CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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EXECUTIVE DIRECTOR
JUDITH BLACKWELL

DATE: December 11, 2020

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: Final Proposed Regulation Changes and Responses to Comments

On October 29, 2020, the California Tax Credit Allocation Committee ("TCAC" or the "Committee") released proposed regulation changes. TCAC staff subsequently held a public hearing in Sacramento and virtually through Zoom on November 10, 2020.

TCAC accepted written comments on these initial proposed regulation changes through Friday, November 20, 2020. Numerous individuals, organizations, and groups formally commented on the proposed regulation changes in both oral and written form. TCAC staff carefully considered all comments received and has finalized the recommendations to the Committee for consideration and adoption on Monday, December 21, 2020.

This memo includes the final proposed regulation changes, staff's responses to comments including explanations to any proposed revisions to the initially proposed changes, which are highlighted in yellow. TCAC will publish a matrix summarizing the public comments in a subsequent document.

The memo also includes one additional regulation change to Section 10327(c)(6)(A) on Page 81 to align with the California Debt Limit Allocation Committee ("CDLAC") propose scoring system.

Proposed Regulation Changes, Comments Received, and Responses to Comments
December 11, 2020

Section 10302(a)

Initial Proposed Change:

a) Adaptive reuse. Adaptive reuse means retrofitting and repurposing of existing buildings that create new residential rental units, and expressly excludes any project that involves rehabilitation of any construction affecting existing residential rental units. Adaptive reuse may include retrofitting and repurposing of existing hotels or motels if the hotel or motel is not a place of residence for the current occupants.

[section renumbering continues through the end of 10302]

Comments Received: Several commenters requested that the proposed change be modified to allow past conversions of hotels and motels to residential rental units (going back 10-15 years) be considered adaptive reuse, for the purpose of benefitting from the new construction and adaptive reuse tie breaker size factor. Commenters also requested that conversions currently being done through the Project Homekey program be considered adaptive reuse. One commenter suggested a technical change to clarify that the temporary occupants living in those motels or hotels as a place of last resort not be penalized or evicted in order for a site to qualify as adaptive reuse.

Response to Comments: TCAC staff believes that existing residential housing that was formerly a hotel or motel 10 years ago is not an adaptive reuse. Staff understands that the recently established Project Homekey program is converting hotels and motels into permanent housing, including with the use of low-income housing tax credits. Staff proposes to amend the change to allow Project Homekey projects and include the suggested technical change.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes.

a) Adaptive reuse. Adaptive reuse means retrofitting and repurposing of existing buildings that create new residential rental units, and expressly excludes any project that involves rehabilitation of any construction affecting existing residential rental units. Adaptive reuse may include retrofitting and repurposing of existing hotels or motels if the hotel or motel is not currently a place of residence for the ~~current~~ occupants, and/or sites that have received a Project Homekey allocation.

Section 10302(e)

Initial Proposed Change:

e) Bedroom. A bedroom be at least 70 square feet, must include an interior door, a window or an exterior door, a closet, and at least one receptacle outlet.

[section renumbering follows]

Comments Received: Two comments opposed the requirement of an exterior door or window, stating that building codes permit this design and it is used in the construction of high-density, urban buildings. One commenter requested to continue the use of a free-standing wardrobe in place of a framed closet to allow more design flexibility.

Response to Comments: Based on the comments received, staff has revised the proposed definition.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

e) Bedroom. A bedroom be at least 70 square feet, must include an interior door, ~~a window or an exterior door,~~ a closet or free-standing wardrobe provided by the project owner, and at least one receptacle outlet.

Section 10302(f)

Initial Proposed Change:

f) Bath or bathroom. A bath or bathroom must be and must be equipped with an exhaust fan, a toilet, a sink, a shower or bathtub, and a receptacle outlet.

[section renumbering follows]

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(l)

Initial Proposed Change:

~~l~~o) Developer Fee. All Funds paid at any time as compensation for developing the proposed project, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders. Development consultant fees include but are not limited to: financial modeling or consulting, application preparation, assistance or review, specialized financing consultant services such as HUD, FHA, or AHP financing, entitlement consulting or services, building permit expediting, and tenant file review.

[section renumbering follows]

Comments Received: Commenters generally opposed the proposed language, with one commenter supporting. Commenters stated that consulting fees are not being included in the developer fee maximum, and that these are specialized experts outside of a typical developer staff capacity, citing the complexity of affordable housing programs as well as financial and tax modeling.

Response to Comments: Based on the comments received, staff finds it reasonable to believe that developers have been discounting the existing requirement, or somehow interpreting the developer fee to exclude certain consulting as outside the defined term, without verification from TCAC. While there may be a level of specialized knowledge developed by some consultants, it is staff's recommendation that the clarifying change proceed as proposed since it is in line with the existing defined term.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(p)

Initial Proposed Change:

~~p~~s) Farmworker Housing. A development of permanent housing ~~exclusively~~ for agricultural workers (as defined by California Labor Code Section 1140.4(b)) in which at least 50 percent of the units are available to, and occupied by, farmworkers and their households. The Committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, such emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency ~~that is available to, and occupied by, only farmworkers and their households~~.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(z)

Initial Proposed Change:

z) Hybrid project or development. A new construction development constructed with separate 9% and 4% Federal Credit Allocations. The development must meet the conditions set forth in section 10325(c)(9)(A).

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(y)

Initial Proposed Change:

~~y~~cc) Local Reviewing Agency. An agency designated by the local government having jurisdiction~~,~~ that will perform evaluations of proposed projects in its locale according to criteria set forth by the Committee.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(ll)

Initial Proposed Change:

~~ll~~pp) Scattered Site Project. A project in which the parcels of land are not contiguous except for the interposition of a road, street, stream or similar ~~property~~interposition.

Comments Received: A comment received requested that the current definition be broadened to allow for rural sites in contiguous counties to be paired together as a scattered site project.

Response to Comments: The proposed change was a clarification rather than a change of the definition, and staff does not propose to expand the definition of a scattered site at this time.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10305(d)

Initial Proposed Change:

(d) Tax Credit Limitations. No applicant shall be eligible to receive Tax Credits if, together with the amount of Federal or State Tax Credits being requested, the applicant would have, in the capacity of individual owner, corporate shareholder, general partner, sponsor, or developer~~ 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.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10305(h)

Initial Proposed Change:

(h) Notwithstanding any other provision of these regulations, the State Tax Credits allocated pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code shall be awarded to applicants for eligible projects receiving an allocation of State Ceiling from CDLAC and the applicant criteria shall be applied in accordance with Section 10326. Projects shall begin construction within 180 days of award pursuant to Section 10317(j). Up to two hundred million dollars ($200,000,000) ~~shall~~ may be allocated for housing financed by CalHFA's Mixed-Income Program, and this amount may be reduced if requested by CalHFA and subject to agreement of the Executive Directors of CalHFA and CTCAC.

Comments Received: One commenter stated the proposed regulatory language along with current Section 10326(b) establishes the $200 million as a floor, rather than a ceiling, and that CalHFA's Executive Director would need to agree to a reduction. The commenter explained that statute assigns the MIP allocation amount decision solely to TCAC. The commenter instead suggested TCAC outline the factors TCAC would consider in establishing the annual apportionment to the CalHFA MIP projects, which should include proportion of severely rent burdened households at various income levels including those targeted by MIP and the prior year's application demand relative to state credits available, and other State policy priorities such as addressing homelessness.

Response to Comments: TCAC staff appreciates the comment and understands that the $200 million is a ceiling and not a floor. The language enacted AB 83 made up to $200 million in state credits available to projects financed with the CalHFA MIP program. TCAC staff believes the proposed change to require agreement of the Executive Directors of CalHFA and CTCAC meets the intent of AB 83. TCAC staff revised the proposed language slightly to not require the $200 million be requested to be reduced by CalHFA.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(h) Notwithstanding any other provision of these regulations, the State Tax Credits allocated pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code shall be awarded to applicants for eligible projects receiving an allocation of State Ceiling from CDLAC and the applicant criteria shall be applied in accordance with Section 10326. Projects shall begin construction within 180 days of award pursuant to Section 10317(j). Up to two hundred million dollars ($200,000,000) ~~shall~~ may be allocated for housing financed by CalHFA's Mixed-Income Program, and this amount may be reduced ~~if requested by CalHFA and subject to~~ upon agreement of the Executive Directors of CalHFA and CTCAC.

Section 10310(b)

Initial Proposed Change:

(b) Credit Ceiling available. The approximate amount of Tax Credits available in each reservation cycle ~~shall~~ may be established by the Committee at a public meeting designated for that purpose as of February first of the calendar year, in accordance with the following provisions:

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10317(i)

Initial Proposed Change:

(i) State Tax Credit Allocations pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code to bond financed projects. The following parameters apply:

(1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for acquisition and/or rehabilitation bond financed projects. ~~In the first round of each year,~~ CTCAC shall make reservations~~,~~ up to the 15% limit~~,~~ beginning with the first application review period of a calendar year for tax-exempt bond financed projects ~~for all projects receiving maximum point scores in order of final tiebreaker scores. CTCAC shall make reservations of any remaining State Tax Credits within this set-aside during the second round~~;

(2) The project will be competitively scored by CDLAC ~~under~~ according to the CDLAC scoring and ranking system delineated in Section ~~10325(c)(1) through (4)(A) and (B), (6), (7) and (9),~~5230 of the CDLAC Regulations ~~except that the only tie breaker shall be the final tiebreaker enumerated at Section 10325(c)(9) of these regulations and the maximum points available to a project under section 10325(c)(6)(A) shall be 30~~. Notwithstanding the foregoing, existing tax credit projects must comply with the requirements of Section 10326(g)(8)(A);

~~(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 Sections 10326;~~

(~~4~~3) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;

(~~5~~4) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for the last funded tax-exempt bond financed acquisition and/or rehabilitation ~~projects~~ project if that project requires more than the State Tax Credits remaining in this set-aside if (1) fewer than half of the State Tax Credits annually available for the credit ceiling competition are reserved in the first competitive credit round, or (2) if State Credits remain available after funding of competitive projects in the second TCAC funding round.

(~~6~~5) Staff shall identify high cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits, excluding any increase for deeper targeting pursuant to Section 10327(c)(5)(C). CTCAC shall calculate total eligible basis consistent with the method described in Section 10325(d), except that the amount of developer fee in basis that exceeds the project's deferral/contribution threshold described in Section 10327(c)(2)(B) shall be excluded. A project will be designated "high cost" if a project's total eligible basis exceeds its total adjusted threshold basis limit by 30%. Staff shall not recommend such project for credits. Any project may be subject to negative points if the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher) by 40%.

Comments Received: Commenters approved of the proposed change, but only so long as the additional state tax credits for 4% projects are made available. Some commenters suggested reverting to the current system if/when that occurs. Additionally, some commenters suggested the 15% state tax credit authority for 4% credit projects be prioritized for those projects qualifying for the 95% basis calculation for state tax credits.

Response to Comments: TCAC staff concurs with most of the comments received and has revised the proposal accordingly. Staff does not propose to retain the TCAC tie breaker scoring system for these projects in years where the additional state tax credits are not available, but to continue with

the proposal to utilize the CDLAC ranking system. This will eliminate separately scored and ranked project lists made by CDLAC and TCAC.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(i) State Tax Credit Allocations pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code to bond financed projects. The following parameters apply:

(1) In calendar years where there are additional state tax credits available to bond financed projects, ~~An~~ an amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for acquisition and/or rehabilitation bond financed projects, with a ranking priority for projects meeting subparagraphs (A) through (D) in subsection (c)(4) of 12206 of the Revenue and Tax Code . In all other years, an amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects of any construction type. ~~In the first round of each year,~~ CTCAC shall make reservations~~,~~ up to the 15% limit~~,~~ beginning with the first application review period of a calendar year for tax-exempt bond financed projects. ~~for all projects receiving maximum point scores in order of final tiebreaker scores. CTCAC shall make reservations of any remaining State Tax Credits within this set-aside during the second round~~;

(2) The project will be competitively scored by CDLAC ~~under~~ according to the CDLAC scoring and ranking system delineated in Section ~~10325(c)(1) through (4)(A) and (B), (6), (7) and (9),~~5230 of the CDLAC Regulations ~~except that the only tie breaker shall be the final tiebreaker enumerated at Section 10325(c)(9) of these regulations and the maximum points available to a project under section 10325(c)(6)(A) shall be 30~~. Notwithstanding the foregoing, existing tax credit projects must comply with the requirements of Section 10326(g)(8)(A);

~~(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 Sections 10326;~~

(~~4~~3) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;

(~~5~~4) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for the last funded tax-exempt bond financed acquisition and/or rehabilitation ~~projects~~ project if that project requires more than the State Tax Credits remaining in this set-aside if (1) fewer than half of the State Tax Credits annually available for the credit ceiling competition are reserved in the first competitive credit round, or (2) if State Credits remain available after funding of competitive projects in the second TCAC funding round.

(~~6~~5) Staff shall identify high cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits, excluding any increase for deeper targeting pursuant to Section 10327(c)(5)(C). CTCAC shall calculate total eligible basis consistent with the method described in Section 10325(d), except that the amount of developer fee in basis that exceeds the project's deferral/contribution threshold described in Section 10327(c)(2)(B) shall be excluded. A project will be designated "high cost" if a project's total eligible basis exceeds its total adjusted threshold basis limit by 30%. Staff shall not recommend such project for credits. Any project may be subject to negative points if the project's total eligible basis at placed in service exceeds the revised total adjusted threshold

basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher) by 40%.

Section 10317(j)

Initial Proposed Change:

(j) State Tax Credit Allocations pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code. For calendar years beginning in ~~2020~~2021, an amount ~~equal~~ up to five hundred million dollars ($500,000,000) in total State Tax Credit authority will be available (if authorized in the California Budget Act or related legislation) for new construction Tax Exempt Bond Projects subject to the ~~minimum~~ requirements ~~set forth in Sections 5033, 5190, 5010(c), and 5230~~ of the California Debt Limit Allocation Committee regulations~~,~~ and the ~~minimum~~ requirements of Section 10326 of these regulations, for projects that can begin construction within 180 days from award. Failure to begin construction within 180 days of award shall result in rescission of the Tax Credit Reservation and may result in assessment of negative points.

Readiness to begin construction within 180 days from award shall be evidenced in the application as set forth in Sections 10325(c)(7)(A) and (B) of these regulations. Within 180 days of the award the applicant must submit to CTCAC building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and notice to proceed delivered to the contractor.

Failure to begin construction within 180 days of award shall result in rescission of the Tax Credit Reservation and may result in assessment of negative points.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10320(b)(1)(B)

Initial Proposed Change:

(B) The entity replacing a party or acquiring ownership or Tax Credits shall be subject to a "qualifications review" by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee. Any general partner change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(1)(A) as the exiting general partner. At a minimum this must be three (3) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the three projects must be Low Income Housing Tax Credit projects in California. If the new general partner does not meet these experience requirements, then substitution of general partner shall not be permitted. The

requirements of this paragraph apply to a change to any general partner, member, or equivalent responsible party where an exiting party meets the experience capacity and the remaining party does not have experience equal to the minimum stated above.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10320(b)(6)

Initial Proposed Change:

(6) If a project seeks to receive a new reservation of 9% or 4% tax credits, any uncorrected Form(s) 8823 for life and safety violations (life-threatening and non-life threatening) and for Uniform Physical Condition Standards violations that are in existence at the time of the TCAC application must be corrected by the project owner that received the Form(s) 8823. The resyndication application shall not include any costs to correct these Form(s) 8823.

Comments Received: Commenters generally disagreed with the proposal because these resyndications help to preserve the developments, but most stated they would agree if projects without net equity distributions were exempted.

Response to Comments: TCAC staff concurs with the comments received and has revised the proposal accordingly.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(6) Except for resyndication applications without a distribution of Net Project Equity, if a project seeks to receive a new reservation of 9% or 4% tax credits, any uncorrected Form(s) 8823 for life and safety violations (life-threatening and non-life threatening) and for Uniform Physical Condition Standards violations that are in existence at the time of the TCAC application must be corrected by the project owner that received the Form(s) 8823. The resyndication application shall not include any costs to correct these Form(s) 8823.

Sections 10320(b)(7), (8)

Initial Proposed Change:

(7) An applicant seeking to (1) demolish or similarly alter any of the existing structures when seeking a new reservation of 9% and/or 4% tax credits; and/or (2) separate an existing project into multiple projects must request and receive prior written approval of the Executive Director. Projects that involve the demolition of existing residential units or separating an existing project must increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater.

(8) A project owner seeking to sell a portion of vacant or unused land must request and receive prior written approval of the Executive Director. The sale proceeds must either: 1) be contributed (not loaned) to a new multifamily affordable housing restricted project; or 2) reduce rents at the existing

property by the aggregate amount of the proceeds. The project owner must request and receive prior written approval of the Executive Director.

Comments Received: Commenters opposed the proposed language as drafted, with the majority of commenters suggesting revisions to the proposed sections. Commenters stated the language should further clarify that these sections are applicable to projects with an existing low-income housing tax credit restriction. The majority of commenters proposed that the demolition standard be applied only to the demolished units, and suggested additional sale proceeds options such as 55 year loans. The remainder of commenters opposed the changes altogether.

Response to Comments: TCAC staff concurs with some of the suggested changes and has included these in the final proposed change. Staff is revising the demolition standard of subsection (7) to allow a calculation based on the demolished units, but is not proposing to allow the lesser of the two options. Staff believes setting a minimum of new units is essential to the proposal.

The proposed standard for subsection (8) has in general been applied consistently to past requests, and project owners have agreed to the terms. Since the original tax credit allocation provided funding resources for affordable housing construction on the project site and resulted in land use restrictions, TCAC seeks to ensure that the sale of any vacant portions continue that intent. While commenters stated that 55 year loans are equivalent to equity contributions, these loans could begin to generate immediate repayment, which is not the intent of this proposed section; therefore staff is proposing to retain the originally proposed language of section (8).

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(7) An applicant seeking to (1) demolish or similarly alter any of the existing structures currently subject to CTCAC regulatory restrictions when seeking a new reservation of 9% and/or 4% tax credits; and/or (2) separate an existing project currently subject to CTCAC regulatory restrictions into multiple projects must request and receive prior written approval of the Executive Director. Projects that involve the demolition of existing residential units or separating an existing project must increase the unit count by (i) 25 or (ii) 50% of the existing demolished units, whichever is greater.

(8) A project owner seeking to sell a portion of vacant or unused land must request and receive prior written approval of the Executive Director. The sale proceeds must either: 1) be contributed (not loaned) to a new multifamily affordable housing restricted project; or 2) reduce rents at the existing property by the aggregate amount of the proceeds. The project owner must request and receive prior written approval of the Executive Director.

Section 10320(c)

Initial Proposed Change:

(c) CTCAC shall initially subordinate its regulatory contract to a permanent lender but thereafter shall not subordinate existing regulatory contracts to acquisition or refinancing debt, except in relation to new Deeds of Trust for rehabilitation loans, FHA-insured loans, restructured public loans, or as otherwise permitted by the Executive Director. For resyndication projects TCAC will subordinate

to loans that are funding rehabilitation only in cases where there are no distributions of Net Project Equity.

At the request of the owner, CTCAC shall enter into a stand-still agreement permitting the acquisition or refinance lender 60 days to work with the owner to remedy a breach of the regulatory contract prior to CTCAC implementing any of the remedies in the regulatory contract, except that CTCAC shall not enter into a stand-still agreement related to a Transfer Event requested on or after October 21, 2015 unless the conditions of Section 10320(b)(2) have been satisfied. If CTCAC enters into a stand-still agreement related to a Transfer Event, Sections 10320(b)(2), (b)(3) and (b)(4) shall apply to the project.

Comments Received: Commenters opposed this change, stating that it is counter to current subordination policy.

Response to Comments: TCAC staff is withdrawing the proposed change. Staff plans to evaluate the current Transfer Event requirements in the future and may propose a related change in the future.

Final Proposed Change: None, retain existing language.

Section 10322(h)(3)

Initial Proposed Change:

(3) Organizational documents. ~~All applicable proposed or executed organizational documents of the applicant entity~~, ~~including~~ An organization chart and a detailed plan describing the ownership role of the applicant throughout the low-income use period of the proposed project, and the California Secretary of State certificate for the project owner. An executed limited partnership agreement may be submitted as documentation that the project ownership entity is formed. If the project owner entity is not yet formed, provide the certificate for the managing general partner or the parent company of the proposed project owner. A reservation of credit cannot be made to a to-be-formed entity.

Comments Received: Commenters supported the change, with one commenter suggesting a clarifying change.

Response to Comments: TCAC staff concurs with the comments received.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(3) Organizational documents. ~~All applicable proposed or executed organizational documents of the applicant entity~~, ~~including~~ An organization chart and a detailed plan describing the ownership role of the applicant throughout the low-income use period of the proposed project, and the California Secretary of State certificate for the project owner (if available). An executed limited partnership agreement may be submitted as documentation that the project ownership entity is formed. If the project owner entity is not yet formed, provide the certificate for the managing general partner or the parent company of the proposed project owner. A reservation of credit cannot be made to a to-be-formed entity.

Section 10322(h)(9)

Initial Proposed Change:

(9) Appraisals. Appraisals are required for 1) all rehabilitation applications except as noted in (A), 2) all competitive applications except for new construction projects that are on tribal trust land or that have submitted a third party purchase contract with, or evidence of a purchase from, an unrelated third party, 3) all applications seeking tiebreaker credit for donated or leased land, and 4) all new construction applications involving a land sale from a related party. For purposes of this paragraph only, a purchase contract or sale with a related party shall be deemed to be a purchase contract or sale with an unrelated party if the applicant demonstrates that the related party is acting solely as a pass-through entity and the tax credit partnership is only paying the acquisition price from the last arms-length transaction, plus any applicable and reasonable carrying costs. Appraisals shall not include the value of favorable financing.

Appraisals must be prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee, and include, at a minimum, the following:

(i) the highest and best use value of the proposed project as residential rental property, taking into account any on-going recorded rent restrictions;

(ii) for rehabilitation and new construction applications, the Sales Comparison Approach and Income Approach valuation methodologies shall be used; for adaptive reuse applications, the Cost Approach valuation methodology shall be used for adaptive reuse of office buildings, retail buildings, and similar, and the Sales Comparison and Income Approaches may be used for hotels, motels, and similar;

(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;

(iv) a value for the land of the subject property ("as if vacant" for rehabilitation or adaptive reuse applications);

(v) an on site inspection; and

(vi) a purchase contract verifying the sales price of the subject property.

(A) Rehabilitation applications. An "as-is" appraisal is required ~~prepared~~ with a date of value that is within 120 days before or after the execution of: a purchase contract; ~~(or,~~ for leased land, an executed development agreement negotiated between the land owner and the applicant or developer~~) or~~; an option agreement; any other site control document pursuant to Section 10325(f)(2); or the transfer of ownership by all the parties ~~by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee, and that includes, at a minimum, the following:~~

~~(i) the highest and best use value of the proposed project as residential rental property, taking into account any on-going recorded rent restrictions;~~

~~(ii) the Sales Comparison Approach, and Income Approach valuation methodologies except in the case of an adaptive reuse or conversion, where the Cost Approach valuation methodology shall be used;~~

~~(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;~~

~~(iv) a value for the land of the subject property "as if vacant";~~

~~(v) an on site inspection; and~~

~~(vi) a purchase contract verifying the sales price of the subject property~~.

For tax-exempt bond-funded properties receiving credits under Section 10326 only or in combination with State Tax Credits, the applicant may elect to forego the appraisal required pursuant to this section and use an acquisition value equal to the sum of the third party debt encumbering the seller's property, which may increase during subsequent reviews to reflect the actual amount.

(B) New construction applications. Projects for which an appraisal is required above shall provide an "as-is" appraisal with a date of value that is within either:

(i) 120 days before or after the execution of: a purchase contract; ~~(or,~~ for leased land, an executed development agreement negotiated between the land owner and the applicant or developer~~) or~~; an option agreement; any other site control document pursuant to Section 10325(f)(2); the transfer of ownership by all the parties, or

(ii) ~~within~~ one year of the application date if the latest purchase contract, development agreement, option agreement, or any other site control document pursuant to Section 10325(f)(2) was executed within that year~~, prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee~~.

An amendment to an agreement does not constitute any of the agreements listed in (i) or (ii) above.

(C) Adaptive reuse applications. All adaptive reuse applications must submit an appraisal using an "as-is" appraisal date of value as stated in (B) above. For applications required to use the Cost Approach, the appraisal must consider the age, condition, and depreciated value of the existing building(s) when utilizing newly constructed "shell" sales comparisons and must include these calculations in the report.

For applications with existing project-based rental subsidy, the Income Approach shall not include post-rehabilitation contract rent(s). Rent(s) used in the Income Approach, if not the existing approved contract rent, must be supported by a rent comparable study or similar and must be approved by the subsidy provider or contract administrator. For applications with existing affordability restrictions, the Income Approach must be based on the affordability restrictions and restricted rents encumbering the property (a "restricted value") unless all affordability restrictions will expire within five years.

CTCAC may contract with an appraisal reviewer who may review submitted appraisals. If it does so, CTCAC shall commission an appraisal review. If the appraisal review finds the submitted

appraisal to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer.

Comments Received: TCAC received several comments, many opposing the proposal to require income approach rents to be approved by the subsidy provider or contract administrator. Commenters cited the length and timing of the HUD process for approval as problematic for receiving approval prior to a TCAC application. Commenters supported use of a rent comparable study. Other commenters supported the use of post-rehabilitation rents. Commenters also opposed the requirement for adaptive reuse to utilize the cost approach, and opposed the requirement that the age, condition, and depreciated value of the buildings should automatically reduce the value of the building to be reused. One commenter opposed the current requirement that the appraisal be within one year of the contract date, and stated it should be within one year of the application date.

Response to Comments: Staff agrees that the HUD process for approving contract rents for a rehabilitation is not aligned with the TCAC application process, and proposes to allow a rent comparable study in support of rents used in the income approach. Staff continues to believe that post-rehabilitation rents are not consistent with an as-is appraised value, upon which acquisition credit is based. Regarding the cost approach and adaptive reuse, the proposed changes do allow the sales approach when adaptively reusing similar properties, and the depreciated value requirement is limited to use of shell sales comparables.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(9) Appraisals. Appraisals are required for 1) all rehabilitation applications except as noted in (A), 2) all competitive applications except for new construction projects that are on tribal trust land or that have submitted a third party purchase contract with, or evidence of a purchase from, an unrelated third party, 3) all applications seeking tiebreaker credit for donated or leased land, and 4) all new construction applications involving a land sale from a related party. For purposes of this paragraph only, a purchase contract or sale with a related party shall be deemed to be a purchase contract or sale with an unrelated party if the applicant demonstrates that the related party is acting solely as a pass-through entity and the tax credit partnership is only paying the acquisition price from the last arms-length transaction, plus any applicable and reasonable carrying costs. Appraisals shall not include the value of favorable financing.

Appraisals must be prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee, and include, at a minimum, the following:

(i) the highest and best use value of the proposed project as residential rental property, taking into account any on-going recorded rent restrictions;

(ii) for rehabilitation and new construction applications, the Sales Comparison Approach and Income Approach valuation methodologies shall be used; for adaptive reuse applications, the Cost Approach valuation methodology shall be used for adaptive reuse of office buildings, retail buildings, and similar, and the Sales Comparison and Income Approaches may be used for hotels, motels, and similar;

(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;

(iv) a value for the land of the subject property ("as if vacant" for rehabilitation or adaptive reuse applications);

(v) an on site inspection; and

(vi) a purchase contract verifying the sales price of the subject property.

(A) Rehabilitation applications. An "as-is" appraisal is required ~~prepared~~ with a date of value that is within 120 days before or after the execution of: a purchase contract; ~~(or,~~ for leased land, an executed development agreement negotiated between the land owner and the applicant or developer~~) or~~; an option agreement; any other site control document pursuant to Section 10325(f)(2); or the transfer of ownership by all the parties ~~by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee, and that includes, at a minimum, the following:~~

~~(i) the highest and best use value of the proposed project as residential rental property, taking into account any on-going recorded rent restrictions;~~

~~(ii) the Sales Comparison Approach, and Income Approach valuation methodologies except in the case of an adaptive reuse or conversion, where the Cost Approach valuation methodology shall be used;~~

~~(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;~~

~~(iv) a value for the land of the subject property "as if vacant";~~

~~(v) an on site inspection; and~~

~~(vi) a purchase contract verifying the sales price of the subject property~~.

For tax-exempt bond-funded properties receiving credits under Section 10326 only or in combination with State Tax Credits, the applicant may elect to forego the appraisal required pursuant to this section and use an acquisition value equal to the sum of the third party debt encumbering the seller's property, which may increase during subsequent reviews to reflect the actual amount.

(B) New construction applications. Projects for which an appraisal is required above shall provide an "as-is" appraisal with a date of value that is within either:

(i) 120 days before or after the execution of: a purchase contract; ~~(or,~~ for leased land, an executed development agreement negotiated between the land owner and the applicant or developer~~) or~~; an option agreement; any other site control document pursuant to Section 10325(f)(2); the transfer of ownership by all the parties, or

(ii) ~~within~~ one year of the application date if the latest purchase contract, development agreement, option agreement, or any other site control document pursuant to Section 10325(f)(2) was executed within that year~~, prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee~~.

An amendment to an agreement does not constitute any of the agreements listed in (i) or (ii) above.

(C) Adaptive reuse applications. All adaptive reuse applications must submit an appraisal using an "as-is" appraisal date of value as stated in (B) above. For applications required to use the Cost Approach, the appraisal must consider the age, condition, and depreciated value of the existing building(s) when utilizing newly constructed "shell" sales comparisons and must include these calculations in the report.

For applications with existing project-based rental subsidy, the Income Approach shall not include post-rehabilitation contract rent(s). Rent(s) used in the Income Approach, if not the existing approved contract rent, must be supported by a rent comparable study or similar ~~and must be approved by the subsidy provider or contract administrator~~. For applications with existing affordability restrictions, the Income Approach must be based on the affordability restrictions and restricted rents encumbering the property (a "restricted value") unless all affordability restrictions will expire within five years.

CTCAC may contract with an appraisal reviewer who may review submitted appraisals. If it does so, CTCAC shall commission an appraisal review. If the appraisal review finds the submitted appraisal to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer.

Section 10322(h)(10)

Initial Proposed Change:

(10) Market Studies. A full market study prepared within 180 days of the filing deadline by an independent 3rd party having no identity of interest with the development's partners, intended partners, or any other member of the Development Team described in Subsection (5) above. The study must meet the current market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. CTCAC shall publicly notice any changes to its market study guidelines and shall take public comment consistent with the comment period and hearing provisions of Health and Safety Code Section 50199.17. For scattered site projects, a market study may combine information for all sites into one report, provided that the market study has separate rent comparability matrices for each site. A new construction hybrid 9% and 4% tax credit development may combine information for both component projects into one report and, if not, shall reflect the other component project as a development in the planning or construction stages.

A market study shall be updated when either proposed subject project rents change by more than five percent (5%), or the distribution of higher rents increases by more than 5%, or 180 days have passed since the first site inspection date of the subject property and comparable properties. CTCAC shall not accept an updated market study when more than twelve (12) months have passed between the earliest listed site inspection date of either the subject property or any comparable property and the filing deadline. In such cases, applicants shall provide a new market study. If the market study does not meet the guidelines or support sufficient need and demand for the project, the application may be considered ineligible to receive Tax Credits. ~~Except where a waiver is obtained from the Executive Director in advance of a submitted application, or within two weeks of the application date for applications received~~

~~in the same funding round, CTCAC shall not reserve credits for a rural new construction application if a tax credit or other publicly-assisted new construction project housing the same population and within the same market area either (a) already has a tax credit reservation from CTCAC, (b) is a higher ranking project that will receive a reservation in the same funding round, or (c) is currently under construction within the same market area. The Executive Director may grant a waiver for subsequent phases of a single project, where newly constructed housing would be replacing specific existing housing, or where extraordinary demand warrants an exception to the prohibition.~~

For acquisition/rehabilitation projects meeting all of the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean a written statement by a third party market analyst certifying that the project meets these criteria:

- All of the buildings in the project are subject to existing federal or state rental assistance or operating subsidies, an existing TCAC Regulatory Agreement, or an existing regulatory agreement with a federal, state, or local public entity.

- The proposed tenant-paid rents and income targeting levels shall not increase by more than five percent (5%) (except that proposed rents and income targeting levels for units subject to a continuing state or federal project-based rental assistance contract may increase more and proposed rents and income targeting levels for resyndication projects shall be consistent with Section 10325(f)(11) or Section 10326(g)(8)).

- The project shall have a vacancy rate of no more than ten percent (10%) for special needs units and non-special needs SRO units without a significant project-based public rental subsidy and five percent (5%) for all other units at the time of the tax credit application.

Comments Received: Commenters supported the change.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(h)(17)

Initial Proposed Change:

(17) Eligible basis certification. A certification from a third party certified public accountant or tax attorney that project costs included in applicant's calculation of eligible basis are allowed by IRC Section 42, as amended, and are presented in accordance with standard accounting procedures. This must be delivered on the tax professional's corporate letterhead, in the prescribed CTCAC format and must include a statement that the Sources and Uses Budget was reviewed and that the accountant or attorney discussed the budget with the applicant as needed.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(h)(26)(B)

Initial Proposed Change:

(B) A Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline (except as provided in section 10322(h)(35)) that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment shall also include a pre-rehabilitation 15-year reserve study, indicating anticipated dates and costs of future replacements of all current major building components. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. An adaptive reuse application is not required to submit a CNA.

Comments Received: Commenters supported the change, with one request to clarify that adaptive reuse includes former hotels and motels.

Response to Comments: Staff is proposing to clarify when former hotels and motels are considered adaptive reuse in Section 10302 above and so does not believe the suggested clarification is needed.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(h)(35)

Initial Proposed Change:

(35) Reapplication documents. Notwithstanding the time sensitive document requirements, the Committee may permit the site control title report and the capital needs assessment report of an unsuccessful application to be submitted, only once, in the reapplication cycle immediately following the unsuccessful application.

Comments Received: Commenters supported the change, and requested that the re-use of these documents be permitted for a calendar year of reapplications.

Response to Comments: Staff is recommending to proceed with the original proposal to allow re-use during one application cycle, but will assess this new standard in 2021 and consider the requests for a longer period in future regulation change proposals.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(i)

Initial Proposed Change:

(i) Placed-in-service application. Within ~~one year~~nine months of completing construction or rehabilitation of the proposed project, the project owner shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee

required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs or changes to the services amenities, must be explained by the project owner in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:

Comments Received: Commenters opposed the change, stating that the requirements of permanent closing necessitate the current one year standard, or supported if placed in service applications could be submitted prior to permanent loan closing. Commenters stated that developers are motivated to finalize placed in service documents as quickly they are able to, and do so.

Response to Comments: TCAC staff is withdrawing the proposed change.

Final Proposed Change: None, retain existing language.

Section 10322(i)(2)

Initial Proposed Change:

(2) an audited certification, prepared and signed by an independent Certified Public Accountant identified by name, under generally accepted auditing standards, with all disclosures and notes. The Certified Public Accountant (CPA) or accounting firm shall not have acted a manner that would impair independence as established by the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct Section 101 and the Securities and Exchange Commission (SEC) regulations 17 CFR Parts 210 and 240. Examples of such impairing services, when performed for the final cost certification client, include bookkeeping or other services relating to the accounting records, financial information systems design and implementation, appraisal or evaluation services, actuarial services, internal audit outsourcing services, management functions or human resources, investment advisor, banking services, legal services, or expert services unrelated to the audit. Both the referenced SEC and AICPA rules shall apply to all public and private CPA firms providing the final audited cost certification. In order to perform audits of final cost certifications, the auditor must have a peer review of its accounting and auditing practice once every three years consistent with the AICPA Peer Review Program as required by the California Board of Accountancy for California licensed public accounting firms (including proprietors); and make the peer review report publicly available and submit a copy to CTCAC along with the final cost certification. If a peer review reflects systems deficiencies, CTCAC may require another CPA provide the final cost certification. This certification shall:

(A) as identified by the certified public accountant, reflect all costs, in conformance with 26 CFR § 1.42-17, and expenditures for the project up to the funding of the permanent loan as well as all sources and amounts of all permanent funding. Projects developed with general contractors who are Related Parties to the developer must be audited to the subcontractor level;

(B) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan; and

(C) certify that the CPA has not performed any services, as defined by AICPA and SEC rules, that would impair independence;.

The project owner must request approval from CTCAC if the final cost certification includes a prospective permanent loan or other source amount to be reduced at the time of the final tax credit equity installment, occurring after the Form(s) 8609 are issued. The equity must be used to pay principal balances and shall not be used to pay accrued interest. As a condition of accepting the projected equity, CTCAC will require documentation of the final equity payment and the reduction of the principal balance. A project owner must provide this documentation to CTCAC within 20 days of the loan payment. If the documentation does not support the equity amount or the projected loan or source reduction, the tax credits will be recalculated, the Form(s) 8609 will be amended, and the fee of section 10335(g) will be assessed.

Comments Received: Commenters opposed the proposed changes related to loan reductions after 8609 issuance, and stating that lenders require interest payments before principal. One commenter suggested TCAC should instead require that applicants verify the paydown within 45 days with a copy of the funds transfer and only recalculate the credits if the discrepancy from the final cost certification is greater than $50,000. Several commenters recommended either separating 8609 issuance from the placed in service application review or requiring TCAC to complete the placed in service application review in 90 days.

Response to Comments: TCAC staff is continuing to recommend the proposed change. The loans that staff has seen slated for paydown are public loans with residual receipts payments. It is staff's experience (in reviewing many existing public loans in rehabilitation and resyndication applications) that these loans accrue millions of dollars in interest over the course of a 15-year period and often have little principal payment during that time. Staff finds little value in agreeing to use tax credit equity proceeds to decrease a public loan, but then have those proceeds go toward interest only, with no real loan amount reduction. In addition, developers need not structure projects to utilize the final equity payment in this way.

Staff does not agree with separating the placed in service application review from 8609 issuance. TCAC has a responsibility, based on the federal program requirements, to ensure no more tax credits are issued than are necessary for feasibility. Many of the corrections to the placed in service application directly impact the federal credit allocation. Additionally, establishing a 90 day review period is unrealistic at this time since developer response time and developer delays are a primary source for the lengthy placed in service application review period.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(i)(21)

Initial Proposed Change:

(21) Evidence that the subject property is within the control of the project owner in the form of an executed lease agreement, a current title report (within 90 days of application except as provided in section 10322(h)(35) (or preliminary title report, but not title insurance or commitment to insure)

showing the project owner holds fee title, a grant deed, or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status.

Comments Received: One commenter opposed the change, stating that a title insurance policy issued to a buyer at the time of purchase (if within 90 days of application) is better evidence than a preliminary title report.

Response to Comments: This is a conforming change to align with CDLAC, and staff will proceed with the proposed change unless modified by CDLAC.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(i)(23)

Initial Proposed Change:

(23) if the application includes legal separation or subdivision of a building that is not a condominium plan:

(A) a legal opinion of how the legal separation meets the IRS definition of a building. The opinion must include a summary of the common area and building access ownership structure and any shared use agreements; and

(B) if the project owners are proposing any kind of proportionate cost where there is a single common area owner, a tax attorney or CPA must provide an opinion of how proportioning a cost and corresponding eligible basis to an entity that does not own the space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were proportioned and is subject to review and approval by CTCAC;

Comments Received: One commenter requested that CPA be removed from subsection (B) because CPAs would not be able to audit or examine such an allocation under professional standards.

Response to Comments: Staff will make the requested change.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(23) if the application includes legal separation or subdivision of a building that is not a condominium plan:

(A) a legal opinion of how the legal separation meets the IRS definition of a building. The opinion must include a summary of the common area and building access ownership structure and any shared use agreements; and

(B) if the project owners are proposing any kind of proportionate cost where there is a single common area owner, a tax attorney ~~or CPA~~ must provide an opinion of how proportioning a cost and corresponding eligible basis to an entity that does not own the space is

permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were proportioned and is subject to review and approval by CTCAC;

Section 10322(i)(24)

Initial Proposed Change:

(24) for multiphase projects proposing to share use of common areas and community space, a joint use agreement must be provided in the placed in service application. In addition, if there is any kind of proportionate cost for common area and community space to a project that does not own the area/space, a tax attorney or CPA must provide an opinion of how apportioning a cost and corresponding eligible basis to an entity that does not own the area/space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were apportioned and is subject to review and approval by CTCAC;

Comments Received: One commenter requested that CPA be removed from subsection (B) because CPAs would not be able to audit or examine such an allocation under professional standards.

Response to Comments: Staff will make the requested change.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(24) for multiphase projects proposing to share use of common areas and community space, a joint use agreement must be provided in the placed in service application. In addition, if there is any kind of proportionate cost for common area and community space to a project that does not own the area/space, a tax attorney ~~or CPA~~ must provide an opinion of how apportioning a cost and corresponding eligible basis to an entity that does not own the area/space is permissible under IRS LIHTC and/or tax law. The opinion must include an estimated cost breakdown and the methodology for how these shared area costs were apportioned and is subject to review and approval by CTCAC;

Section 10322(j)

Initial Proposed Change:

(j) Revisions to 4% Reservations at Placed in Service. Proposals submitted under Section 10326 of these regulations do not require new applications for changes in costs or Tax Credits alone. Committee staff will adjust the Credit amount when the placed-in-service package is received and reviewed. Approval of the Executive Director is required for any change in unit mix or income targeting after reservation except for changes that decrease income targeting. It is the applicant's responsibility to notify CTCAC of any unit mix or income targeting change. Projects at placed-in-service that are requesting additional Tax Credits will be required to submit a fee equal to one percent (1%) of the increase from reservation in the annual federal tax credits allocated. This section shall apply to all projects for which TCAC issues tax forms after December 31, 2017.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(a)

Initial Proposed Change:

(a) General. All applications not requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4)(b) and Section 10326 of these Regulations (for buildings financed by tax-exempt bonds) shall compete for reservations of Credit Ceiling amounts during designated reservation cycles. Further, no project that has a pending application for a private activity bond allocation or that has previously received a private activity bond allocation will be eligible to compete under the Credit Ceiling competition for Federal Tax Credits~~ unless it receives a waiver from the Executive Director~~.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(1)(A) first paragraph only

Initial Proposed Change:

(A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, ~~the~~ a proposed general partner~~s~~, or a key person within the proposed general partner organization, must meet the following conditions:

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(1)(A)(i)

Initial Proposed Change:

(i) For projects in operation for over three years, submit a certification from a third party certified public accountant that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development's last financial statement has been prepared and have funded reserves in accordance with the partnership agreement and any applicable loan documents. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the number of years that the project was owned by that general partner. To obtain points for projects previously owned,

the ending date of ownership or participation must be no more than 10 years from the application deadline. This certification must list the specific projects for which the points are being requested. The certification of the third party certified public accountant may be in the form of an agreed upon procedure report that includes funded reserves as of the report date, which shall be dated within 60 days of the application deadline, unless the general partner or key person has no current projects which are eligible for points in which case the report date shall be after the date from which the general partner or key person separated from the last eligible project. If the certification is prepared for a first round application utilizing prepared financial statements of the previous calendar year, the certification may be submitted in a second round application, exceeding the 60 day requirement above. Where there is more than 1 general partner, experience points may not be aggregated; rather, points will be awarded based on the highest points for which 1 general partner is eligible.

3-4 projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be California Low Income Housing Tax Credit projects 4 5 points

5 or more projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be California Low Income Housing Tax Credit projects 6 7 points

For special needs housing type projects only applying through the Nonprofit set-aside or Special Needs set-aside only, points are available as described above or as follows:

3 Special Needs projects in service more than 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the 3 special needs projects 4 5 points

4 or more Special Needs projects in service more than 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the 4 special needs projects 6 7 points

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(1)(B)(ii)

Initial Proposed Change:

(i) 6-10 projects managed over 3 years, of which 2 shall be California Low Income Housing Tax Credit projects 2 points

11 or more projects managed over 3 years, of which 2 shall be California Low Income Housing Tax Credit projects 3 points

For special needs housing type projects only applying through the Nonprofit setaside or Special Needs set-aside only, points are available as described above or as follows:

2-3 Special Needs projects managed over 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the special needs projects 2 points

4 or more Special Needs projects managed over 3 years and one California Low Income Housing Tax Credit project which may or may not be one of the special needs projects 3 points

~~Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a low income housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.~~

Comments Received: One commenter opposed the change, stating that it would limit the ability of a mission-driven nonprofit to build, renovate, or manage a low-income housing tax credit (LIHTC) project to its fullest benefit to the communities they serve and in which they operate, and force permanent outsourcing of property management.

Response to Comments: TCAC staff continues to believe that, for TCAC competitive applications, this point category will remain unused due to the competitiveness of the 9% tax credits. For its use within the CDLAC scoring system, staff notes that CDLAC's proposed scoring system allows for training to take place within the maximum point category, and so should not result in any displacement or outsourcing of property management staff.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(4)(A)

Initial Proposed Change:

(A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application except as specified in paragraphs 1, 5, and 8 below. In addition, an amenity to be operated by a public entity that is (i) being constructed within the project as part of the tax credit development, (ii) is receiving development funding for the amenity from the public entity, and (iii) has a proposed operations budget from the operating public entity, would be considered "in place" at the time of application. Distances must be measured using a standardized radius from the development site to the target amenity, unless that line crosses a significant physical barrier or barriers. Such barriers include highways, railroad tracks, regional parks, golf courses, or any other feature that significantly disrupts the pedestrian walking pattern between the development site and the amenity. The radius line may be struck from the corner of development site nearest the target amenity, to the nearest corner of the target amenity site. However, a radius line shall not be struck from the end of an entry drive or on-site access road that extends from the central portion of the site itself by 250 feet or more. Rather, the line shall be struck from the nearest corner of the site's central portion. Where an amenity such as a grocery store resides within a larger shopping complex or commercial strip, the radius line must be measured to the amenity exterior wall, rather than the site boundary. The resulting distance shall be reduced in such instances by 250 feet to account for close-in parking.

No more than 15 points will be awarded in this category. For purposes of the Native American apportionment only, no points will be awarded in this category. However, projects that apply under the Native American apportionment that drop down to the rural set-aside will be scored

in this category. Applicants must certify to the accuracy of their submissions and will be subject to negative points in the round in which an application is considered, as well as subsequent rounds, if the information submitted is found to be inaccurate. For each amenity, color photographs, a contact person and a contact telephone must be included in the application. The Committee may employ third parties to verify distances or may have staff verify them. Only one point award will be available in each of the subcategories (1-9) listed below, with the exception of the transit pass option of subcategory 1. Amenities may include:

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(4)(A)1. transit pass point option only

Initial Proposed Change:

1. In addition to meeting one of the point categories described above, the applicant commits to provide to residents free transit passes or discounted passes priced at no more than half of retail cost. Passes shall be made available to each Low-Income Unit at the time a Low-Income Unit is leased to the tenant and shall be made available for at least 15 years. These points are not available for projects with van service. These points are only available to Rural set-aside projects with dial-a-ride service for free or discounted dial-a-ride passes.

   At least one pass per Low-Income Unit 3 points
   At least one pass per each 2 Low-Income Units 2 points

Comments Received: One comment received stated that (1) many people with disabilities already receive reduced or free transit passes through other services and sources and it is unnecessary for the affordable housing project to be required to provide them additionally, and (2) TCAC should seek to ensure all residents have access to a reduced or free transit pass.

Response to Comments: As the proposed change is a clarifying one, staff proposes to proceed with the change as initially proposed.

Final Proposed Change: Proceed with changes as initially proposed.

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

Initial Proposed Change:

5. For a development wherein at least 25 percent (25%) of the Low-Income Units (or, for Special Needs housing type, at least 25% of the Large Family Low-Income Units) shall be three-bedroom or larger units, the site is within 1/4 mile of a public elementary school; 1/2 mile of a public middle school; or one (1) mile of a public high school, (an additional 1/2 mile for each public school type for Rural setaside projects) and that the site is within the attendance area of that school. Public schools demonstrated, at the time of application, to be under construction and to be completed and available to the residents prior to the housing

development completion are considered in place at the time of application for purposes of this scoring factor. 3 points

or within an additional 1/2 mile for each public school type (an additional 1 mile for Rural set-aside projects) 2 points

Comments Received: One commenter proposed a reduction in the percentage of 3-bedroom units required.

Response to Comments: Staff's proposal is to allow special needs projects to access this point category, not to reduce the percentage of 3-bedroom units. Staff continues to believe in the importance of providing these larger units to low-income families.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(4)(A)10.

Initial Proposed Change:

10. High speed internet service, with a minimum average download speed of ~~1.5~~50 megabits/second must be made available to each Low-Income Unit for a minimum of 15 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. ~~Will serve letters or other documentation~~ Documentation of internet availability must be ~~documented within~~included in the application. If internet is selected as an option in the application it must be provided even if it is not needed for points.

Comments Received: Two commenters noted the proposed requirement of 50 Mbps may not be readily available in all locations and suggested the language be changed to 25 Mbps.

Response to Comments: TCAC staff concurs with the comments received.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

10. High speed internet service, with a minimum average download speed of ~~1.5~~25 megabits/second must be made available to each Low-Income Unit for a minimum of 15 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. ~~Will serve letters or other documentation~~ Documentation of internet availability must be ~~documented within~~included in the application. If internet is selected as an option in the application it must be provided even if it is not needed for points.

Section 10325(c)(4)(A)11.

Initial Proposed Change:

11. The project is a new construction ~~large family~~Large Family housing type project, except for an inclusionary project as defined in Section 10325(c)(9)(C), and the site is located in a census

tract, or census block group as applicable, designated on the TCAC/HCD Opportunity Area Map as Highest or High Resource: 8 points

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(4)(B)

Initial Proposed Change:

(B) Projects that provide high-quality services designed to improve the quality of life for tenants are eligible to receive points for service amenities. Services must be appropriate to meet the needs of the tenant population served and designed to generate positive changes in the lives of tenants, such as by increasing tenant knowledge of and access to available services, helping tenants maintain stability and prevent eviction, building life skills, increasing household income and assets, increasing health and well-being, or improving the educational success of children and youth.

Except as provided below, in order to receive points in this category, physical space for service amenities must be available when the development is placed-in-service. Services space must be located inside the project and provide sufficient square footage, accessibility and privacy to accommodate the proposed services. Evidence that adequate physical space for services will be provided must be documented within the application.

The amenities must be available within 6 months of the project's placed-in-service date. Applicants must commit that services shall be provided for a period of 15 years.

All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development (1½ miles for Rural set-aside projects) provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative.

No more than 10 points will be awarded in this category. The number of hours per year for a full time-equivalent (FTE) will be calculated as follows: 1) the number of bedrooms X 0.0017 = FTE multiplier; 2) FTE Multiplier X 2,080 = number of hours per year (up to a maximum of 2,080 hours).

For Large Family, Senior, and At-Risk Projects or for the non-Special Needs units in a Special Needs Project with less than 75% Special Needs units, amenities may include, but are not limited to:

1. Service Coordinator. Responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.).

   Minimum ratio of 1 Full Time Equivalent (FTE) Service Coordinator to 600 bedrooms.

5 points

~~Minimum ratio of 1 FTE Service Coordinator to 1,000 bedrooms 3 points~~

2. Other Services Specialist. Must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor.

   Minimum ratio of 1 FTE Services Specialist to 600 bedrooms. 5 points

   ~~Minimum ratio of 1 FTE Services Specialist to 1,000 bedrooms 3 points~~

3. Instructor-led ~~A~~adult educational, health and wellness, or skill building classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Drop-in computer labs, monitoring or technical assistance shall not qualify.

   84 hours of instruction per year (42 for small developments) 7 points

   60 hours of instruction per year (30 for small developments) 5 points

   ~~36 hours of instruction per year (18 for small developments) 3 points~~

4. Health and wellness services and programs. Such services and programs shall provide individualized support to tenants (not group classes) and need not be provided by licensed individuals or organizations. Includes, but is not limited to visiting nurses programs, intergenerational visiting programs, or senior companion programs. The application must describe in detail the services to be provided.

   100 hours of services per year for each 100 bedrooms 5 points

   60 hours of services per year for each 100 bedrooms 3 points

   ~~40 hours of services per year for each 100 bedrooms 2 points~~

5. Licensed child care. Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 25% of Low-Income Units are three bedrooms or larger). 5 points

6. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. (Only for large family projects or other projects in which at least 25% of Low-Income Units are three bedrooms or larger).

   10 hours per week, offered weekdays throughout school year 5 points

   6 hours per week, offered weekdays throughout school year 3 points

   ~~4 hours per week, offered weekdays throughout school year 2 points~~

For Special Needs Projects with 75% or more Special Needs units or for the Special Needs units in a Special Needs Project with less than 75% Special Needs units, amenities may include, but are not limited to:

7. Case Manager. Responsibilities must include (but are not limited to) working with tenants to develop and implement an individualized service plan, goal plan or independent living plan.

   Ratio of 1 FTE case manager to 100 bedrooms 5 points

   ~~Ratio of 1 FTE case manager to 160 bedrooms 3 points~~

8. Service Coordinator or Other Services Specialist. Service coordinator responsibilities shall include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.). Other services specialist must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor.

   Ratio of 1 FTE service coordinator or specialist to 360 bedrooms 5 points

   ~~Ratio of 1 FTE service coordinator or specialist to 600 bedrooms 3 points~~

9. Adult educational, health and wellness, or skill building classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes.

   84 hours of instruction per year (42 for small developments) 5 points

   ~~60 hours of instruction per year (30 for small developments) 3 points~~

   ~~36 hours of instruction per year (18 for small developments) 2 points~~

10. Health or behavioral health services provided by appropriately-licensed organization or individual. Includes but is not limited to: health clinic, adult day health center, medication management services, mental health services and treatment, substance abuse services and treatment. 5 points

11. Licensed child care. Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 25% of Low-Income Units are three bedrooms or larger). 5 points

12. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. (Only for large family projects or other projects in which at least 25% of Low-Income Units are three bedrooms or larger).

10 hours per week, offered weekdays throughout school year 5 points

~~6 hours per week, offered weekdays throughout school year 3 points~~

~~4 hours per week, offered weekdays throughout school year 2 points~~

Special needs projects with less than 75% special needs units shall be scored proportionately in the service amenity category based upon (i) the services provided to special needs and non-special needs units, respectively; and (ii) the percentage of units represented by special needs and non-special needs units, respectively. Proportionate scoring means for a project to score the maximum 10 points, nonspecial needs units and special needs units must independently score 10 points for service amenities. For special needs projects with less than 75% special needs units that provide the same service amenity for the special needs and non-special needs tenants, the applicant must select the amenity from 1-6 and from 7-12 in the application form. Special needs projects with 75% or more but less than 100% special needs units shall demonstrate that all tenants will receive an appropriate level of services.

Items 1 through 12 are mutually exclusive~~.~~ ; ~~O~~one proposed service may not receive points under two different categories, except in the case of proportionately-scored scored services pursuant to the previous paragraph.

Documentation must be provided for each category of services for which the applicant is claiming service amenities points and must state the name and address of the organization or entity that will provide the services; describe the services to be provided and the number of hours services will be provided; and name the project to which the services are being committed.

Documentation shall take the form of a contract for services, Memorandum of Understanding (MOU), or commitment letter on agency letterhead.

For projects claiming points for items 1, 2, 7, or 8, a position description must be provided. Services delivered by the on-site Property Manager or other property management staff will not be eligible for points under any category (items 1 through 12).

The application's Service Amenity Sources and Uses Budget page must clearly describe all anticipated income and expenses associated with the services program(s) and must align with the services commitments provided (i.e. contracts, MOUs, letters, etc.). Applications shall receive points for services only if the proposed services budget adequately accounts for the level of service. The budgeted amount must be reasonably expected to cover the costs of the proposed level of service. If project operating income will fund service amenities, the application's Service Amenities Sources and Uses Budget must be consistent with the application's fifteen year pro forma. Services costs contained in the project's pro forma operating budget do not count towards meeting CTCAC's minimum operating expenses required by Section 10327(g)(1).

All organizations providing services for which the project is claiming points must document that they have at least 24 months of experience providing services to the project's target population. Experience of individuals may not be substituted for organizational experience.

Comments Received: One commenter opposed the change stating that it does not result in simplification, stating that 2- and 3-point categories can be combined to make 5-point categories.

Response to Comments: TCAC staff's experience is that applicants generally do not combine 2- and 3-point categories, which individually do not produce a high number of service hours for tenants. Staff believes the hours required in 5-point categories provide a more meaningful amount of service hours to tenants, and proposes to proceed with the original proposal.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(5)

Initial Proposed Change:

(5) Reserved~~Sustainable building methods. Maximum 5 points~~

~~Sustainable building methods points shall be awarded to applicant projects committing to the following applicable standards. Except where 90 percent (90%) or more of the proposed units consist of either new construction or rehabilitation, projects consisting of both (i) new construction or adaptive reuse and (ii) rehabilitation of existing units shall be scored on meeting applicable standards for both construction types. In such cases, points shall be awarded based upon the lowest score achieved by each construction type. The application shall include a statement committing the property owner to at least maintain the installed energy efficiency and sustainability features' quality when replacing any such feature.~~

~~(A) New Construction and Adaptive Reuse Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); Green Communities; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; National Green Building Standard ICC / ASRAE – 700 silver or higher rating; or the GreenPoint Rated Program. 5 points~~

~~WELL (when not combined with the program above) 1 point~~

~~(B) New Construction and Adaptive Reuse Projects: Points for energy efficiency shall be awarded according to one of the following:~~

~~(i) Energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the 2019 Title 24, Part 6, of the California Building Code (the 2019 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:~~

~~Low-Rise Multifamily~~		~~High-Rise Multifamily~~	
~~5 Total EDR Pts.~~	~~3 points~~	~~7 percent~~	~~3 points~~
~~8 Total EDR Pts.~~	~~5 points~~	~~12 percent~~	~~5 points~~

~~If the local building department has determined that building permit applications submitted on or before December 31, 2019 are complete, then energy efficiency beyond the requirements in the 2016 Title 24, Part 6, of the California Building~~

Code (the 2016 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:

9 percent 3 points

15 percent 5 points

(ii) Energy Efficiency with renewable energy that provides the following percentages of project tenants' energy loads for the project as a whole, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:

Offset of Tenants' Load	**Low-Rise Multifamily**	**High-Rise Multifamily**
40 percent	3 points	4 points
60 percent	4 points	5 points
80 percent	5 points	

The percentage Zero Net Energy (ZNE) solar offset of a project's tenant energy loads is to be calculated using the California Utility Allowance Calculator (CUAC) with kilowatt hours (kWh) consumed to be balanced by kilowatts generated on-site. Gas use is to be converted to kWh for percentage ZNE offset calculations, assuming 1 Therm = 29.3 kWh, and 100,100 British Thermal Units (BTUs) = 29.3 kWh. Residential energy loads modeled by the CUAC shall include all energy used by tenants, both gas and electric, regardless of whether the energy load is billed to the owner or the tenants. This calculation excludes non-residential energy uses associates with the community building, elevators, parking lot lighting, and similar end uses, but includes domestic hot water and Heating, Ventilation, and Air Conditioning (HVAC) loads, regardless of whether they are central or distributed. For purposes of this paragraph, "High-Rise Multifamily" is defined consistently with the California Energy Code.

(C) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; National Green Building Standard ICC / ASRAE – 700 silver or higher rating; or 2015 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

WELL (when not combined with the programs above) 1 point

(D) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the project as a whole based on existing conditions, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being

replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. The project must undergo an energy assessment that meets the CTCAC Existing Multifamily Assessment Protocols. The report documenting the results of the Assessment must be submitted using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Report Template. Points are awarded based on the building(s) percentage decrease in estimated Time Dependent Valuation (TDV) energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the Nonresidential (High-Rise Residential) performance module of California Energy Commission (CEC) approved software:

Improvement Over Current

15 percent 3 points

20 percent 5 points

(E) Additional Rehabilitation Project Measures. For projects receiving points under section 10325(c)(5)(D) applicants may be awarded points for committing to developing, and/or managing, their project with one or more of the following:

1. Projects shall include either:

   a. Photovoltaic (PV) generation that offsets 30% of tenant loads (if the combined available roof area of the project structures, including carports, is insufficient for provision of 30% of annual tenant electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area; or

   b. PV that offsets either 50 percent (50%) of common area load (if the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual common area electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area); or

   c. Solar hot water for all tenants who have individual water meters. 2 points

2. Project shall implement sustainable building management practices including:

   Develop a project-specific maintenance manual including replacement specifications and operating information of all energy and green building features, and

   Undertake formal building systems commissioning, retro-commissioning or re-commissioning as appropriate (continuous commissioning is not required). 2 points

3. Projects shall individually meter or sub-meter currently master-metered gas, electricity, or central hot water systems for all tenants. 2 points

(F) Water efficiency:

Use no irrigation at all, irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), or irrigate with reclaimed water, greywater, or rainwater in an amount that annually equals or exceeds 10,000 gallons or 150 gallons per unit, whichever is less. 5 points

(G) Compliance and Verification:

1. For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building methods of Section 10325(c)(5) have been incorporated into the project, if applicable. For rehabilitation applications incorporating the requirements of subsection (C) Green Communities or WELL option, and for all applications incorporating the requirements of subsections (B), (D), or (E)1.a above, applicants must include a completed Sustainable Building Method Workbook.

2. For placed-in-service applications to receive points under section 10325(c)(5)(A) and section 10325(c)(5)(C), the applicant must submit the appropriate required third party verification documentation showing the project has met the requirements for the relevant program.

3. For low-rise new construction project placed-in-service applications to receive points under the 2019 Standards in section 10325(c)(5)(B)(i), the applicant must submit a completed Sustainable Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the necessary Total EDR score better than the appropriate Standards. For high-rise new construction project placed-in-service applications to receive points under section 10325(c)(5)(B)(i), the applicant must submit a completed Sustainable Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the Regulations necessary percentage improvement better than the appropriate Standards. This compliance form must be the output from the building(s) modeled “as built” and reflect all relevant changes that impact the building(s) energy efficiency that were made after the preliminary reservation application. The compliance form must be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Analyst (CEA). Documentation for measures that require verification by California Home Energy Rating System (HERS) Raters must also be submitted.

4. New Construction placed-in-service applications for projects that received points under section 10325(c)(5)(B)(ii), the applicant must submit a completed Sustainable Building Method Workbook, a completed CUAC analysis establishing the total tenant energy load, and documentation of the PV output using the Expected Performance Based Buydown (EPBB) calculator with TCAC approved monthly scalars. These compliance forms must reflect all relevant changes that impact building(s) energy efficiency that were made after the preliminary reservation application. The CUAC analysis and other required forms must be signed by a CABEC certified CEA. Documentation for the solar PV installation and other measures that require verification by California HERS Raters must also be submitted.

5. For rehabilitation project placed-in-service applications to receive points under section10325(c)(5)(D), the applicant must submit a completed Sustainable Building Method Workbook and the energy consumption and analysis report from the Nonresidential (High-Rise Residential) performance module of CEC approved

~~software, completed by a CABEC certified CEA, which shows the pre- and post-rehabilitation estimated TDV energy use demonstrating the required improvement. The pre-rehabilitation conditions shall be established using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report Template, signed by a qualified HERS Rater.~~

~~6. For rehabilitation project placed-in-service applications to receive points under section 10325(c)(5)(E) the applicants must submit the following documentation:~~

~~(i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a completed Sustainable Building Method Workbook, a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project's solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter. The applicant shall use the Expected Performance Based Buydown (EPBB) calculator with CTCAC approved monthly scalars to determine the solar values to be input into the CUAC calculator.~~

~~(ii) For projects including photovoltaic generation that offsets common area load, the energy analyst shall provide documentation of the load serving the common area and the output calculations of the photovoltaic generation.~~

~~(iii) For sustainable building management practices, the applicant must submit a copy of the energy management and maintenance manual and submit the building commissioning plan drafted in accordance with the California Commissioning Collaborative's best practice recommendations for existing buildings or the GreenPoint Rated Multifamily Commissioning requirements.~~

~~(iv) For sub-metered central hot water systems, the applicant must demonstrate compliance with CPUC regulations for hot water sub-metering and billing by submitting a copy of the Utility Service Agreement from project's local utility provider.~~

~~7. For placed in service applications to receive points under Section 10325(c)(5)(F), the project architect, landscape architect, water system engineer, HERS Rater, GreenPoint Rater, NGBS Green Verifier, or LEED for Homes Green Rater shall certify that the project has been designed and constructed to achieve the standards and that, if applicable, reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property to meet the standards under normal conditions.~~

~~8. Failure to produce the appropriate documentation for (2) through (7) of this subsection may result in an award of negative points for the development team.~~

Comments Received: TCAC received a high volume of comments regarding this proposed change, many of them opposing the change. Energy firms, public agencies, and developers opposed the change, and instead proposed to add all-electric and carbon emission reduction point options. These commenters cited the current point category's alignment with the state's energy and sustainability goals, the importance of providing sustainably built and energy efficient units to low-income

residents, and the importance of moving away from use of gas-fired systems and appliances for climate change, healthy living, and greenhouse gas emission reductions.

Commenters stated that California has been a leader in climate change mitigation and that the impacts of climate change, including the increase in droughts, wildfires smoke pollution, disproportionally affect low-income people. Commenters noted the importance of TCAC in providing leadership to address both the housing shortfall and the commitment to provide safer homes. Some of these commenters cited that the affordable housing community has started embracing all-electric new construction. Regulatory changes from TCAC to eliminate rather than advance these policies will disincentivize and delay a much needed shift and lead to uneven adoption of and investments in quality of life improvements for lower income residents.

Commenters stated that removal of this point category is inconsistent with state directives requiring state agencies to consider greenhouse gas implications of their programs and activities. Several commenters noted that TCAC's current program is aligned with the CPUC's energy efficiency programs, CEC Building Energy Codes, the Affordable Housing Sustainable Communities Program, the Multifamily Low-Income Weatherization Program (LIWP), and local government codes. One commenter stated that the CEC has produced numerous cost-effectiveness studies of local electrification ordinances showing reduced or cost-neutral construction costs and significant lifetime operational cost savings benefiting both owners and tenants. Commenters stated that there are other statewide programs providing technical assistance and incentives to offset costs associated with changing building practices.

Commenters opposed to the change stated that sustainable building is not a significant contributor to housing cost, and is a significant driver for developers to transition to construction methods that provide health and safety benefits. Several of these commenters stated that over the life of a project, the cost of complying with these point categories results in savings, although the development may have a higher initial cost. In stressing the importance of retaining this point category, commenters noted that the initial design and construction of a project is the most cost-effective time to incorporate sustainability.

Other developers supported the change, citing the resulting project cost reductions and impacts on total unit production. These commenters stated that the stringency of the current building code provides significant energy efficiency and sustainable building outcomes, and that TCAC should align with the state building code for TCAC's energy and sustainable building requirements.

Response to Comments: Staff proposed the removal of the Sustainable Building Methods point category due to the current emphasis on unit production and cost containment. The proposed change also aligns with the proposed CDLAC scoring system. Staff proposes to proceed with eliminating this point category, and to rely on local and California Building Code requirements to provide the energy efficiency and sustainability requirements for this program. Staff will consider the suggested changes and adding additional point scoring categories such as all-electric energy use for future regulation change proposals.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(7)

Initial Proposed Change:

(7) Readiness to Proceed. 10 points will be available to projects that document ~~items (A) through (B) below,~~ enforceable financing commitment(s) as defined in Section 10325(f)(3) for all construction financing and commit to begin construction within 180 days of the Credit Reservation as documented by the requirements below (after preliminary reservation CTCAC will randomly assign a 180 day deadline for half of the projects receiving a Credit Reservation within each round and a 194 day deadline for remaining projects)~~,~~.

No later than the 180/194 day deadline, CTCAC must receive~~as evidenced by submission, within that time, of~~:

(A) a completed updated application form along with a detailed explanation of any changes from the initial application,

(B) an executed construction contract,

(C) recorded deeds of trust for all construction financing (unless a project's location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction,

(D) a limited partnership agreement executed by the general partner and the investor providing the equity,

(E) an updated CTCAC Attachment 16, ~~payment of all construction lender fees,~~

(F) issuance of building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and

(G) notice to proceed delivered to the contractor.

Failure to meet the 180-day or 194-day due date, if applicable, shall result in rescission of the Tax Credit Reservation or negative points.

If no construction lender is involved, evidence must be submitted within 180 or 194 days, as applicable, after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

~~For projects that are federal funding recipients and receiving competitive reservations in the second round of 2018, the 180-day or 194-day references in the preceding paragraph shall be extended by sixty (60) days. The extension is only provided to projects that demonstrate to CTCAC prior to the original 180-day or 194-day deadline, in the form of a written timetable and~~

~~an explanation, that the federal government shutdown impacted their ability to meet Readiness to Proceed requirements.~~

~~The 180-day or 194-day requirements shall not apply to projects that do not obtain the maximum points in this category. Failure to meet the 180-day or 194-day due date, if applicable, shall result in rescission of the Tax Credit Reservation or negative points. Five (5) points shall be awarded for submittals within the application documenting each of the following criteria, up to a maximum of 10 points:~~

~~(A) enforceable financing commitment, as defined in Section 10325(f)(3), for all construction financing;~~

~~(B) evidence, as verified by the appropriate officials on a Committee-provided form signed by an appropriate local government planning official of the applicable local jurisdiction, that all applicable local land use approvals have been obtained as described in Section 10325(f)(4).~~

~~For paragraph (B) a final appeal period may run up to 30 days beyond the application due date as described in Section 10325(f)(4). The applicant must provide proof that either no appeals were received, or that any appeals received during that time period were resolved within that 30-day period to garner local approval readiness points.~~

Comments Received: Commenters did not oppose the change, but made requests that included accepting Permit Ready-to-Issue letters from the local permit-issuing agency in lieu of the building permit and clarifying which penalty is applicable, credit rescission or negative points.

Response to Comments: TCAC staff does not propose to change the existing requirement that building permits be issued since the intent of this section is to begin construction within 180 day of the TCAC award. Regarding the penalty for not complying, the two options are to provide TCAC with discretion in choosing which to apply, based on individual circumstances.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(9)

Initial Proposed Change:

(9) Tie Breakers

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

For applications for projects within single-jurisdiction regional competitions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence within the submitted application of a formal letter of support for the project from either the San Francisco Mayor's Office of Housing or the Los Angeles Housing + Community Investment Department respectively. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped (unless the application to be skipped is the highest ranked in the set-aside or geographic region) if there is another

application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and Second, the highest of the sum of the following:

(A) Leveraged soft resources, as described below, defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, leveraged soft resources shall be discounted by the proportion of the project that is non-residential. Leveraged soft resources shall be demonstrated through documentation including but not limited to funding award letters, committed land donations, or documented project-specific local fee waivers.

Leveraged soft resources shall include all of the following:

(i) Public funds. "Public funds" include federal, tribal, state, or local government funds, including the outstanding principal balances of prior existing public debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, except that outstanding principal balances for projects subject to an existing CTCAC regulatory agreement shall not be considered public funds if such loans were funded less than 30 years prior to the application deadline. Outstanding principal balances shall not include any accrued interest on assumed loans even where the original interest has been or is being recast as principal under a new loan agreement. Public funds shall include assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, local government fee reductions established in ordinance and not required by federal or state law that are available only to rental affordable housing for lower-income households and affordable ownership housing for moderate income households, or the value of land and improvements donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement negotiated between a public entity and an unrelated private developer. The value of land leased by a public entity shall be discounted by the sum of upfront lease pre-payments and all mandatory lease payments in excess of $100 per year over the term of the lease, exclusive of residual receipt payments. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be counted as public funds, unless the loans have a designated repayment commitment from a public source other than rental or operating subsidies, such as the HUD Title VI Loan Guarantee Program involving Native American Housing Assistance and Self Determination Act (NAHASDA) funds. Land and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement, must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(h)(9). The appraised value is not to include off-site improvements. For Tribal apportionment applications, donated land value and land-purchase funding shall not be eligible. However, unsuccessful Tribal apportionment applicants subsequently competing within the rural set-aside or tribal applicants competing in a geographic region shall have such donated land value and land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

Loans must be "soft" loans, having terms (or remaining terms) of at least 15 years, and below market interest rates and interest accruals, and are either fully deferred or require

only residual receipts payments for at least the first fifteen years of their terms. Qualified soft loans may have annual fees that reasonably defray compliance monitoring and asset management costs associated with the project. The maximum below-market interest rate allowed for tiebreaker purposes shall be the greater of four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt in spite of a debt service requirement. Further, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. Seller carryback financing and any portion of a loan from a public seller or related party that is less than or equal to sale proceeds due the seller, except for a public land loan to a new construction project that is not replacing affordable housing within the footprint of the original development, shall be excluded for purposes of the tiebreaker. Projects that include both new construction and rehabilitation or affordable housing replacement shall have the land loan value prorated based on units.

Public contributions of off-site costs shall not be counted competitively, unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees or (2) the off-sites must be developed by the sponsor as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property. Public funds shall be allocated to off-site costs and shall be reduced for tie breaker scoring purposes.

The capitalized value of rent differentials attributable to public rent or public operating subsidies shall be considered public funds based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 40 percent (40%) AMI levels (30% AMI for units subject to the 40% average AMI requirement of Section 10325(g)(3)(A)) from the committed contract rent income documented by the subsidy source or, in the case of a USDA rental subsidy only, the higher of 60% AMI rents or the committed contract USDA Basic rents. The committed contract rent income for units with existing project-based Section 8 rental subsidy shall be documented by the current monthly contract rent in place at the time of the application or by contract rent committed to and approved by the subsidy source (HUD); rent from a rent comparable study or post-rehabilitation rent shall not be permitted. The rent differential for projects with public operating subsidies shall equal the annual subsidy amount in year 1, provided the subsidy will be of a similar amount in succeeding years, or the aggregate subsidy amount of the contract divided by the number of years in the contract if the contract does not specify an annual subsidy amount.

(ii) soft loans that meet the criteria described in subparagraph (i) ~~(except that terms shall be of at least 55 years),~~ or grants, from unrelated non-public parties that are not covered by subparagraph (i) and that do not represent financing available through the National Mortgage Settlement Affordable Rental Housing Consumer Relief programs. The party providing the soft loans or grants shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit or funds from a related party to the project. The application shall include (1) a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the leveraged soft resource(s) is from an unrelated non-public entity(ies), that the unrelated non-public entity(ies) shall not

receive any benefit or funds from a related party to the project, and that the leveraged soft resource(s) is available and not committed to any other project or use; and (2) a narrative from the applicant regarding the nature and source of the leveraged soft resource(s) and the conditions under which it was given. Seller carryback financing and any portion of a loan from a non-public seller or related party that is less than or equal to sale proceeds due the seller shall be excluded for purposes of the tiebreaker.

(iii) the value of donated land and improvements that are not covered by subparagraph (i), that meet the criteria described in subparagraph (i), and that are contributed by an unrelated entity (unless otherwise approved by the Executive Director), so long as the contributed asset has been held by the entity for at least 5 years prior to the application due date, except for the value of donated land and improvements in the case of a rehabilitation project subject to an existing regulatory agreement with CTCAC or a federal, state, or local public entity or with greater than 25% of the units receiving project-based rental assistance unless the land and improvements are wholly donated. For a case in which the donor is a non-profit organization acting solely as a pass-through entity, the Executive Director may in advance of the application date approve an exception to the 5-year hold rule provided that the donor to the non-profit organization held the contributed asset for at least 5 years and that both the original donor and nonprofit donor meet the requirements of, and are included in the certifications required by, this paragraph. The party providing the donation shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. In addition, the land shall not have been owned previously by a related party or a partner or proposed partner (unless the partner has no ownership interest and only the right to complete construction). The application shall include a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the donation is from an unrelated entity and that the unrelated entity shall not receive any benefit from a related party to the project.

(iv) For purposes of this section, a related party shall mean a member of the development team or a Related Party, as defined in Section 10302(gg), to a member of the development team.

(v) For 4% credit applications, recycled private activity bonds (whether they be used for construction or permanent financing, or both) shall be considered leveraged soft resources so long as the loan terms are consistent with market standards.

Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

Land donations include land leased for a de minimis annual lease payment. CTCAC may contract with an appraisal reviewer and, if it does so, shall commission an appraisal review for donated land and improvements if a reduction of 15% to the submitted appraisal value would change an award outcome. If the appraisal review finds the submitted appraisal to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer for calculating the tiebreaker only.

The numerator of projects of 50 or more newly constructed or adaptive reuse Tax Credit Units shall be multiplied by a size factor equal to seventy five percent plus the total number of newly

constructed or adaptively reused Tax Credit Units divided by 200 (75% + (total new construction/adaptive reuse units/200)). The size factor calculation shall be limited to no more than 150 Tax Credit Units.

In the case of a new construction hybrid 9% and 4% tax credit development which meets all of the following conditions, the calculation of the size factor for the 9% application shall include all of the Tax Credit Units in the 4% application up to the limit described above, the leveraged soft resources ratio calculated pursuant to this subparagraph (A) shall utilize the combined amount of leveraged soft resources defraying residential costs and the combined total residential project development costs from both the 9% and 4% applications, and the ratio calculated pursuant to subparagraph (B) shall also utilize the combined total residential project development costs from both the 9% and 4% applications:

(i) the 4% application shall have been submitted to CTCAC and CDLAC by the 9% application deadline;
(ii) the 4% and 9% projects are simultaneous phases, as defined in Section 10327(c)(2)(C);
(iii) the 4% application is eligible for maximum points under Sections 10325(c)(3), (4)(B), (5), and (6), except that 1) the 4% application may be eligible for maximum points in the lowest income category in combination with the 9% project, and 2) the 4% application may be eligible for maximum housing type points in combination with the 9% project. Under each exception, the 9% project shall also be scored in the corresponding point category in combination with the 4% project; and
(iv) developers shall defer or contribute as equity to the project any amount of combined 4% and 9% developer fees in cost that are in excess of the limit pursuant to Section 10327(c)(2)(A) plus $10,000 per unit for each Tax Credit Unit in excess of 100, using (a) the combined Tax Credit Units of the 9% and 4% components, (b) the combined eligible basis of the 9% and 4% components, and (c) the high-cost test factor calculated using the eligible basis and threshold basis limits for the 9% component.

In the event that the 4% component of a hybrid project that receives an increase to its size factor pursuant to this paragraph is not placed in service within 6 months of the 9% component, both applicants shall be subject to negative points. If the project's paid purchase price exceeds appraised value, the leveraged soft resources amount shall be discounted by the overage, unless the Executive Director has granted a waiver pursuant to Section 10327(c)(6).

(B) One (1) minus the ratio of requested unadjusted eligible basis to total residential project development costs~~, with the resulting figure divided by three~~.

(C) Except as provided below, a new construction ~~large-family~~Large Family housing type project ~~applying in 2019 or later~~ (excluding a Special Needs project with non-special needs Low-Income Units meeting Large Family housing type requirements) shall receive a higher resource area bonus as follows based on the designation of the project's location on the TCAC/HCD Opportunity Area Map:

The project is non-rural and the project's census tract is a Highest Resource area 20 percentage points

The project is non-rural and the project's census tract is a High Resource area 10 percentage points

The project is rural and project's census tract or census block group as applicable is a Highest Resource area 10 percentage points

The project is rural and the project's census tract or census block group as applicable is a High Resource area 5 percentage points

This bonus shall not apply to projects competing in the Native American apportionment, unless such projects fall into the rural set-aside competition. In addition, this bonus shall not apply to an inclusionary project, which for purposes of this subparagraph shall mean a project in which any of the Low-Income Units satisfy the obligations of an inclusionary housing ordinance or other development agreement negotiated between a public entity and private developer, unless the obligations derive solely from the Low-Income Units themselves or unless the project includes at least 40 Low-Income Units that are not counted towards the obligations of the inclusionary housing ordinance or development agreement. An application for a large family new construction project located in a High or Highest Resource area shall disclose whether or not the project includes any Low-Income Units which satisfy the obligations of an inclusionary housing ordinance or development agreement and, if so, the number of such units and whether the inclusionary obligations derive solely from the Low-Income Units themselves.

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

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

Comments Received: One commenter supported the proposed change to not skip the highest scoring project in a given region even if the housing type goal has been met.

Multiple comments were received with regard to outstanding principal balances for existing TCAC projects being counted towards the final tie breaker score. One commenter supported the proposed change which further prevents "churning" of projects that are already regulated by TCAC. Some commenters opposed the proposed change stating it would will make re-syndication projects less competitive in the 9% competition. Some commenters stated that public debt is generally extended as part of a re-syndication or at the end of its term such that newer and older debt has the same value. One commenter suggested the 30 years being proposed be reduced to less than 20 years given that most affordable projects need to be rehabilitated and recapitalized after 20 years.

One commenter noted the language with regard to the public contributions of off-site costs appeared to be due to a drafting error and suggested alternative language to provide clarity.

One commenter supported the proposed change by restricting the use of post-rehabilitation rents to avoid artificially inflating the public benefit associated with rental assistance. One commenter opposed the proposed change to the capitalized value of rent differential and stated the post-rehabilitation contract rent should be permitted to count in the leveraged soft resources section if the applicant has a commitment from a subsidy provider at the time of application. One commenter noted that the proposed regulation change requires that the tie breaker calculation be calculated based on the seller's existing contract rent rather than the more realistic expected rent and the rents presented for feasibility of the property and loan sizing be based on the seller's

existing contract rent rather than the more realistic expected rent. The commenter stated this was counterproductive in two ways in that the tie breaker calculation may be calculating a figure that is substantially or even greatly different from what will be the final obtained rent and thus the tiebreaker is not accurately derived based on the expected rent and the financial structure of the property may be affected by reducing permanent loan sizing and possibly increasing the request for tax credits, as a result of the inability to list the expected post renovation rent. The commenter recommends requiring a Project-based Section 8 project submit a Rent Comparability Study supporting the post renovation rents but not to require that HUD has gone through the lengthy process of formally approving the expected rent prior to application submission.

Some commenters recommended TCAC staff withdraw the removal of the 55 year requirement for third party soft debt. The commenters stated that unlike public debt of less than 55 years, which are generally extended, developments are in no position to repay private soft debt as the end of a short term, putting the development at significant risk of foreclosure and erasure of the affordability restrictions long before their 55 years expiration. The commenters recommend retaining the 55 year term for private soft debt.

Multiple comments were received with regard to the inclusion of recycled bonds as a public source for 4% projects. One commenter supported the proposed change stating it is a very positive move that will encourage the use of this resource, better preparing the development community for potential federal legislation that could increase the amount of bonds that can be used for affordable housing. One commenter described recycled bonds as hard debt with a lower interest rate and did not believe they were comparable to public sources. A commenter noted an alternative was to include the capitalized benefit of the interest rate differential as a public source.

The proposed elimination of the 1/3 weighting of the second ratio in the final tie breaker calculation received multiple comments. Multiple commenters supported the removal of the 1/3 rule, stating that it complies with AB 83's mandate to contain costs and increase production. One commenter stated the proposed change will strike a better balance between the value of public funding and cost containment. Other commenters stated that by eliminating the 1/3 weighting, developers inflated their project costs to improve their tie breaker score. Another commenter stated implementation of this type of change would affect projects currently in progress and urges a delayed implementation to 2022. The commenter recommended modifying the weighting from 1/3 to 1/2 if a change must be made and again with delayed implementation to 2022. One commenter stated emphasizing the second ratio in an era when credit pricing is down, and development costs are already high is counter-productive to facilitating successful tax credit deals.

Multiple comments were received on the clarifying proposed change with regard to Large Family projects located in high or highest resource areas. One commenter believes the development of all housing types in high resource areas is critical and suggest expanding the increases to include special needs housing. Another commenter agreed and stated CDLAC made a similar proposal which will allow for increased affordable housing opportunities for special needs projects.

Response to Comments: While TCAC staff is understanding of the comments in response to the comments with regard to outstanding balances, TCAC staff believes that given the current emphasis on unit production and efficiency, TCAC staff does not believe projects proposing a re-syndication

of existing tax credit projects should receive a competitive advantage for 9% credits over new affordable housing projects.

TCAC staff appreciates the comment and suggested revised language to public contributions of off-site costs. While TCAC staff did not ultimately use the suggested language, the initially proposed language was reviewed and revised to provide further clarity that ineligible off-site costs will be excluded from final tie breaker score.

While TCAC staff acknowledges HUD may have a lengthy process for approval of the expected rents, TCAC continues to recommend the initial proposed change to more clearly establish the TCAC's practice in evaluating the capitalized value of rent differentials from the final tie breaker score into the regulations. Absent a subsidy layering review, TCAC staff does not believe reliance on a rent comparable study is appropriate given the competitive nature of the tie breaker scoring.

TCAC staff concurs with the comments relating to the minimum 55 year term and withdraws the proposed change.

TCAC staff understands the comments raised, but believes the proposed change will encourage the efficient use of recycled private activity bonds as a public funding source to align with the proposed CDLAC scoring system. TCAC staff will monitor this with CDLAC and consider this for future regulation changes.

TCAC staff appreciates the thoughtful comments received on the propose change. As previously stated, the proposed change to eliminate the 1/3 weighting was to provide the second ratio more weighting to encourage cost containment. In response to the concerns raised that the propose change would increase project costs, TCAC staff will monitor the effects on project costs in 2021 for any need to revisit an adjustment to the ratio.

As previously stated, TCAC proposed the change to Large Family projects located in high or highest resource areas was a clarifying change and consistent with current practice. While staff finds some comments to have merit, the opportunity map was developed in 2017 to increase access to high opportunity areas for families with children.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(9) Tie Breakers

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

For applications for projects within single-jurisdiction regional competitions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence within the submitted application of a formal letter of support for the project from either the San Francisco Mayor's Office of Housing or the Los Angeles Housing + Community Investment Department respectively. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped (unless the application to be skipped is the highest ranked in the set-aside or geographic region) if there is another

application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and Second, the highest of the sum of the following:

(C) Leveraged soft resources, as described below, defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, leveraged soft resources shall be discounted by the proportion of the project that is non-residential. Leveraged soft resources shall be demonstrated through documentation including but not limited to funding award letters, committed land donations, or documented project-specific local fee waivers.

Leveraged soft resources shall include all of the following:

(i) Public funds. "Public funds" include federal, tribal, state, or local government funds, including the outstanding principal balances of prior existing public debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, except that outstanding principal balances for projects subject to an existing CTCAC regulatory agreement shall not be considered public funds if such loans were funded less than 30 years prior to the application deadline. Outstanding principal balances shall not include any accrued interest on assumed loans even where the original interest has been or is being recast as principal under a new loan agreement. Public funds shall include assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, local government fee reductions established in ordinance and not required by federal or state law that are available only to rental affordable housing for lower-income households and affordable ownership housing for moderate income households, or the value of land and improvements donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement negotiated between a public entity and an unrelated private developer. The value of land leased by a public entity shall be discounted by the sum of upfront lease pre-payments and all mandatory lease payments in excess of $100 per year over the term of the lease, exclusive of residual receipt payments. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be counted as public funds, unless the loans have a designated repayment commitment from a public source other than rental or operating subsidies, such as the HUD Title VI Loan Guarantee Program involving Native American Housing Assistance and Self Determination Act (NAHASDA) funds. Land and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement, must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(h)(9). The appraised value is not to include off-site improvements. For Tribal apportionment applications, donated land value and land-purchase funding shall not be eligible. However, unsuccessful Tribal apportionment applicants subsequently competing within the rural set-aside or tribal applicants competing in a geographic region shall have such donated land value and land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

Loans must be "soft" loans, having terms (or remaining terms) of at least 15 years, and below market interest rates and interest accruals, and are either fully deferred or require

only residual receipts payments for at least the first fifteen years of their terms. Qualified soft loans may have annual fees that reasonably defray compliance monitoring and asset management costs associated with the project. The maximum below-market interest rate allowed for tiebreaker purposes shall be the greater of four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt in spite of a debt service requirement. Further, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. Seller carryback financing and any portion of a loan from a public seller or related party that is less than or equal to sale proceeds due the seller, except for a public land loan to a new construction project that is not replacing affordable housing within the footprint of the original development, shall be excluded for purposes of the tiebreaker. Projects that include both new construction and rehabilitation or affordable housing replacement shall have the land loan value prorated based on units.

Public contributions of off-site costs shall not be counted competitively, unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees or (2) the off-sites must be developed by the sponsor as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property. Public funds shall be ~~allocated to off-site costs and shall be~~ reduced for tie breaker scoring purposes by an amount equal to the off-sites not meeting the requirements noted in this paragraph.

The capitalized value of rent differentials attributable to public rent or public operating subsidies shall be considered public funds based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 40 percent (40%) AMI levels (30% AMI for units subject to the 40% average AMI requirement of Section 10325(g)(3)(A)) from the committed contract rent income documented by the subsidy source or, in the case of a USDA rental subsidy only, the higher of 60% AMI rents or the committed contract USDA Basic rents. The committed contract rent income for units with existing project-based Section 8 rental subsidy shall be documented by the current monthly contract rent in place at the time of the application or by contract rent committed to and approved by the subsidy source (HUD); rent from a rent comparable study or post-rehabilitation rent shall not be permitted. The rent differential for projects with public operating subsidies shall equal the annual subsidy amount in year 1, provided the subsidy will be of a similar amount in succeeding years, or the aggregate subsidy amount of the contract divided by the number of years in the contract if the contract does not specify an annual subsidy amount.

(ii) soft loans that meet the criteria described in subparagraph (i) (except that terms shall be of at least 55 years), or grants, from unrelated non-public parties that are not covered by subparagraph (i) and that do not represent financing available through the National Mortgage Settlement Affordable Rental Housing Consumer Relief programs. The party providing the soft loans or grants shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit or funds from a related party to the project. The application shall include (1) a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the leveraged soft resource(s) is from

an unrelated non-public entity(ies), that the unrelated non-public entity(ies) shall not receive any benefit or funds from a related party to the project, and that the leveraged soft resource(s) is available and not committed to any other project or use; and (2) a narrative from the applicant regarding the nature and source of the leveraged soft resource(s) and the conditions under which it was given. Seller carryback financing and any portion of a loan from a non-public seller or related party that is less than or equal to sale proceeds due the seller shall be excluded for purposes of the tiebreaker.

(iii) the value of donated land and improvements that are not covered by subparagraph (i), that meet the criteria described in subparagraph (i), and that are contributed by an unrelated entity (unless otherwise approved by the Executive Director), so long as the contributed asset has been held by the entity for at least 5 years prior to the application due date, except for the value of donated land and improvements in the case of a rehabilitation project subject to an existing regulatory agreement with CTCAC or a federal, state, or local public entity or with greater than 25% of the units receiving project-based rental assistance unless the land and improvements are wholly donated. For a case in which the donor is a non-profit organization acting solely as a pass-through entity, the Executive Director may in advance of the application date approve an exception to the 5-year hold rule provided that the donor to the non-profit organization held the contributed asset for at least 5 years and that both the original donor and nonprofit donor meet the requirements of, and are included in the certifications required by, this paragraph. The party providing the donation shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. In addition, the land shall not have been owned previously by a related party or a partner or proposed partner (unless the partner has no ownership interest and only the right to complete construction). The application shall include a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the donation is from an unrelated entity and that the unrelated entity shall not receive any benefit from a related party to the project.

(iv) For purposes of this section, a related party shall mean a member of the development team or a Related Party, as defined in Section 10302(gg), to a member of the development team.

(v) For 4% credit applications, recycled private activity bonds (whether they be used for construction or permanent financing, or both) shall be considered leveraged soft resources so long as the loan terms are consistent with market standards.

Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

Land donations include land leased for a de minimis annual lease payment. CTCAC may contract with an appraisal reviewer and, if it does so, shall commission an appraisal review for donated land and improvements if a reduction of 15% to the submitted appraisal value would change an award outcome. If the appraisal review finds the submitted appraisal to be inappropriate, misleading, or inconsistent with the data reported and with other generally known information, then the reviewer shall develop his or her own opinion of value and CTCAC shall use the opinion of value established by the appraisal reviewer for calculating the tiebreaker only.

The numerator of projects of 50 or more newly constructed or adaptive reuse Tax Credit Units shall be multiplied by a size factor equal to seventy five percent plus the total number of newly constructed or adaptively reused Tax Credit Units divided by 200 (75% + (total new construction/adaptive reuse units/200)). The size factor calculation shall be limited to no more than 150 Tax Credit Units.

In the case of a new construction hybrid 9% and 4% tax credit development which meets all of the following conditions, the calculation of the size factor for the 9% application shall include all of the Tax Credit Units in the 4% application up to the limit described above, the leveraged soft resources ratio calculated pursuant to this subparagraph (A) shall utilize the combined amount of leveraged soft resources defraying residential costs and the combined total residential project development costs from both the 9% and 4% applications, and the ratio calculated pursuant to subparagraph (B) shall also utilize the combined total residential project development costs from both the 9% and 4% applications:

(v) the 4% application shall have been submitted to CTCAC and CDLAC by the 9% application deadline;
(vi) the 4% and 9% projects are simultaneous phases, as defined in Section 10327(c)(2)(C);
(vii) the 4% application is eligible for maximum points under Sections 10325(c)(3), (4)(B), (5), and (6), except that 1) the 4% application may be eligible for maximum points in the lowest income category in combination with the 9% project, and 2) the 4% application may be eligible for maximum housing type points in combination with the 9% project. Under each exception, the 9% project shall also be scored in the corresponding point category in combination with the 4% project; and
(viii) developers shall defer or contribute as equity to the project any amount of combined 4% and 9% developer fees in cost that are in excess of the limit pursuant to Section 10327(c)(2)(A) plus $10,000 per unit for each Tax Credit Unit in excess of 100, using (a) the combined Tax Credit Units of the 9% and 4% components, (b) the combined eligible basis of the 9% and 4% components, and (c) the high-cost test factor calculated using the eligible basis and threshold basis limits for the 9% component.

In the event that the 4% component of a hybrid project that receives an increase to its size factor pursuant to this paragraph is not placed in service within 6 months of the 9% component, both applicants shall be subject to negative points. If the project's paid purchase price exceeds appraised value, the leveraged soft resources amount shall be discounted by the overage, unless the Executive Director has granted a waiver pursuant to Section 10327(c)(6).

(D) One (1) minus the ratio of requested unadjusted eligible basis to total residential project development costs~~, with the resulting figure divided by three~~.

(C) Except as provided below, a new construction ~~large-family~~Large Family housing type project ~~applying in 2019 or later~~ (excluding a Special Needs project with non-special needs Low-Income Units meeting Large Family housing type requirements) shall receive a higher resource area bonus as follows based on the designation of the project's location on the TCAC/HCD Opportunity Area Map:

The project is non-rural and the project's census tract is a Highest Resource area 20 percentage points

The project is non-rural and the project's census tract is a High Resource area 10 percentage points

The project is rural and project's census tract or census block group as applicable is a Highest Resource area 10 percentage points

The project is rural and the project's census tract or census block group as applicable is a High Resource area 5 percentage points

This bonus shall not apply to projects competing in the Native American apportionment, unless such projects fall into the rural set-aside competition. In addition, this bonus shall not apply to an inclusionary project, which for purposes of this subparagraph shall mean a project in which any of the Low-Income Units satisfy the obligations of an inclusionary housing ordinance or other development agreement negotiated between a public entity and private developer, unless the obligations derive solely from the Low-Income Units themselves or unless the project includes at least 40 Low-Income Units that are not counted towards the obligations of the inclusionary housing ordinance or development agreement. An application for a large family new construction project located in a High or Highest Resource area shall disclose whether or not the project includes any Low-Income Units which satisfy the obligations of an inclusionary housing ordinance or development agreement and, if so, the number of such units and whether the inclusionary obligations derive solely from the Low-Income Units themselves.

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

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

Section 10325(f)(1)

Initial Proposed Change:

(1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located, with evidence including a market study that meets the current market study guidelines distributed by the Committee. Market studies will be assessed thoroughly. Meeting the requirements of subsection (B) below is essential, but because other elements of the market study will also be considered, meeting those requirements in subsection (B) will not in itself show adequate need and demand for a proposed project or ensure approval of a given project. Evidence shall be conclusive, and include the most recent documentation available (prepared within one year of the application date and updated, if necessary). Evidence of housing need and demand shall include, but is not limited to:

(A) evidence of public housing waiting lists, by bedroom size and tenant type, if available, from the local housing authority; and

(B) except as provided in Section 10322(h)(10), a market study as described in Section 10322(h)(10) of these regulations, which provides evidence that:

(i) The proposed tenant paid rents for each affordable unit type in the proposed development will be at least ten percent (10%) below the weighted average rent for the same unit types in comparable market rate rental properties;

(ii) Except for special needs rehabilitation projects in which at least 90% of the total units are SRO units, the proposed unit value ratio stated as dollars per square foot ($/s.f.) will be no more than the weighted average unit value ratios for comparable market rate units;

(iii) In rural areas without sufficient three- and four-bedroom market rate rental comparables, the market study must show that in comparison to three- and four-bedroom market rate single family homes, the affordable rents will be at least 20% below the rents for single family homes and the $/s.f. ratio will not exceed that of the single family homes; and

(iv) The demand for the proposed project's units must appear strong enough to reach stabilized occupancy – 90% occupancy for Special Needs projects and 95% for all other projects – within six months of being placed in service for projects of 150 units or less, and within 12 months for projects of more than 150 units and senior projects.

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

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(f)(2)

Initial Proposed Change:

(2) Demonstrated site control. Applicants shall provide evidence that the subject property is within the control of the applicant.

(A) Site control may be evidenced by:

(i) a current title report ~~(~~within 90 days of application except as provided in section 10322(h)(35) (or preliminary title report, but not title insurance or commitment to insure) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;

(ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program connecting the applicant and the owner of the subject property;

(iii) an executed disposition and development agreement connecting the applicant and a public agency; or,

(iv) a valid, current, enforceable contingent purchase and sale agreement or option agreement connecting the applicant and the owner of the subject property. Evidence must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.

(B) A current title report (within 90 days of application except as provided in Section 10322(h)(35) (or preliminary title report, but not title insurance or commitment to insure) or for tribal trust land a title status report or an attorney's opinion regarding chain of title and current title status, shall be submitted with all applications for purposes of this threshold requirement.

(C) The Executive Director may determine, in her/his sole discretion, that site control has been demonstrated where a local agency has demonstrated its intention to acquire the site, or portion of the site, through eminent domain proceedings.

Comments Received: One commenter opposed the change, stating that a title insurance policy issued to a buyer at the time of purchase (if within 90 days of application) is better evidence than a preliminary title report.

Response to Comments: This is a conforming change to align with CDLAC, and staff will proceed with the proposed change unless modified by CDLAC.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(f)(4)

Initial Proposed Change:

(4) Local approvals and Zoning. Applicants shall provide evidence, at the time the application is filed, that the project as proposed is zoned for the intended use, and has obtained all applicable local land use approvals which allow the discretion of local elected officials to be applied, except that an appeal period may run 30 days beyond that application due date. ~~The applicant must provide proof that either no appeals were filed, or that any appeals filed during that time period were resolved within that 30-day period and the project is ready to proceed.~~ Examples of such approvals include, but are not limited to, general plan amendments, rezonings, and conditional use permits. Notwithstanding the first sentence of this subsection, local land use approvals not required to be obtained at the time of application include, design review, initial environmental study assessments, variances, and development agreements. The evidence must describe the local approval process, the applicable approvals, and whether each required approval is "by right," ministerial, or discretionary. When the appeal period, if any, is concluded, the applicant must provide proof that either no appeals were filed, or that any appeals filed during that time period were resolved within that 30-day period and the project is ready to proceed.

The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction, including acknowledgment of any zoning or land use approvals pursuant to a state streamlined approval requirement.

Comments Received: One commenter stated the changes are reasonable and encourage TCAC to update its forms so that it is easy for local jurisdictions to provide the information that TCAC

requires. Another commenter supported the intent of the proposed change and recommends revisions to TCAC Application Attachment 26 and also allow applicants to demonstrate administrative approval for projects subject to streamlined entitlement processes which eliminate discretionary approval has been received by the application filing deadline. Another commenter believed the proposed change puts too much of an administrative burden on local jurisdictions especially given the limited resources and limited staff. The commenter urged TCAC staff to allow the applicant to provide an explanation to any issues regarding the entitlement process and then use the LRA process to confirm any concerns.

Response to Comments: As previously stated, local jurisdictions have unique processes and processes and TCAC staff is unable to uniformly and consistently apply the requirements of this section without a better understanding of those local processes and requirements. TCAC staff intends to update TCAC application attachments to assist the local jurisdictions to document the required approvals. While the proposed change would require additional explanation from the local jurisdiction, TCAC staff believe additional detail surrounding each local jurisdiction process will provide consistency during the application reviews.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(f)(7)

Initial Proposed Change (as revised on November 10, 2020):

(7) Minimum construction standards. For preliminary reservation applications, applicants shall provide a statement that the following minimum specifications will be incorporated into the project design for all new construction and rehabilitation projects. In addition, a statement shall commit the property owner to at least maintaining the installed energy efficiency and sustainability features' quality when replacing each of the following listed systems or materials:

(A) Energy Efficiency. ~~New construction and rehabilitation non-competitive applicants shall consult with the design team, a CABEC certified 2019 Certified Energy Analyst, and a LEED AP homes (low-rise and mid-rise), LEED AP BD+C (high-rise), NGBS Green Verifier, or GreenPoint Rater (one person may meet both of these latter qualifications) early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency, generation measures, and energy storage beyond those required by this subsection. Prior to the meeting, the energy analyst shall complete an initial energy model based on either current Title 24 standards or, if the project is eligible, the California Utility Allowance Calculator using best available information on the project. All non-competitive applications to CTCAC shall include a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting.~~ All rehabilitated buildings, both competitive and non-competitive, shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report template. Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for the project as a whole, except that Scattered Site applications shall also document at least a 5% post-rehabilitation improvement over existing conditions energy efficiency achieved for each site. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application

date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. Furthermore, rehabilitation applicants must submit a completed Sustainable Building Method Workbook with their ~~preliminary reservation~~placed-in-service application unless they are developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED), Passive House Institute US (PHIUS), Passive House, Living Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating or GreenPoint Rated Program.~~ In addition, all applicants who will receive points from CDLAC pursuant to Sections 5230(k)(7) or (8) (for energy efficiency only) of the CDLAC regulations must submit a completed Sustainable Building Method Workbook with their preliminary reservation application.~~

(B) Landscaping. If landscaping is to be provided or replaced, a variety of plant and tree species that require low water use shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs. Projects shall follow the requirements of the state Model Water Efficient Landscape Ordinance (http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) unless a local landscape ordinance has been determined to be at least as stringent as the current model ordinance.

(C) Roofs. Newly installed roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty.

(D) Exterior doors. If exterior doors are to be provided or replaced, insulated or solid core, flush, paint or stain grade exterior doors shall be made of metal clad, hardwood faces, or fiberglass faces, with a standard one-year guarantee and all six sides ~~factory~~ primed.

(E) Appliances. All Low-Income Units shall provide a refrigerator. All non-SRO Low-Income Units shall provide a ~~stove~~range (cooktop and oven), and all SRO Low-Income Units shall include a cooking facility (at least a cooktop or microwave). The Executive Director may waive the refrigerator and cooking facility requirement for SRO units if the project includes a common area kitchen facility for tenants. Refrigerators, dishwashers, clothes washers and dryers provided or replaced within Low-Income Units and/or in on-site community facilities shall be ENERGY STAR rated appliances, unless waived by the Executive Director.

(F) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blind.

(G) Water heater. If water heaters are to be provided or replaced, for Low-Income Units with individual tank-type water heaters, minimum capacities are to be 28 gallons for one- and two-bedroom units and 38 gallons for three-bedroom units or larger.

(H) Floor coverings. If floor coverings are to be provided or replaced, a hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Any carpet provided or replaced shall comply with U.S. Department of Housing and Urban Development/Federal Housing Administration UM44D.

(I) All fiberglass-based insulation provided or replaced shall meet the Greenguard Gold Certification (http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSch ools.aspx).

(J) Consistent with California State law, projects with 16 or more Low-Income and Market-Rate Units must have an on-site manager's unit. Projects with at least 161 Low-Income and Market-Rate Units shall provide a second on-site manager's unit for either another on-site manager or other maintenance personnel, and there shall be one additional on-site manager's unit for either another on-site manager or other maintenance personnel for each 80 Low-Income and Market-Rate Units beyond 161 units, up to a maximum of four on-site manager's units.

Scattered site projects totaling 16 or more Low-Income and Market-Rate Units must have at least one onsite manager's unit for the entire project, and at least one manager's unit at each site where that site's building(s) consist of 16 or more Low-Income and Market-Rate Units. Scattered sites within 100 yards of each other shall be treated as a single site for purposes of the on-site manager rule only.

If an applicant or project owner proposes to utilize a low-income unit to meet California and CTCAC manager unit requirements, the following applies: (1) the unit is considered a low-income restricted unit and must comply with all requirements associated with low-income restricted units; (2) the unit is included in the applicable fraction; and (3) the tenant cannot be evicted upon employment termination. If employment is terminated, the project owner is responsible for continuing to meet California and CTCAC onsite manager unit requirements. Any application proposing to utilize a low-income unit to meet California and CTCAC manager unit requirements must include a description in the application of how the project will meet those requirements if employment is terminated.

In lieu of on-site manager units, a project may commit to employ an equivalent number of on-site full-time property management staff (at least one of whom is a property manager) and provide an equivalent number of desk or security staff who are not tenants and are capable of responding to emergencies for the hours when property management staff is not working. All staff or contractors performing desk or security work shall be knowledgeable of how the property's fire system operates and be trained in, and have participated in, fire evacuation drills for tenants. CTCAC reserves the right to require that one or more on-site managers' units be provided and occupied by property management staff if, in its sole discretion, it determines as part of any onsite inspection that the project has not been adequately operated and/or maintained.

(K) All new construction projects shall adhere to the provisions of California Building Code (CBC) Chapter 11(B) regarding accessibility to privately owned housing made available for public use in all respects except as follows: instead of the minimum requirements established in 11B 233.3.1.1 and 11B 233.3.1.3, all new construction projects must provide a minimum of ~~ten~~ fifteen percent (~~10~~15%) of the Low-Income Units with mobility features, as defined in CBC 11B 809.2 through 11B 809.4, and a minimum of ~~four~~ ten percent (~~4~~10%) of the Low-Income Units with communications features, as defined in CBC 11B 809.5. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.

Rehabilitation projects shall provide a minimum of ten percent (10%) of the Low-Income Units with mobility features, as defined in CBC 11B 809.2 through 11B 809.4, and four percent (4%) with communications features, as defined in CBC 11B 809.5. To the maximum extent feasible and subject to reasonable health and safety requirements, these units shall be distributed throughout the project consistent with 24 CFR Section 8.26. At least one of each common area facility type and amenity, as well as paths of travel between accessible units and such facilities and amenities, the building entry and public right of way, and the leasing office or area shall also be made accessible utilizing CBC Chapter 11(B) as a design standard. In all

other respects, applicable building code will apply. Projects with particular federal, state, or local funding sources may be required to meet additional accessibility requirements related to these other sources.

Except for paragraph (J) and (K), if a rehabilitation applicant does not propose to meet the requirements of this subsection, its Capital Needs Assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive. The Executive Director may approve a waiver to paragraph (J) for a new construction or rehabilitation project, provided that tenants will have equivalent access to management services. The Executive Director may approve a waiver to paragraph (K) for a rehabilitation project, provided that the applicant and architect demonstrate that full compliance would be impractical or create an undue financial burden. All waivers must be approved in advance by the Executive Director.

Compliance and Verification: For placed-in-service applications, applicants with rehabilitation projects, with the exception of applicants developing a project in accordance with the minimum requirements of LEED, PHIUS, Passive House, Living Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating, or GreenPoint Rated Program ~~who will not receive points pursuant to Section 5230(k)(8) (for energy efficiency only) of the CDLAC regulations, or applicants with new construction projects that will receive points from CDLAC pursuant to Section 5230(k)(6) or (7) of the CDLAC regulations~~ must submit a completed Sustainable Building Method Workbook for subsection (A). For subsections (B) through (I) applicants shall submit LEED, PHIUS, Passive House, Living Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating, or GreenPoint Rated Program certification or third party certification confirming compliance from one of the following: a certified HERS Rater, a certified GreenPoint rater, a US Green Building Council certification, or the project architect. For Subsection (K), the project architect shall provide third party documentation confirming compliance. Failure to produce appropriate and acceptable third party documentation may result in negative points.

Comments Received: One commenter recommended retaining the requirement for the design team to meet with a CABEC certified consultant at the application stage and noted pitfalls that a project could encounter if an applicant waited to consult an energy analyst late in the project time line. Another commenter supported the elimination of this requirement and as it created unnecessary costs and an unnecessary administrative burden, in light of the fact that this requirement applied to all project applicants, regardless if they ever received an award of tax credits.

Several commenters supported the proposed change to require the submission of the Sustainable Building Methods Workbook in the placed-in-service application.

One commenter suggested the allowance to provide a cooking facility in lieu of a range (cooktop and oven) be expanded from SRO units to Special Needs studio units given they are of a similar size and serve a similar population. Another commenter suggested that the refrigerator waiver provision be removed and that in cases where the requirement for a range is waived if the project includes a common area kitchen facility, a microwave or microwave/convection oven should be required in the units.

The vast majority of the commenters strongly supported the proposed increases to the accessibility requirements for new construction projects. Some commenters noted the enormous need for housing to address people with disabilities and help more of those with mobility disabilities integrate into the community, enabling them to live independently. Two commenters suggested the use of total units

rather than low income unit for the calculation of the percentage of accessible units. Some commenters opposed the proposed changes noting the increase as excessive and without and will result in increased project costs due to increased construction costs and complexity in project design. One commenter stated that most owners make units adaptable and therefore should be allowed to convert units as needed to meet the needs of its residents instead of imposing a higher percentage. A couple of commenters suggested delaying implementation to 2022 to provide developers time to plan and design the buildings to meet this new requirement.

Response to Comments: TCAC staff finds the comment relating to subsection (A) has merit, however the requirement the design team to meet with CABEC certified consultant at the application stage adds costs for all projects who apply to TCAC. With the emphasis on unit production and cost containment, and given the energy efficiency standards already required California Building Code (CBC), TCAC staff believes the elimination of this requirement will be reduce costs and increase unit production.

In response to the comments received with regard to the requirement of a range, TCAC staff proposed the change to clarify the definition of a stove and define a cooking facility in subsection (E), which is consistent with current practice. With regard to the waiver provisions, there may instances where a waiver of the refrigerator and cooking facility may be warranted. TCAC staff appreciates the comments, but is not inclined to make any additional changes.

TCAC staff finds the comments received all have merit. While there may be additional costs associated with increased accessibility, TCAC staff believes they will be minimal for new construction projects when compared to other project costs. With regard to comment to use total units, TCAC staff believes the percentage should apply to the low income units given the amount of tax credits are based on the applicable fraction of low income units to total units. TCAC staff believes Based on the overwhelming support for the proposed changes, the need and following review of HCD's 2020 Analysis of Impediments to Fair Housing Choice (AI) report, TCAC staff recommends proceeding with the changes as proposed.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(f)(13)

Initial Proposed Change:

(13) A project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI.

A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to accommodate existing over-income tenants, provided that the average targeting does not exceed 50% AMI. ~~All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI.~~

A project including Low-Income Units targeted at greater than 60% AMI shall make the "Yes" election on line 8b of the IRS Form 8609.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(1)(G)

Initial Proposed Change:

(G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 10 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each unit;

Comments Received: One commenter supports and appreciates the proposed change that helps reduce costs. The commenter suggested the language be amended to account for the percentage of units with hook-ups. Other commenters suggested waiving a common laundry room if washer/dryer hook ups are provided in each unit. The commenters found that most residents prefer the hook ups in their unit without the constraint of time of use, conservation of water and energy during peak times and also COVID community restrictions that come along with the common laundry facility. The commenters also noted that developers are forced into unfair leases to get equipment in the laundry room, that rarely gets used.

Response to Comments: TCAC staff finds the comments all have merit, but given the hook ups do not ensure washer and dryers will actually be utilized in the unit, the residents without washers and dryers should be provided adequate laundry facilities.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(1)(H)

Initial Proposed Change:

(H) Dishwashers shall be provided in all Low-Income Units except for studio and SRO units. ~~unless a~~A waiver for one and two bedroom units in rehabilitation projects may be ~~is~~ granted ~~by~~ at the sole discretion of the Executive Director ~~because~~ due to~~of~~ planning or financial impracticality;

Comments Received: While supporting the change, multiple commenters requested that one-bedroom units also be exempt from providing dishwashers. One commenter stated in small households, dishwashers often turn into kitchen storage so additional cabinet space would be more beneficiary, especially for senior units. Another commenter echoed the exemption for senior projects. One commenter stated that the maintenance and repair of dishwashers increases costs.

Other commenters suggested larger units in rehabilitation projects be included in the waiver provision.

Response to Comments: TCAC staff understands that dishwashers may not be used in some cases, but in the case of one bedroom units or senior units in a Large Family project, TCAC staff believe dishwashers are still beneficial to the tenants. Given dishwashers are a requirement of the Large Family projects, TCAC staff believes they should remain a requirement in the unit, including the one bedroom units and senior units. While no additional changes are being proposed, TCAC staff will continue to research and monitor the requirement.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(2)

Initial Proposed Change (as revised on November 10, 2020):

(2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements;

(A) All units shall be restricted to ~~residents who are 62 years of age or older~~ households eligible under applicable provisions of California Civil Code Section 51.3 and the federal Fair Housing Act (except for projects utilizing a federal funding source specifically for senior housing and the program definition of senior prohibits a restriction of 62 years of age or older), and further be subject to state and federal fair housing laws with respect to senior housing;

(B) For new construction projects, one half of all Low-Income Units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of California Building Code (CBC) Chapter 11(B). For rehabilitation projects, 25% of all Low-Income Units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of CBC Chapter 11(B). All projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators. All project owners must provide adequate and visible notice to tenants of their ability to request conversion of their adaptable unit to an accessible unit. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26. The Executive Director may approve a waiver in advance for a rehabilitation project, provided that the applicant and architect demonstrate that full compliance would be impractical or create an undue financial burden;

(C) ~~Projects~~ Buildings over two stories shall have an elevator;

(D) No more than twenty percent (20%) of the Low-Income Units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study;

(E) One-bedroom Low-Income Units must include at least 450 square feet and two-bedroom Low-Income Units must include at least 700 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director, prior to application submission;

(F) Emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring system is approved by the Executive Director;

(G) Common areas shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall include all interior amenity space, such as the rental office, community room, service space, computer labs, and gym, but shall not include laundry rooms or manager living units. Common areas shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments of 20 units or fewer are exempt from this requirement. These limits may be waived, at the discretion of the Executive Director, for rehabilitation projects with existing common area;

(H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;

(I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units;

(J) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Comments Received: Two commenters supported lowering minimum age requirement on senior developments. Another commenter suggested the removal of the exception noted in subsection (A).

Two commenters suggested the use of total units rather than low income unit for the calculation of the percentage of accessible units. Multiple commenters supported the withdrawal of the previous proposal to reduce accessibility requirements. Two commenters encouraged TCAC staff to reduce the number of fully-accessible units from 50% to 20% of all units on an accessible path.

One commenter strongly supports the unit modification noticing provisions and encouraged TCAC staff to require the notification of local advocacy groups when new accessible units are nearing delivery to market. Another commenter suggested additional modifications to the noticing language in subsection (B).

One commenter suggested adding a waiver provision to the elevator requirement for rehabilitation projects. One commenter suggested further clarification for developments that have more than one building that is able to be serviced by one elevator to avoid additional costs. One commenter suggested other changes such as applying the elevator requirement or sloped ramps to buildings with one or more stories.

One commenter supports and appreciates the proposed change that helps reduce costs. The commenter suggested the language be amended to account for the percentage of units with hook-ups. Other commenters suggested waiving a common laundry room if washer/dryer hook ups are provided in each unit. The commenters found that most residents prefer the hook ups in their unit without the constraint of time of use, conservation of water and energy during peak times and also COVID community restrictions that come along with the common laundry facility. The commenters also noted that developers are forced into unfair leases to get equipment in the laundry room, that rarely gets used.

Response to Comments: TCAC staff concurs with the comment regarding the removal of the exception in subsection (A).

TCAC staff appreciates the comments regarding the use of total units. Given the amount of tax credits are based on the applicable fraction of low income units to total units, TCAC staff believes the percentage should apply to the low income units. With regard to the accessibility requirements, TCAC staff is not proposing to make any additional changes, but will continue to research and monitor the requirement.

TCAC staff is not proposing to make any additional changes with regard to the requirements of subsection (B) and (C) but appreciate the comments received. TCAC staff will continue to research and monitor the requirement.

TCAC staff finds the comments all have merit, but given the hook ups do not ensure washer and dryers will actually be utilized in the unit, the residents without washers and dryers should be provided adequate laundry facilities.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted change.

(2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements;

(A) All units shall be restricted to ~~residents who are 62 years of age or older~~ households eligible under applicable provisions of California Civil Code Section 51.3 and the federal Fair Housing Act ~~(except for projects utilizing a federal funding source specifically for senior housing and the program definition of senior prohibits a restriction of 62 years of age or older)~~, and further be subject to state and federal fair housing laws with respect to senior housing;

(B) For new construction projects, one half of all Low-Income Units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of California Building Code (CBC) Chapter 11(B). For rehabilitation projects, 25% of all Low-Income Units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of CBC Chapter 11(B). All projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators. All project owners must provide adequate and visible notice to tenants of their ability to request conversion of their adaptable unit to an accessible unit. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26. The Executive Director may approve a waiver in advance for a rehabilitation project, provided that the applicant and architect demonstrate that full compliance would be impractical or create an undue financial burden;

(C) ~~Projects~~ Buildings over two stories shall have an elevator;

(D) No more than twenty percent (20%) of the Low-Income Units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study;

(E) One-bedroom Low-Income Units must include at least 450 square feet and two-bedroom Low-Income Units must include at least 700 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director, prior to application submission;

(F) Emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring system is approved by the Executive Director;

(G) Common areas shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall include all interior amenity space, such as the rental office, community room, service space, computer labs, and gym, but shall not include laundry rooms or manager living units. Common areas shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments of 20 units or fewer are exempt from this requirement. These limits may be waived, at the discretion of the Executive Director, for rehabilitation projects with existing common area;

(H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;

(I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units;

(J) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Section 10325(g)(3)

Initial Proposed Change:

(3) Special Needs projects. To be considered Special Needs housing, at least 45% of the Low-Income Units in the project shall serve populations that meet one of the following: are individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental or mental health disabilities; individuals who are survivors of physical abuse; individuals who are

homeless as described in Section 10315(b); individuals with chronic illness, including HIV; homeless youth as defined in Government Code Section 12957(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; or another specific group determined by the Executive Director to meet the intent of this housing type. The Executive Director shall have sole discretion in determining whether or not an application meets these requirements. A development that is less than 75% special needs shall meet one of the following criteria: (i) the non-special needs Low-Income Units meet the large family or senior housing type requirements; (ii) the non-special needs Low-Income Units consist of at least 20% one-bedroom units and at least 10% larger than one-bedroom units; or (iii) at least 90% of all Low-Income Units (both special needs and non-special needs) are SRO units. The application shall meet the following additional threshold requirements:

(A) Average targeted income for the special needs and non-special needs SRO units is no more than forty percent (40%) of the area median income;

~~(B) Third party verification from a federal, state or local agency of the availability of services appropriate to the targeted population;~~

(~~C~~B) The units/building configurations (including community space) shall meet the specific needs of the population, including kitchen needs for SRO units without full kitchens;

(~~D~~C) If the project does not have a public rental or operating subsidy committed for all special needs and non-special needs SRO units, the applicant shall demonstrate for these unsubsidized units that the target population(s) will not experience rent overburden, as supported by the market study. Rent overburden means the targeted rent is more than 30% of the target population(s) income ~~of special needs units and non-special needs SRO units 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~~D) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;

(~~F~~E) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers;

(~~G~~F) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land);

(~~H~~G) One-bedroom Low-Income Units must include at least 450 square feet, and two bedroom Low-Income Units must include at least 700 square feet of living space. Three-bedroom Low-Income Units shall include at least 900 square feet of living space. These bedroom and size requirements may be waived for rehabilitation projects or for projects that received entitlements prior to January 1, 2016 at the discretion of the Executive Director;

(~~I~~H) SRO units are efficiency units that may include a complete private bath and kitchen but generally do not have a separate bedroom, unless the configuration of an already

existing building being proposed to be used for an SRO dictates otherwise. The minimum size for SRO Low-Income Units shall be 200 square feet, and the size shall not exceed 500 square feet. These bedroom and size requirements may be waived for rehabilitation projects or for projects that received entitlements prior to January 1, 2016 at the discretion of the Executive Director. A project that includes SRO units without complete private baths shall provide at least one bath for every eight SRO units;

(~~J~~I) 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; and

~~(K) A summary of the experience of the developer and the service provider(s) in providing services to the project's special needs populations must accompany the Tax Credit application; and~~

(~~L~~J) A preliminary service plan that specifically identifies: the service needs of the projects special needs population; the organization(s) that would be providing the services to the residents; the services to be provided to the special needs population; how the services would support resident stability and any other service plan objectives; a preliminary budget displaying anticipated income and expenses associated with the services program. The Executive Director shall, in his/her sole discretion, determine whether the plan is adequate to qualify the project as a special needs project.

(~~M~~K) If the project will be operated as senior housing for persons 62 years of age and older pursuant to fair housing laws, then the project shall have an elevator for any building over two stories and shall meet the accessibility requirements of Section 10325(g)(2)(B).

(~~N~~L) With respect to Special Needs units designated for individuals who are homeless, owners, property managers, and service providers shall comply with the core components of Housing First, as defined in Welfare and Institutions Code Section 8255(b).

Comments Received: Two commenters supported the elimination of the third party verification of available services, the service provider resolution, and the description of developer and service provider experience.

One commenter supports and appreciates the proposed change that helps reduce costs. The commenter suggested the language be amended to account for the percentage of units with hook-ups. Other commenters suggested waiving a common laundry room if washer/dryer hook ups are provided in each unit. The commenters found that most residents prefer the hook ups in their unit without the constraint of time of use, conservation of water and energy during peak times and also COVID community restrictions that come along with the common laundry facility. The commenters also noted that developers are forced into unfair leases to get equipment in the laundry room, that rarely gets used.

Response to Comments: TCAC staff finds the comments and suggestions all have merit, but given the hook ups do not ensure washer and dryers will actually be utilized in the unit, the residents without washers and dryers should be provided adequate laundry facilities.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(4)(B)

Initial Proposed Change:

(B) Project application eligibility criteria include:

(i) before applying for Tax Credits, the project must meet the At-risk eligibility requirements under the terms of applicable federal and state law as verified by a third party legal opinion, except that a project that has been acquired by a qualified nonprofit organization within the past five years of the date of application with interim financing in order to preserve its affordability and that meets all other requirements of this section, shall be eligible to be considered an "at-risk" project under these regulations. A project application will not qualify in this category unless it is determined by the Committee that the project is at-risk of losing any affordability restrictions on at least 50% of the restricted units ~~due to market or other conditions~~ that result in an increase to actual tenant rent of more than 10%;

(ii) the project, as verified by a third party legal opinion, must currently possess or have had within the past five years from the date of application, either:

- federal mortgage insurance, a federal loan guarantee, federal project-based rental assistance, or, have its mortgage held by a federal agency, or be owned by a federal agency; or
- loans or grants programs administered by the Department of Housing and Community Development (HCD); or
- be currently subject to, or have been subject to, within five years preceding the application deadline, the later of Federal or State Housing Tax Credit restrictions whose compliance period is expiring or has expired within the last five years and at least 50% of whose units are not subject to any other rental restrictions beyond the term of the Tax Credit restrictions; or
- be currently subject to, or have been subject to, within five years preceding the application deadline, California Debt Limit Allocation Committee (CDLAC) bond regulatory agreement restrictions whose compliance period is expiring or has expired within the last five years and at least 50% of whose units are not subject to any other rental restrictions beyond the term of the CDLAC restrictions;

Comments Received: Commenters disagreed with the proposal to define "losing affordability" as resulting in any affordability restriction loss and stated that the 9% credit at-risk set aside should be reserved for projects that will lose all affordability restrictions within five years. Commenters proposed that a project not be deemed at-risk if it is subject to a rent restriction with a remaining term of at least five years that restricts incomes and rents on the restricted units to an average no greater than 60% of area median income.

Response to Comments: The comments reflect an interest in limiting the at-risk set aside to projects losing all affordability restrictions within five years of the TCAC application. Staff is revising the proposed change to reflect the commenters' proposal.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(B) Project application eligibility criteria include:

(i) before applying for Tax Credits, the project must meet the At-risk eligibility requirements under the terms of applicable federal and state law as verified by a third party legal opinion, except that a project that has been acquired by a qualified nonprofit organization within the past five years of the date of application with interim financing in order to preserve its affordability and that meets all other requirements of this section, shall be eligible to be considered an "at-risk" project under these regulations. A project application will not qualify in this category unless it is determined by the Committee that the project is at-risk of losing affordability on at least 50% of the restricted units due to market or other conditions. A project will not be deemed at-risk of losing affordability if the project is subject to a rent restriction with a remaining term of at least five years that restricts incomes and rents on the restricted units to an average no greater than 60% of area median income;

(ii) the project, as verified by a third party legal opinion, must currently possess or have had within the past five years from the date of application, either:

- federal mortgage insurance, a federal loan guarantee, federal project-based rental assistance, or, have its mortgage held by a federal agency, or be owned by a federal agency; or
- loans or grants programs administered by the Department of Housing and Community Development (HCD); or
- be currently subject to, or have been subject to, within five years preceding the application deadline, the later of Federal or State Housing Tax Credit restrictions whose compliance period is expiring or has expired within the last five years and at least 50% of whose units are not subject to any other rental restrictions beyond the term of the Tax Credit restrictions; or
- be currently subject to, or have been subject to, within five years preceding the application deadline, California Debt Limit Allocation Committee (CDLAC) bond regulatory agreement restrictions whose compliance period is expiring or has expired within the last five years and at least 50% of whose units are not subject to any other rental restrictions beyond the term of the CDLAC restrictions;

Section 10325(g)(5)(G)

Initial Proposed Change:

(G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. This requirement shall be reduced by 25% for projects where all units include hook-ups for washers and dryers;

Comments Received: One commenter supports and appreciates the proposed change that helps reduce costs. The commenter suggested the language be amended to account for the percentage of units with hook-ups. Other commenters suggested waiving a common laundry room if washer/dryer hook ups are provided in each unit. The commenters found that most residents prefer the hook ups in their unit without the constraint of time of use, conservation of water and energy during peak times and also COVID community restrictions that come along with the common laundry facility. The commenters also noted that developers are forced into unfair leases to get equipment in the laundry room, that rarely gets used.

Response to Comments: TCAC staff finds the comments all have merit, but given the hook ups do not ensure washer and dryers will actually be utilized in the unit, the residents without washers and dryers should be provided adequate laundry facilities.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(a)

Initial Proposed Change:

(a) General. All applications requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of Federal Tax Credits. ~~However, those~~ Those projects requesting State Tax Credits pursuant to subsection (g)(1)(A) and (B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will also be ~~competitively scored as described in Section 10317(i). The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of this section~~subject to the applicable requirements of Section 10317. All applicants requesting Tax Credits for projects financed with tax-exempt bonds shall apply simultaneously to the California Debt Limit Allocation Committee (CDLAC) and CTCAC and shall use the CDLAC-TCAC Joint Application. Applications will be eligible for a reservation of tax credits only if receiving a bond allocation pursuant to a joint application.

Comments Received: One commenter was very supportive of streamlining the applications. The commenter supported the proposed change to require joint applications for tax exempt bond financing and tax credits and ranking the applications only under the CDLAC scoring and ranking system.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(b)

Initial Proposed Change:

(b) Applicable criteria. Selection criteria for applications reviewed under this Section shall include those required by IRC Section 42(m), this Section 10326, and Sections 10300, 10302, 10305,

10320, 10322, 10327, 10328(e), 10330, 10335, and 10337 of these regulations. Other sections of these regulations shall not apply. The first funding round shall be the first application review period of a calendar year for tax-exempt bond financed projects.

(1) ~~If the applications received requesting State Tax Credits pursuant to Section 10317(j) of these Regulations exceed an established State Tax Credit allocation amount per application review period as described in Section 10326(c) of these Regulations, applications will be ranked in order of Tax Credit Units per State Tax Credit.~~ Subject to conditions described in these Regulations, reservations of Federal and State Tax Credits shall be made for those applications ~~of highest rank~~that receive a bond allocation from CDLAC until the established State Tax Credit allocation amount is exhausted. If the last application requires more ~~than the~~ State Tax Credits ~~remaining~~than remain for the calendar year, that application will not be funded and the remaining credits will be ~~added to the next funding round~~either funded through the Waiting List or carried forward into the next calendar year.

(2) For State Tax Credits pursuant to Section 10317(j) of these Regulations, ~~at least two (2) funding rounds shall be established.~~ an amount up to $200,000,000 in a calendar year may be allocated for housing financed by CalHFA's Mixed-Income Program (MIP) that also receives a bond allocation from CDLAC. Applications with financing by CalHFA~~'s Mixed-Income Program~~(MIP) will be accepted in any funding round~~,~~. The amount allocated for CalHFA MIP may be reduced subject to request by CalHFA and agreement of the Executive Directors of CalHFA and CTCAC~~, until the reserved amount of $200,000,000 is exhausted~~. ~~The first funding round shall be for a reservation of Tax Credits in January 2020 following an application review period pursuant to subsection (c). For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the first funding round. For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the second funding round. Any remaining State Tax Credits shall be allocated in subsequent funding rounds during calendar year 2020.~~

At the conclusion of the final funding round of a calendar year, the Committee may establish a Waiting List of pending applications in anticipation of utilizing any State Tax Credits that may be returned to the Committee, and/or that have not been allocated to projects for which they were intended. The Waiting List shall expire on December 31 of the year the list is established.

Comments Received: Three commenters supported the proposed changes. Multiple commenters suggested making the state credits available in multiple rounds by either establishing equal proportions across the first two CDLAC rounds with any remaining credits in the third or later rounds or establishing a cap for the first round. One commenter noted concerns that projects requesting state credits would be disadvantaged in the CDLAC tie breaker. One commenter opposed the proposal to eliminate TCAC ranking and noted the state credits should be allocated to the most cost-effective projects.

Response to Comments: TCAC staff believes apportioning the state credits over multiple rounds may again result in some projects being successful in the CDLAC competition but unable to access state tax credits. While the ranking system at TCAC is being eliminated, it is being captured in the proposed CDLAC tie breaker and will therefore still encourage state credit efficiency. In conformance with the change made in Section 10305(h), TCAC staff is proposing a slight revision to the proposed language to not require the $200 million be requested to be reduced by CalHFA.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted change.

(b) Applicable criteria. Selection criteria for applications reviewed under this Section shall include those required by IRC Section 42(m), this Section 10326, and Sections 10300, 10302, 10305, 10320, 10322, 10327, 10328(e), 10330, 10335, and 10337 of these regulations. Other sections of these regulations shall not apply. The first funding round shall be the first application review period of a calendar year for tax-exempt bond financed projects.

(1) ~~If the applications received requesting State Tax Credits pursuant to Section 10317(j) of these Regulations exceed an established State Tax Credit allocation amount per application review period as described in Section 10326(c) of these Regulations, applications will be ranked in order of Tax Credit Units per State Tax Credit.~~ Subject to conditions described in these Regulations, reservations of Federal and State Tax Credits shall be made for those applications ~~of highest rank~~that receive a bond allocation from CDLAC until the established State Tax Credit allocation amount is exhausted. If the last application requires more ~~than the~~ State Tax Credits ~~remaining~~than remain for the calendar year, that application will not be funded and the remaining credits will be ~~added to the next funding round~~either funded through the Waiting List or carried forward into the next calendar year.

(2) For State Tax Credits pursuant to Section 10317(j) of these Regulations, ~~at least two (2) funding rounds shall be established.~~ an amount up to $200,000,000 in a calendar year may be allocated for housing financed by CalHFA's Mixed-Income Program (MIP) that also receives a bond allocation from CDLAC. Applications with financing by CalHFA~~'s Mixed-Income Program~~(MIP) will be accepted in any funding round~~,~~. The amount allocated for CalHFA MIP may be reduced ~~subject to request by CalHFA and~~upon agreement of the Executive Directors of CalHFA and CTCAC~~, until the reserved amount of $200,000,000 is exhausted~~. ~~The first funding round shall be for a reservation of Tax Credits in January 2020 following an application review period pursuant to subsection (c). For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the first funding round. For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the second funding round. Any remaining State Tax Credits shall be allocated in subsequent funding rounds during calendar year 2020.~~

At the conclusion of the final funding round of a calendar year, the Committee may establish a Waiting List of pending applications in anticipation of utilizing any State Tax Credits that may be returned to the Committee, and/or that have not been allocated to projects for which they were intended. The Waiting List shall expire on December 31 of the year the list is established.

Section 10326(c)

Initial Proposed Change:

(c) Application review period. The Committee may require up to ~~forty-five~~sixty (~~45~~60) days to review an application, and an additional ~~fifteen~~ thirty (~~15~~30) days to consider the application for a reservation of Tax Credits. Applicants must deliver applications no less than ~~sixty~~ ninety (~~60~~90) days prior to the CTCAC Committee meeting in which they wish to obtain a decision. Applications not expected to receive a bond allocation from CDLAC due to relatively low CDLAC scores may or may not be fully evaluated by the TCAC.

Applications requesting State Tax Credits allocated pursuant to subsections (g)(1)(A) and (B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and not in compliance with the application completeness requirements of Sections 10322(d) and (e) of these Regulations shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(g)(9)

Initial Proposed Change:

(9) A non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 60% AMI. A competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI.

A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to increase the number of Low-Income Units or to accommodate existing over-income tenants, provided that the average targeting does not exceed ~~59~~60% AMI for non-competitive projects or 50% AMI for competitive projects. ~~All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI.~~

A project including Low-Income Units targeted at greater than 60% AMI shall make the "Yes" election on line 8b of the IRS Form 8609.

Comments Received: No comments were received, however, staff is proposing to include language addressing the federal requirement of 10% increment targeting for clarification. This corresponds to existing language in Section 10325(c)(6)(A).

Final Proposed Change:

(9) A non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 60% AMI. A competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI. Projects electing the average income federal set-aside must choose targeting in 10% increments of Area Median Income (i.e. 20% AMI, 30% AMI, 40% AMI, etc.).

A project with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018 may, with the discretionary approval of the Executive Director, revise its targeting prior to the recordation of the regulatory agreement to include Low-Income Units targeted at greater than 60% AMI only to increase the number of Low-Income Units or to accommodate existing over-income tenants, provided that the average targeting does not

exceed ~~59~~60% AMI for non-competitive projects or 50% AMI for competitive projects. ~~All other projects with a tax credit reservation dated prior to, or a submitted application pending as of, March 26, 2018, may not alter the AMI targeting committed to in the application in order to include Low-Income Units targeted at greater than 60% AMI.~~

A project including Low-Income Units targeted at greater than 60% AMI shall make the “Yes” election on line 8b of the IRS Form 8609.

Section 10326(h)

Initial Proposed Change:

(h) ~~Except as provided in Section 10317(g)(4), if not currently possessing a bond allocation for the proposed project, the applicant shall have either applied for a bond allocation from the California Debt Limit Allocation Committee (CDLAC) prior to or concurrently with submitting an application to CTCAC, or shall have received an initial loan commitment from the California Housing Finance Agency (CalHFA)~~Reserved.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(j)

Initial Proposed Change:

(j) Additional conditions on reservations. The following additional conditions shall apply to reservations of Tax Credits pursuant to this Section:

(1) ~~CDLAC allocation. The applicant shall receive a bond allocation from CDLAC for the proposed project within 90 days of receiving a reservation;~~

~~(2)~~ Bonds issued. Bonds shall be issued within the time limit specified by CDLAC, if applicable; and,

(~~3~~2) Projects shall maintain at least 10% of the total Low-Income Units at rents affordable to tenants earning 50% or less of the Area Median Income, and shall maintain a minimum 30 year affordability period.

(~~4~~3) Projects proposing new construction shall provide CTCAC with an updated development timetable by December 31 of the second year following the year the project received its reservation of Tax Credits.

(i) The report shall include the actual placed-in-service date or the anticipated placedin-service date for the last building in the project and the date the project achieved full occupancy. The report shall detail the causes for any change from the original date.

(ii) Projects proposing new construction shall provide CTCAC with an updated development timetable by December 31 of the second year following the year the project received its

reservation of Tax Credits. The update shall include the actual placed-in-service date for the last building in the project and the date that the project achieved full occupancy; or the date the project is anticipated to achieve full occupancy.

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

(~~5~~4) Projects intended for eventual tenant homeownership must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(c)(2)

Initial Proposed Change:

(2) Developer fee.

(A) The maximum developer fee that may be included in project costs and eligible basis for ~~a~~ 9% competitive credit new construction, rehabilitation only, or adaptive reuse applications applying under Section 10325 of these regulations is the sum of the lesser of 15% of the project's unadjusted eligible basis ~~plus~~ and 15% of the basis for non-residential costs included in the project ~~and~~ allocated on a pro rata basis ~~or~~up to two million two hundred thousand ($~~2,000,000~~2,200,000) dollars. The maximum developer fee that may be included in project costs and eligible basis for a 9% competitive credit acquisition/rehabilitation application is the sum of the lesser of 15% of the project's unadjusted eligible construction related basis plus 5% of the project's unadjusted eligible acquisition basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis up to two million two hundred thousand ($2,200,000) dollars. ~~If acquisition Tax Credits are not requested, any unadjusted eligible acquisition basis shall be excluded from the developer fee calculation. The maximum developer fee that may be included in project costs for a 9% competitive credit new construction application shall be calculated as follows: The base fee limit shall be the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million two hundred thousand ($2,200,000) dollars. At placed in service, the maximum developer fee shall be re-calculated where the application base fee limit shall be multiplied by the difference between 2 and the project's high-cost test factor in the placed in service application, which equals the project's total eligible basis divided by its total adjusted threshold basis limits. In no case shall the base fee limit be increased from initial application. For purposes of this subparagraph, at placed in service TCAC shall use the higher of the unadjusted threshold basis limit from application or the year the project places in service.~~

~~For 9% competitive applications applying under section 10325 of these regulations, the cost limitation on developer fees that may be included in eligible basis, shall be as follows:~~

~~(i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or the developer fee amount allowed in project costs ; or~~

~~(ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or the developer fee amount allowed in project costs.~~

(B) For 4% credit ~~projects~~ applications applying under Section 10326 of these regulations, the maximum developer fee that may be included in project costs and eligible basis shall be as follows:

(i) for new construction, ~~or~~ rehabilitation only, or adaptive reuse projects, the maximum developer fee ~~that may be included in project costs and eligible basis~~is the sum of the lesser of ~~is~~ 15% of the project's unadjusted eligible basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $~~10,000~~20,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.

(ii) ~~the maximum developer fee that may be included in project costs and eligible basis~~ for acquisition/rehabilitation projects, the maximum developer fee is 15% of the unadjusted eligible construction related basis and 5% ~~percent~~ of the unadjusted eligible acquisition basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $~~10,000~~20,000 per unit for each Tax Credit Unit in excess of 100 shall be deferred or contributed as equity to the project. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(4) or for other acquisition/rehabilitation projects, except for existing tax credit projects applying for a new reservation of tax credits for acquisition (i.e., resyndication), whose hard construction costs per unit in rehabilitation expenditures are at least $~~25,000~~50,000 or where the development will restrict at least 30% of its Low Income Units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

(C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. With exception of 4% projects with a 2016 or later reservation, ~~Once established by a reservation of Tax Credits,~~ the developer fee in cost and in basis ~~for a 9% Tax Credit project or for a 4% Tax Credit project with a 2015 or earlier reservation cannot~~ shall not be increased once established by a reservation of Tax Credits but may be decreased in the event of a modification in basis~~, except that the adjustment factor related to costs described in paragraph (A) shall be recalculated at placed in service where applicable~~. Once established by a reservation of Tax Credits, the developer fee in cost and in basis for a 4% project with a 2016 or later reservation may increase or decrease in the event of modification in basis, and in the case it is increased, ~~provided that an~~ the entire increase ~~in the developer fee in cost shall only be allowed if the sum total of all permanent funding sources from related parties included in the initial application is maintained at placed in service and the entire increase is~~ shall be additionally deferred or contributed as equity to the project. The ~~provisions~~ maximum developer fees above apply to projects developed as multiple simultaneous phases using the same credit type: ~~of~~ (2)(A) applies to all simultaneous phases

using all 9% credits and (2)(B) above ~~apply~~ applies to ~~projects developed as~~all ~~multiple~~ simultaneous phases using ~~the same credit type (all 9% or~~ all 4% credits~~) in both phases, except for an all 9% credit phased project in which the immediately preceding phase includes 150 or more total units~~. Only when the immediately preceding phase of an all 9% credit phased project equals or exceeds 150 units or when any other phased project is using both credit types shall the provision of (2)(A) and (2)(B) apply to each phase independently. For purposes of this limitation, “simultaneous” refers to projects consisting of a single building, or projects on the same parcel or on parcels within ¼ mile of each other and with construction start dates within ~~six~~ twelve months of each other, or completion dates that are within ~~six~~ twelve months of each other.

Deferred developer fee notes and/or agreements must be included in the placed-in-service application and the interest rates of such notes shall not exceed eight percent (8%).

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

(E) Persons of Color / Woman-Owned Business Enterprise (PCWBE) Projects. For projects which qualify for general partner experience pursuant to Section 5230(f)(1)(B) of the CDLAC Regulations, the 15% of project’s unadjusted eligible basis limit stated in Section 10327(c)(2)(B) shall be increased to 20% of the project’s unadjusted eligible basis.

Comments Received: Multiple commenters supported the proposed changes to increase the developer fee, to allow the full developer fee cost included in basis for 9% projects, to increase the per unit hard cost minimum to access the higher 15% of acquisition basis, the elimination of the high-cost adjustment, and to establish the 8% interest rate limit on deferred fees. One commenter stated the current rate of 8% was high in this low-interest environment. Another commenter stated that developer fees have not kept pace with inflation associated with the costs of doing business and questions establishing a limit.

A couple of comments were received with regarding to the “sum of the lesser” and “lesser of” language stating noting them as possible drafting errors. In addition, a commenter noted an edit to the “2016” reference in subsection (C).

Some commenters recommended the proposed change with regard to the 15% developer fee on acquisition basis for re-syndication projects be withdrawn. One commenter stated that it limits the ability for non-at-risk projects to close funding gaps on difficult to finance but essential projects. One commenter noted the ability to include 15% of acquisition basis in the developer fee allows re-syndication projects to generate unlimited 4% tax credits to close financing gaps, thereby reducing other public subsidy needs. The commenter added that developers do not receive additional cash out fee because it must be contributed back to the project. One commenter stated developers should be incentivized to rehabilitate existing tax credit projects for the tenants and their surrounding communities. The commenter explained that projects older than 15 years are often in need of significant capital work to avoid becoming dilapidated and an eyesore in the local community.

TCAC staff received a number of comments opposing the proposed change to what constitutes a "simultaneous phases" of projects. The commenters recommended the proposed change either be withdrawn or a waiver provision be added to address the more dense locations.

Rather than increase the developer fee for PCWBE projects by increasing the 15% limit to 20%, two commenters instead suggested increasing the cash out limit from $2.5 million to $3 or $3.5 million plus the $20,000/unit over 100 units. Another commenter opposed the increase to the developer fee for PCWBE projects as it will increase projects cost unnecessarily. The commenter stated CDLAC's proposed changes will already open the door to more participation by PCWBE entities.

Response to Comments: As previously stated, TCAC staff noted the 8% was based on staff review where the majority of the developer fee notes reviewed utilized 8% and some as high as 10%. Staff believes an interest rate limit of 8% is an appropriate ceiling for the developer fee note. TCAC staff will continue to monitor the rate for future regulation changes to ensure the ceiling is appropriate and current.

TCAC staff reviewed the comments in regard to the "sum of the lesser" and "lesser of" language and concurs. TCAC staff has made minor revisions to clarify the language. TCAC staff reviewed the "2016" reference in subsection (C) and proposes no additional changes. The first sentence prohibits all projects (9% and 4%), with exception of the more recent 4% projects (2016 or later), from increasing the developer fee following credit reservation. The second sentence further explains that the more recent 4% projects (2016 or later) may increase or decrease their developer fee based on modification of basis following credit reservation.

TCAC staff appreciates the comments relating to the 15% developer fee for acquisition basis not being available to re-syndication projects. As previously stated, TCAC staff review of these applications have shown that these projects to be primarily related party transfers that staff do not believe these justify the additional increase in developer fee on the acquisition portion. Given the current emphasis on unit production and efficiency, TCAC staff is proceeding the initial proposed change.

With regard to the comments to relating to "simultaneous phases" of projects, TCAC staff finds the comments compelling and is withdrawing the initial proposed change from six months to twelve months. TCAC staff will continue to research and monitor the requirement.

TCAC staff finds the comments to increase the cash out limit from $2.5 million rather than increasing the 15%, would increase the actual cost of the developer fee. Given the proposed change was to incentivize the joint venture between an entity which received maximum general experience points and a PCWBE, TCAC is proceeding with the initial proposed change. TCAC staff has revised the language to further clarify that the increase from 15% to 20% is specific to construction related basis. In considering the comments, TCAC staff believes the proposed change alone may not produce intended outcome. For that reason, TCAC staff has revised the language to further incentivize this joint venture by also increasing the cash out limit to $3 million.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes.

(2) Developer fee.

(A) The maximum developer fee that may be included in project costs and eligible basis for ~~a~~ 9% competitive credit new construction, rehabilitation only, or adaptive reuse applications applying under Section 10325 of these regulations is the ~~sum of the~~ lesser of 15% of the project's unadjusted eligible basis ~~plus~~ and 15% of the basis for non-residential costs included in the project ~~and~~ allocated on a pro rata basis or~~up to~~ two million two hundred thousand ($~~2,000,000~~2,200,000) dollars. The maximum developer fee that may be included in project costs and eligible basis for a 9% competitive credit acquisition/rehabilitation application is the ~~sum of the~~ lesser of 15% of the project's unadjusted eligible construction related basis plus 5% of the project's unadjusted eligible acquisition basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis or ~~up to~~ two million two hundred thousand ($2,200,000) dollars. ~~If acquisition Tax Credits are not requested, any unadjusted eligible acquisition basis shall be excluded from the developer fee calculation. The maximum developer fee that may be included in project costs for a 9% competitive credit new construction application shall be calculated as follows: The base fee limit shall be the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million two hundred thousand ($2,200,000) dollars. At placed in service, the maximum developer fee shall be re-calculated where the application base fee limit shall be multiplied by the difference between 2 and the project's high-cost test factor in the placed in service application, which equals the project's total eligible basis divided by its total adjusted threshold basis limits. In no case shall the base fee limit be increased from initial application. For purposes of this subparagraph, at placed in service TCAC shall use the higher of the unadjusted threshold basis limit from application or the year the project places in service.~~

~~For 9% competitive applications applying under section 10325 of these regulations, the cost limitation on developer fees that may be included in eligible basis, shall be as follows:~~

~~(iii) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or the developer fee amount allowed in project costs ; or~~

~~(iv) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or the developer fee amount allowed in project costs.~~

(B) For 4% credit ~~projects~~ applications applying under Section 10326 of these regulations, the maximum developer fee that may be included in project costs and eligible basis shall be as follows:

(ii) for new construction, ~~or~~ rehabilitation only, or adaptive reuse projects, the maximum developer fee ~~that may be included in project costs and eligible basis~~is the sum of ~~the lesser of is~~ 15% of the project's unadjusted eligible basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $~~10,000~~20,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.

(ii) ~~the maximum developer fee that may be included in project costs and eligible basis~~ for acquisition/rehabilitation projects, the maximum developer fee is 15% of the unadjusted eligible construction related basis and 5% ~~percent~~ of the unadjusted eligible acquisition basis and 15% of the basis for non-residential costs included in the project allocated on

a pro rata basis. All developer fees in excess of two million five hundred thousand ($2,500,000) dollars plus $10,00020,000 per unit for each Tax Credit Unit in excess of 100 shall be deferred or contributed as equity to the project. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(4) or for other acquisition/rehabilitation projects, except for existing tax credit projects applying for a new reservation of tax credits for acquisition (i.e., resyndication), whose hard construction costs per unit in rehabilitation expenditures are at least $25,00050,000 or where the development will restrict at least 30% of its Low Income Units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

(C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. With exception of 4% projects with a 2016 or later reservation, Once established by a reservation of Tax Credits, the developer fee in cost and in basis for a 9% Tax Credit project or for a 4% Tax Credit project with a 2015 or earlier reservation cannot shall not be increased once established by a reservation of Tax Credits but may be decreased in the event of a modification in basis, except that the adjustment factor related to costs described in paragraph (A) shall be recalculated at placed in service where applicable. Once established by a reservation of Tax Credits, the developer fee in cost and in basis for a 4% project with a 2016 or later reservation may increase or decrease in the event of modification in basis, and in the case it is increased, provided that an the entire increase in the developer fee in cost shall only be allowed if the sum total of all permanent funding sources from related parties included in the initial application is maintained at placed in service and the entire increase is shall be additionally deferred or contributed as equity to the project. The provisions maximum developer fees above apply to projects developed as multiple simultaneous phases using the same credit type: of (2)(A) applies to all simultaneous phases using all 9% credits and (2)(B) above apply applies to projects developed asall multiple simultaneous phases using the same credit type (all 9% or all 4% credits) in both phases, except for an all 9% credit phased project in which the immediately preceding phase includes 150 or more total units. Only when the immediately preceding phase of an all 9% credit phased project equals or exceeds 150 units or when any other phased project is using both credit types shall the provision of (2)(A) and (2)(B) apply to each phase independently. For purposes of this limitation, "simultaneous" refers to projects consisting of a single building, or projects on the same parcel or on parcels within ¼ mile of each other and with construction start dates within six twelve months of each other, or completion dates that are within six twelve months of each other.

Deferred developer fee notes and/or agreements must be included in the placed-in-service application and the interest rates of such notes shall not exceed eight percent (8%).

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

(E) Persons of Color / Woman-Owned Business Enterprise (PCWBE) Projects. For projects which qualify for general partner experience pursuant to Section 5230(f)(1)(B) of the CDLAC Regulations, the 15% of project's unadjusted eligible construction related basis limit stated in Section 10327(c)(2)(B) shall be increased to 20% of the project's unadjusted eligible

construction related basis and the two million five hundred thousand ($2,500,000) dollars in subsection (c)(2)(B)(ii) above, is increased to three million ($3,000,000) dollars.

Section 10327(c)(5)(A)

Initial Proposed Change:

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

A twenty percent (20%) increase to limits for a development that is paid for in whole or in part out of public funds and is subject to a legal requirement for the payment of state or federal prevailing wages or financed in part by a labor-affiliated organization that requires the employment of construction workers who are paid at least state or federal prevailing wages. An additional five percent (5%) increase to the unadjusted eligible basis shall be available for projects that certify that they are subject to a project labor agreement within the meaning of Section 2500(b)(1) of the Public Contract Code that requires the employment of construction workers who are paid at least state or federal prevailing wages or that they will use a skilled and trained workforce, as defined in Section 25536.7 of the Health and Safety Code, to perform all onsite work within an apprenticeable occupation in the building and construction trades. All applicants under this paragraph shall certify that contractors and subcontractors will comply with Section 1725.5 of the Labor Code, if applicable;

A ~~seven~~ ten percent (~~7~~10%) increase to the limits for a new construction development where parking is required to be provided beneath the residential units (but not "tuck under" parking) or through construction of an on-site parking structure of two or more levels;

A two percent (2%) increase to the limits where a day care center is part of the development;

A two percent (2%) increase to the limits where 100% of the Low Income Units are for special needs populations;

A ten percent (10%) increase to the limits for a development wherein at least 95% of the project's upper floor units are serviced by an elevator.

A fifteen percent (15%) increase to the limits for a development wherein at least 95% of the building(s) is constructed as Type I as defined in the California Building Code, in which case, the Type III increase below (10%) shall not be allowed.

A ten percent (10%) increase to the limits for a development wherein at least 95% of the building(s) is constructed as (1) a Type III as defined in the California Building Code, or (2) a Type III/Type I combination, in which case, the Type I increase above (15%) shall not be allowed.

With the exception of the prevailing wage increase, the Local Impact Fee increase, and the special needs increase, in order to receive the basis limit increases by the corresponding percentage(s) listed above, a certification signed by the project architect shall be provided within the initial and placed-in-service application confirming that item(s) listed above will be or have been incorporated into the project design, respectively.

Comments Received: Multiple commenters supported proposed changes with regard to the threshold basis limit increases for parking and construction type. Some of the commenters also suggested adding an option for all-electric projects to recognize the additional costs associated. One commenter suggested a revision making any project requiring a concrete podium eligible for the 10% park basis increase whether parking is provided or not. The commenter added that a basis limit increase for concrete podium will incentivize taller, more efficient projects on smaller sites. One commenter suggested making the increase available to off-site parking.

Response to Comments: TCAC staff finds the comments to all have merit, but is not proposing to make any additional changes at this time. As summarized in the Sustainable Building Methods point category, TCAC staff will continue to research all-electric projects and consider it for future regulation changes proposals. With regard to the comments relating to concrete podium with no parking, TCAC staff believes the proposed basis limit increase option for Type I construction will encourage taller, more efficient projects on smaller sites. TCAC staff will continue to do more research on concrete podium and consider it for future regulation changes proposals.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(c)(6)

Initial Proposed Change:

(6) Acquisition costs. All applications must include the cost of land and improvements in the Sources and Uses budget, except that (i) competitive projects with donated land and/or improvements shall include the appraised value of the donated land and improvements that is not nominal, and (ii) projects on tribal trust land need only provide an improvement cost or value. If the acquisition for a new construction project involves a Related Party, the applicant shall disclose the relationship at the time of initial application.

Once established in the initial application, the acquisition cost of a new construction site shall not increase except as provided below for land and improvements donated or leased. Except as allowed pursuant to Section 10322(h)(9)(A) or by a waiver pursuant to this section below for projects basing cost on assumed debt, neither the purchase price nor the basis associated with existing improvements, if any, shall increase during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.

If land or land and improvements (real property) are donated to the general partner or member of the project owner and if approved by CTCAC in advance, the general partner or member may sell the real property to the project for an amount equal to the donated value established in the application provided that: there must be a seller carryback loan for the full amount of the sale, the loan must be “soft,” having a term of at least 15 years, a below market interest rate and

interest accrual, and be either fully deferred or require only residual receipts payments for the loan term. Alternatively, the value may be a capital contribution of a general partner or member. Once established in the initial application, the donated value of the real property shall not increase.

If land or land and improvements (real property) are donated or are leased for a mandatory lease payment of $100 per year or less, and if approved by CTCAC in advance, the donation value established in the application may be a capital contribution of a general partner or member. Once established in the initial application, the donated value of the real property/lease shall not increase.

Comments Received: A commenter group recommended that TCAC simplify the proposal to state that land included in initial applications, including leases with de minimus payments that are considered donations, may be structured as general partner capital contributions or 0% deferred loans. The comments also recommended that acquisition prices can increase to the extent the increase is balanced by such general partner capital or loan.

Response to Comments: TCAC staff appreciates the comments to simplify the proposal. Staff would like to proceed with the initial proposed change in establishing this process, but will consider the comments for future revisions. Consistent with the long-standing requirement that acquisition prices not increase once established in the application, staff continues to propose the original change. An unrelated party in a market-driven transaction would not agree to pay more for a site once a price has been established, and staff does not believe affordable housing transactions should differ in this regard. The proposed change supports cost containment.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(c)(6)(A)

New Proposed Change: TCAC staff is proposing an additional change to align existing TCAC regulations with the proposed CDLAC leveraging point category. CDLAC's point system provides points for donated land, referencing TCAC's section 10325(c)(9). Without this newly proposed change, the TCAC and CDLAC's treatment of donated land would be inconsistent and detrimental for CDLAC scoring purposes.

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

~~For competitive projects, t~~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). ~~For non-competitive projects, the value of donated land shall be zero.~~

Section 10327(c)(7)

Initial Proposed Change:

(7) Reserve accounts. ~~All unexpended funds in project reserve~~ All reserve accounts shall ~~remain with the project to~~ be used ~~for the benefit of~~to maintain the property (which does not include repayment of loans) and/or benefit its residents, and shall remain with the project except as provided in subparagraph (B) below. If ownership of a project is transferred, the reserve accounts may be purchased by the purchaser(s) or transferee(s) for an amount equal to the reserve account(s) balance(s).

Comments Received: One comment was received, with a concern related to service and rental subsidy reserves. "On some projects with supportive housing units, soft lenders have been willing to fund these reserves when there is concern that services funding or rent subsidy will not remain sufficient over time. In those case, those funders have also put requirements into their loan agreements that the funds must be repaid, generally after 10 or 15 years, if it becomes clear they are not needed. Accordingly, we request that this language be clearly specified to pertain to operating and replacement reserves only. Alternatively, language could be added to read "(which does not include repayment of loans except when a soft lender requires repayment of unused services or rent subsidy reserves)."

Response to Comments: TCAC staff concurs with the suggested change and has revised the original proposal.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(7) Reserve accounts. ~~All unexpended funds in project reserve~~ All reserve accounts shall ~~remain with the project to~~ be used ~~for the benefit of~~to maintain the property (which does not include repayment of loans) and/or benefit its residents, and shall remain with the project except as provided in subparagraph (B) below and except when a public lender funds rent subsidy and/or service reserves and requires repayment of unused rent subsidy and/or service reserves. If ownership of a project is transferred, the reserve accounts may be purchased by the purchaser(s) or transferee(s) for an amount equal to the reserve account(s) balance(s).

Section 10327(c)(10)

Initial Proposed Change:

(10) Limits to fees and loans by related entities, and non-arm's length relationships ("related entities"). The following limits apply to a project applicant, developer, sponsor, owner, general partner, member, and to parent companies, principals of entities, and family members, as well as selling entities and individuals. 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 disclosure is required at the time of application.

(A) If not included in the developer entity fee, related entities are prohibited from charging fees or being reimbursed for preparing relocation plans, service plans, due diligence, or other

similar work typically prepared by professional third parties. All related entity fees must be disclosed and described in the placed-in-service application and final cost certification.

(B) Related entities to the buyer and seller are prohibited from charging broker commissions for purchase of the project site. All broker commissions must be disclosed and described in the placed-in-service application and final cost certification.

Comments Received: TCAC received several comments opposing this change. Commenters stated that it is unfair to developers with vertical integration and to entities with a service provider general partner or in-house property management. Other comments stated the proposal is harsh and overly broad and complicated.

Response to Comments: TCAC staff is withdrawing the proposed change for the current proposal package, and will consider the comments for future proposals of limits to related party fees and loans.

Final Proposed Change: None, retain existing language.

Section 10327(f)

Initial Proposed Change:

(f) Determination of feasibility. To be considered feasible, a proposed project shall exhibit positive cash flow after debt service for a 15-year minimum term beginning at stabilized occupancy, or in the case of acquisition/rehabilitation projects, at the completion of rehabilitation. “Cash flow after debt service” is defined as gross income (including (1) all rental income generated by proposed initial rent levels contained within the project application and (2) committed federal, state, and local rental subsidies; excluding income generated by tenant-based rental subsidies) minus vacancy, operating expenses, property taxes, service and site amenity expenses, operating and replacement reserves and must pay debt service (not including residual receipts debt payments). Expenses that do not continue through all 15 years of the pro forma shall be excluded from the evaluation of feasibility as well as from the minimum debt service coverage ratio and cash flow parameters pursuant to Section 10327(g)(6). For ~~Applications~~ applications that qualify for a reservation of Tax Credits: (1) from the Nonprofit set-aside homeless assistance apportionment, ~~or~~ (2) ~~from the Special Needs set-aside as described in subsections 10315(b) and (e),~~with special needs units comprising at least 25% of the low-income units, or (3) with an average targeted affordability of 40% of Area Median Income or less, capitalized operating reserves in excess of the 3-month minimum amount may be added to gross income for purposes of determining “cash flow after debt service.” In addition, applications with a committed capitalized operating subsidy reserve from HCD, CalHFA, or another public entity approved by the Executive Director may add withdrawals from this reserve to gross income for purposes of determining “cash flow after debt service.”

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(g)(1)

Initial Proposed Change:

(1) The fifteen year pro forma revenue and expense projection calculations shall utilize a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts), and a two percent (2%) increase in property taxes.

(A) Where a private conventional lender and project equity partner use a 2% gross income and 3% operating expense increase underwriting assumption, CTCAC shall accept this methodology as well.

(B) For projects with a HUD rental subsidy that will receive a subsidy layering review from CTCAC, CTCAC shall accept 2% gross income, 3% operating expense increase, and 7% vacancy underwriting assumptions.

For purposes of the pro forma projections only, the application form Subsidy Contract Calculation may utilize post-rehabilitation rental subsidy contract rent assumptions when applicable.

Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published by the Committee staff annually. The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to CTCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting when the equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, compliance monitoring or lender fees, or the costs of any site or service amenities. ~~Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts), and a two percent (2%) increase in property taxes. However, where a private conventional lender and project equity partner use a 2% gross income and 3% operating expense increase underwriting assumption, CTCAC shall accept this methodology as well.~~

~~(A)~~ Special needs projects that are less than 100% special needs shall prorate the operating expense minimums, using the special needs operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10335(a)

Initial Proposed Change:

(a) Application fee.

(1) Every applicant for non-competitive tax credits shall be required to pay an application filing fee of $1,000. Scattered site applications and resyndication applications shall be required to pay an application filing fee of $1,500. This fee shall be paid to the Committee and shall be submitted with the application. This fee is not refundable.

(2) Every applicant for competitive tax credits shall be required to pay an application filing fee of $2,000, except for projects with sites within the jurisdictions of multiple Local Reviewing Agencies (LRA) for which applicants shall be required to pay an additional $1,000 application fee for each additional LRA. This fee shall be paid to the Committee and shall be submitted with the application. This fee is not refundable. Applicants reapplying in the same calendar year for an essentially similar project on the same project site shall be required to pay an additional $1,000 filing fee to be considered in a subsequent funding round, regardless of whether any amendments are made to the re-filed application. At the request of the applicant and upon payment of the applicable fee by the application filing deadline, applications remaining on file will be considered as is, or as amended, as of the date of a reservation cycle deadline. It is the sole responsibility of the applicant to amend its application prior to the reservation cycle deadline to meet all application requirements of these regulations, and to submit a "complete" application in accordance with Section 10322. $1,000 of the initial application filing fee shall be provided to each official LRA which completes a project evaluation for the Committee. A LRA may waive its portion of the application filing fee. Such waiver shall be evidenced by written confirmation from the LRA, included with the application.

(3) Every project owner submitting an incomplete or inaccurate placed-in-service application shall be required to pay a non-refundable application filing fee of $1,000 within 20 days of notification by CTCAC staff.

Comments Received: No comments were received regarding the scattered site application fee increases. Comments for the placed in service application fee were in opposition, although some commenters expressed understanding for the intent of the proposal. Commenters requested concrete information about "incomplete or inaccurate" applications.

Response to Comments: TCAC staff proposes to proceed with the scattered site application fee increase and withdraw the placed in service application fee. Staff will continue to work toward providing solutions to placed in service application errors.

Final Proposed Change: Proceed with changes as initially proposed with the highlighted changes

(a) Application fee.

(1) Every applicant for non-competitive tax credits shall be required to pay an application filing fee of $1,000. Scattered site applications and resyndication applications shall be required to pay an application filing fee of $1,500. This fee shall be paid to the Committee and shall be submitted with the application. This fee is not refundable.

(2) Every applicant for competitive tax credits shall be required to pay an application filing fee of $2,000, except for projects with sites within the jurisdictions of multiple Local Reviewing Agencies (LRA) for which applicants shall be required to pay an additional $1,000 application fee for each additional LRA. This fee shall be paid to the Committee and shall be submitted with the application. This fee is not refundable. Applicants reapplying in the same calendar year for an essentially similar project on the same project site shall be required to pay an

additional $1,000 filing fee to be considered in a subsequent funding round, regardless of whether any amendments are made to the re-filed application. At the request of the applicant and upon payment of the applicable fee by the application filing deadline, applications remaining on file will be considered as is, or as amended, as of the date of a reservation cycle deadline. It is the sole responsibility of the applicant to amend its application prior to the reservation cycle deadline to meet all application requirements of these regulations, and to submit a "complete" application in accordance with Section 10322. $1,000 of the initial application filing fee shall be provided to each official LRA which completes a project evaluation for the Committee. A LRA may waive its portion of the application filing fee. Such waiver shall be evidenced by written confirmation from the LRA, included with the application.

~~(3) Every project owner submitting an incomplete or inaccurate placed-in-service application shall be required to pay a non-refundable application filing fee of $1,000 within 20 days of notification by CTCAC staff.~~

Section 10335(e)

Initial Proposed Change:

(e) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State (including State Farmworker), Tax Credits shall submit a performance deposit equal to four percent (4%) of the first year's Federal Credit amount reserved, but not to exceed $100,000, including applicants with a reservation of credit on or after October 14, 2020. Notwithstanding the other provisions of this subsection, an applicant requesting Federal Tax Credits not subject to the Federal housing Credit Ceiling and requesting State Tax Credits or State Farmworker Tax Credits, shall be required to submit a performance deposit in an amount equal to two percent (2%) of the first year's State Credit amount reserved for the project, but not to exceed $100,000~~, including applicants with a January 15, 2020 reservation of State Credit.~~ Notwithstanding the other provisions of this Section, an applicant requesting only Federal Tax Credits not subject to the Federal Credit Ceiling, shall not be required to submit a performance deposit.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10335(g)

Initial Proposed Change:

(g) Tax form ~~amendment~~ revision fee. An owner who requests an amendment to 8609 or 3521A tax forms, including a request that occurs after CTCAC completes the drafting of these forms, shall pay a fee of $1000 unless the Executive Director determines that the amendment is necessary due to a CTCAC error.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.

Section 10337(d)

Initial Proposed Change:

(d) Change in ownership and property management. It is the project owner's responsibility to comply with the requirements of Section 10320(b) and to inform the Committee of any change in the project owner's mailing address.

(1) Any property management change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(1)(A) as the exiting property management company. At a minimum this must be six (6) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the six projects must be Low Income Housing Tax Credit projects in California. If the new property management company does not meet these experience requirements, then substitution of property management shall not be permitted.

Comments Received: One commenter opposed the change, stating that it would limit the ability of a mission-driven nonprofit to build, renovate, or manage a low-income housing tax credit (LIHTC) project to its fullest benefit to the communities they serve and in which they operate, and force permanent outsourcing of property management.

Response to Comments: As stated previously, the proposed change is not a new change, but rather clarifies existing practice that an incoming property management company have equal experience as the exiting property management company. The propose language is specific to projects previously allocated credits now proposing to replace the property management company for which points were received or where the minimum threshold requirements were met. For a project proposing to replace a property management company where no experience points were originally received, the change allows for training of a proposed replacement property manager to take place. However, this regulation section is not applicable to existing property management that has not intent to make a change, and so should not result in any displacement or outsourcing of those property management staff.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10337(f)(5)

Initial Proposed Change:

(5) If a fine assessed against a property owner is not paid within six months from the date when the fine was initially assessed and after reasonable notice has been provided to the property owner, the Committee may record a lien against the property. If the violation(s) for which the fine(s) is assessed is not corrected within 90 days of the assessed fine, the Committee may record a lien against the property.

Comments Received: None

Final Proposed Change: Proceed with changes as initially proposed.