Additional 2009 Proposed
Regulation Changes with Reasons
March 17, 2009

Section 10317(i)

Proposed Change:

(i) Allocations. The following parameters apply:

(1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects;

(2) The project will be competitively scored under the system delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the ~~third~~ final tie-breaker enumerated at Section 10325(c)~~(12)~~(10) of these regulations;

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

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

(5) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for tax-exempt bond financed projects if State Credits remain available after funding of competitive projects in the second funding round.

Reason: Corrective updates to final tiebreaker references.

Section 10325(c)(10)

Proposed Change:

(10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed: 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 second, the highest ratio of committed permanent 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 local fee waivers; or through commitments from unrelated private financial institutions or consortia of private financial institutions. Such financial institutions could include foundations, but shall not include seller-carry-back financing. 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 land costs~~, unless land donated by a public entity is also being claimed as a permanent funding source~~. Total development costs for purposes of this tiebreaker shall also exclude budgeted developer fee. TCAC may establish underwriting parameters within its application for private funding sources to assure the reasonableness of the purposed loan amounts. This ratio must not have decreased when the project is placed-in-service or negative points may be awarded.

Reason: Since the February 25, 2009 adoption of the current final tiebreaker language, TCAC has received numerous clarifying questions. The proposed additional language addresses the more frequent questions by clearly citing specific funding sources that are and are not included in the final tiebreaker calculation. The added provisions are not meant to be exhaustive, but clarify the most frequently asked questions to date.

First, the competitive comparison was intended to compare sources and costs between the residential projects. That is, the application will compare the percentages of the residential portion of a project's costs are committed. This allows a comparison of like products, without either penalizing or rewarding a project's commercial or other non-residential aspects. Residential costs include on-site amenities related to the residential uses, including community rooms and common space.

Second, proposed changes explicitly include committed land donations and documented local fee waivers as a committed public funding source. These forms of public contribution are equally beneficial to a project as a loan or grant, and will be scored accordingly.

Third, additional language clearly acknowledges unrelated foundations as a financial institution for purposes of this scoring factor. However, additional language clearly states that seller carry-back financing is not permanent funding from a financial institution. More typically, sellers may carry back paper as bridge financing, but rarely as permanent financing that would meet the terms of more conventional permanent funding sources.

A final change to the final tiebreaker is to delete the provision that would have, in essence, competitively penalized projects for having their land costs paid by a public entity contributing the land. The original intent was to fairly reflect such contributions in both the numerator and denominator. However, TCAC did not intend to competitively harm such projects reducing the ratio in such cases by increasing the denominator..