



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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**EXECUTIVE DIRECTOR**  
Judith Blackwell

DATE: August 16, 2019

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: Proposed Regulation Changes with Initial Statement of Reasons

Attached for public review and comment are the regulation changes proposed by the California Tax Credit Allocation Committee (TCAC) staff. This memorandum summarizes the proposed changes. Attached to this memorandum is the complete set of proposed changes with reasoning. The target date for regulation change adoption is October 16, 2019. TCAC staff will conduct public hearings to explain, answer questions, and solicit comments regarding the proposals. The dates, times and locations of the public hearings will be released at a later date.

Please see the public notice for additional information regarding public comments on these proposed regulation changes. Interested persons wishing to express their views on the proposed regulation changes may submit written comments to TCAC by 5:00 pm on Monday, September 16, 2019. Please email comments to [judith.blackwell@treasurer.ca.gov](mailto:judith.blackwell@treasurer.ca.gov) and [azeto@treasurer.ca.gov](mailto:azeto@treasurer.ca.gov), preferably in a Microsoft Word document or in an electronic, rather than scanned pdf, format that allows for copying. While TCAC welcomes public comments, staff encourages commenters to be sparing and brief given the short timeframe for staff to turn around responses. In the interest of consistency, TCAC prefers that commenters comment at the public hearing or submit written comments, as opposed to both.

## **Summary of Changes Proposed**

The following section summarizes all of the proposed changes to the TCAC regulations. The attached Initial Statement of Reasons provides the actual language and the explanation for each proposed change.

1. Clarify the definition for Scattered Site Projects that 100% of the units be comprised of Tax Credit Units. Section 10302(l). Page 1.
2. Add language relating to the allocation of the \$500M in State Tax Credits. Section 10305(h). Page 1.
3. Clarify the eligible basis multiplier for calculating State Tax Credit. Section 10317(a). Page 1-2.
4. Remove clarifying references resulting from conforming change in Section 10317(d)(3). Section 10317(c). Page 2.
5. Add authority to utilize the 130% basis increase with State Tax Credits allocated from the new \$500M. Section 10317(d)(3). Page 2.
6. Remove requirement that 100% units be Tax Credit Units for 4% projects awarded State Tax Credits from original \$70M. Section 10317(g)(1). Page 2-3.
7. Separate parameters for State Tax Credit Allocations from original \$70M and new \$500M. Section 10317(i) through (k). Page 4.
8. Incorporate changes from SB 9 regarding Certificated State Tax Credits. Section 10317(l). Page 4.
9. Eliminate the requirement that the Applicant Statement needs to be notarized. Section 10322(h). Page 5.
10. Remove references to redevelopment-related projects subject to Department of Finance (DOF) approval. Section 10322(h)(16). Page 5.
11. Allow non-competitive 4% projects to provide the applicable rental subsidy commitment within 180 days after credit reservation. Section 10322(h)(22). Page 5-6.
12. Clarify that projects not meeting the 180/194-day Readiness to Proceed deadline or projects awarded State Tax Credits pursuant to Section 10317(j) unable to begin construction within 180 days of award shall result in rescission of credits or negative points. Section 10325(c)(2). Page 6.
13. Eliminate requirement of a position description in the Service Amenities point category. Section 10325(c)(4)(B). Page 6-7.
14. Eliminate requirement that the service provider have at least 24 months of experience providing services in the Service Amenities point category. Section 10325(c)(4)(B). Page 7.
15. Updates the current scoring options to the equivalent energy measurement of the 2019 Building Energy Efficiency Standards. Section 10325(c)(5)(B)(i) and (ii). Page 7-8.
16. Updates the Enterprise Green Communities point option to the current certification. Section 10325(c)(5)(C). Page 9.
17. Updates a software reference for rehabilitation energy improvement measurement. Section 10325(c)(5)(D). Page 9.
18. Increase the Water Efficiency point option from 3 points to 5 points in the Sustainable Building Methods point category. Section 10325(c)(5)(F). Page 9-10.
19. Updates the current energy measurement of the 2019 Building Energy Efficiency Standards, the reference from a discontinued calculator to the Expected Performance Based Buydown calculator, and the software reference for rehabilitation energy improvement measurement. Section 10325(c)(5)(G)3. through 6.(i). Page 10-11.

20. Removal of the environmental clearance requirement (NEPA and CEQA) in the Readiness to Proceed point category. Section 10325(c)(7)(B). Page 11-13.
21. Clarify that substitution of funds requirements for an Enforceable Financing Commitment is post-reservation of tax credits. Section 10325(f)(3). Page 13-14.
22. Remove requirement for current financial statements for general partners and executed property management company contracts for 9% projects. Section 10325(f)(6). Page 14.
23. Updates the CABEC CEA certification to the current certification standards. Section 10325(f)(7)(A). Page 14-15.
24. Clarify that substitution of funds requirements for Deferred-payment financing, grants and subsidies is post-reservation of tax credits. Section 10325(f)(8). Page 15-16.
25. Remove requirement for outdoor play/recreational area for ages 13-17 in the Large Family housing type. Section 10325(g)(1)(D). Page 16-17.
26. Clarify the exception for the 62 years of age requirement in the Senior housing type. Section 10325(g)(2)(A). Page 17.
27. Clarify language relating to the competitive requirements of the original \$70M in State Tax Credits. Section 10326(a). Page 17.
28. Remove requirement for current financial statements for general partners and an executed property management contract for 4% projects. Section 10326(g)(5). Page 17-18.
29. Remove archaic dates for projects proposing Average Income Test and increase the average targeting from 59% to 60% for 4% projects. Section 10326(g)(9). Page 18.
30. Clarify that the project's high-cost test factor may increase or decrease the Developer Fee at the placed in service stage and that the base fee limit may not be increased from the initial application. Section 10327(c)(2)(A). Page 19-20.
31. Increase the amount of developer fee that may be included in eligible basis for 9% projects from \$1.4M to \$2M for rehabilitation or adaptive reuse projects or \$2.2M for new construction projects. Section 10327(c)(2)(A)(i)-(ii). Page 19-20.
32. Remove developer fee requirements for projects receiving a waiver of the project size limitation. Section 10327(c)(2)(A)(iii). Page 19-20.
33. Increase the base cash out developer fee for 4% projects from \$2.5M to \$3M. Section 10327(c)(2)(B)(i)-(ii). Page 19-20.
34. Remove 39% limit for basis limit increases. Section 10327(c)(5)(A). Page 21.
35. Update the energy measurement to current Energy Design Rating (EDR) of the 2019 Building Energy Efficiency Standards for buildings permitted on or after January 1, 2020, and the reference from a discontinued calculator to the Expected Performance Based Buydown calculator. Section 10327(c)(5)(B). Page 21-22.
36. Remove parking requirements relating to basis for 9% projects. Section 10327(c)(10). Page 23.
37. Remove minimum and maximum flow requirements at the placed in service stage and clarified the elimination of the requirement was retroactive to placed in service packages already received by TCAC. Section 10327(g)(6). Page 23-24.

**2019 Proposed Regulation Changes with Reasons**  
**August 16, 2019**

**Section 10302(II)**

- II) 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. Pursuant to IRC Section 42(g)(7), a Scattered Site Project must be comprised of 100% Tax Credit Units.

**Reason:** The proposed change incorporates the federal requirement that for scattered sites, all units must be rent-restricted as defined by IRC Section 42(g)(2), with the exception of any manager units.

**Section 10305(h)**

- (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 shall not be subject to a competition administered by the Committee during the calendar year 2020. Application selection criteria shall otherwise be applied in accordance with Section 10326.

**Reason:** The proposed regulation change incorporates changes made to state statute pursuant to AB 101.

**Section 10317(a)**

- (a) General. In accordance with the R & T Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the "tax" (as defined by R & T Code Section 12201) a State Tax Credit for Federal Credit Ceiling projects pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Tax Exempt Bond Projects pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code in an amount equal to no more than 30 percent (30%) of ~~a credit ceiling~~ the project's requested construction-related eligible basis. Except for State Farmworker Credits and projects meeting subparagraphs (A) through (D) in subsection (c)(4) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, the maximum State Tax Credit award amount for a ~~T~~ax ~~E~~xempt ~~B~~ond ~~P~~roject pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 13 percent (13%) of that project's requested eligible basis. The maximum State Farmworker Credit award amount for a ~~T~~ax ~~E~~xempt ~~B~~ond ~~P~~roject, or basis described in paragraph (f) below, is 75 percent (75%) of that project's requested eligible basis. The maximum State Credit award for a project meeting subparagraphs (A) through (D) in subsection (c)(4) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 95 percent (95%) of that project's requested eligible basis. Award amounts shall be computed in

accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.

**Reason:** The proposed regulation change incorporates changes made to state statute pursuant to AB 101 and clarifies the percentages used to calculate the various type of State Tax Credits.

### Section 10317(c)

- (c) Limit on Credit amount. Except for ~~Special Needs and State Farmworker Credit~~ applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area (DDA).

**Reason:** The proposed change removes the exception references for Special Needs and State Farmworker Credit applications since they are already referenced in subsection (d).

### Section 10317(d)(3)

- (3) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(iii), 17058(b)(2)(E)(iii), and 23610.5(b)(2)(E)(iii), new construction applications for 4% federal tax credits plus State Credits pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code within a QCT or DDA may request the federal 130% basis boost and may also request State credits.

**Reason:** The proposed change conforms to authority granted by Revenue and Taxation Code Sections 12206(b)(2)(E)(iii), 17058(b)(2)(E)(iii), and 23610.5(b)(2)(E)(iii) permitting new construction applications for 4% federal tax credits plus State Credits pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code located within a QCT or DDA to request both the federal 130% basis boost and State credits.

### Section 10317(g)

- (g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:
- (1) ~~the project is comprised of 100% Tax Credit Units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to those programs' use restrictions. Projects under those circumstances may propose a lesser percentage of Tax Credit Units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;~~

- ~~(2)~~ —one or more buildings is not eligible for the 130% basis adjustment, in which case the State Tax Credits shall be available only for the buildings not eligible for the 130% basis adjustment. This paragraph shall not apply to projects proposing a Special Needs housing type or applying for State Farmworker Credits;
- ~~(3)~~(2) the project has or will have a current year's tax-exempt bond allocation: That is, that State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and
- ~~(4)~~(3) the applicant must demonstrate, by no later than 10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for.

**Reason:** Staff proposes to remove the requirement that projects with tax-exempt bond financing and requesting state credit (4% plus state credit) be comprised of 100% tax credit units. No other application types are held to this restriction, and staff proposes to remove the requirement for 4% plus state credit applications.

**Section 10317(i)**

- (i) State Tax Credit Allocations pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code. The following parameters apply:
  - (1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects. In the first round of each year, CTCAC shall make reservations, up to the 15% limit, 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 under the system delineated in Section 10325(c)(1) through (4)(A), (6), (7) and (9), except that the only tie breaker shall be the final tie-breaker 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);

**Reason:** Staff proposes to reduce the minimum point requirements for 4% plus state credit applications. Under the current system, these applications are required to compete under a point scoring system nearly identical to the 9% credit scoring system, but for fewer credits per project (4% credit versus 9% credit). Recent stakeholder input regarding increasing housing production and the financial feasibility of projects funded with 4% plus state credit proposed reducing the minimum point requirements for 4% plus state credit applications. The proposed change eliminates the scoring categories for service amenities and sustainable building and reduces the deeper income targeting point category requirement. The proposed change also clarifies that resyndication applications must comply with the requirement that any former service amenity requirements must continue for a period of 15 years as part of the resyndication.

## Section 10317(j) through (l)

- (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 year 2020, an amount equal to five hundred million dollars (\$500,000,000) in total State Tax Credit authority will be available for new construction Tax Exempt Bond Projects subject to the minimum requirements of Section 10326 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.
- ~~(j)~~(k) All projects that have received state credits shall comply with the limitations on cash distributions required pursuant to Sections 12206(d), 17058(d), and 23610.5(d) of the Revenue and Taxation Code.
- ~~(k)~~(l) (1) In the initial application, applicants requesting state credits shall make an ~~irrevocable~~ election to sell (“certificate”) or not sell all or any portion of the state credit, as allowed pursuant to Revenue and Taxation Code Sections 12206(o), 17058(q), and 23610.5(r). The applicant for a certificated credit shall be a non-profit entity and the state credit price shall not be less than eighty (80) cents per dollar of credit. After a reservation is made, the applicant may only rescind an election to sell if the state credit pricing falls below the required 80 cents per dollar of credit and with the approval of the Executive DirectorThe applicant may, only once, revoke an election to sell at any time before CTCAC issues the Form(s) 3521A for the project, at which the point the election shall become irrevocable.
- (2) An applicant who elects to sell any portion of the state credit and a buyer who later resells any portion of the credit (~~credits may be resold only once~~) shall report to CTCAC within 10 days of the sale of the credit, in a form specified by CTCAC, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the party or parties to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received for the sale of the credit. At the request of the owner, CTCAC shall reissue the Form(s) 3521A in the name of the buyer.

**Reason:** The proposed change in subsection (j) differentiates the requirements of the State Credit Allocations from subsection (i) for State Tax Credit Allocations pursuant to subsections (g)(1)(A) and (B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code. Furthermore, the previous subsection (j) now becomes (k) and the previous subsection (k) becomes (l).

The proposed changes in the new subsection (l) incorporate changes to state statute for certificated state credit. Certificated state credits allow for higher state credit pricing and equity (because the state credit investor does not have an ownership interest in the project), providing more financing resources. The first proposed change permits an applicant to revoke an election to certificate through the period of the placed in service application review, for any reason. The second proposed change permits credits to be resold more than once.



**Section 10322(h)(1)**

- (h) Standard application documents. The following documentation relevant to the proposed project is required to be submitted with all applications:
  - (1) Applicant's Statement. A signed, ~~notarized~~ statement signifying the responsibility of the applicant to:

**Reason:** The proposed change eliminates the requirement for a notarized applicant statement. Staff does not find that the notarization process adds significant value, and this change allows TCAC's program to conform to the CDLAC applicant statement format.

**Section 10322(h)(16)**

- (16) Financing plan. A detailed description of the financing plan, and proposed sources and uses of funds, to include construction, permanent, and bridge loan sources, and other fund sources, including rent or operating subsidies and reserves. The commitment status of all fund sources shall be described, and non-traditional financing arrangements shall be explained. ~~Those projects with redevelopment-related project financing subject to Department of Finance (DOF) approval are required to provide within the CTCAC application a Final and Conclusive Determination Letter, or other written communication from DOF stating that DOF does not issue, or concludes is unnecessary, Final and Conclusive Determinations for this form of redevelopment financing obligation.~~

**Reason:** The proposed change removes the requirement that projects with redevelopment (RDA) financing provide documentation of Department of Finance (DOF) approval of the disposition of redevelopment assets and properties and any applicable transfer to successor agencies. Based on application submissions of the past several years, this process appears to be completed and assets and properties are now held by successor agencies.

**Section 10322(h)(22)**

- (22) Certification of subsidies. The applicant must certify as to the full extent of all Federal, State, and local subsidies which apply (or for which the taxpayer expects to apply) with respect to the proposed project. (IRC Section 42(m)(2)(C)(ii)) If rental assistance, operating subsidies or annuities are proposed, all related commitments that secure such funds must be provided. Non-competitive Tax-Exempt Bond Projects may receive a reservation of tax credits with the condition to provide the applicable subsidy commitment within 180 days of the reservation. The source, annual amount, term, number of units receiving assistance, and expiration date of each subsidy must be included.

**Reason:** The proposed change provides additional time for 4% non-competitive projects to obtain rental subsidy commitments. Since TCAC does not require financing commitments from lenders in



non-competitive applications, and recognizing the challenges that may sometimes occur in obtaining HUD verification in a short time frame, staff proposes relaxing the public subsidy commitment requirement. Staff proposes that rental subsidies be committed within 180 days to facilitate the 180 day readiness requirement of the new state credit for 4% new construction projects, and the subsidy layering review process. Because the rental subsidy is an important component to a project's underwriting, staff does not propose to eliminate the commitment requirement altogether for applications. Competitive applications must continue to have all rental subsidies committed consistent with the requirement that all public and deferred financing be committed, and due to the final tie breaker's capitalized rent differential ("Tranche B") calculation.

### **Section 10325(c)(2), 10325(c)(2)(A) and (B)**

- (2) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(h)(5). Notwithstanding the foregoing and (B) below, failure to meet the requirements of Sections 10317(j) and 10325(c)(7) shall result in rescission of the Tax Credit Reservation or negative points. Negative points may be assessed for items including, but not limited to:
- (A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (B) failure to utilize Tax Credits within program time guidelines, ~~including failure to meet the 180-day or 194-day, as applicable, readiness requirements,~~ unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;

**Reason:** The proposed change eliminates potential confusion regarding the penalty for not complying with the readiness to proceed point category committed to in an application and the requirement to begin construction within 180 days for applications awarded State Tax Credits pursuant to Section 10317(j). The penalty is either negative points or a rescission of the tax credit award. The proposed change clarifies this within the negative points section of the regulations.

### **Section 10325(c)(4)(B)**

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. 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. One proposed service may not receive points under two different categories, except in the case of proportionately-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.~~

**Reason:** The proposed change eliminates two document requirements for service amenity points, a position description and service provider experience documentation. TCAC staff's experience in reviewing competitive applications is that developers of 9% projects contracting with service providers are choosing experienced and qualified service providers, making these documents unnecessary. Staff continues to review the service amenity point category and documentation requirements for future changes that will streamline and simplify this point category while continuing to produce quality onsite service amenities for residents.

#### **Section 10325(c)(5)(B)(i) and (ii)**

- (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 ~~2016~~2019 Title 24, Part 6, of the California Building Code (the ~~2016~~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:

<u>Low-Rise Multifamily</u>	<u>High-Rise Multifamily</u>
<u>5 EDR Pts.</u> <u>3 points</u>	7 percent                      3 points
<u>8 EDR Pts.</u> <u>5 points</u>	12 percent                      5 points

If the local building department has determined that building permit applications submitted on or before December 31, ~~2016~~2019 are complete, then energy efficiency beyond the requirements in the ~~2013~~2016 Title 24, Part 6, of the California Building Code (the ~~2013~~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:

<u>Low-Rise Multifamily</u>	<u>High-Rise Multifamily</u>
<u>60 percent</u> <u>3 points</u>	<del>9</del> 20 percent                      3 points
<u>65 percent</u> <u>5 points</u>	<del>15</del> 25 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:

<b>Offset of Tenants' Load</b>	<b>Low-Rise Multifamily</b>	<b>High-Rise Multifamily</b>
<del>20</del> 40 percent	3 points	4 points
<del>30</del> 60 percent	4 points	5 points
<del>40</del> 80 percent	5 points	

**Reason:** The proposed change under subsection (i) updates the current scoring options to the equivalent energy measurement of the 2019 Building Energy Efficiency Standards: the Energy Design Rating (EDR), effective for buildings permitted on or after January 1, 2020. The California Energy Commission has changed the methodology for computing compliance for low-rise residential construction, but not for high-rise residential new construction. That change will happen in the next set of Standards (2022).

The proposed change under subsection (ii) updates the current scoring options to the equivalent energy measurement of the 2019 Building Energy Efficiency Standards. The 2019 Standards require enough PV to offset the electric portion of a mixed-fuel building's energy use. The current percentages are equivalent to what is required for a building permit, requiring an update to the scoring options.

**Section 10325(c)(5)(C)**

- (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 ~~2014~~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

**Reason:** The proposed change updates the Enterprise Green Communities point option to the current certification.

**Section 10325(c)(5)(D)**

- (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 ~~appropriate~~Nonresidential (High-Rise Residential) performance module of California Energy Commission (CEC) approved software:

**Improvement Over Current**

15 percent	3 points
20 percent	5 points

**Reason:** The proposed change updates a software reference for rehabilitation energy improvement measurement. The California Public Utilities Commission has directed all multifamily programs to use this module, and TCAC proposes to align the required module to be consistent with the programs most developers will utilize.

**Section 10325(c)(5)(F)**

- (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. ~~3~~5 points

**Reason:** The proposed change increases the point value for water efficiency, enabling this point category to qualify for maximum sustainable building points. TCAC staff believes water savings is an important California housing issue and projects implementing water efficiency measures should be eligible for maximum points. This change also aligns TCAC's scoring value with that of CDLAC's for water efficiency.

### **Section 10325(c)(5)(G)3. through 6.(i).**

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 percentage EDR score improvement 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 CEC's PV Calculator Expected Performance Based Buydown (EPPB) 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 section 10325(c)(5)(D), the applicant must submit a completed Sustainable Building Method Workbook and the energy consumption and analysis report from the appropriate 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 ~~California Energy Commission's Photovoltaic Calculator, or the~~ Expected Performance Based Buydown (EPBB) calculator with TCAC approved monthly scalars ~~to be determined by CTCAC, for purposes of determining to determine~~ the solar values to be input into the CUAC calculator.

**Reason:** The proposed change in subsection 3. updates the current energy measurement to that of the 2019 Building Energy Efficiency Standards: the Energy Design Rating (EDR), effective for buildings permitted on or after January 1, 2020.

The proposed change in subsection 4. removes a reference to the California Energy Commission (CEC) Photovoltaic Calculator because the CEC is discontinuing support of this calculator. The current calculator is the Expected Performance Based Buydown (EPBB).

The proposed change in subsection 5. updates a software reference for rehabilitation energy improvement measurement. The California Public Utilities Commission has directed all multifamily programs to use this module, and TCAC proposes to align the required module to be consistent with the programs most developers will utilize.

The proposed change in subsection 6.(i) removes a reference to the California Energy Commission (CEC) Photovoltaic Calculator because the CEC is discontinuing support of this calculator.

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

- (7) Readiness to Proceed. 10 points will be available to projects that document items (A) through (B) below, and commit to begin construction within 180 days of the Credit Reservation (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), as evidenced by submission, within that time, of: a completed updated application form along with a detailed explanation of any changes from the initial application, an executed construction contract, 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, a limited partnership agreement executed by the general partner and the investor providing the equity, an updated CTCAC Attachment 16, payment of all construction lender fees, 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 notice to proceed delivered to the contractor. 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) environmental review clearances (CEQA, NEPA, and applicable tribal land environmental reviews) necessary to begin construction, except for clearances related to loans with must pay debt service for which the applicant is not seeking tiebreaker benefit, are either finally approved or unnecessary. For 2019 first round projects that are federal funding recipients and demonstrate to CTCAC at application, in the form of a written timetable and explanation, that the federal government shutdown impacted the environmental review clearances process, all federal environmental review clearances necessary to begin construction as verified by the appropriate officials, except for clearances related to loans with must pay debt service for which the applicant is not seeking tiebreaker benefit, must be either finally approved or unnecessary by the 180-day or 194-day deadline.

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.

**Reason:** The proposed change eliminates the readiness to proceed point category requirement that TCAC staff review and confirm environmental clearances (typically NEPA and CEQA). These are federal and state requirements not specifically imposed by TCAC. As applicants are required by other agencies to comply with various environmental clearances, staff proposes to leave the



documentation verification to those agencies. This change will eliminate application documentation requirements and reduce staff time during the application review process.

### **Section 10325(f)(3)**

- (3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:
- (A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;
  - (B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;
  - (C) have a term of at least fifteen (15) years if it is permanent financing;
  - (D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,
  - (E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and
  - (F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds after a Reservation of Tax Credits may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application. ~~Notwithstanding the remainder of this paragraph,~~ After a Reservation of Tax Credits an applicant may substitute Affordable Housing Program (AHP) funds provided pursuant to a program of the Federal Home Loan Bank for any other source.

Projects awarded under a Nonprofit set-aside homeless assistance priority or a Rural setaside RHS or HOME apportionment pursuant to a funding commitment may not substitute other funds for this commitment after application to CTCAC. Failure to retain the funding may result in an award of negative points.

For projects using FHA-insured debt, the submission of a letter from a Multifamily Accelerated Processing (MAP) lender stating that they have underwritten the project and that it meets the requirements for submittal of a multifamily accelerated processing firm commitment application to HUD.

**Reason:** The first proposed change clarifies the requirement that substitution of funds is permitted only after a reservation of credit, it is not permitted during an application review (see also TCAC regulation sections 10322(d) and (e) for incomplete and complete applications). The second proposed change further clarifies that the substitution of AHP funds in for either public or private financing is only permitted after a reservation of credit.

### Section 10325(f)(6)

(4) Sponsor characteristics. Applicants shall provide evidence that proposed project participants, as a Development Team, possess all of the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee may conduct an investigation into an applicant's background that it deems necessary, in its sole discretion, and may determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional Development Team members need be added to appropriately perform all program requirements. ~~The following documentation is required to be submitted at the time of application:~~

~~(A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);~~

~~(B) a copy of a contract to provide property management services to the proposed project.~~

**Reason:** The proposed changes reduce application documentation requirements. First, TCAC staff proposes to eliminate the requirement for submission of financial statements. Without stated evaluation criteria, the review of general partner and developer financial statements and any resulting questions from TCAC staff do not result in meaningful conclusions. TCAC staff believes that the financial evaluation by a project's lenders and investors provides analogous or superior financial scrutiny and proposes to eliminate this requirement. Second, TCAC staff proposes to eliminate this section's reference to the required property management contract. The contract requirement is also stated in section 10325(c)(1), property management experience points, and the requirement in this section is duplicative. Additionally, no other development team member is required to provide an executed contract with the project owner or developer.

### Section 10325(f)(7)(A)

(A) Energy Efficiency. New construction and rehabilitation non-competitive applicants shall consult with the design team, a CABEC certified ~~2016~~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, ~~or generation,~~ and energy storage measures 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 noncompetitive, 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 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.

**Reason:** The first proposed change updates the CABEC CEA certification to the current certification standard. The second change adds energy storage to the list of energy considerations provided to the development team. Onsite energy storage can provide cost savings in project operations, such as in the distribution of energy during peak use times. Staff believes this is useful information for developers to consider, and proposes to add it to the items evaluated and modeled by the energy analyst.

### **Section 10325(f)(8)**

- (8) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies shown in the application are “committed” at the time of application, ~~except as permitted in subsection (E) below.~~
  - (A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant's acceptance in the case of privately committed loans.
  - (B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Tax Credits.
  - (C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.

- (D) Substantiating evidence of the value of local fee waivers, exemptions or land writedowns is required.
- (E) Substitution or an increase of such funds after a Reservation of Tax Credits may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. AHP funds may be substituted for any ~~construction period~~ funding source after a Reservation of Tax Credits if an AHP commitment is obtained after the TCAC application due date. ~~Funds from a previously committed source may be increased only in an amount necessary to achieve project feasibility. Adding new funding sources to cover additional, unanticipated costs requires TCAC pre-approval. This provision shall include projects that have already received a reservation or allocation of Tax Credits in prior years.~~

**Reason:** The first proposed change removes obsolete references to AHP funds from a time prior to 2018 when AHP was permitted as an uncommitted funding source in a competitive application. The change also clarifies the requirement that substitution of funds is permitted only after a reservation of credit, it is not permitted during an application review (see also TCAC regulation sections 10322(d) and (e) for incomplete and complete applications). The change clarifies that the substitution of funds is not specific to construction period funding sources, which aligns with the substitution of funds language in Section 10325(f)(3). Finally, the proposed change removes language requiring TCAC approval to increase or add funds to cover increased project costs. Project costs routinely increase from the estimated cost at application, and other mechanisms are in place for TCAC to evaluate these, including the high cost test and the final tie breaker re-evaluation during the placed in service review.

#### **Section 10325(g)(1)(D)**

- (D) The project shall provide play/recreational facilities suitable and available to ~~all~~ tenants, including children ~~of all~~ ages 2-12 years, except for small developments of 20 units or fewer. Play/recreational area for children ages 2-12 years shall be outdoors, and the minimum square footage is 600 square feet and must include an accessible entrance point. For projects with more than 100 total units this square footage shall be increased by 5 square feet for each additional unit. Outdoor play/recreational space must be equipped with reasonable play equipment for the size of the project, and the surface must be natural or synthetic protective material. The outdoor play area of an onsite day care center may qualify as a play area for children 2-12 years for purposes of this section if it is available to children when the day care center is not open. ~~The application must demonstrate the availability of play or recreational facilities suitable for children ages 13-17. Square footage of a community building cannot be included for the play/recreational area for children ages 13-17 unless that square footage is accessible to minors at all times between 6 a.m. and 10 p.m. except when the area is reserved for service amenities or special events.~~

**Reason:** TCAC staff proposed to require specified play/recreational facilities only for children ages 2-12 years, eliminating the requirement to provide specific facilities or outdoor space for children ages 13-17. In general, the 13-17 year age group does not participate in active outdoor or recreational facilities, and developers have found this requirement challenging to implement and

demonstrate. The regulation language was written broadly to allow applicants a variety of options; however, TCAC staff finds the proposed play/recreational facilities for this age group are often minimal and of little real value. Examples of amenities likely to be valued by this age group include access to internet, computers, and social service amenities, and these are options in TCAC's site and service amenity point categories. As a result, staff proposed to eliminate the requirement.

### **Section 10327(g)(2)(A)**

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

**Reason:** The proposed regulation change clarifies existing age requirements for the senior housing type. The proposed language more clearly states that, unless a federal funding source is designated for a senior housing development and the federal program serves a different senior age group, the TCAC age definition is required. For example, if project-based vouchers are awarded to a senior project, unless those specific vouchers are designated for seniors or elderly tenants only and the federal program has a different age restriction, the TCAC age definition is required.

### **Section 10326(a)**

- (a) General. All applications (including reapplications) 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 projects requesting State Tax Credits pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will be competitively scored as described in Section 10317(i)(~~2~~). 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.

**Reason:** The proposed change clarifies that only State Tax Credit Allocations pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will be competitively scored as described in Section 10317(i).

### **Section 10326(g)(5)**

- (5) Sponsor characteristics. Applicants shall provide evidence that as a Development Team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the

applicant from participating in the Tax Credit Programs, or if additional Development Team members need be added to appropriately perform all program requirements. General partners and management companies lacking documented experience with Section 42 requirements using the minimum scoring standards at Section 10325(c)(1)(A) and (B) shall be required to complete training as prescribed by CTCAC prior to a project's placing in service. The minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(1). Applicants need not submit the third party public accountant certification that the projects have maintained a positive operating cash flow. ~~The following documentation is required to be submitted at the time of application:~~

~~(A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);~~

~~(B) a copy of a contract to provide property management services to the proposed project.~~

**Reason:** The proposed changes reduce application documentation requirements. First, TCAC staff proposes to eliminate the requirement for submission of financial statements. Without stated evaluation criteria, the review of general partner and developer financial statements and any resulting questions from TCAC staff do not result in meaningful conclusions. TCAC staff believes that the financial evaluation by a project's lenders and investors provides analogous or superior financial scrutiny and proposes to eliminate this requirement. Second, TCAC staff proposes to eliminate this section's reference to the required property management contract. No other development team member is required to provide an executed contract with the project owner or developer, and for a reservation of tax credits TCAC staff finds this requirement unnecessary. Any changes to the property management company are reviewed and verified during the placed in service application review.

### **Section 10326(g)(9)**

- (9) ~~For all applications received on or after March 26, 2018, A~~a non-competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed ~~5960~~59% AMI. ~~For all applications received on or after March 26, 2018, A~~a competitive project that includes Low-Income Units targeted at greater than 60% AMI shall have average targeting that does not exceed 50% AMI.

**Reason:** At the request of stakeholders, TCAC staff proposes to eliminate the requirement that non-competitive projects have average Area Median Income (AMI) targeting of 59%, which is 1% less than the maximum permitted. This change also assists in implementation of additional state credit resources for 4% plus state credits pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, which includes provisions to allocate these resources to housing financed by CalHFA's Mixed Use Program. The Mixed Use Program allows for higher AMI targeting.



## Section 10327(c)(2)(A)

### (2) Developer fee.

- (A) The maximum developer fee that may be included in project costs for a 9% competitive credit rehabilitation or adaptive reuse application is 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 (\$2,000,000) dollars. 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, To arrive at~~ the maximum developer fee ~~shall be re-calculated, where~~ the application base fee limit shall ~~then~~ 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 ~~one two million four hundred thousand (\$1,400,000 2,000,000)~~ dollars for a rehabilitation or adaptive reuse project or two million two hundred thousand (\$2,200,000) for a new construction project; 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 ~~one two million four hundred thousand (\$1,400,000 2,000,000)~~ dollars; ~~or.~~
- ~~(iii) the maximum developer fee that may be included in eligible basis for projects receiving a waiver of the project size limitations under section 10325(f)(9)(B) of these regulations is the lesser of 15% of the project's eligible basis or \$1,680,000 for projects having between 201 and 250 Low-Income Units, \$1,750,000 for projects having between 251 and 300 Low-Income Units, and \$1,820,000 for projects having more than 300 Low-Income Units.~~

- (B) For 4% credit projects 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 projects, the maximum developer fee that may be included in project costs and eligible basis is 15% of the project's unadjusted eligible basis. All developer fees in excess of ~~two three~~ million ~~five hundred thousand~~ (\$~~2,500,000~~~~3,000,000~~) dollars plus \$10,000 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 is 15% of the unadjusted eligible construction related basis and 5% percent of the unadjusted eligible acquisition basis. All developer fees in excess of ~~two three~~ million ~~five hundred thousand~~ (\$~~2,500,000~~~~3,000,000~~) dollars plus \$10,000 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 whose hard construction costs per unit in rehabilitation expenditures are at least \$25,000 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.

**Reason:** For subsection (A), TCAC staff first proposes that the 9% credit developer fee high cost adjustment be reflected in the placed in service application rather than the initial application. Staff has found that mistakes in this calculation are frequent, and even a minor mistake results in corrections to a competitive application's requested credit amount. This results in a credit reduction and an appeal period that often runs concurrent with the credit award date. This problem can be eliminated by having the required developer fee adjustment (decrease or increase depending on the project cost) take place in the placed in service application. Due to the frequent errors in this calculation, Staff also recommends project owners and applicants verify the developer fee adjustment calculation with TCAC staff in advance.

Next, in subsections (i) and (ii), TCAC staff proposes to increase the developer fee in basis from a maximum of \$1,400,000 to either \$2,200,000 (new construction) or \$2,000,000 (rehabilitation). As identified by stakeholders requesting a change to this section, most 9% credit applications voluntarily exclude a significant amount of eligible basis for competitive reasons, making the \$600,000 - \$800,000 basis reduction generally unnecessary (this amount would be incorporated into the voluntary basis reduction elsewhere in the application).

Corresponding to the above, the proposed change in subsection (iii) eliminates now unnecessary language allowing the developer fee in basis to exceed \$1,400,000.

The proposed change in subsection (B) increases the amount of a developer fee that can be paid during the construction of a project, from \$2,500,000 to \$3,000,000 (plus any additional amount for projects with more than 100 units). Some stakeholders have requested an increase to the developer fee, which TCAC staff does not believe is warranted at this time. In 2016, the developer fee maximum was increased from \$2,500,000 to 15% of eligible basis. Most developer fees are substantially more than \$2,500,000, averaging around \$6,000,000. As construction costs (and the corresponding tax credit basis) continue to increase, the developer fee maximum increases also

because, for most projects, the developer fee maximum will be 15% of eligible basis. Instead staff proposes to increase the “cash out” portion of the developer fee.

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

- (A) Increases in the threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. ~~The maximum increase to the limits permitted under this subsection shall not exceed thirty-nine percent (39%).~~

**Reason:** The proposed change eliminates the maximum percentage points (39%) a project may request for the increase options of subsection (A). Staff finds no compelling reason for this limit, and proposes to allow projects to access all options that are applicable.

### **Section 10327(c)(5)(B)**

- (B) A further increase of up to ten percent (10%) in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that include one or more of the following energy efficiency/resource conservation/indoor air quality items:
- (1) Project shall have onsite renewable generation estimated to produce 50 percent (50%) or more of annual tenant electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (2) only if the renewable generation used to calculate each basis increase does not overlap. Five percent (5%)
  - (2) Project shall have onsite renewable generation estimated to produce 75 percent (75%) or more of annual common area electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 75% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (1) only if the renewable generation used to calculate each basis increase does not overlap. Two percent (2%)
  - (3) Newly constructed project buildings shall be ~~fifteen percent (15%) or more~~ energy efficient than the ~~2016~~2019 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24) ~~by at least 5, EDR points for energy efficiency alone (not counting solar)~~; except that if the local building department has determined that building permit applications submitted on or before December 31, ~~2016~~2019 are complete, then newly constructed project buildings shall be fifteen percent (15%) or more energy efficient than the ~~2013~~2016 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). Four percent (4%)

- (4) Rehabilitated project buildings shall have eighty percent (80%) decrease in estimated TDV energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the appropriate performance module of CEC approved software. Four percent (4%)
- (5) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens) or irrigate with reclaimed water, grey water, or rainwater in an amount that annually equals or exceeds 20,000 gallons or 300 gallons per unit, whichever is less. One percent (1%)
- (6) Community Gardens of at least 60 square feet per unit. Permanent site improvements that provide a viable growing space within the project including solar access, fencing, watering systems, secure storage space for tools, and pedestrian access. One percent (1%)
- (7) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all kitchens, living rooms, and bathrooms (where no VOC adhesives or backing is also used). One percent (1%)
- (8) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all interior floor space other than units (where no VOC adhesives or backing is also used). Two percent (2%)
- (9) For new construction projects, meet all requirements of the U.S. Environmental Protection Agency Indoor Air Plus Program. Two percent (2%)

Compliance and Verification: For placed-in-service applications, in order to receive the increase to the basis limit, the application shall contain a certification from a HERS, GreenPoint, NGBS Green Verifier, PHIUS, Passive House, or Living Building Challenge Rater, or from a LEED for Homes Green Rater verifying that item(s) listed above have been incorporated into the project, except that items (5) through (8) may be verified by the project architect. For item (1), the applicant must submit a 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 ~~California Energy Commission's Photovoltaic Calculator or, for existing residential buildings, the~~ Expected Performance Based Buydown (EPBB) calculator with monthly scalars to be determined by CTCAC, for purposes of determining the solar values to be input into the CUAC calculator. For item (2), the energy analyst shall provide documentation of the load serving the common area and the output calculations or the photovoltaic generation. For items (3) and (4), the applicant must submit a Sustainable Building Method Workbook with the original application and the placed-in-service application. For item (5), the Rater, architect, landscape architect, or water system engineer shall certify that 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. Failure to incorporate the features, or to submit the appropriate documentation may result in a reduction in credits awarded and/or an award of negative points.

**Reason:** The proposed change updates this section’s energy measurement to the current Energy Design Rating (EDR) of the 2019 Building Energy Efficiency Standards, effective for buildings permitted on or after January 1, 2020.

The proposed change under the Compliance and Verification section removes a reference to the California Energy Commission (CEC) Photovoltaic Calculator because the CEC is discontinuing support of this calculator.

**Section 10327(c)(10)**

~~(10) Basis related to parking. For 9% new construction projects of a type described in Section 65915(p)(2) or (3) of the Government Code, regardless of whether or not the developer makes a request to the city or county, and that received land use entitlements after December 31, 2016, an applicant shall exclude from basis the proportionate cost of parking spaces that exceed the following ratios:~~

~~(A) 0.3 spaces per unit for special needs projects, except that for non-special needs units in a special needs project the applicable ratios of subparagraphs (B), (C), and (D) shall apply and, for units not referenced by subparagraphs (B), (C), or (D), 1 space per unit shall be allowed for studio and 1-bedroom non-special needs units and 2 spaces per units shall be allowed for larger non-special needs units.~~

~~(B) 0.5 spaces per unit for senior projects within ½ mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code.~~

~~(C) 1 space per unit for large-family projects within ½ mile of a major transit stop.~~

~~(D) 1 space per unit for senior projects more than ½ mile from a major transit stop.~~

**Reason:** The proposed change eliminates a requirement for 9% new construction projects to reduce eligible basis when parking limits established by state statute are legally exceeded based on local government guidelines. The requirement reduces eligible basis but does not prohibit an applicant from constructing the excess parking. Staff does not believe that significant project cost savings have been achieved by this requirement. Most 9% credit applications voluntarily exclude a significant amount of eligible basis for competitive reasons, and as a result the small basis reduction generally associated with reduced parking is negligible. Additionally, staff has found that mistakes in this calculation are frequent, and even a minor mistake can result in multiple corrections to a competitive application: reduced credit amount, increased high cost test factor, and reduced developer fee. This results in a credit reduction and an appeal period that often runs concurrent with the credit award date. Due to these factors, staff is proposing to eliminate the requirement.

**Section 10327(g)(6)**

(6) Minimum and Maximum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project’s first three years is required, except for FHA/HUD projects, RHS projects or projects financed with hard debt by the California Housing Finance Agency. Debt service does not include residual receipts debt

payments. Except for projects in which less than 50% of the units are Tax Credit Units or where a higher first year ratio is necessary to meet the requirements of subsection 10327(f) (under such an exception the year-15 cash flow shall be no more than the greater of 1) two percent (2%) of the year-15 gross income or 2) the lesser of \$500 per unit or \$25,000 total), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during each of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service initial application, application at 180 days or 194 days pursuant to Section 10328(c), and application at subsidy layering review must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Gross income includes rental income generated by proposed initial rent levels contained with the project application. Effective October 16, 2019, CTCAC underwriting requirements for placed in service applications currently under review pursuant to Section 10322(i) are eliminated.

**Reason:** The proposed change eliminates the cash flow and debt service coverage (DCR) underwriting review for the placed in service application. Currently this 15 year cash flow review occurs at the time of the initial application, the 180/194 day application (when applicable), the subsidy layering review application (when applicable), and the placed in service application. The placed in service application review frequently occurs when a project has been operating for about one year, a time when there is documentation of actual revenue, annual debt payments, and operating expenses. However, TCAC does not require the use of actual financial statements or require actual cash flow limits or DCR. Often during the placed in service application review, these limits are not met in the "pro forma" document submitted to TCAC, requiring corrections to hypothetical underwriting numbers and delaying the issuance of tax forms. For these reasons staff proposes to eliminate this requirement in the placed in service application. Given that actual cash flow limits and DCR requirements do not exist, staff believes the initial and 180/194 day underwriting reviews are sufficient.