offering, and ten percent (10%) of the gross syndication proceeds, if the sale is through a private offering. The Executive Director may allow exceptions to the above limitation, in amounts not to exceed twenty-four percent (24%) for public offerings and private Securities and Exchange Commission Regulation D offerings, and fifteen percent (15%) for private offerings, should the following circumstances be present: smaller than average project size; complex financing structure due to multiple sources; complex land lease or ownership structure; higher than average investor yield requirements, due to higher than average investor risk; and, little or no anticipated project cash allowing lower-than-market investor returns. Syndication costs cannot be included in eligible basis.
- (4) Net syndication proceeds. The Executive Director shall evaluate the net syndication proceeds to ensure that project sources do not exceed uses and that the sale of Tax Credits generates proceeds equivalent to amounts paid in comparable syndication raises. The Executive Director shall determine the minimum tax credit factor to be used in all applications prior to the beginning of a funding cycle for projects applying under Section 10325 for both Federal and State Tax Credits. The minimum tax credit factor for applications made under Section 10326 shall be adjusted annually based on current market conditions.
- (5) Threshold Basis Limits. At application, the Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Tax Credits to amounts published on its website in effect at the time of application and in accordance with the Threshold Basis Limit definition in Section 10302 of these regulations. At placed in service, the Committee shall limit the unadjusted eligible basis amount to the higher of the amount published on its website in effect at the time of application or in effect for the year the project places in service.

Exceptions to limits.

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

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 ten percent (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.

(B) A further increase of up to ten percent (10%) in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that include one or more of the following energy efficiency/resource conservation/indoor air quality items:

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

renewable generation used to calculate each basis increase does not overlap. Five percent (5%)

- (2) Project shall have onsite renewable generation estimated to produce 75 percent (75%) or more of annual common area electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 75% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (1) only if the renewable generation used to calculate each basis increase does not overlap. Two percent (2%)
- (3) Newly constructed project buildings shall be 15% more energy efficient than the applicable Building Energy Efficiency Standards (Energy Code, California Code of Regulations, Title 24) for energy efficiency alone (not counting solar), except that if the local building department has determined that building permit applications submitted on or before December 31, 2019 are complete, then newly constructed project buildings shall be fifteen percent (15%) or more energy efficient than the 2016 Energy Efficiency Standards (California Code of Regulations, Title 24). Four percent (4%)
- (4) Rehabilitated project buildings shall have eighty percent (80%) decrease in estimated TDV energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the appropriate performance module of CEC approved software. Four percent (4%)
- (5) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens) or irrigate with reclaimed water, grey water, or rainwater in an amount that annually equals or exceeds 20,000 gallons or 300 gallons per unit, whichever is less. One percent (1%)
- (6) Community Gardens of at least 60 square feet per unit. Permanent site improvements that provide a viable growing space within the project including solar access, fencing, watering systems, secure storage space for tools, and pedestrian access. One percent (1%)
- (7) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all kitchens, living rooms, and bathrooms (where no VOC adhesives or backing is also used). One percent (1%)
- (8) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all interior floor space other than units (where no VOC adhesives or backing is also used). Two percent (2%)
- (9) For new construction projects, meet all requirements of the U.S. Environmental Protection Agency Indoor Air Plus Program. Two percent (2%)

Compliance and Verification: For placed-in-service applications, in order to receive the increase to the basis limit, the application shall contain a certification from a HERS, GreenPoint, NGBS Green Verifier, PHIUS, Passive House, or Living Building Challenge Rater, or from a LEED for Homes Green Rater verifying that item(s) listed

above have been incorporated into the project, except that items (5) through (8) may be verified by the project architect. For item (1), the applicant must submit a 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 monthly scalars to be determined by CTCAC, for purposes of determining the solar values to be input into the CUAC calculator. For item (2), the energy analyst shall provide documentation of the load serving the common area and the output calculations or the photovoltaic generation. For items (3) and (4), the applicant must submit a Sustainable Building Method Workbook with the original application and the placed-in-service application. For item (5), the Rater, architect, landscape architect, or water system engineer shall certify that 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. Failure to incorporate the features, or to submit the appropriate documentation may result in a reduction in credits awarded and/or an award of negative points.

- (C) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's Low-Income and Market Rate Units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the project's Low-Income and Market Rate Units that will be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years (50 years for projects located on tribal trust land).
- (D) Projects requiring seismic upgrading of existing structures, and/or projects requiring on-site toxic or other environmental mitigation may be permitted an increase in basis limit equal to the lesser of the amount of costs associated with the seismic upgrading or one-site environmental mitigation or 15% of the project's unadjusted eligible basis to the extent that the project architect or seismic engineer certifies in the application to the costs associated with such work.
- (E) An increase equal to any Local Development Impact Fees as defined in Section 10302 of these regulations if the fees are documented in the application submission by the entities charging such fees.
- (F) In a county that has an unadjusted 9% threshold basis limit for a 2-bedroom unit equal to or less than ~~\$400,000~~\$500,000, a ten percent (10%) increase to the project's threshold basis limit for a development located in a census tract, or census block group as applicable, designated on the CTCAC/HCD Opportunity Area Map as Highest or High Resource.

An applicant may choose to utilize the census tract, or census block group as applicable, resource designation from the CTCAC/HCD Opportunity Maps in effect when the initial site control was obtained up to seven calendar years prior to the application.

- (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.

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.

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.

- (A) New Construction. The cost of land acquired through a third-party transaction with an unrelated party shall be evidenced by a sales agreement, purchase contract, or escrow closing statement. The value of land acquired from a Related Party shall be underwritten using the lesser of the current purchase price or appraised value pursuant to Section 10322(h)(9). If the purchase price exceeds appraised value, the applicant shall, within the shortfall calculation section of the basis and credits page of the application only, reduce the project cost and the soft permanent financing by the overage. For all other purposes, the project cost shall include the overage.

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

- (B) Rehabilitation. Except as noted below, the applicant shall provide a sales agreement or purchase contract in addition to the appraisal. The value of land and improvements shall be underwritten using the lesser amount of the purchase price or the "as is" appraised value of the subject property (as defined in Section 10322(h)(9)) and its existing improvements without consideration of the future use of the property as rent restricted housing except if the property has existing long term rent restrictions that affect the as-is value of the property. The land value shall be based upon an "as if vacant" value as determined by the appraisal methodology described in Section 10322(h)(9) of these regulations. If the purchase price is less than the appraised value, the savings shall be prorated between the land and improvements based on the ratio in the appraisal. If the purchase price exceeds appraised value, the applicant shall (i) limit improvements acquisition basis to the amount supported by the appraisal and (ii) within the shortfall calculation section of the basis and credits page of the application only, reduce the project cost and the soft permanent financing, exclusive of any developer fee that must be deferred or contributed pursuant to Section 10327(c)(2)(B), by the overage. For all other purposes, the project cost shall include the overage.

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

For tax-exempt bond-funded properties receiving credits under Section 10326 only or in combination with State Tax Credits and exercising the option to forgo an appraisal pursuant to Section 10322(h)(9)(A), no sales agreement or purchase contract is required, and CTCAC shall approve a reasonable proration of land and improvement value consistent with similar projects in the market area.

- (7) Reserve accounts. All reserve accounts shall be used 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 and except when a public lender funds rent subsidy and/or service reserves and requires repayment of unused rent subsidy and/or service reserves. 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).
  - (A) The minimum replacement reserve deposit for projects shall be three hundred dollars (\$300) per unit per year, or for new construction or senior projects, two hundred fifty dollars (\$250) per unit per year. The on-going funding of the replacement reserve in this amount shall be a requirement of the regulatory agreement during the term of the agreement, and the owner shall maintain these reserves in a segregated account. Funds in the replacement reserve shall only be used for capital improvements or repairs.
  - (B) An operating reserve shall be funded in an amount equal to three months of estimated operating expenses and debt service under stabilized occupancy. Additional funding will be required only if withdrawals result in a reduction of the operating reserve account balance to 50% or less of the originally funded amount. An equal, verified operating reserve requirement of any other debt or equity source may be used as a substitute, and the reserve may be released following achievement of a minimum annual debt service ratio of 1.15 for three consecutive years following stabilized occupancy only to pay deferred developer fee. The Committee shall allow operating reserve amounts in excess of industry norms to be considered "reasonable costs," for purposes of this subsection, only for homeless assistance projects under the Non-Profit Set-Aside, as described in Section 10315(b), Special Needs projects, HOPE VI projects, or project-based Section 8 projects. The original Sources and Uses budget and the final cost certification shall demonstrate the initial and subsequent funding of the operating reserves.
- (8) Applicant resources. If the applicant intends to finance part or all of the project from its own resources (other than deferred fees), the applicant shall be required to prove, to the Executive Director's satisfaction, that such resources are available and committed solely for this purpose, including an audited certification from a third party certified public accountant that applicant has sufficient funds to successfully accomplish the financing.
- (9) Self-syndication. If the applicant or a Related Party intends to be the sole or primary tax credit investor in a project, the project shall be underwritten using a tax credit factor (i.e., price) of \$1 for each dollar of federal tax credit and \$.79 dollars for each dollar of State Tax Credit, unless the applicant proposes a higher value.
- (d) Determination of eligible and qualified basis. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.
  - (1) High-Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations. Pursuant to Authority granted by IRC

§42(d)(5)(B)(v), CTCAC designates credit ceiling applications relating to sites that have lost their difficult development area or qualified census tract status within the previous 12 months as a difficult development area (DDA).

- (2) Pursuant to Authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications proposing a project meeting the Special Needs housing type threshold requirements at Section 10325(g)(3) as a difficult development area (DDA).
  - (3) Pursuant to authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications seeking state credits for which there are insufficient state credits as a difficult development area (DDA).
  - (4) Pursuant to authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications for Federal Credit established by the Further Consolidated Appropriations Act, 2020 or the Consolidated Appropriations Act, 2021 as a difficult development area (DDA).
- (e) Determination of Credit amounts. The applicant shall determine, and the Committee shall verify, the maximum allowable Tax Credits and the minimum Tax Credits necessary for financial feasibility, subject to all conditions of this Section. For purposes of determining the amount of Tax Credits, the project's qualified basis shall be multiplied by an applicable Credit percentage established by the Executive Director, prior to each funding cycle. The percentage shall be determined taking into account recently published monthly Credit percentages.
- (f) Determination of feasibility. To be considered feasible, a proposed project shall exhibit positive cash flow after debt service for a 15-year minimum term beginning at stabilized occupancy, or in the case of acquisition/rehabilitation projects, at the completion of rehabilitation. "Cash flow after debt service" is defined as gross income (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 that qualify for a reservation of Tax Credits: (1) from the Nonprofit set-aside homeless assistance apportionment, (2) 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."
- (g) Underwriting criteria. The following underwriting criteria shall be employed by the Committee in a pro forma analysis of proposed project cash flow to determine the minimum Tax Credits necessary for financial feasibility and the maximum allowable Tax Credits. The Committee shall allow initial applicants to correct cash flow shortages or overages up to the higher of \$25,000 or 0.5% of gross income at placed in service. In addition, if the operating expenses are below the published amount pursuant to subparagraph (1), the CTCAC Executive Director may correct the error by increasing the operating expenses to the published amount, provided the increase maintains compliance with all other feasibility and underwriting criteria.
- (1) The 15-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.

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.

- (2) Property tax expense minimums shall be one percent (1%) of total replacement cost, unless:
- (A) the verified tax rate is higher or lower;
  - (B) the proposed sponsorship of the applicant includes an identified 501(c)(3) corporate general partner which will pursue a property tax exemption; or
  - (C) the proposed sponsorship of the applicant includes a Tribe or tribally-designated housing entity.
- (3) Vacancy and collection loss rates shall be ten percent (10%) for special needs units and non-special needs SRO units without a significant project-based public rental subsidy, unless waived by the Executive Director based on vacancy data in the market area for the population to be served. Vacancy and collection loss rates shall be between five and ten percent (5-10%) for special needs units and non-special needs SRO units with a significant project-based public rental subsidy. Vacancy and collection loss rates shall be five percent (5%) for all other units.
- (4) Loan terms, including interest rate, length of term, and debt service coverage, shall be evidenced as achievable and supported in the application, or applicant shall be subject to the prevailing loan terms of a lender selected by the Committee.
- (5) Variable interest rate permanent loans shall be considered at the underwriting interest rate, or, alternatively, at the permanent lender's underwriting rate upon submission of a letter from the lender indicating the rate used by it to underwrite the loan. All permanent loan commitments with variable interest rates must demonstrate that a "ceiling" rate is included in the loan commitment or loan documentation. If not, the permanent loan will not be accepted by CTCAC as a funding source.
- (6) Minimum and Maximum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except

for FHA/HUD projects, RHS projects or projects financed with hard debt by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except for projects in which less than 50% of the units are Tax Credit Units or where a higher first year ratio is necessary to meet the requirements of subsection 10327(f) (under such an exception the year-15 cash flow shall be no more than the greater of 1) two percent (2%) of the year-15 gross income or 2) the lesser of \$500 per unit or \$25,000 total), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during each of the first three years of project operation. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

9% credit applications without a HUD subsidy layering review: A pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at initial application; application at 180 days or 194 days pursuant to Section 10328(c); and placed in service application review must demonstrate that this limitation is not exceeded during the first three years of the project's operation.

All other applications: A pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at initial application; application at 180 days or 194 days pursuant to Section 10328(c); and if applicable, application at subsidy layering review must demonstrate that this limitation is not exceeded during the first three years of the project's operation. For these applications, effective November 1, 2019 CTCAC underwriting requirements for placed in service applications currently under review pursuant to Section 10322(i) are eliminated.

- (7) The income from the residential portion of a project shall not be used to support any negative cash flow of a commercial portion. Alternatively, the commercial income shall not support the residential portion. Applicants must provide an analysis of the anticipated commercial income and expenses. At placed in service, an applicant with commercial space shall provide a written communication from the hard lender specifying the portion of the loan that is underwritten with commercial income and, if greater than zero, the corresponding annual commercial debt service payments.
- (8) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) that are subject to the hold harmless rent provisions of the federal Housing and Economic Recovery Act of 2008 (HERA) at application may, at the request of the applicant, be underwritten at the hold harmless rent limits to the extent that they do not exceed the elected federal set-aside current tax credit rent limits, except that the application of the rent adjuster shall be delayed for a number of years equal to the percentage difference between the hold harmless rent limits and the current tax credit rent limits, with the result divided by 2.5 and rounded to the nearest year. The new regulatory agreement shall reflect the current tax credit rent limits, but the project may continue to charge hold harmless HERA rents for units targeted below the elected federal set-aside (i.e., 40% of units at 60% AMI or 20% of units at 50% AMI) provided that the hold harmless rents do not exceed the rent level for the applicable elected federal set-aside and only until such time as the current tax credit rent limits equal or exceed the hold harmless rents.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10328. Conditions on Credit Reservations**

- (a) General. All reservations of Tax Credits shall be conditioned upon:
  - (1) timely project completion;

- (2) receipt of amounts of Tax Credits no greater than necessary for financial feasibility and viability as a qualified low-income housing project throughout the extended use period;
  - (3) income targets as proposed in the application; and,
- (b) Preliminary reservations. Preliminary reservations of Tax Credits shall be subject to conditions as described in this subsection and applicable statutes. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the performance deposit described in Section 10335 and an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant of the preliminary reservation. However, should the 20-day period for returning the executed reservation letter continue past December 15 of any year, an applicant may be required to execute and return the reservation letter in less than twenty (20) days in order that the reservation be effective. Failure to comply with any shortened period would invalidate the reservation offer and permit the Committee to offer a reservation to the next eligible project.
- (c) Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation but who did not receive maximum points in the Readiness to Proceed point category shall provide the Committee with a completed updated application form no later than 180 days or 194 days, as applicable, following Credit reservation and start construction no later than 12 months following Credit reservation. Failure to start construction within 12 months following Credit reservation may result in rescission of Credit reservation.

Upon receipt of the updated application form, the Committee shall conduct a financial feasibility and cost reasonableness analysis for the proposed project and determine if all conditions of the preliminary reservation have been satisfied. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee.

- (d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted no later than 20 days following the Credit reservation date, together with the applicable allocation fee, and all required documentation, except that the time for meeting the "10% test" and submitting related documentation, and owning the land, will be no later than twelve (12) months after the date of the carryover allocation.
- (1) Additional documentation and analysis. The Executive Director may request, and the holder of a Credit reservation shall provide, additional documentation required for processing a carryover allocation.
  - (2) In addition to the requirements of the Internal Revenue Code, to receive a carryover allocation an applicant shall provide evidence that applicant has maintained site control from the time of the initial application and, if the land is not already owned, will continue to maintain site control until the time for submitting evidence of the land's purchase.
  - (3) Certification. The Committee shall require a certification from an applicant that has received a reservation, that the facts in the application continue to be true before a carryover allocation is made.
- (e) Placed-in-service. Within one year following the project's completion of construction, the applicant shall submit documentation required by Section 10322(i).
- (f) Additional Conditions to Reservations and Allocations of Tax Credits. Additional conditions, including cancellation, disqualification and other sanctions may be imposed by the Committee in furtherance of the purposes of the Tax Credits programs.

- (g) Reservation Exchange. A project with a reservation of Federal Credit pursuant to Section 10325 and a carryover allocation pursuant to Section 10328(d) and IRC Code § 42(h)(1)(E) that meets either of the following criteria may elect to return all of the Federal Credit in exchange for a new reservation and allocation of Federal Credits. The reservation and carryover allocation of the Federal Credits returned pursuant to this subdivision shall be deemed cancelled by mutual consent pursuant to a written agreement executed by the Committee and the applicant specifying the returned credit amount and the effective date on which the credits are deemed returned. The Committee shall concurrently issue a new reservation of Federal Credits to the project in the amount of the Federal Credits returned by the project to the Committee.
- (1) A High-Rise Project that returns all of the Federal Credit only during January of the calendar year immediately following the calendar year in which the initial reservation and carryover allocation were made.
  - (2) A project ~~which-that~~ prior to the placed-in-service deadline the Executive Director finds, in his or her sole discretion, merits additional time to place in service because development was significantly delayed during construction due to physical damage to the development directly caused by a disaster, including but not limited to, fires, floods, or earthquakes. In considering a request the Executive Director may consider, among other things, the extent of the damage, the length of the delay, the time remaining until the project's placed in service deadline, and the circumstances causing the physical damage.
  - ~~(3)~~ A project reserved Federal credit established by the Further Consolidated Appropriations Act, 2020 or the Consolidated Appropriations Act, 2021 that returns all of the Federal Credit only during January of the calendar year immediately following the calendar year in which the initial reservation and carryover allocation were made.
  - ~~(4)~~ A Waiting List project that returns all of the Federal Credit only during January of the calendar year immediately following the calendar year in which the initial reservation and carryover allocation were made.
  - ~~(3)(5)~~ Notwithstanding paragraph (4), a Waiting List project that returns all of the Federal Credit prior to February 15, 2023, immediately following when the initial reservation and carryover allocation were made.
- (h) CTCAC may contract with accountants and contractors or construction engineers to review the accuracy and reasonableness of a subset of final cost certifications submitted each year. The owner of a project selected for review and the accountant who prepared the final cost certification for such a project shall provide all requested information and generally facilitate the review.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10330. Appeals**

- (a) Availability. An applicant shall not appeal the Committee staff evaluation of another applicant's application. An appeal may only be filed under the following circumstances:
- (1) determination of the application point score;
  - (2) disqualification from participation in the program pursuant to subsection 10325(c);
  - (3) qualification for "additional threshold requirements," pursuant to subsection 10325(g); and, determination of the Credit amount, pursuant to Section 10327.

- (b) (1) Procedure for application appeals. An appeal related to an application must be submitted in writing and received by CTCAC staff no later than five (5) calendar days following the transmittal date of the staff's point or disqualification letter. The appeal shall identify specifically, based upon previously submitted application materials, the applicant's grounds for the appeal.

Staff will respond in writing to the appeal letter within five (5) days after receipt of the appeal letter. If the applicant wishes to appeal the staff response, the applicant may appeal in writing to the Executive Director no later than five (5) days following the transmittal date of the staff response letter. The Executive Director will respond in writing within five (5) days after receipt of the appeal letter. If the applicant wishes to appeal the Executive Director's decision, a final appeal may be submitted to the Committee no more than five (5) days following the transmittal date of the Executive Director's letter. An appeal to the Committee must be accompanied by a five hundred dollar (\$500) non-refundable fee payment payable to CTCAC. No Committee appeals will be addressed without this payment. The appeal review shall be based upon the existing documentation submitted by the applicant when the application was filed. Any appeal or response due on a weekend or holiday shall be deemed to be due on the following business day.

- (2) Procedure for negative point or fine appeals. An appeal related to negative points or a fine must be submitted in writing and received by the Committee or no later than fourteen (14) days following the transmittal of a negative point or fine letter, unless the Executive Director grants an extension which shall not exceed fourteen (14) additional days. The appeal shall identify specifically the appellant's ground for the appeal.

The Executive Director will respond in writing no more than seven (7) days after receipt of the appeal, unless the appellant requests an extension to accommodate a meeting with the Executive Director. If the appellant wishes to appeal the Executive Director's decision, a final appeal may be submitted to the Committee no more than seven (7) days following the date of receipt of the Executive Director's letter. An appeal to the Committee must be accompanied by a five hundred dollar (\$500) non-refundable fee payment payable to CTCAC. No Committee appeals will be addressed without this payment.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10335. Fees and Performance Deposit**

- (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.

- (b) Allocation fee. Every applicant who receives a reservation of Tax Credits, except tax-exempt bond project applicants, shall be required to pay an allocation fee equal to four percent (4%) of the dollar amount of the first year's Federal Credit amount reserved. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the required fee paid to the Committee prior to execution of a carryover allocation or issuance of tax forms, whichever comes first. This fee is not refundable.
- (c) Appeal fee. Any applicant submitting an appeal to the Committee shall pay a fee of five hundred dollars (\$500) to CTCAC. The fee must accompany the appeal letter to the Committee.
- (d) Reservation fee. Tax-exempt bond project applicants receiving Credit reservations shall be required to pay a reservation fee equal to one percent (1%) of the annual Federal Tax Credit reserved. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the required fee within twenty (20) days of issuance of a tax-exempt bond reservation or prior to the issuance of tax forms, whichever is first.
- (e) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State (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. Notwithstanding the other provisions of this Section, an applicant requesting only Federal Tax Credits not subject to the Federal Credit Ceiling, shall not be required to submit a performance deposit.
  - (1) Timing and form of payment. The performance deposit shall be paid to the Committee within twenty (20) calendar days of the Committee's notice to the applicant of a preliminary reservation.
  - (2) Returned Tax Credits. If Tax Credits are returned after a reservation has been accepted, the performance deposit is not refundable, with the following exceptions. Projects unable to proceed due to a natural disaster, a lawsuit, or similar extraordinary circumstance that prohibits project development may be eligible for a refund. Requests to refund a deposit shall be submitted in writing for Committee consideration. Amounts not refunded are forfeited to the Committee. All forfeited funds shall be deposited in the occupancy compliance monitoring account to be used to help cover the costs of performing the responsibilities described in Section 10337.
  - (3) Refund or forfeiture. To receive a full refund of the performance deposit, the applicant shall do all of the following: place the project in service under the time limits permitted bylaw; qualify the project as a low-income housing project as described in Section 42; meet all the conditions under which the reservation of Tax Credits was made; certify to the Committee that the Tax Credits allocated will be claimed; and, execute a regulatory agreement for the project.

If the Committee cancels a Credit because of misrepresentation by the applicant either before or after an allocation is made, the performance deposit is not refundable. If the project is completed, but does not become a qualified low-income housing project, the

performance deposit is not refundable. Appeals. An applicant may appeal the forfeiture of a performance deposit, by submitting in writing, a statement as to why the deposit should be refunded. The appeal shall be received by the Committee not later than seven (7) calendar days after the date of mailing by the Committee of the action from which the appeal is to be taken. The Executive Director shall review the appeal, make a recommendation to the Committee, and submit the appeal to the Committee for a decision.

- (f) Compliance monitoring fee. The Committee shall charge a \$410 per low-income unit fee to cover the costs associated with compliance monitoring throughout the extended-use period. Generally, payment of the fee shall be made prior to the issuance of Federal and/or State tax forms. Assessment of a lesser fee, and any alternative timing for payment of the fee, may be approved at the sole discretion of the Executive Director and shall only be considered where convincing proof of financial hardship to the owner is provided. Nothing in this subsection shall preclude the Committee from charging an additional fee to cover the costs of any compliance monitoring required, but an additional fee shall not be required prior to the end of the initial 15 year compliance period.
- (g) Tax form 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.

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.

### **Section 10337. Compliance**

- (a) Regulatory Agreement. All recipients of Tax Credits, whether Federal only, or both Federal and State, are required to execute a regulatory agreement, as a condition to the Committee's making an allocation, which will be recorded against the property for which the Tax Credits are allocated, and, if applicable, will reflect all scoring criteria proposed by the applicant in the competition for Federal and/or State housing Credit Ceiling.
  - (1) For all projects receiving a reservation of competitive 9% federal tax credits on or after January 1, 2016 for which all general partners will be Qualified Nonprofit Organizations, the partnership agreement shall include a Right of First Refusal ("ROFR") for one or more of the nonprofit general partners to purchase the project after the end of the 15-year federal compliance period. The price to purchase the project under this ROFR shall be the minimum price allowed under IRC Section 42(i) plus any amounts required to be paid to the tax credit investors that remain unpaid for approved Asset Management Fees and required payments under the limited partnership agreement for tax credit adjusters that remain outstanding at the time of the sale. The applicant shall demonstrate compliance with this requirement prior to the issuance of the 8609 forms.
  - (2) For all projects receiving a reservation of 4% and 9% federal tax credits on or after January 1, 2016, the regulatory agreement shall require written approval of the Executive Director for any Transfer Event.
  - (3) Where a Project is receiving renewable project-based rental assistance or operating subsidy:
    - (A) the owner shall in good faith apply for and accept all renewals available;
    - (B) if the project-based rental assistance or operating subsidy is terminated through no fault of the owner, the property owner shall notify CTCAC in writing immediately and shall make every effort to find alternative subsidies or financing structures that would maintain the deeper income targeting contained in the recorded CTCAC regulatory

agreement. Upon documenting to CTCAC's satisfaction unsuccessful efforts to identify and obtain alternative resources, the owner may increase rents and income targeting for Low-Income Units above the levels allowed by the recorded regulatory agreement up to the federally-permitted maximum. Rents shall be raised only to the extent required for Financial Feasibility, as determined by CTCAC. Where possible, remedies shall include skewing rents higher on portions of the project in order to preserve affordability for units regulated by CTCAC at extremely low income targeting. Any necessary rent increases shall be phased in as gradually as possible, consistent with maintaining the project's Financial Feasibility. If housing Special Needs populations, the property owner shall attempt to minimize disruption to existing households, and transition to non-Special Needs households only as necessary and upon vacancy whenever possible.

- (4) All projects that receive a reservation of Tax Credits on or after January 1, 2017 and that involve a leasehold interest shall, in addition to the regulatory agreement, execute a lease rider which shall be recorded against the property.

(b) Responsibility of owner.

- (1) Compliance. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Project owners are required to annually certify tenant incomes in conformance with IRS regulation §1.42-5(c)(3) unless the project is a 100 percent (100%) tax credit property exempted under IRC Section 142(d)(3)(A). Owners of a 100% tax credit property must perform a first annual income recertification in addition to the required initial move-in certification. After initial move-in certification and first annual recertification, owners of 100% tax credit properties may discontinue obtaining income verifications. Owners of 100% tax credit properties must continue to check for full-time student status of all households during the entire tenancy of the households and throughout the initial compliance period, and continue recordkeeping in accordance with paragraph (1) of this subsection. These requirements continue if the tax credit property is sold, transferred, or under new management. Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.

- (2) Accessible Units: Reasonable Accommodations. All new and existing Tax Credit projects with fully accessible units for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows.

- (A) First, to a current occupant of another unit of the same project having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or if no such occupant exists, then
- (B) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager shall require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

Owners and managers shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit.



- (3) Homeless youth and federal student rule. After the 15-year federal compliance period has lapsed, units in a special needs project designated at reservation for homeless youth may be occupied entirely by full-time students who are not dependents of another individual.
  - (4) Prohibition against requiring tenants to participate in services. All new and existing Tax Credit projects are prohibited from requiring tenants to participate in services, unless the tenant occupies a unit assisted with a federal source that requires tenant participation in services.
- (c) Compliance monitoring procedure. As required by Section 42(m), allocating agencies are to follow a compliance monitoring procedure to monitor all Credit projects for compliance with provisions of Section 42. Compliance with Section 42 is the sole responsibility of the owner of the building for which the Credit is allowable. The Committee's obligation to monitor projects for compliance with the requirements of Section 42 does not place liability on the Committee for any owner's noncompliance, nor does it relieve the owner of its responsibility to comply with Section 42.

- (1) Record keeping. The owner of a Credit project is required to keep records for each qualified low income building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms, and unit size in square feet); the percentage of Low-Income and Market Rate Units in the building that are Low-Income Units; the rent charged for each Low-Income Unit; a current utility allowance as specified in 26 CFR Section 142.10(c) and Section 10322(h)(21) of these regulations (for buildings using an energy consumption model utility allowance, that allowance must be calculated using the most recent version of the CUAC); the number of household members in each Low-Income Unit; notation of any vacant Low-Income Units; move-in dates for all Low-Income Units; low-income tenants' (i.e., household) income; documentation to support each low-income household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the Credit period; and, the character and use of any nonresidential portion of the building included in the building's eligible basis.

Upon request, scattered site projects shall make these records available for inspection by CTCAC staff at a single location.

- (2) Record Retention. For each qualified low-income building in the project, and for each year of the compliance period, owners and the Committee are required to retain records of the information described above in "record keeping requirements."

(A) Owners shall retain documents according to the following schedule:

- (i) for at least six years following the due date (with extensions) for filing the Federal income tax return for that year (for each year except the first year of the Credit period); and,
- (ii) for the first year of the Credit period, at least six years following the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period of the building.
- (iii) for local health, safety, or building code violation reports or notices issued by a state or local governmental entity, until the Committee has inspected the reports or notices and completes the tenant file and unit inspections, and the violation has been corrected. This subsection shall take effect beginning January 1, 2001.

(B) The Committee shall retain records of noncompliance, or failure to certify, for at least six years beyond the Committee's filing of the respective IRS noncompliance Form 8823. Should the Committee require submission of copies of tenant certifications and records, it shall retain them for three years from the end of the calendar year it

receives them. Should it instead review tenant files at the management office of the subject project, it shall retain its review notes and any other pertinent information for the same three-year period. The Committee shall retain all other project documentation for the same three-year period.

- (3) Certification requirements. Under penalty of perjury, a Credit project owner is required to annually, during each year of the compliance period, meet the certification requirements of U.S. Treasury Regulations 26 CFR 1.42-5(c), (including certifications that no finding of discrimination under the Fair Housing Act, 42 USC 3601 occurred for the project), that the buildings and low income units in the project were suitable for occupancy taking into account local health, safety, and building codes, that no violation reports were issued for any building or low income unit in the property by the responsible state or local government unit, that the owner did not refuse to lease a unit to an applicant because the applicant had a section 8 voucher or certificate, and that except for transitional or single room occupancy housing, all low income units in the project were used on a nontransient basis. The following must also be certified to by the owner:
  - (A) the project met all terms and conditions recorded in its Regulatory Agreement, if applicable;
  - (B) the applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the Credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification.);
  - (C) no change in ownership of the project has occurred during the reporting period;
  - (D) the project has not been notified by the IRS that it is no longer a “qualified low-income housing project” within the meaning of Section 42 of the IRC;
  - (E) no additional tax-exempt bond funds or other Federal grants or loans with interest rates below the applicable Federal rate have been used in the Project since it was placed-in-service; and,
  - (F) report the number of units that were occupied by Credit eligible households during the reporting period.
  - (G) the services specified in the Regulatory Agreement were provided to the tenants during the reporting period.
  - (H) if the project is subject to a cash flow limitation in its Regulatory Agreement, that the limitation has been met.
- (4) Status report, file and on site physical inspection. The Committee or its agent will conduct file and on site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is placed-in-service, and once every three years thereafter. These physical inspections will be conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews will also be for at least 20% of the low-income units in each project, but may be conducted on site or off site. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose, while the units and tenant records to be inspected shall be randomly selected. Advance notice shall not be given of the Committee's selection process, or of which tenant records will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection.
  - (A) A Notice of Intent to Conduct Compliance Inspection and a Project Status Report (PSR) form will be delivered to the project owner within a reasonable period before

an inspection is scheduled to occur. The completed PSR form shall be submitted to the Committee by the owner prior to the compliance inspection. The Committee will review the information submitted on the PSR for compliance with income, rent and other requirements prior to performing the tenant file inspection.

- (B) Each project undergoing a file inspection will be subject to a physical inspection to assure compliance with local health, safety, and building codes or with HUD's uniform physical condition standards. Owners shall be notified of the inspection results.
  - (C) The Committee may perform its status report, file inspection procedures and physical inspection on Credit projects even if other governmental agencies also monitor those projects. The Committee's reliance on other review findings may alter the extent of the review, solely at the Committee's discretion and as allowed by IRS regulations. The Committee may rely on reports of site visits prepared by lenders or other governmental agencies, at its sole discretion. The Committee shall, whenever possible, coordinate its procedures with those of other agencies, lenders and investors.
- (5) Notification of noncompliance. The Committee shall notify owners in writing if the owner is required to submit documents/information related to either the physical or tenant file inspection. If the Committee does not receive the information requested, is not permitted or otherwise is unable to conduct the inspections or discovers noncompliance with Section 42 as a result of its review, the owner shall be notified in writing before any notice is sent to the IRS.
  - (6) Correction period. It is the intention of the Committee that owners be given every reasonable opportunity to correct any noncompliance. Owners shall be allowed an opportunity to supply missing tenant file documents or to correct other noncompliance within a correction period no longer than ninety (90) days from the date of written notice by the Committee to the owner, unless the violation constitutes an immediate health or safety issue, in which case, the correction should be made immediately. With good cause, the Committee may grant up to a six-month extension of the correction period upon receipt of a written justification from the owner.
  - (7) IRS and FTB notification. All instances of noncompliance, whether corrected or not, shall be reported by the Committee to the IRS. This shall be done within forty-five (45) days following the termination of a correction period allowed by the Committee, pertaining to IRS Form 8823.
- (d) Change in ownership 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.
  - (e) First year's 8609. Project owners shall be required to submit a copy of the executed first year's filing of IRS Form 8609 (Low-Income Housing Credit Allocation Certification) for inclusion in the Committee's permanent project records.
  - (f) (1) CTCAC may establish a schedule of fines for violations of the terms and conditions, the regulatory agreement, other agreements, or program regulations. In developing the

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

- (2) CTCAC shall adopt and may revise the schedule of fines by resolution at a public general Committee meeting.
- (3) A person or entity subject to a fine may appeal the fine to the Executive Director and, thereafter, to the Committee pursuant to Section 10330(b)(2).
- (4) The Executive Director may approve a payment plan for any fines.
- (5) If a fine assessed against a property owner is not paid within six months from the date when the fine was initially assessed and after reasonable notice has been provided to the property owner, the Committee may record a lien against the property. 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.
- (6) Reoccurring or repeated noncompliance – CTCAC shall issue fines of up to \$500 per instance of repeated or reoccurring noncompliance violations noted in separate monitoring cycles. CTCAC defines repeated or reoccurring violations as 25% or more instances of the current monitoring inspection having the same noncompliance issues as found in the previous monitoring cycle.  
Areas of repeated or reoccurring noncompliance include (but are not limited to):
  - (A) Repeated Uniform Physical Conditions Standards (UPCS) Health and Safety Violations and Common Area Violations
  - (B) Reoccurring patterns of units no turn-key ready and advertised within 60 days of unit vacancy date
  - (C) Reoccurring patterns of missing or the incorrect use of required CTCAC forms
  - (D) Reoccurring misuse of Utility Allowance methods
  - (E) Reoccurring patterns of over-income households
  - (F) Reoccurring patterns of over-charged rents
  - (G) Reoccurring patterns of incomplete or missing re-certifications
  - (H) Service Amenities not provided within Federal Compliance periods

Note: Authority cited: Section 50199.17, Health and Safety Code.

Reference: Sections 12206, 17058 and 23610.5, Revenue and Taxation Code; and Sections 50199.4, 50199.5, 50199.6, 50199.7, 50199.8, 50199.9, 50199.10, 50199.11, 50199.12, 50199.13, 50199.14, 50199.15, 50199.16, 50199.17, 50199.18, 50199.20, 50199.21 and 50199.22, Health and Safety Code.