

**2006 Proposed Regulation Changes Resulting from
Comments Received, with Reasons
January 11, 2006**

Note: The changes highlighted below are changes to staff's initially proposed regulation revisions. That is, ~~deletions~~ and additions are highlighted against text as proposed in our initial revisions version dated November 17, 2005. In this way, TCAC staff is attempting to highlight changes in response to comments on our initial proposal.

In addition, only those November 17, 2005 proposed changes that are now being amended are reflected below. All other changes proposed November 17, 2005 will go forward for committee consideration and action in January 2006.

Section 10305(d)

Proposed Change:

- (d) Tax Credit Limitations. No applicant shall be eligible to receive ~~a Federal 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, developer or housing consultant, received a reservation or allocation greater than fifteen percent (15%) of the total Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year. ~~For purposes of this limitation, applicant includes individual owner, corporate shareholder, general partner, sponsor, developer or housing consultant.~~
- (e) Allocation Limit. No one project applying for 9% Tax Credits may receive an allocation of more than Two Million (\$2,000,000) Dollars in annual Federal Tax Credits in any one funding round, except for projects receiving a waiver of unit size under Section 10325(f)(9)(C) of these regulations, in which case the maximum annual Federal Tax Credits reserved to any one project in any one funding round shall not exceed Two Million Five Hundred Thousand (\$2,500,000) Dollars
- (f) Notification. Upon receipt of an application, CTCAC shall notify the Chief Executive Officer (e.g., city manager, county administrative officer) 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)).
- (g) 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.

Reason:

The changes highlighted above return to the original 2005 regulatory language with no substantive change from existing regulations. The only remaining clarifying format changes accommodate separating under a new paragraph (e) the per application limitations on federal credit.

Staff received substantial comment that the initially proposed change could systematically harm applicants who work in Difficult to Develop Areas (DDAs) and Qualified Census Tracts (QCTs). Commenters urged that we clearly amend paragraphs (d) and (e) to limit combinations of State and federal credits. Staff wishes to examine this matter more closely and therefore withdraws any substantive change to this section.

Section 10315(b)

Proposed Change:

- (b) Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available to projects providing housing to populations defined under HUD (42 U.S.C. 11302, Title 1, Section 301). Specifically, the project would provide units to house:
 - (1) An individual who lacks a fixed, regular and adequate nighttime residence; or
 - (2) An individual who has a primary nighttime residence that is;
 - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

~~assisted, under U.S. Code Title 42 Chapter 119 Subchapter IV Part E — Miscellaneous Provisions, Assistance for Single Room Occupancy Dwellings or U.S. Code Title 42 Chapter 119 Subchapter IV Part F— Shelter Plus Care Program or U.S. Code Title 42 Chapter 131— Housing Opportunities for Persons With AIDS. If rental assistance is the type of assistance provided by the above named programs, 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 thirty percent (30%) of the units in the proposed project.~~

Any amount of Tax Credits apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Non-profit set-side.

Reason:

Commenters advocated retaining the homeless apportionment targeting for federal McKinney Act homeless populations, while no longer requiring the presence of McKinney Act funding in the project. This is reasonable in light of the fact that little McKinney Act funding is available for creating new housing, while other State funding

sources are available to develop housing for homeless populations. This change would enable the use of those non-McKinney Act resources in concert with 9% tax credits under the homeless apportionment. Finally, this change may help assure the full subscription of the homeless apportionment in 2006.

Section 10315(d)

Proposed Change:

- (d) RHS 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 commitments from RHS of at least \$1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, ~~or~~ RHS's Section 515 Rural Rental Housing Loan Program, or RHS's Section 538 Guaranteed Rural Rental Housing Loan Programs, in the following priority order:
- First, to projects with RHS funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance for at least 50% of the project units (excluding non-restricted management units);
 - Second, to projects for which the Section 514, ~~or 515,~~ or 538 funding commitment is an "obligation" (as that term is used by RHS);
 - Third, to projects for which the Section 514, ~~or 515,~~ or 538 funding commitment is a "NOFA selection for further processing" but not an "obligation" (as those terms are used by RHS.)

Beginning the second round of 2006, the presence of a Section 538 funding commitment alone will not enable a project to compete under the RHS program apportionment. Rather, such projects will compete under the general rural set-aside.

Any amount reserved under this subsection for which RHS 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.

Reason:

The change described above carries out the intended deletion of the Section 538 program from preferential consideration under the rural set-aside, but delays the deletion until after the first round of 2006. This change is in response to specific and general comments that significant changes should be implemented only after due advance notice so as to minimize harm to parties who have already invested time and resources in prospective applications based upon pre-change rules. While staff does not agree this concern always overrides the public interest in an immediate change, staff believes a delay of one round for this change does little significant public harm, while ultimately accomplishing the underlying objective of the change.

Section 10325(c)(6)

Proposed Change:

- (6) Neighborhood Revitalization. These points will not be available to projects applying under the Rural set-aside.

A development must be located in a Neighborhood Revitalization area, as defined in Section 10302(bb) of these regulations where demonstrable evidence, satisfactory to the Executive Director, is submitted showing that a neighborhood revitalization plan has been adopted and specific efforts towards achieving the plan's goals have occurred. Plans should be specific to the neighborhood, and efforts undertaken may include, but are not limited to, existing partnership coalitions with public entities, private sector enterprises, and/or nonprofit community organizations; financing commitments for work to be done in the neighborhood; and/or commencement of a specific neighborhood project. Each application for neighborhood revitalization points must include a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. Applications that have received HOPE awards from the U.S. Department of Housing and Urban Development, or located in federally designated Renewal Communities, Empowerment Zones, or Enterprise Communities, or are planned military base re-use projects, or are for projects located on tribal lands, or are located in a State Enterprise Zone will automatically be granted the full maximum points in this category without meeting any other conditions for Neighborhood Revitalization points. Base re-use, as used in this subsection, refers to projects that are located on a military base. Generally, such projects will involve, at least in part, the rehabilitation of already existing buildings on such a base. A project requesting neighborhood revitalization points will not be eligible to receive points in the balanced communities section below.

Points for neighborhood revitalization will be awarded as follows, to a maximum of 9 points:

Location in a locally designated revitalization area as evidenced by submission of a plan adopted by the jurisdiction, including evidence that the plan for neighborhood revitalization is still in effect, and a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. The plan should include findings of need or identification of problems requiring revitalization efforts. 2 points

3rd party letters from governmental entities or Letter(s) from non-profit organizations, documenting and substantiating funds committed or expended within the past five years in the neighborhood, as they specifically relate to the revitalization of the neighborhood where the project will be located.

Up to 2 points

A narrative explaining precisely the nature and extent of the neighborhood's revitalization efforts, how the applicant's project will fit into that framework, and how the proposed project is critical to the neighborhood's revitalization.

2 points

A letter from an governmental entity official in the jurisdiction that delineates the various neighborhood revitalization efforts in the immediate vicinity of the proposed development, both already undertaken and planned, and the funds that have been committed and expended for projects within that immediate neighborhood ~~substantiating funds committed or expended within the past five years in the neighborhood, as they specifically relate to the revitalization of the neighborhood where the project will be located.~~ Up to 3 points

Reason:

The changes above revert the edited paragraphs back to their current 2005 wording, leaving those provisions unchanged. Staff received significant comment that nonprofit letters do not necessarily indicate the successful revitalization of an area, and shouldn't be required to achieve full points under neighborhood revitalization. All commenters on the original proposed change opined that local government efforts and investments are generally much more meaningful to an area's revitalization.

Section 10325(c)(8)

Proposed Change:

(8) Sustainable building methods. Maximum 8 points

A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. (4 points)

~~New construction or adaptive reuse projects that exceed Title 24 energy standards by at least 5%. For rehabilitation projects not subject to Title 24, a project that reduces energy use on a per square foot basis by 20% as calculated using a methodology approved by the California Energy Commission (2 points).~~

For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period. (2 points)

Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems. (2 points)

Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less). (2 points) 1 point

Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit. (2 points)

Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less) (~~2 points~~) 1 point

Use of no-VOC interior paint (5 g/l or less). (~~2 points~~) 1 point

Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives (less than 25 g/l). (~~2 points~~) 1 point

Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer. (~~2 points~~) 1 point

Use of formaldehyde-free insulation. (~~2 points~~) 1 point

Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%). (~~2 points~~) 1 point

Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period. (~~2 points~~) 1 point

Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for ~~rehab~~ rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas. (~~2 points~~) 1 point

Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. (~~2 points~~) 1 point

~~including a no-step entry with maximum 1/2-inch flat topped thresholds; minimum 42" wide hallways on primary floor; minimum 34" clear door openings throughout the units; accessible lever hardware and door thresholds throughout the units; at least one bathroom with a 30" x 48" turning area; a 30" x 48" clearance space in the kitchen parallel to and centered on the front of all major fixtures and appliances.~~ (~~2 points~~)

The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 1 point

To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included and/or that the energy

efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.

Reason:

The proposed changes respond to specific comments received and acknowledge the general proposition that while (a) a lengthy menu of options for getting points under this category is good, (b) not all of the options merit two points. Rather, to achieve a roughly comparable level of “green” design and materials usage to the 2005 regulations, some of the options should be reduced in point value. The net affect is that, by selecting the more meaningful options from the menu, an applicant may still achieve the eight (8) available points with four menu items and without exceeding the more rigorous Title 24 standards. However, if selecting the more modest menu items, more such features would be required to achieve the eight points.

In addition, commenters noted that exceeding Title 24 standards by 5 percent (5%) is not meaningful within the measuring error of the energy efficiency metrics. We have therefore removed the 5% option for two points.

Finally, pursuant to extensive persuasive testimony regarding the health benefits associated with smoke free living environments, we have added a one-point option to the menu for providing smoke-free sections, buildings, or projects.

Section 10325(f)(7)

Proposed Change:

- (7) Minimum construction standards. Applicants shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note that the following minimum specifications will be incorporated into the project design for all new construction projects:
- (A) Landscaping. 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.
 - (B) Roofs. Roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer’s warranty.
 - (C) Exterior doors. ~~Solid~~ Insulated or solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one-year guarantee and all six sides factory primed.
 - (D) Appliances. Energy Star rated appliances, including but not limited to, refrigerators, dishwashers, and clothes washers ~~and dryers~~ shall be installed when such appliances are provided in within Low-Income Units and/or in on-site community facilities unless waived by the Executive Director.
 - (E) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.
 - (F) Water heater. For units with individual water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger. All individual water heaters shall be

equipped with pressure and temperature relief valves unless waived by the Executive Director.

- (G) Floor coverings. For light and medium traffic areas vinyl or linoleum shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick. A hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Carpet complying with U.S. Department of Housing and Urban Development/Federal Housing Administration UM 44D, or alternatively, cork, bamboo, linoleum, or hardwood floors shall be provided in all other floor spaces unless this requirement is specifically waived by the Executive Director.
- (H) Use of Low Volatile Organic Compound (VOC) paints and stains (Non-flat: 150 g/l or less, Flat: 50 g/l or less) for all interior surfaces where paints and stains are applied.

Reason:

Commenters have pointed out that insulated doors provide equal benefit to solid core doors. In addition, commenters noted that the previous suggested language implied that Energy Star appliances must be installed in all affordable units in order to receive competitive points. Staff's intent was reward Energy Star appliances if such appliances are provided within the units. Alternatively, such appliances may reside within a common facility on-site.

Finally, commenters noted that clothes dryers do not have Energy Star ratings.

Section 10327(c)(5)(B)

Proposed Change:

(B) A further four percent (4%) increase in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that include three of the following energy efficiency/resource conservation/indoor air quality items:

- (1) ~~exceed~~ Exceed Title 24 standards by at least ~~20%~~ 15%.
- (2) ~~use Energy Star rated refrigerators, dishwashers, clothes washers, furnaces, and air conditioners~~
- (3) ~~use~~ Use tankless water heaters, a high efficiency condensing boiler (92% AFUE or greater), or a solar thermal domestic hot water pre-heating system.

Use a Minimum Efficiency Report Value (MERV) 8 or higher air-filter for HVAC systems that introduce outside air.

Irrigation system using only reclaimed water and/or captured rainwater.

Recycle at least 75% of construction and demolition waste (measured by either weight or volume).

- (4) ~~use~~ Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).
- (5) ~~use natural fiber woven carpet, recycled content carpet, recycled carpet tiles, cork, bamboo, linoleum, or hardwood floors in living rooms and bathrooms (where no VOC adhesives or backing is also used.)~~
- (6) ~~use Energy Star rated roof(s)~~
- (7) ~~provide hard wiring for computers in each unit with each unit wired for telephones using CAT5e or better and a second network for television services using coax cable, as certified by the project architect and owner at application and at placed in service~~

Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all living rooms or 50% of all common areas.

Install CRI Green Label Plus Carpet, or no carpet, in all bedrooms.

- (8) ~~vent~~ Vent kitchen range hoods to the exterior of the building-in at least 80% of units.

Use at least four recycled products listed in the Construction, Flooring, or Recreation section of the California Integrated Waste Management Boards Recycle Content Products Database www.ciwmb.ca.gov/RCP .

Reason:

The proposed changes incorporate the latest improvements in materials and methods for energy and resource efficient development. In addition, the proposed changes account for what has become common practice with little cost impact.

The first change accounts for the more rigorous Title 24 energy standards by reducing the percentage by which a project must exceed the new, more rigorous standard. The proposed changes have also eliminated certain Energy Star appliances and electronic wiring from the list due to the fact that these have become more commonplace and price competitive. Finally, the list now contains more specificity for the various components so that those beneficial improvements that truly add to costs are accounted for.

Section 10327(c)(5)(C)

Proposed Change:

(C) Additionally, for projects applying under Section 10326 of these regulations, an increase in the threshold basis limits of up to ~~40%~~ 60% for projects located in federally designated difficult to develop areas or qualified census tracts and up to ~~60%~~ 80% for projects not located in federally designated difficult to develop areas or qualified census tracts, in addition to all other adjustments permitted under these regulations, will be permitted, and where more than 50% of the units will be income and rent restricted to Tax Credit levels, the basis limits can be exceeded by ~~60%~~ 80% for projects located in federally designated difficult to develop areas or qualified census tracts, and up to ~~80%~~ 100% for projects not located in federally designated census tracts, in addition to all other adjustments permitted under these regulations. In order to qualify for either of the aforementioned adjustments to the threshold basis limits, the applicant must agree to maintain the affordability period of the project for 55 years.

Reason:

The current percentage basis boosts for 4% tax credit projects, added in 2003, recognized the constraining effect of the federal 221(d)(3) limits on projects within certain regions of the state. That is, legitimate project costs justified eligible bases that exceeded the 221(d)(3) limits then in place. Since that time development costs, especially materials costs, have increased dramatically. While the federal Department of Housing and Urban Development (HUD) has accounted for these costs somewhat in raising their high-cost multipliers, in several regions of the state the current limits, even with the available boosts, remain unrealistically low.

The net effect of unrealistically low regional basis limits is less equity brought into the development than would otherwise be available. Therefore, project sponsors are required to incur additional project debt. In light of the state's interest in lower income targeting, many projects lack the rent streams to service conventional debt. So, the debt obtained is typically scarce local or state funding.

The State seeks a reasonable balance between equity and local and state debt in funding affordable housing development using 4% tax credits. By raising the percentage boosts as suggested, more equity will be available to those projects that need it, and a better balance of equity and subsidy debt will be achieved. TCAC staff still intends to examine the topic of basis limits more generally in 2006, but advocates this adjustment in 4% tax credit boosts as an interim measure.

Section 10327(c)(5) (E)

Proposed Change:

(E) Further, the Executive Director, in his/her sole discretion, may permit a further increase in basis limits to a maximum of 5%, where distributive energy technologies such as microturbines and fuel cells and/or renewable energy sources such as solar photovoltaics will be implemented. To obtain this increase, an applicant must submit evidence of the total cost of the system, the net cost of the system after any rebates, and the estimated value of the energy savings over the warranted life of the proposed system. ~~and the operating cost savings to be created through the use of the technology, throughout the time of the compliance period.~~

Reason:

This proposed change accounts for current available technologies and specifies that the costs versus benefits will be evaluated over the projected life of the system. This provides a more realistic estimate of the public good derived from the additional cost.

Section 10327(c)(2)(C)

Proposed Change:

(C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis.

Reason:

Commenters asked that we clarify that an unfunded application does not establish the initial developer fee. Staff's intent was to cap the fee at what was originally proposed in the initial funded application.