

**2010 Proposed Regulation Changes with Reasons  
November 23, 2009**

**Section 10315(i)**

**Proposed Change:**

- (i) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below 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 attempt to fund Federal and State Credit awards in each funding round in the approximate following percentages:

<u>Housing Type</u>	<u>Goal</u>
Large Family	65%
Single Room Occupancy	<del>40%</del> <u>15%</u>
“At-Risk”	5%
Special Needs	<del>5%</del> <u>15%</u>
Seniors	15%

**Reason:** The proposed changes would increase the goal percentages for Single Room Occupancy (SRO) and Special Needs housing types up to 15 percent (15%) each. These changes would delay invoking the first tiebreaker and competitively disadvantaging those housing types under Section 10325(c)(10). In 2009, three SRO and three Special Needs projects lost due to the first tiebreaker. TCAC has received numerous comments stating that the scoring system should not show a preference for non-SRO and non-Special Needs projects so early in its competitive process. The current system virtually assures that no Special Needs projects are likely to compete successfully against large family projects outside of the Nonprofit set-aside since homeless assistance projects are the preemptive priority in that competition. For example, no rural special needs project could compete successfully under the current first tiebreaker.

In essence, the proposed changes would permit SROs and Special Needs projects to compete under the final tiebreaker further into the competitive award process. At a time when the California Housing Finance Agency and the State Department of Housing and Community Development are devoting resources to housing special needs populations, this change would complement those state efforts.

As a practical effect, fewer family projects could result if SROs and Special Needs projects possess stronger final tiebreakers. However, staff does not propose lowering the Large Family goal to 50% since this would disadvantage those projects under the first tiebreaker, rather than permitting them to compete under the final tiebreaker.

**Section 10315(j)**

**Proposed Change:**

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

<u>Geographic Area</u>	<u>Apportionment</u>
Los Angeles County	33%
Central <u>Region</u> (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	10%
<u>North and East Bay Region</u> (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)	10%
San Diego County	10%
Inland Empire <u>Region</u> (San Bernardino, Riverside, Imperial Counties)	8%
Orange County	8%
<u>South and West Bay Region</u> (San Mateo, and Santa Clara Counties)	6%
Capital/ <u>and Northern Area Region</u> (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)	6%
<u>Central Coastal California Region</u> (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5%
San Francisco County	4%

**Reason:** The proposed minor changes would establish naming consistency for multi-county regions.

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**Section 10317(d)**

**Proposed Change:**

- (d) DDA Status of Specified Counties for ~~2009~~ 2010: Under authority contained in IRC Section 42(d)(5)(B)(v), for ~~2009~~ 2010 CTCAC additionally designates projects applying for Credit Ceiling credits in the following counties as requiring an increase in credit ceiling credits and therefore considers such projects as being within a difficult to develop area (DDA) as that term is used in IRC Section 42(d)(5)(B)(iii): Alameda, Contra Costa, El Dorado, ~~Napa~~, Placer, Sacramento, and San Joaquin, and Sonoma.

**Reason:** The Department of Housing and Urban Development (HUD) annually establishes a list of counties to be designated as difficult to develop areas (DDAs). Proposed projects located in

those counties are designated as DDA projects available for a 30 percent (30%) increase in eligible basis. The proposed change continues for one year the treatment of six (6) California Counties as DDAs for purposes of calculating basis and credit reservations. The reason for the reduction from eight (8) counties in 2009 to 6 for 2010 is due the recent HUD release which now includes Napa and Sonoma counties as DDAs for 2010. Under the difficult financial environment likely to continue into 2010, a decrease in the anticipated basis for federal credit calculation further jeopardizes such projects' viability in the short term.

Additional language clarifies that the State DDA designation only applies to nine percent (9%) credit applicants, consistent with the limited federal authority granted to States.

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## Section 10322(i)(2)

### Proposed Change:

- (2) Placed-in-service application. Within ~~one year~~ six months of completing construction of the proposed project, the applicant 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 applicant 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:
  - (A) 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;
  - (B) an audited certification, prepared by a Certified Public Accountant under generally accepted accounting principles, with all disclosures and notes. This certification shall:
    - (1) reflect all costs, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan; and
    - (2) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.
  - (C) 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;
  - (D) photographs of the completed building(s);
  - (E) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
  - (F) a certification from the syndicator of equity raised and syndication costs in a Committee-provided format;
  - (G) a project ownership profile on a Committee-provided form;
  - (H) a sponsor-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, detailed description of the services currently provided to tenants including copies of contracts for such services. If services are not available at the time of submission, a description of the proposed services and a timetable for the provision of those services;~~

**Reason:** Proposed language would require sponsors to submit a placed-in-service application within six months of project completion. Providing TCAC earlier notice of the project's placed-in-service date would enable staff to conduct an initial compliance monitoring by the end of the second calendar year following the placed-in-service date as required by federal regulation §1.42-5(c)(2)(ii)(A).

Additional proposed language would clarify that service amenity changes must be explained at placed-in-service. In addition, the sponsor would be required to certify that services are in place, and to provide executed contracts and service values. These clarifications help TCAC assure committed services are in place.

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## **Section 10325(c)**

### **Proposed Change:**

- (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. An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle except where a pre-existing project-based Section 8 contract is in effect, shall be scored proportionately in the site amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site. 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.

Effective in the second round of 2010, the number of applications received from individuals, entities, affiliates, and related entities is limited to no more than two (2) per set-aside or geographic apportionment per round, and no more than four (4) per round total. 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.

**Reason:** This proposal would limit applications accepted from related entities to no more than four per round total, and two per set-aside or region per round. The established practice of entities submitting numerous applications each year in the 9% competition inefficiently increases an already-high application volume for 9% tax credits. This practice increases the number of lesser-quality applications and TCAC staff workload. Over time the practice is also leading to large numbers of TCAC portfolio projects being held by a smaller set of sponsors. This is especially true in certain set-asides and geographic regions.

In addition, TCAC staff has begun to see large volume competition winners struggle to maintain quality and timeliness in developing projects simultaneously. Finally, staff believes a larger, diverse community of affordable housing developers statewide is in the public interests.

Finally, staff welcomes comments regarding policing this policy. Staff intends to look to the capacity point-garnering entity as one test for related-party relationships. In addition, staff would consider significant negative points for intentional circumvention of the intent of this provision. Therefore, suggestions for additional clarifying language are welcomed.

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### **Section 10325(c)(5)(A)1.**

#### **Proposed Change:**

##### 1. Transit Amenities

The project is part of a transit-oriented development strategy where there is a transit station, rail station, commuter rail station, or bus station, or public bus stop within 1/4 mile from the site with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m., and the project's density will exceed 25 units per acre 7 points

The site is within 1/4 mile of a transit station, rail station, commuter rail station or bus station, or public bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m. 6 points

The site is within 1/3 mile of a public bus stop with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m. 5 points

The site is located within 500 feet of a regular public bus stop, or rapid transit system 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 1,500 feet of a regular public bus stop or rapid transit system stop 3 points

Multiple bus lines may not be aggregated for the above points, only if CTCAC determines that multiple lines from the designated stop travel to the community's employment center.

**Reason:** TCAC received an application in 2009 demonstrating a privately-operated transit line with a stop near the proposed project site. In the absence of regulation language specifying that the bus system must be publicly-operated, TCAC was compelled to award points for this system. Such private systems generally lack publicly-subsidized fare discounting, and do not have a scheduling process subject to public review and comment. The proposed change would clarify the generally-understood intent that, in order to garner competitive points, an identified bus system must be publicly operated.

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

**Proposed Change:**

- 4. The site is within 1/4 mile of a full scale grocery store/supermarket of at least 25,000 square feet where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural set-aside projects ~~or projects located in inner cities~~) 4 points
- ~~or within 1/2 mile (1 mile for Rural set-aside projects ~~or projects located in inner cities~~)~~ 3 points
- or within 1.5 miles (3 miles for Rural set-aside projects) 2 points
- ~~or site is within 1/4 mile of a convenience market where staples are sold~~ 2 points
- The site is within 1/4 mile of a neighborhood market of 5,000 square feet or more (1/2 mile for Rural Set-aside projects) 3 points
- or within 1/2 mile (1 mile for Rural Set-aside projects) 2 points
- The site is within 1/4 mile of a weekly certified farmers market operating at least 5 months in a calendar year 2 points
- or within 1/2 mile 1 point

**Reason:** The proposed change would further define “full scale grocery store/supermarket” in terms of square footage and allow additional distance to qualify for points. Proposed point category additions to this section are neighborhood markets and farmers’ markets. The deletion of the inner city and convenience market categories are also proposed.

In reviewing competitive applications requesting full scale grocery store/supermarket site amenity points, TCAC staff has examined a variety of markets. Each competitive round, photos submitted for many markets have not met the regulation’s intent. Rather than supermarkets or full-scale grocery stores, smaller neighborhood-style markets are presented within applications. Absent a clear definition appearing in regulation, markets

selling a small meat and produce selection have received supermarket amenity points when they were not, in fact, “supermarkets” or “full-scale grocery stores.”

Staff proposes a new point category for these “neighborhood” markets as well as more clearly defining “full scale grocery store/supermarket.” By expanding the distance to 1.5 miles for partial points and including neighborhood markets, staff proposes that the need for an unclear inner city exception is no longer applicable.

Proposed supermarket and neighborhood market square footage is based on staff researching the grocery industry and reviewing numerous market size examples. The average square footage of supermarkets built within the last 15 years is not less than 35,000 square feet, with current median supermarket square footage over 46,000 square feet. Staff is not proposing that these “jumbo” sized markets become the scoring standard, and has proposed a lesser threshold than the average for new supermarkets.

Neighborhood market data provides a wider size range. For neighborhood market square footage, staff reviewed industry data and considered the quantity of food items that would be carried in a 5,000 square-foot market. The proposed neighborhood market size would indicate a volume of commodities providing some dietary and pricing variety.

Staff recommends removing the convenience market point option. Convenience stores typically charge inflated prices for poor quality food items. This is not a benefit to tenants, and staff proposes removing the option from site amenity scoring. TCAC staff also proposes a certified farmers’ market point category, recognizing their nutritional and variety benefit. A variety of fresh fruits, vegetables, and other food items sold by growers near a project is a valuable site amenity and a benefit to the tenants.

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

**Proposed Change:**

5. For a Large Family development, the site is within 1/4 mile of a public elementary, middle, or high school that children living in the development may attend (1/2 mile for Rural set-aside projects). Public schools demonstrated 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 1/2 mile (1 mile for Rural set-aside projects)

2 points

**Reason:** Consistent with the intent of the scoring factor, applications demonstrating that resident families would benefit from a nearby public school would receive competitive credit. This would now include projects near public schools that are under construction at the time of application, and that demonstrate a completion timeline assuring the school’s availability by the time the residential project is completed. This change would account for long lead-times for public school approval and development, and acknowledge the prospective availability by the time the housing units are completed.

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**Section 10325(c)(5)(A)10.**

**Proposed Change:**

10. High speed internet service must be provided in each unit for a minimum of 10 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. Contracts with service providers must be documented within 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

**Reason:** The proposed change would move free internet service scoring from the service amenity category to the site amenity category. While this would more accurately reflect its status as a project amenity, it differs from the other point-garnering amenities. A project sponsor could control this amenity, rather than exclusively reliant upon existing amenities being nearby. This would make two site amenity points possible to sponsors whose project otherwise lacks proximity to an adequate number of existing amenities.

Staff expects a larger number of projects would elect to provide free internet service to residents with a two-point option under site amenities rather than service amenities.

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**Section 10325(c)(5)(B)**

**Proposed Change:**

~~(B) — Service Amenities: Amenities must be appropriate to the tenant population served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the project's placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenants free of charge, except for day care services. Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development 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. Referral services will not be eligible for points. Contracts with service providers, service provider experience, and evidence that physical space will be provided must be documented within the application. To receive points for service amenities the application must propose a combined annual value of at least \$10,000, or \$5,000 for projects of 20 units or fewer, for those services. Any donated services must be assigned a dollar value by the provider of those services. To receive service amenities points, applications must contain a detailed budget clearly displaying all anticipated income and expenses associated with the projects services program. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:~~



1. ~~High speed internet service provided in each unit (as stated above, free of charge to the tenants) ————— 5 points~~
2. ~~After school programs of an ongoing nature for school age children ————— 5 points~~
3. ~~Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above. ————— 5 points~~
4. ~~Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development ————— 5 points~~
5. ~~Direct client services, such as assistance with activities of daily living, or provision of counseling services, where a contract is in place at the time of application (only for senior, SRO and Special Needs Projects) — 5 points~~
6. ~~Bona fide service coordinator/social worker available ————— 5 points~~

(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.

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.

The amenities must be available within 6 months of the project's placed-in-service date. Services must be committed for a period of 10-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 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. All organizations providing services for which the project is claiming service amenities points must have at least 24 months experience providing services to one of the target populations to be served by the project.

No more than 10 points will be awarded in this category.

Amenities may include, but are not limited to:

1. Service Coordinator. Responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.). Minimum ratio of 1 Service Coordinator to 200 tenants. May not be the same position as #2 or #3. 5 points
  
2. 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. Minimum ratio of 1 Case Manager to 50 tenants. May not be the same position as #1 or #3. 5 points
  
3. Other Services Specialist. Must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor. Minimum ratio of 1 Services Specialist to 100 tenants. May not be the same position as #1 or #2. 5 points
  
4. Adult educational classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes. Must provide a minimum of 80 hours of instruction each year (40 hours for small developments of 20 units or less). May not be the same as #5. 5 points
  
5. Health and wellness or skill-building classes. Includes, but is not limited to: ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Must provide a minimum of 80 hours of instruction each year (40 hours for small developments of 20 units or less). May not be the same as #4. 5 points
  
6. Individual development account (IDA) or matched savings program provided by appropriately-licensed organization or individual for tenants. 5 points
  
7. Health services provided by appropriately-licensed organization or individual. Includes but is not limited to: health clinic, adult day health center, medication management services. 5 points
  
8. Behavioral health services provided by appropriately-licensed organization or individual. Includes but is not limited to: mental health services and treatment, substance abuse services and treatment. 5 points

9. Licensed child care. Must 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 50% of units are for families). 5 points

10. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. Minimum of 10 hours per week, Monday to Friday, offered throughout the school year. (Only for large family projects or other projects in which at least 50% of units are for families). 5 points

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; state the annual dollar value of the services; commit that services will be provided for a period of 10 years; 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); name the project to which the services are being committed. Organizations providing in-kind or donated service must estimate the value of those services. Volunteer time may be valued at \$10 per hour.

Documentation may 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 or 3, 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 10).

Applications must include a services sources and uses budget clearly describing all anticipated income and expenses associated with the services program and that aligns with the services commitments provided (i.e. contracts, MOUs, letters, etc.)

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.

Evidence that adequate physical space for services will be provided must be documented within the application.

**Reason:** The proposed changes would provide a lengthier list of service options, and add clarity and consistency in evaluating and scoring project services plans. The proposed changes clearly describe various service types, and would establish standards regarding services duration and frequency. The proposed changes also specify financial sources and uses documentation describing the proposed services budget.

The proposed changes would more appropriately distinguish among various services types and levels, and competitively recognize more rigorous services plans. In recent years, staff has noted a decline in services plan quality. The specific proposed standards were developed using a contracted services consultant and through facilitated communications with affordable housing service providers.

New language would also specifically list and endorse smoking-cessation and on-site food cultivation and preparation classes.

Finally, the proposed changes would eliminate free on-site internet service as a service amenity point earner. Staff proposes making points available for free on-site internet service as a site amenity.

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### **Section 10325(c)(7)(A)**

#### **Proposed Change:**

- (7) 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 Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income cannot be used twice for 100% at 50% and receive 50 points, nor can 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income for 25 points and 40% of Income Targeted Units to Total Units at 50% of Area Median Income be used for an additional 20 points. However, the “Percent of Income Targeted Units” may be used multiple times. For example, 50% of Targeted Units at 50% of Area–Median Income for 25 points may be combined with another 50% of Targeted 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 with more than 50% of the low income units targeted at or below 45% of Area Median Income must provide documentation of a committed subsidy for a period of at least 15 years (to the extent permitted by the relevant program funding source).

Lowest Income Points Table:

	Percent of Area Median Income							
	55	50	45	40	35	30		
<u>80</u>				<u>45</u>	<u>47.5</u>	<u>50</u>		
<u>75</u>				<u>42.5</u>	<u>45</u>	<u>47.5</u>		
<u>70</u>				<u>40</u>	<u>42.5</u>	<u>45</u>		
<u>65</u>			<u>35</u>	<u>37.5</u>	<u>40</u>	<u>42.5</u>		
<u>60</u>			<u>32.5</u>	<u>35</u>	<u>37.5</u>	<u>40</u>		
<u>55</u>			<u>30</u>	<u>32.5</u>	<u>35</u>	<u>37.5</u>		
<b>50</b>	22.5	25*	27.5	30	32.5	35	points	
<b>45</b>	20	22.5*	25	27.5	30	32.5	points	
<b>40</b>	17.5	20	22.5	25	27.5	30	points	
<b>35</b>	15	17.5	20	22.5	25	27.5	points	
<b>30</b>	12.5	15	17.5	20	22.5	25	points	
<b>Total Tax</b>	<b>25</b>	<b>10</b>	<b>12.5</b>	<b>15</b>	<b>17.5</b>	<b>20</b>	<b>22.5</b>	points
<b>Credit Units</b>	<b>20</b>	<b>7.5</b>	<b>10</b>	<b>12.5</b>	<b>15</b>	<b>17.5</b>	<b>20</b>	points
(exclusive of mgr.'s unit)	<b>15</b>	<b>5</b>	<b>7.5</b>	<b>10</b>	<b>12.5</b>	<b>15</b>	<b>17.5</b>	points
	<b>10</b>	<b>2.5</b>	<b>5</b>	<b>7.5</b>	<b>10</b>	<b>12.5</b>	<b>15</b>	points

\* Available to Rural set-aside projects only

**Reason:** The proposed changes would modify the Lowest Income scoring table and provide guidance on the table's use. Currently, the table does not award points for more than 50 percent of low income units being designated for each area median income (AMI) category. Projects are currently unable to garner points for all of the more deeply targeted units. TCAC staff proposes to expand the table, awarding additional points for deeper income targeting. The table would award points for projects that have more than 50% of their units targeted to tenants with incomes of 30 percent, 35 percent, 40 percent, and 45 percent of AMI. In addition, projects with deeper income targeting would be required to provide evidence of a committed rent or operating subsidy.

Staff also proposes to reduce the maximum points garnered for units targeted at higher incomes (50 percent and 55 percent of AMI). This minor change would recognize and reward projects providing deeper income targeting. Current use of the Lowest Income table allows projects to garner the full 50 points with a combination of income targeting that provides an average affordability of around 50% AMI for a project. Given this average, staff believes that an application should not earn up to half the available Lowest Income points for rents targeted at the 50 percent and 55 percent of AMI levels. The proposed change would recognize a broader variety of income targeting within tax credit units.

Since TCAC regulates rents to those upon which scores are based, the proposed changes would more closely align proposed and regulated rents. The proposed changes would expand income targeting while minimally affecting existing use of the table. The proposed table would not radically change current practices utilized by stakeholders.

## Section 10325(c)(10)

### Proposed Change:

#### (10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed:

~~f~~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 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

~~s~~Second, the highest ~~ratio~~ of the sum of the following two ratios:

~~e~~(a) Committed permanent public funds defraying residential costs to total residential project development costs. Permanent funds shall be demonstrated through documentation including but not limited to public funding award letters, committed land donations, or documented project-specific local fee waivers; ~~or through commitments from unrelated private financial institutions or consortia of private financial institutions. Such financial institutions~~ The numerator of this ratio may include permanent funding committed by foundations so long as the funding is a grant or residual receipts loan. ~~, but shall not include seller-carry-back financing. Local land donations include land leased from a public entity for a de minimis annual lease payment. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits. For purposes of this tiebreaker, total development costs will not include total land costs. Total development costs for purposes of this tiebreaker shall also exclude budgeted developer fee. CTCAC may establish underwriting parameters within its application for private funding sources to assure the reasonableness of the proposed loan amounts.~~

~~(b)~~ One (1) minus the ratio of requested unadjusted eligible basis to total residential project development costs.

~~This ratio~~ These ratios must not have decreased ~~when the project is placed in service~~ following award or negative points may be awarded.

**Reason:** For the final competitive tiebreaker, TCAC staff proposes combining the 2008 third tiebreaker, and a variation of the 2009 final tiebreaker. In essence, the proposed new tiebreaker would evaluate a project's ability to reduce its requested eligible basis and obtain permanent public funding commitments. In addition, proposed changes would evaluate application efforts in these areas relative to all residential project costs, including land and developer fee.

By reducing requested eligible basis, a project would utilize less of the State's available credit ceiling Low Income Housing Tax Credit authority, allowing more projects to receive credits. Reducing requested eligible basis could be accomplished by obtaining other funding sources, both private and public, and better equity pricing for the credits.

By maximizing public funding in the project, sponsors bring additional public-purpose oversight and participation to the project, be it local, State, or federal. In addition, public assistance typically does not bring “must-pay” debt to the project, permitting lower rents and deeper income targeting. In contrast, private permanent financing adds to a project’s financial stress by requiring debt service and applying upward pressure on rents.

In 2009, project applications documented permanent private financing sources that were not reliably sized or meaningfully committed. Expecting such commitments from private financing sources at the application stage is not realistic, and basing a key scoring factor on more reliably-committed public sources is sounder public policy.

The proposed changes would also count all residential development costs in each ratio’s denominator. This would avoid applicants competitively benefiting from loading predevelopment and other development costs into land costs for no beneficial public purpose. While including land costs in the 2009 competition would have moderately changed outcomes, staff has not found a systematic disadvantage accruing to any class of projects.

In order to combine the ratios and derive a meaningful score, staff proposes “inversing” the eligible basis ratio expression by subtracting it from one (1). This mathematical convenience does not affect the scoring outcomes. However, combining the two ratios will tend to neutralize development cost over-statement or under-statement would be neutralized since one ratio benefits from a higher development cost, and one benefits from a lower development cost. Combining the two ratios encourages sponsors to accurately estimate the project’s total residential development costs.

Finally, staff proposes to continue counting permanent funding from foundations, since those sources typically do not add “must pay” debt for the property’s operating budget.

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## **Section 10325(g)(4)**

### **Proposed Change:**

- (4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are developmentally disabled, are survivors of physical abuse, are homeless, have chronic illness, including HIV and mental illness, are displaced teenage parents (or expectant teenage parents) 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. In the case of a development that is less than 75% special needs, the non-special needs units must meet another housing type (for example, large family), although the project will be considered as a special needs project for purposes of Section 10325. The application shall meet the following additional threshold requirements:
  - (A) Average income for the special needs units is no more than forty percent (40%) of the area median income;
  - (B) Third party verification from a federal, state or local agency of the availability of services appropriate to the targeted population;
  - (C) The units/building configurations (including community space) shall meet the specific needs of the population;

- (D) If the project does not have a rental subsidy committed, the applicant 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 those receiving such assistance are willing to pay rent at the level proposed;
- (E) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
- (F) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;
- (G) Projects are subject to a minimum low-income use period of 55 years;
- (H) A ten percent (10%) vacancy rate shall be used for pro-forma purposes unless otherwise approved by the Executive Director. Justification of a lower rate shall be included;
- (I) Where services are required as a condition of occupancy, special attention shall be paid to the assessment of service costs as related to maximum allowable Credit rents. A tax professional's opinion as to compliance with IRC Section 42 may be required by the Executive Director;
- (J) A signed contract or memorandum of understanding between the developer and the service provider, together with the resolution of the service provider(s) identified in the preliminary service plan described in paragraph (L), must accompany the Tax Credit application;
- (K) A summary of the experience of the developer and the service provider(s) in providing services to the project's for special needs populations must accompany the Tax Credit application; and,
- (L) 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.

**Reason:** The proposed changes would clarify ongoing requirements related to providing committed services to project residents. Changes would also clarify the expected contents of a preliminary services plan.

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## Section 10327(c)(1)

### Proposed Change:

- (1) Builder overhead, profit and general requirements. An overall cost limitation of fourteen percent (14%) of the cost of construction (~~site work and structures~~) 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 site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes site work, structures, and prevailing wages.



**Reason:** The proposed change more clearly describes how TCAC calculates the fourteen percent (14%) limitation by including the appropriate cost factors in the calculation.

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**Section 10327(c)(5)(A)**

**Proposed Change:**

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. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed thirty-nine percent (39%).
- A twenty percent (20%) increase to the unadjusted eligible basis for a development that is required to pay state or federal prevailing wages;
  - A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not “tuck under” parking);
  - A two percent (2%) increase to the unadjusted eligible basis where a day care center is part of the development;
  - A two percent (2%) increase to the unadjusted eligible basis where 100% of the units are for special needs populations
  - A ten percent (10%) increase to the unadjusted eligible basis for a development wherein at least 95% of the project’s upper floor units are serviced by an elevator.

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 application confirming that item(s) listed above will be incorporated into the project design.

- (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 either (a) exceed Title 24 standards by at least 35 percent, or (b) include three of the following energy efficiency/resource conservation/indoor air quality items:

Exceed Title 24 standards by at least 15%.

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 by weight or volume).

Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).

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.

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](http://www.ciwmb.ca.gov/RCP).

In order to receive the four percent (4%) increase to the basis limit, the application shall contain a certification from the project architect confirming that item(s) listed above will be incorporated into the project design.

**Reason:** The proposed changes would codify the requirement that a professional architect confirm that the features warranting the basis limit boost will, in fact, be designed into the project. This assures the State that permitting access to additional tax credits would result in the beneficial improvements claimed in the application.

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#### **Section 10327(c)(6)**

##### **Proposed Change:**

- (6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least ~~4.40~~ 1.15 to 1 is required, except for RHS projects or projects financed by the California Housing Finance Agency.

**Reason:** The 1.10 to 1 DSCR is significantly off-market relative to other states', other public lenders', and especially other private lenders' underwriting. In addition, applying a more conservative standard appropriately stress-tests projects to increase the likelihood that tax credit projects would ultimately operate successfully.

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#### **Section 10327(g)(1)**

##### **Proposed Change:**

- (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:

- (1) Minimum operating expenses shall include expenses of all manager units (budgeting for and ultimately providing at least one (1) manager's unit, and at least one additional manager's unit for every additional 80 units within a project) 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 TCAC by existing tax credit property

operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/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, or the costs of any service amenities.

**Reason:** TCAC's compliance staff has observed significant deficiencies within projects containing too few on-site manager's units. By state regulation, every rental property with 16 or more units must contain a resident manager or other responsible person. TCAC staff is proposing that every tax credit project have at least one on-site manager, regardless of size, and one additional manager's unit for every additional 80 units. Therefore, an 80-unit project would require one on-site manager's unit, while a 160-unit project would require two. At least one unit would be occupied by a Section 42 knowledgeable property manager, and additional units could be occupied by an assistant manager or on-site maintenance personnel. Staff's monitoring experience has been that additional manager's units for every 80 units are best practice.

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### **Section 10337(c)(3)**

#### **Proposed Change**

- (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), (which beginning January 1, 2001, includes 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.

**Reason:** New language would require annual certifications that committed services are in place. This would help TCAC assure that point-garnering services are in fact provided to residents over the compliance period.

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