



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: June 1, 2018

TO: Low Income Housing Tax Credit Stakeholders

FROM: Gina Ferguson, Development Section Chief

SUBJECT: 2018 Second Round Guidance

With this memorandum, the California Tax Credit Allocation Committee (“TCAC”) is providing guidance for prospective applicants. In the event of a conflict with prior guidance, this guidance shall supersede.

### **Advisory Guidance to Applicants**

During first round reviews of nine percent (9%) and four percent (4%)-plus-State credit applications, TCAC staff noted items to clarify for future applicants based on regulation requirements. The following items and corresponding application content expectations were identified.

#### Documenting Land Acquisition

The value of land acquired through a third party transaction with an unrelated party must be evidenced by a sales agreement, purchase contract, or escrow closing statement; this document(s) must support the amount in the Sources and Uses Budget. The value of land acquired from a related party is underwritten using the lesser of the current purchase price or appraised value pursuant to Section 10322(h)(9); these applications must include both an appraisal and purchase contract. For competitive projects, the value of donated land, including land donated as part of an inclusionary housing ordinance, must be evidenced by an appraisal pursuant to Section 10322(h)(9). Rehabilitation applications must include both an appraisal and purchase contract.

Clearly explain any unusual site control for a project (multiple contiguous site purchases, scattered sites, phased projects purchased as one site, sites purchased by an entity that is not the TCAC applicant, etc.). Explain how the land cost/value and acquisition cost in the application is derived (for example, a phased project’s prorated land value); this must be supported by documents in the application. Site control documents must connect the applicant and the owner of the property.

Appraised Value and Favorable Financing: value is limited to the as-is land value and improvement value. Any additional value, such as favorable financing, is not mentioned in TCAC regulations and therefore not included in the appraised value. The reconciled value requirement of Reg. Section 10322(h)(9)(A) harmonizes the Income, Sales, and Cost Comparison approaches. Since the value of favorable financing is in addition to the reconciled value, it is not part of it. Section 10327(c)(6)(B) states: “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...”

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#### Eligible Basis and High Cost Test

TCAC calculates eligible basis using all project costs listed within the application unless those costs are not includable in basis under federal law. In calculating the high cost test, excluded basis can be demonstrated by either the shaded cells in the application form itself or by a certification from the development team’s third party tax professional (Reg. Section 10325(d)). The third party tax professional certification must identify all ineligible costs not included in eligible basis by the specific line item description(s) and dollar amount(s) in the Sources and Uses Budget sheet of the application. Any costs not included in eligible basis that are not acknowledged as ineligible by the tax professional will be considered when determining the actual eligible basis for the high cost determination. The developer fee cannot be voluntarily reduced in basis only as a strategy to remain under the 130% threshold; a developer fee less than the maximum in cost is acceptable.

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#### Eligible Basis and Developer Fee Limits

Be sure to verify that the developer fee in cost and basis does not exceed TCAC limits (Reg. Section 10327(c)(2)). TCAC staff made reductions to several first round applications as a result of developer fees exceeding the limits, including neglecting to incorporate the high cost adjuster into the developer fee limit. Please contact TCAC staff with any questions, and see the [New Construction Developer Fee Calculator](#).

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#### Basis Related to Parking

Applicants must demonstrate compliance with TCAC Regulation Section 10327(c)(10), which requires **9% new construction** projects with land use entitlements after 12-31-16 to exclude from eligible basis parking costs that exceed specified ratios. **Use the Excel application’s Basis and Credits sheet, not the Sources and Uses Budget, to exclude this basis.** Documenting compliance includes identification of a project’s parking spaces, presenting a calculation of the applicable ratio as described in TCAC regulations, an explanation of any applicable major transit stop information (including support for any representation that the project site is not within ½ mile of a major transit stop as defined in Section 21064.3 of the Public Resources Code), and documentation from a CPA of any required basis reduction in the final cost certification. Please [contact TCAC staff](#) with any questions prior to the application deadline.

Prevailing Wage Documentation for Threshold Basis Limit Increase

Pursuant to TCAC Regulation Section 10327(c)(5)(A) a threshold basis limit increase is permitted for prevailing wage requirements. The application checklist Tab 18 requires an applicant certification of prevailing wage requirements as a means of clearly identifying which prevailing wage requirements the project is subject to. Additionally, the checklist requires applicants to confirm whether the project is or is not required to comply with Section 1725.5 of the Labor Code. Please review the checklist carefully and contact TCAC staff with any questions prior to the application deadline.

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Large Family Housing Type

Applicants must demonstrate compliance with play/recreational facility requirements, including play/recreational area(s) for ages 2-17, as described in TCAC Regulation Section 10325(g)(1)(D). These should be clearly described and identified in Attachment 4(A), Attachment 12, and the architectural drawings. If a landscaped, open area is proposed for ages 13-17, to meet the minimum requirement for play/recreational area this area must include adequate seating.

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Local Development Impact Fees

The total dollar amount of the local development impact fee line item in the Sources and Uses Budget sheet must match the amount shown on TCAC Attachment 18(A); this may include multiple documents if there are multiple entities assessing fees. Any commercial fees must be included. In cases where alternative documentation from the fee assessing entity is submitted in lieu of TCAC Attachment 18(A), an explanation must be included in Tab 18 and this must include calculations that clearly tie back to the amounts in Attachment 18(A). This may include marking up documentation from the assessing entity (such as website fee schedules) showing the calculations and providing a table showing calculations based on dwelling unit or square footage. The totals on such documents must match the totals of Attachment 18(A) and the Sources and Uses Budget impact fee amount. Do not include permitting fees that are not development impact fees.

For the local development impact fees increase to the Threshold Basis Limit (TBL) on Page 20 of the Excel application, only the residential portion of the fees may be included. While local development impact fees can be waived, they still must be included as a project cost in the Sources and Uses Budget sheet with the corresponding source being the fee assessing entity. A project is not eligible to receive a TBL increase for waived local development impact fees.

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Service Amenity Points

Service amenity documentation should be organized to clearly demonstrate which point category the documentation supports. When multiple services are provided and when multiple service providers are referenced in the application, be sure these clearly support the point category(ies) requested.

The service provider commitments must clearly describe the point category services. Contracts for services, MOUs, or commitment letters must include:

- the name and address of the organization or entity that will provide the services;
- describe the services to be provided;
- state the annual dollar value of the services;
- commit that services will be provided for a period of at least one (1) year;
- commit that services will be available to tenants of the project free of charge (except for child care services or other charges required by law); and
- name the project to which the services are being committed.
- Organizations providing in-kind or donated service must estimate the value of those services.

Projects of more than one housing type (for example, 50% special needs, 50% large family) must score maximum service amenity points (10 points) for each applicable housing type in order to score maximum points in the service amenity point category. **Applicants are advised that the summary point score in the application will not calculate correctly for projects that are scored proportionately.** This affects both scattered site projects in the site amenity category and special needs projects with less than 75% special needs units in the service amenity category. Applicants should not rely on the summary point total but should ensure that the project is receiving maximum points for each scattered site or, for services, in each housing type category to ensure that they are receiving maximum points when scored proportionately. Point overages within the Large Family service amenity options cannot be added to point shortfalls within the Special Needs service amenity options, and the two (Large Family service amenity points and Special Needs service amenity points) cannot be averaged. This proportionate scoring is also applicable to site amenity points for scattered sites.

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#### Sustainable Building Methods Points

Confirm the energy analyst certification information (2016 CEA, HERS Rater, etc.) in the application is complete and meets the requirements in Reg. Sections 10325(c)(5) and 10325(f)(7), and the TCAC Sustainable Building Methods Workbook (including the Assessment Report).

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#### Lowest Income Points

The federal requirement for income averaging is income targeting in **10% increments** (not 35% AMI, 65% AMI, etc.). Applicants proposing 40/60 Average Income must choose 10% increments (30% AMI, 40% AMI, 50% AMI, etc.) for purposes of meeting the federal set-aside; the TCAC-required average income of 50% AMI must also use 10% increments. The lowest income point table must reflect these 10% increments.

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Approvals Necessary to Begin Construction for Readiness to Proceed Point Category

Any item on TCAC Application Attachment 26, Approvals Necessary to Begin Construction that are checked “Not Applicable (N/A)” must include documentation and/or a clear explanation stating why the item is not applicable. Additional sheets may be attached if needed. In no case should any of the items be left unchecked.

If any item on Attachment 26 contains a statement that says “not required” or “not reviewed by this agency,” you must submit another Attachment 26 completed by the agency that does have oversight over the approval(s).

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Environmental Clearance

Tab 26 of the application must include National Environmental Policy Act (NEPA) environmental clearance documentation for **each** federal funding source in the project. In some cases, the same Responsible Entity under NEPA 24 CFR Part 58 is providing additional funds for the project from a different federal funding source. In those cases, NEPA may be exempt, but documentation (i.e. Finding of Exemption form) must still be included in the application.

- As an example, if a project has HOME funds where a NEPA review has already been completed and the project is subsequently awarded CDBG funds, the application must contain NEPA environmental clearance documentation for the HOME **and** CDBG funds no matter the level of NEPA environmental clearance (i.e. exempt, excluded, FONSI, etc.).
- In another example, if a project has HUD Project-based Section 8 and HOME funds, the application must contain NEPA environmental clearance documentation for **both** sources.

For rehabilitation projects that are exempt from NEPA, an explanation for the exemption **and** exemption documentation (i.e. Finding of Exemption form) must be submitted in Tab 26.

In addition to the clarifying information above, please also refer to previously posted guidance relating to environmental clearance for the Readiness to Proceed point category on the TCAC website:

- Memorandum dated May 26, 2011:  
(<http://www.treasurer.ca.gov/ctcac/2011/firstround/update.pdf>)
- Memorandum dated June 20, 2013:  
(<http://www.treasurer.ca.gov/ctcac/2013/secondround/guidance.pdf>)

If applicants have circumstances regarding NEPA environmental clearance not addressed in the above guidance, please contact your regional TCAC analyst immediately.

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Final Tie Breaker

- **Land Donation and Fee Waivers:** Land donations and fee waivers as described in TCAC Regulation Sections 10325(c)(9) are true donations when not encumbered by any debt obligation including residual receipt payments. Land leased to the applicant is only

considered a donation if annual rent payments do not exceed \$100. The value of any land or lease donation is discounted by the amount of any up-front payment or lease pre-payment. Any lease payments must be defined by the lessor in the application documents. If there is an undefined lease payment requirement in a lease agreement or other site control document, TCAC staff will not be able to determine the donation value and a \$0 land donation will result. If a lease payment is required the amount must be known in order to determine how it reduces the donation value. Please ensure land donations and fee waivers are identified and categorized correctly in the Final Tie Breaker Self-Score worksheet to assure only true land donations and fee waivers are excluded from the leveraged soft resources/financing increase to the requested unadjusted eligible basis in the second ratio of the final tie breaker calculation.

- **Leveraged Soft Resources from Unrelated Non-Public Entity(ies):** Ensure that the certification from an independent CPA includes **both** a confirmation of unrelated party status **and** that the CPA verified the unrelated non-public entity is not receiving any benefit. Without both of these statements the certification is insufficient and the soft resource cannot be included in the final tiebreaker.
- **Related Party Transactions:** When a related party has transferred land or existing improvements to an entity that is now transferring the land or improvements to the applicant, this is not a leveraged soft resource under TCAC Regulation Section 10325(c)(9)(A)(iii).
- **Capitalized Value of Rent Differentials:** The “anticipated contract rent income documented by the subsidy source” (Reg. Section 10325(c)(9)(A)(i)) may include post-rehabilitation contract rents if the contract rent is documented in the application as committed to and approved by the public source, including any required NEPA review. Projects receiving USDA rental assistance, both new construction and rehabilitation projects, should use the TCAC 60% AMI rents as the anticipated contract rent for purposes of the rent differential calculation on the tiebreaker page. If there is an existing USDA contract rent (“Basic Rate”) that is higher than 60% AMI, the approved Basic Rate should be used. Please note, as part of the fall 2018 regulation change cycle, TCAC intends to review this section of the regulations and likely will propose changes to resolve any ambiguities.
- **Ineligible Off-Site Costs:** Ineligible off-site costs excluded from the final tie breaker calculation must be entered as a positive number on the row labeled “Less: Ineligible Offsites” (cell E42) in the Final Tie Breaker Self-Score sheet to assure that these costs are correctly excluded and accounted for in the increase to the requested unadjusted eligible basis pursuant to TCAC Regulation Section 10325(c)(9)(A)(i).

Attachment 12 must provide a detailed, clear description of all off-site costs. An off-site requirement as a condition of local approval does not equate to the off-site being eligible for final tiebreaker scoring; the off-site must be immediately bordering the property and be curbs, gutters, sidewalks, and/or utility connections. Many applicants continue to include non-eligible off-sites in final tiebreaker scoring, resulting in numerous tiebreaker recalculations by TCAC staff. The Attachment 12 descriptions should address the

location of the listed off-sites relative to the border of the property. Non-eligible off-sites that are a condition of eligible off-sites (e.g., landscaping replacement due to utility connection work) are not eligible off-sites.

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Vacancy Rate for Special Needs and SRO Units

Special needs and SRO units are required to use a 10% vacancy rate assumption pursuant to TCAC Regulation Section 10327(g)(3) as part of the underwriting criteria of Section 10327(g) unless these units have project-based rental subsidy. The vacancy rate for special needs units and SRO units with a project-based rental subsidy must be at least 5%. Applicants proposing a lesser vacancy rate must obtain a waiver prior to submitting an application. TCAC staff strongly recommends applicants allow sufficient time for the waiver request to be reviewed and a response to be provided prior to the application deadline.

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Operating Expenses

Minimum operating expense requirements are identified as part of the underwriting criteria of Section 10327(g). Operating expenses are expenses related to the operation of the property. Standard operating expense categories are clearly identified in both the TCAC application and the AOE form. TCAC Regulation Section 10327(g)(1) lists certain expenses that are not considered operating expenses and should not be included as operating expenses in the Excel Application sheet section III.G. (page 18, approximately rows 803-840). The list is not meant to be an exhaustive list; the items identified are examples of non-operating expenses such as depreciation and service amenity costs. This guidance further clarifies that transit pass or other site and service amenity expenses, taxes, financing-related expenses, and monitoring costs are not considered operating expenses. These costs are included in the 15-year pro forma in the section below Total Operating Expenses by reflecting them as other expenses in the Application sheet (page 18, approximately rows 852 and 853). Please contact TCAC staff with any questions prior to the application deadline. Minimum operating expense errors may result in an application disqualification.

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State Credit Certification

For projects making an irrevocable election to certificate the state credits, the applicant must be a non-profit entity.

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Miscellaneous

Following are some examples of application errors seen in previous applications. Please review your applications carefully to avoid or correct these errors:

- Failure to include explanatory information when submitting multiple, lengthy, and interrelated documents;
- Failure to include all necessary documentation to support site amenity point requests;

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- Failure to provide detailed explanations for approvals on TCAC Application Attachment 26 identified as “N/A”;
- Failure to provide documentation verifying NEPA completion for each federal funding source (i.e. HOME, CDBG, HOPWA, NSP, USDA RHS financing (**the USDA form must identify both loan and rental subsidy if applicable**, HUD Project-based Section 8, etc.);
- Failure to properly complete the Funding Source table on Page 19 of the Application worksheet;
- Failure to note caution formula prompts in the Excel application (i.e. funding gap, exceeding limits, etc.);
- Failure to copy the correct application to the flash drive/CD/DVD **\*Make sure the application being submitted is for the correct project you are submitting for.\***

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When preparing your application for the second round, please also refer to the following links on the TCAC website:

- [Competitive Tax Credit Application Submittals](#)
- [Current Guidance Memos](#)
- [First Round Applicants Re-applying in the Second Round](#)

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If you have any questions regarding the above guidance items, please contact your regional analyst (<http://www.treasurer.ca.gov/ctcac/assignments.pdf>).