CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: October 24, 2012

TO: California Tax Credit Stakeholders

FROM: William J. Pavão, Executive Director

SUBJECT: Proposed Regulation Changes for 2013

Attached for public review and comment are the California Tax Credit Allocation Committee (TCAC) staff's proposed regulation changes for 2013. This summary memorandum highlights what TCAC staff proposes to present to the Committee for their adoption in January 2013. TCAC staff will conduct public hearings to solicit comments as follows:

Wednesday November 7, 2012	**Los Angeles** Ronald Reagan State Building 300 South Spring Street, Auditorium 2:30 p.m. to 4:30 p.m.
Thursday November 8, 2012	**San Diego** San Diego Housing Commission 1122 Broadway, Fourth Floor Conference Room 10:00 a.m. to 12:00 noon
Tuesday November 13, 2012	**Oakland** Elihu Harris State Building 1515 Clay Street, Room 2 1:00 p.m. to 3:00 p.m.
Wednesday November 14, 2012	**Sacramento** State Treasurer's Office 915 Capitol Mall, Room 587 2:00 p.m. to 4:00 p.m.

TCAC staff is proposing both substantive changes affecting policy or procedures, as well as changes that simply clarify existing policy or that only align existing language with a proposed substantive change elsewhere in the regulations. In summary, the proposed regulation changes are as follows:

Proposed Substantive Changes:

1. Codify TCAC's longstanding practice of relying upon the most recent USDA Section 515 designated places list, or a letter from the USDA Multifamily Housing Program Director when establishing an area's rural status under State statute. **Section 10315(c), page 1 of the attached draft.**
2. Establish that RHS apportionment-eligible projects must compete in that apportionment, and that any unsuccessful RHS competitors would then compete within the larger rural set-aside. **Section 10315(d), page 2.**
3. Increase the at-risk housing type goal to 15 percent (15%), and apply this percentage in the first tiebreaker. **Section 10315(h), page 2.**
4. Effective 2014, update the geographic apportionments and create a new region: The City of Los Angeles. **Section 10315(i), page 3.**
5. Relocate and broaden existing appraisal regulations to apply to both new construction and rehabilitation projects. **Section 10322(h)(9), page 5.**
6. Require final cost certifications be prepared by CPAs other than those who consulted on a project's application or financial structuring generally as a member of the development team. **Section 10322(i)(2)(B), page 7.**
7. Permit re-syndicating special needs projects to claim acquisition basis in a 9% tax credit application. **Section 10322(k), page 8.**
8. Prohibit sponsors from withdrawing competitive applications so that another of their submitted applications may succeed in the competition. **Section 10325(c), page 16.**
9. In scoring existing public debt to be assumed by a sponsor, count only principal, and not any accrued interest. Clarify that private loans with public loan guarantees are not scored as public funds, and clarify that publicly donated land must supported by an appraisal in order to receive public funds points. Limit scored public funding to four percent (4%) simple interest. **Section 10325(c)(1)(C), page 17.**
10. Strengthen the scoring of general partners and property management entities based upon performance with tax credit projects. **Section 10325(c)(2), page 20.**
11. Explicitly list uncorrected serious compliance failures as cause for receiving negative competitive points. **Section 10325(c)(3)(R), page 24.**
12. In measuring site amenity distances, provide clarifying examples of physical barriers between the proposed project site and an amenity that would preclude using a standardized radius measurement to the amenity. Also clarify that the distance radius may be struck from the nearest corner of the project site to the nearest corner of the amenity site, excepting long entry drive portions of the project site. Finally, clarify measuring distances to amenities inside larger shopping complexes or commercial strips. **Section 10325(c)(5)(A), page 25.**
13. Delete a scoring reference to "transit-oriented development strategy" and clarify that scored transit service times refer to Monday through Friday schedules. Also, clearly define "transit station" and score such an amenity which is planned for completion prior to the project's scheduled completion. **Section 10325(c)(5)(A)(1), page 27.**

14. Permit multi-purpose stores containing grocery sections to earn competitive grocery store or neighborhood market points. **Section 10325(c)(5)(A)(4), page 29.**
15. Permit specified project other than Large Family housing types to earn points for proximity to a public school. **Section 10325(c)(5)(A)(5), page 29.**
16. Clarify that a medical clinic must accept Medi-Cal payments in order to receive competitive amenity points. **Section 10325(c)(5)(A)(8), page 30.**
17. Eliminate the requirement that at least 50 percent (50%) of a 9% applicant's credit request amount must remain in a geographic apportionment to receive funding. Also, discontinue "skipping" larger credit requests and funding lower-scoring, smaller-request projects. **Section 10325(d)(2), page 32.**
18. Provide the TCAC Executive Director with the authority to waive the market study value ratio requirement for rehabilitation projects with existing rental assistance or operating subsidies proposing minimal rent increases and having a history of low vacancies. **Section 10325(f)(1)(B), page 34.**
19. Within TCAC's minimum construction standards, clarify energy efficiency minimum measuring standards; permit fiberglass-faced exterior doors; delete flooring thickness minimums for specified project areas; relocate on-site property manager provisions to the minimum construction standards section and apply those provisions to scattered sites. **Section 10325(f)(7), page 35.**
20. Establish a 200 square foot minimum size for competitive SRO units. **Section 10325(g)(3)(B), page 37.**
21. Require less-experienced general partners and property management companies to complete TCAC-provided or -prescribed training. **Section 10326(g)(5), page 39.**
22. Clarify that the prevailing wage exception to the threshold basis limits is available only where a public funding source requires it. Include on-site parking structures with podium parking for the seven percent (7%) basis limit boost. Also relocate local development fee exception to the larger threshold basis limits exceptions section, and exclude those fees from the project architect certification requirement. **Section 10327(c)(5)(A), page 40.**
23. Establish policy regarding project based rental assistance renewal and discontinuation. **Section 10337(a), page 42.**

Proposed Clarifying or Conforming Changes:

1. Move local impact fee excerption from threshold basis limits definition to threshold basis limits exception portion of the regulations where other basis limit boosts are described (Section 10327(c)(5)((A)). **Section 10302(nn), page 1 of the attached draft.**
2. Clarify that an architect must certify that a proposed project would meet applicable ADA and other fair housing requirements, even where an architect is not retained for a rehabilitation project's general improvement work. **Section 10322(h)(11), page 6.**
3. Clarify that an architect must certify that a completed project meets applicable ADA and other fair housing requirements, even where an architect was not retained for a rehabilitation project's general improvement work. **Section 10322(i)(2)(P), page 7.**
4. Delete and cross-reference new consolidated appraisal language at Section 10322(h)(9). **Section 10322(i)(4)(A), page 8.**

5. Delete inoperative, archaic language regarding the Jobs and Closing Tax Loopholes Act of 2010. **Section 10323, page 9.**
6. Clarify that combined new construction and rehabilitation projects must earn sustainable building methods points for both portions of the project using the applicable scoring standards for each portion. **Section 10325(c)(6), page 30.**
7. Clarify how 30 percent (30%) AMI units are to be arrayed across various unit sizes for competitive scoring. **Section 10325(c)(7)(B), page 31.**
8. Clarify that project qualify as "at-risk" if they are nearing the end of either federal or State tax credit restrictions. **Section 10325(g)(5)(B), page 38.**
9. Align tax-exempt bond and 4% feasibility provisions to parallel 9% provision by correctly cross-referencing the latter. **Section 10326(g)(4), page 39.**
10. Correctly cross-reference new appraisal provisions at Section 10322(h)(9). **Section 10327(c)(7), page 41.**
11. Relocate property management provisions from current location within underwriting criteria description. **Section 10327(g)(1), page 41.**

Attachment

2013 Proposed Regulation Change with Reason
October 24, 2012

Section 10302(nn)
Proposed Change:

nn) Threshold Basis Limit. The aggregate limit on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Tax Credit amounts. These limits are published by CTCAC on its website, by unit size and project location, and are based upon average development costs reported within CTCAC applications and certified development cost reports. CTCAC staff shall use new construction cost data from both 9 percent and 4 percent funded projects, and shall eliminate extreme outliers from the calculation of averages. Staff shall publicly disclose the standard deviation percentage used in establishing the limits, and shall provide a worksheet for applicant use. CTCAC staff shall establish the limits in a manner that seeks to avoid a precipitous reduction in the volume of 9 percent projects awarded credits from year to year~~. Local Development Impact Fees as defined in section 10302 of these regulations shall be excluded from this calculation if the fees are documented in the application submission by the entities charging such fee.~~

Reason:

The proposed change would move the existing basis limit exception for local fees to Section 10327(c)(5)(A) with the other basis limit exceptions, or boosts. The local fee exception's current location within the Threshold Basis Limit definition causes some confusion among program users, and would be most easily located if it resided within the "exceptions to limits" section of the regulations.

Section 10315(c)
Proposed Change:

(c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. <u>For purposes of implementing Section 50199.21(a), an area is eligible under the Section 515 program on January 1 of the calendar year in question if it either resides on the Section 515 designated places list in effect the prior September 30, or is so designated in writing by the USDA Multifamily Housing Program Director.</u> All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless:

Reason:

The proposed additional text would clarify longstanding TCAC practice related to determining an area's rural status under the Section 515 program. On January 1 of any given year, USDA has typically yet to publish that federal fiscal year's Section 515 designated places list (the federal fiscal year commences on October 1 of the prior calendar year). In order to comply with State statute, Section 50199.21(a), TCAC has adopted the convention of relying upon the most recently published designated places list. This practice permits prospective applicants to anticipate their rural status under the Section 515 option well in advance of the TCAC program

year starting on January 1. Additionally, new text would explicitly recognize TCAC's practice of honoring letters from the USDA Multifamily Housing Program Director that attest to an area's rural status by virtue of its Section 515 eligibility..

Section 10315(d)
Proposed Change:

(d) RHS program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available for new construction projects which have a funding commitment from RHS of at least $1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, or RHS's Section 515 Rural Rental Housing Loan Program, in the following priority order:

- First, to projects with RHS funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance for at least 50% of the project units (excluding non-restricted management units);
- Second, to projects for which the Section 514, or 515, funding commitment is an "obligation" (as that term is used by RHS);
- Third, to projects for which the Section 514, or 515, funding commitment is a "NOFA selection for further processing" but not an "obligation" (as those terms are used by RHS.)

All projects meeting the RHS program apportionment eligibility requirements shall compete under the RHS program apportionment. Projects that are unsuccessful under the apportionment shall then compete within the general rural set-aside described in subsection (c). Any amount reserved under this subsection for which RHS funding does not become available in the calendar year in which the reservation is made, or any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.

Reason:

The proposed change would ensure that projects competing under the RHS apportionment are held to the same rigorous tiebreaker and scoring requirements of the general rural set-aside. TCAC has noted that some applicants will enter high-scoring RHS projects through the general rural set-aside to ensure that their lower-scoring RHS projects receive allocations through the RHS program apportionment. This practice is an unintended consequence of the RHS program apportionment and does not reflect TCAC's mission to award high-scoring, quality projects.

Section 10315(h)
Proposed Change:

(h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable "additional threshold requirements" of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(10) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

Housing Type	Goal
Large Family	65%
Single Room Occupancy	15%
At-Risk	15%~~5%~~
Special Needs	15%
Seniors	15%

Reason:

The proposed change would place each housing type at the same 15 percent (15%) credit amount goal percentage, except the large family goal which would remain at 65 percent. This change would select against at-risk preservation projects only when 15% of the available credits in a round are reserved for that housing type. Preservation project application volume is up, and the lower percentage goal is not justifiable. While TCAC staff is concerned about the trend toward higher rehabilitation project application volume within the 9 percent credit competition, preserving at-risk projects is a priority among those rehabilitation projects.

Section 10315(i)
Proposed Change:

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

Geographic Area Apportionments	2013	2014 Onward
City of Los Angeles	0%	17.6%
Balance of Los Angeles County	33%	17.2%
Central Valley Region (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	10%	8.6%
North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)	10%	10.8%
San Diego County	10%	8.6%
Inland Empire Region (San Bernardino, Riverside, Imperial Counties)	8%	8.3%
Orange County	8%	7.3%
South and West Bay Region (San Mateo, Santa Clara Counties)	6%	6.0%

Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)	6%	6.7%
Central Coast Region (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5%	5.2%
San Francisco County	4%	3.7%

Reason:

The current geographic apportionments have been in place since 2004, and TCAC staff has been petitioned for some time to update the underlying data and the resulting apportionments. The proposed apportionment changes would take effect in 2014, ten years since the adoption of the current percentages. TCAC staff considered using the 2004 methodology and simply updating the process by using more current data. However, once TCAC published the preliminary results of such an updating, both staff's analysis and stakeholder feedback led TCAC to consider using other, different factors and methods for deriving new apportionments. In addition, TCAC worked with the City of Los Angeles to evaluate the possibility and effect of creating a City of Los Angeles apportionment. Documents related to TCAC staff's process and various iterations are available at http://www.treasurer.ca.gov/ctcac/apportionment/index.asp.

The proposed percentages are derived by establishing each region's population of high cost burdened renters (renter households at all income levels paying more than 50 percent (50%) of their household income for housing). This statistic is available through the American Communities Survey for 2006-2010. Each region's high rent burdened population in each region is then reduced by the percentage of that region's population that resides in rural areas as determined in the 2010 U.S. census. Finally, each region's figure is adjusted by a construction cost adjuster available through 2012 RS Means Building Construction Cost Data.

The resulting regional figures are compared to the statewide roll-up of the regional results, and percentages of the statewide total are derived. In essence, each region's high rent burdened population is adjusted by a rural population exclusion, and by a development cost adjuster.

After considering several possible data points comparatively describing regional needs, TCAC staff believes that the high cost burdened renter population is the most relevant statistic to start the comparative analysis. This data set represents renters beyond the tax credit program's target population, but that population is included within the larger statistic. The more inclusive dataset selected more accurately describes a regional rental market's level of distress.

Like the current apportionment methodology, the proposed apportionments also factor out rural populations from the process. This accounts for the fact that rural projects access 9 percent credits through a separate set-aside. Therefore, regions with larger access to the rural set-aside ought to receive a proportionate downward adjustment to their regional apportionment.

Finally, TCAC staff selected a construction cost indicator that does not rely solely upon TCAC's own portfolio of rental developments. Instead, the RS Means data covers a larger range of construction types, while drawing primarily from the more urban markets for construction data. This results in a helpful comparative dataset that accounts for varying construction costs across regions, and delivers more credits to regions where similar results are more costly due to factors like construction type.

TCAC is also proposing a new City of Los Angeles regional apportionment. The City of Los Angeles's scale and complexity merits providing an apportionment just for that community. The City's proposed apportionment would be the single largest apportionment in the state, followed by the balance of Los Angeles County. Coordination with City affordable housing strategies and efforts facilitates the State achieving its housing policy goals effectively and efficiently. Where the City of Los Angeles has invested in tax credit projects, those projects have received additional beneficial oversight by the City, complementing TCAC's compliance monitoring. Providing the City with its own geographic apportionment will facilitate a coordinated strategic approach utilizing tax credit and local resources across 9 percent projects as well as tax-exempt bond projects.

Section 10322(h)(9)
Proposed Change:

(9) Appraisals. Appraisals are required for all competitive applications except for new construction projects that have third party purchase contracts executed within five years of the application date. If a third party purchase contract was executed more than five years from the application date, an appraisal with a date of value that is within one year of the application date is required.

(A) Rehabilitation applications. An "as-is" appraisal prepared within 120 days before or after the execution of a purchase contract 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;
(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.

The "as if vacant" land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values will be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.

(B) New construction applications. An "as-is" appraisal with a date of value that is within one year of the application date 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.

All applications, including those funded with tax-exempt bond financing, must include a land cost or value in the Sources and Uses budget. A nominal cost will not be accepted. If land is donated or leased from a public entity or in the absence of a third party purchase contract, an appraisal is required to establish value.

Reason:

TCAC staff proposes to add regulations addressing appraisal requirements within the program regulation's "Standard application documents" listing. The proposed changes import appraisal requirements for rehabilitation projects from Section 10322(i)(4)(A) and provide guidance on appraisal requirements for all other applications. The language remains identical except for the following two changes: (1) deleting the unnecessary and confusing phrase "ownership for the property" and (2) changing from "California certified appraiser" to "California certified general appraiser". TCAC staff has determined that the licensing requirements of a California certified general license are consistent with the multifamily properties and land values submitted in TCAC applications and therefore proposes to require this level of licensing and experience. This change is generally consistent with the appraiser qualifications received in current applications and should not require any significant change in current practice. Section 10322(h)(9)(B) adds to TCAC regulations appraisal requirements for new construction projects. Since, in many instances, public funds points and the final tiebreaker scoring require an appraisal for new construction projects under Section 10325(c)(1)(C), TCAC staff proposes consolidating these appraisal requirements more clearly under a general "Appraisals" section. Currently this is done by cross-reference to Section 10322(i)(4)(A), which outlines rehabilitation application requirements. Additionally, this section establishes appraisal requirements for all projects, including non-competitive applications funded with tax-exempt bond financing.

Note: The proposed insertion of "Appraisals" as Section 10322(h)(9) above results in a renumbering of the remaining subsections of Section 10322(h), beginning with "Market Studies" as 10322(h)(10) and ending with "Self-scoring sheet as provided in the application" as 10322(h)(24).

Section 10322(h)(11)
Proposed Change:

(11) Architectural drawings. Preliminary drawings of the proposed project, including a site plan, building elevations, and unit floor plans (including square footage of each unit). The project architect, or in the case of rehabilitation projects proceeding without an architect, an architect retained for the purpose of this certification must certify that the development will comply with building codes and the physical building requirements of all applicable fair housing laws. The site plan shall identify all areas or features proposed as project amenities, laundry facilities, recreation facilities and community space. Drawings shall be to a scale that clearly shows all requested information. Blueprints need not be submitted. A project applying as a High-Rise Project must include the project architect certification required by Section 10302(v).

Reason:

This change would clarify that an architect must certify that the proposed project would comply with ADA and fair housing compliance, even in rehabilitation projects where an architect is not retained for the rehabilitation work itself. This requirement would assure that proposed tax credit projects plan to

comply with applicable ADA and other fair housing requirements by having a qualified third party provide the certification. TCAC staff has recently seen sponsor self-certifications in rehabilitation projects where an architect is not used. Self-certification is inadequate as an assurance to TCAC that relevant design requirements will be met.

Section 10322(i)(2)(B)
Proposed Change:

(3) Placed-in-service application. Within one year of completing construction of the proposed project, the applicant shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs or changes to the services amenities, must be explained by the applicant in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:

(A) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Tax Credits are requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;

(B) an audited certification, prepared by a Certified Public Accountant under generally accepted auditing standards, with all disclosures and notes. <u>The Certified Public Accountant or accounting firm shall not have acted in an advisory or consulting capacity as a project participant under Section 10322(h)(5).</u> This certification shall:

Reason:

The proposed change seeks to ensure that the Certified Public Accountant (CPA) preparing a project's final cost certification is providing an independent evaluation of the project's costs, expenditures, and funds. CTCAC staff has noted that accounting firms can be members of a project's development team, providing services such as application preparation and market study analysis. Staff proposed this change to ensure that the final cost certification is audited by a CPA having no other considerations than establishing conformance with 26 CFR §1.42-17.

Section 10322(i)(2)(P)
Proposed Change:

(P) a certification from the project architect <u>or in the case of rehabilitation projects, from an architect retained for the purpose of this certification,</u> that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws;

Reason:

Similar to the proposed change at Section 10322(h)(11) above, the proposed change would clarify that the placed-in-service requirement related to ADA and fair housing compliance must be certified by an architect, even in rehabilitation projects where an architect was not retained for the rehabilitation work itself. This requirement assures that completed tax credit projects comply with ADA and other fair housing requirements by having a qualified third party provide the certification. TCAC staff has recently seen sponsor self-certifications in rehabilitation projects where an architect is not used. Self-certification is inadequate as an assurance to TCAC that relevant design requirements have been met.

Section 10322(i)(4)(A)
Proposed Change:

(4) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:

(A) ~~a~~An independent, third party appraisal prepared consistent with the guidelines in Section 10322(h)(9). ~~"as-is" appraisal prepared within 120 days before or after the execution of a purchase contract or the transfer of ownership for the property by all the parties by a California certified 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:~~

~~(vii) the highest and best use value of the proposed project as residential rental property;~~

~~(viii) 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;~~

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

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

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

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

~~The "as if vacant" land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values will be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.~~

Reason:

The proposed and deleted language incorporates modifications and conforming language consistent with the proposed appraisal requirements changes in Section 10322(h)(9) above.

Section 10322(k)
Proposed Change:

(i) Unless the proposed project is a Single Room Occupancy development, a Special Needs development, or within ten (10) years of an expiring tax credit regulatory agreement, applicants for nine percent (9%) Low Income Housing Tax Credits to acquire

and/or rehabilitate existing tax credit properties still regulated by an extended use agreement shall:

(1) certify that the property sales price is no more than the current debt balance secured by the property, and

(2) be prohibited from receiving any tax credits derived from acquisition basis.

Reason:

The proposed change would include Special Needs projects in the exception to the prohibition against older tax credit properties receiving new tax credits for acquisition basis. Special Needs projects would be added to Single Room Occupancy (SRO) and tax credit projects approaching the end of their regulatory term. The general prohibition is meant to encourage project sponsors to seek tax exempt bond financing along with four percent (4%) credits when rehabilitating their regulated tax credit projects.

The exception is granted for high-value projects that are unlikely to find tax exempt bond financing a viable option, or to accommodate projects approaching the opportunity to escape their regulatory agreement altogether.

The proposed change would help vital Special Needs projects access tax credit equity by using acquisition basis, if necessary, in addition to the project's rehabilitation basis. The nine percent (9%) credit scoring system provides competitive inducements to reduce a project's requested eligible basis. However, this change would accommodate projects that must access the additional equity, while remaining competitive in the TCAC scoring system.

Section 10323
Proposed Change:

Section 10323. The American Recovery and Reinvestment Act of 2009 ~~Jobs and Closing Tax Loopholes Act of 2010~~

~~(a) General. Under the authority granted by The American Jobs and Closing Tax Loopholes Act of 2010 or other federal legislation extending the Section 1602 tax credit exchange provisions of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the California Tax Credit Allocation Committee (CTCAC) may subaward federal grants in lieu of housing credit allocations to projects awarded Low Income Housing Tax Credits in calendar year 2010. If referenced federal legislation does not pass, the provisions herein addressing 2010 credit exchange are inoperative. While CTCAC may access and subaward these funds in accordance with the provisions of this Section, nothing in this Section shall be construed to imply an obligation by the Committee to award funds to specific projects.~~

~~Circumstances related to a specific project, such as updated market information, or the sponsor's financial strength, including inadequate net assets or pending litigation or other liabilities, may cause the Committee to deny a subaward, in spite of that project having previously received a reservation or allocation of credits. The Committee shall state in writing reasons for denying a subaward where the standards described below would otherwise have resulted in a subaward. The overriding public interest in sound investments through cash subawards shall be paramount as the Committee makes it~~

~~funding decisions. Projects shall be evaluated in accordance with the underwriting criteria listed at Section 10327(g), as modified by this Section.~~

~~Under the authority granted by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or ARRA, the California Tax Credit Allocation Committee (CTCAC) may subaward Tax Credit Assistance Program (TCAP) funds and Section 1602 funds as described in paragraph (d)(2) below.~~

~~All terms and conditions established by federal rule shall hereby be incorporated by reference.~~

~~(b) Eligible Projects~~

~~Applicants for federal cash awards must have a current reservation of federal Low Income Housing Tax Credits for a project awarded Credit Ceiling credits in calendar year 2010. To be eligible for funds, projects must be expected to be completed by December 31, 2012. In addition, all sub-awardees must be prepared to close all construction period financing and begin construction within 120 days of award. In addition, the project sponsor shall assure adherence to this requirement by entering into a contractual obligation to CTCAC to perform according to a draw schedule, and by providing CTCAC monthly updates as to the project's progress.~~

~~Projects receiving Credit Ceiling or Tax Exempt Bond credit reservations in calendar year 2009 are eligible for ARRA Funds, if federal authority remains, under the conditions described in paragraph (d)(2) below.~~

~~(c) Award Amounts.~~

~~(1) Cash in lieu of credits: 2010 credit recipients may receive an award equal to the stated equity in the original tax credit application up to 73 cents ($0.73) for every currently reserved federal tax credit dollar and up to 50 cents ($0.50) for every California State Credit currently reserved by CTCAC for the project. Current Credit Ceiling reservation recipients must return their reservation before applying for a cash award in lieu of credits.~~

~~To be eligible for cash in lieu of credits, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. An applicant shall provide a narrative describing steps they have taken to secure an equity investment, and describing issues inhibiting investor interest in the project. The narrative must identify potential investors proffering unacceptable offers, and why specific terms and conditions were detrimental to the project's feasibility. CTCAC reserves the right to corroborate presented facts, and may request additional information from the applicant and/or the potential investor or syndicator. CTCAC shall determine whether an applicant has met the federal good faith effort test. Any misrepresentations by an applicant shall draw maximum penalties under program regulations.~~

~~(2) CTCAC may award TCAP or Section 1602 Funds to projects as described in paragraph (d)(2) at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already subject to related requirements, such as paying prevailing wages, or where federal funds are a funding source in the project.~~

(3) No cash award amount shall exceed $18.25 million plus an award amount associated with any reserved State credits.

(d) Application and Award Processes.

(1) 2010 Credit Ceiling reservation recipients.

(A) Successful first round competitors for 2010 Credit Ceiling awards shall have 90 days, consistent with Section 10325(c)(8), to produce a letter of intent (LOI) from an equity partner. If federal legislation extending exchange authority to 2010, is not signed into law by September 7, 2010 then paragraph (B) below is not in effect and first round reservation recipients shall not have access to tax credit exchange resources.

If, after approximately 45 days or by a date to be announced by CTCAC, and a good faith effort as described in paragraph (c)(1) above, successful 2010 Credit Ceiling reservation recipients have failed to identify an equity partner, the project sponsor may apply for a cash in lieu of credits award from CTCAC. All projects applying for cash in lieu of credits shall submit materials requested by CTCAC, including evidence that the project would be financially feasible with the requested amount of cash in lieu of credits. Special Needs, Homeless Assistance, or SRO projects applying for cash in lieu of credits must return their federal and any State credit reservation, and CTCAC shall exchange as much returned federal credit to the Secretary of the Treasury as necessary to obtain the award amounts described in Section (c)(1) as part of CTCAC's grant election amount. CTCAC shall award this federal exchange cash to the non-competing applicant Special Needs, Homeless Assistance, and SRO projects subject to CTCAC confirming the project's feasibility. However, to qualify for a non-competitive exchange of federal funds for credits, the project sponsor must have at least five (5) years' experience providing such housing for Special Needs, Homeless Assistance, and/or SRO populations. All other cash in lieu of credits applicants shall be placed in a competition and scored as described in subsection (1)(C) below for an award of cash in lieu of credits. No more than 20% of the 2010 federal credit ceiling shall be available for exchange in the first round. Any remaining balance of returned credits shall be made available to second round Credit Ceiling applicants.

(B) Successful second-round 2010 Credit Ceiling reservation recipients shall also have 90 days to produce an LOI consistent with Section 10325(c)(8). If, after approximately 45 days, or by a date to be announced by CTCAC, and a good faith effort as described in paragraph (c)(1) above, successful 2010 Credit Ceiling reservation recipients have failed to identify an equity partner, the project sponsor may apply for a cash in lieu of credits award from CTCAC. All projects applying for cash in lieu of credits shall submit materials requested by CTCAC, including evidence that the project would be financially feasible with the requested amount of cash in lieu of credits. Special Needs, Homeless Assistance, or SRO projects applying for cash in lieu of credits must return their federal and any State credit reservation, and CTCAC shall exchange as much returned federal credit to the Secretary of the Treasury as necessary to obtain the award amounts described in Section (c)(1) as part of CTCAC's grant election amount. CTCAC shall award this federal exchange cash to the non-competing

~~applicant Special Needs, Homeless Assistance, and SRO projects subject to CTCAC confirming the project's feasibility. However, to qualify for a non-competitive exchange of federal funds for credits, the project sponsor must have at least five (5) years' experience providing such housing for Special Needs, Homeless Assistance, and/or SRO populations. All other cash in lieu of credits applicants shall be placed in a competition and scored as described in subsection (1)(C) below for an award of cash in lieu of credits. No more than the balance of 40 percent of 2010 federal credit ceiling remaining un-exchanged after the first round shall be available for exchange in the second round. Any remaining balance of returned credits shall be made available to waiting list Credit Ceiling applicants.~~

~~(C) Competitors shall be scored and ranked competitively based upon the following criteria alone. All scoring information shall be drawn from the originally scored tax credit application with supplemental information as requested by CTCAC.~~

~~(i) Project type (20 points). Projects shall earn points as no more than one project type as follows:~~

- ~~Rural projects meeting the requirements of Section 10315(c) 20 points~~
- ~~At-risk projects meeting the requirements of Section 10325(g)(5) 20 points~~
- ~~All others 0 points~~

~~(ii) Cash award requested (100 points). Projects shall earn points based upon the cash requested in inverse relation to total project costs. Lesser cash requests relative to total project costs will garner higher scores. Where "N" equals the percentage the cash request represents relative to total project costs, points = 100-N. (Example: Where the cash request N equals 60% of the project cost, the applicant's score would be 40.) Rehabilitation projects, except for At-Risk projects, may access these points only if the per-unit rehabilitation hard costs equal $40,000 or greater.~~

~~(iii) Average Affordability (100 points). Projects shall earn 5 points for every one percent (1%) that the project's average affordability would be below 60 percent (60%) of Area Median Income (AMI). While CTCAC's Regulatory Agreement shall regulate specific numbers of units at income levels specified in the application, this scoring factor would be based upon a calculation determining the project's average overall affordability. (Example: A project with an average affordability of 50% of AMI would garner the percentage below 60% (10) times 5 points, or 50 points). An average affordability of 40% of AMI would garner the full 100 points. Units with project-based rental or operating subsidy such as Section 8, HUD Project Rental Assistance Contracts (PRAC), Mental Health Services Act (MHSA), McKinney Act subsidies, or CTCAC-approved locally-funded operating subsidy programs shall be assumed~~

~~to serve households at 40 percent (40%) of AMI, unless regulated to a lower level.~~

~~(2) Executive Director's discretion to award remaining funds.~~

~~If, following the award processes described in paragraphs (d)(1) above, CTCAC has a surplus of either federal funds or Credit Ceiling credits, the Executive Director may take extraordinary measures to assure that all funds and credits are awarded and allocated by year-end. Such extraordinary measures include:~~

~~(A) If Credit Ceiling credits remain with insufficient time for a waiting list award pursuant to Section 10325(c)(h), the Executive Director may declare a project possessing a Credit Ceiling reservation a Difficult to Develop Area (DDA) project and deliver additional federal Credit Ceiling credits in lieu of the reserved California State Credits. The Executive Director must attempt to minimize project disruption by first conferring with the project sponsor, and must also report such an action to the Committee at its next convened meeting.~~

~~(B) (i) If earlier-awarded Section 1602 funds are recaptured or returned, the Executive Director may substitute those returned Section 1602 funds for another project's awarded TCAP funds.~~

~~(ii) Or, CTCAC may award any returned Section 1602 funds to eligible 2010 projects seeking an exchange and able to meet the earlier required federal timelines.~~

~~(C) The Committee may award available TCAP funds to any eligible 2007, 2008, or 2009 project with an MHP, SHP, Homeless Youth, or TOD take-out financing commitment from HCD that:~~

~~(i) has yet to commence construction or has already received partial TCAP funding, and~~

~~(ii) in CTCAC's judgment can meet federal TCAP timelines.~~

~~Or, CTCAC may award available TCAP funds to projects previously awarded both TCAP and Section 1602 funds by reducing the Section 1602 portion of the award by an equal amount.~~

~~(D) Recaptured or returned TCAP funds shall be re-lent as 55-year loans, with an executed Promissory Note and secured by a Deed of Trust. Otherwise, the terms described in sub-section (e) apply. Notwithstanding the provisions of Section 10323(b)(3) in effect at the time of award, any TCAP loans awarded under the PMIB provisions shall not be repayable by financing from the State Department of Housing and Community Development (HCD). Rather, those loans shall be converted to permanent loans of 55 years in duration, with the HCD-required income targeting, operating and replacement reserves, any special needs population targeting, and other requirements and limitations. The asset management fee structure at Section 10323(f)(2) shall supersede HCD's annual fee/interest payment, and TCAC may impose a three percent (3%) simple interest rate upon the project sponsor's request. The project must~~

continue to comply with CTAC's other underwriting standards as described in Section 10327.

(e) Grant Terms.

The project owner receiving any cash award from CTCAC shall agree to the grant terms described below as applicable.

(1) All funds must be expended by December 31, 2012.

(2) All grants shall be underwritten in advance using the applicable financial feasibility standards listed within Section 10327.

(3) The project owner must execute a 55-year regulatory agreement secured by a recorded Deed of Trust as required by CTCAC. In addition, the project owner must execute a recorded Regulatory Agreement provided by CTCAC. TCAC may agree to an assumption by a proposed new property owner.

(4) The CTCAC Deed of Trust shall be recorded in a subordinate position relative to the principal private lender's Deed of Trust, as well as those of public lenders, unless the CTCAC grant amount is more than twice the amount lent by the public lender.

(5) Recipients of cash grants in lieu of tax credits shall enter into a binding agreement establishing CTCAC's right of first refusal to purchase the project for its fair market value at the time the owner chooses to sell the project, except for a sale under IRC §42(i)(7). This right is assignable by CTCAC to a third party of its choice, and shall be in effect for the duration of the Regulatory Agreement.

(6) CTCAC shall disburse grants provided in lieu of tax credit equity on the following schedule with up to two draws per tranche: Up to 40 percent (40%) at and following construction loan closing as justified by costs; up to 35 percent (35%) at project completion as evidenced by a temporary Certificate of Occupancy for the entire project; and up to 25 percent (25%) minus a hold-back at 90 percent (90%) occupancy by eligible households as certified by an independent third party. CTCAC shall hold back up to $300,000 to be payable upon CTCAC approval of final cost certification and other placed-in-service materials. CTCAC may accelerate or depart from this described disbursement schedule at the sole discretion of the Executive Director and as expressed under the terms of a tri-party agreement with other lenders and the project sponsor.

Finally, at the sole discretion of the Executive Director, CTCAC may accelerate payment in order to conform with federal expenditure deadlines.

(7) All executed grant agreements and regulatory agreements shall reflect recapture provisions for defaults on the regulatory agreement. The terms of recapture shall be proportionate to the scale and duration of the uncorrected noncompliance relative to a 15-year initial compliance period, consistent with guidance provided by the U.S. Department of Treasury for cash in lieu awards. If, following an ARRA application and award, a sponsor syndicates and sells a portion of their ownership interest to a partner seeking tax losses associated with the project, and such syndication was not set forth in the original ARRA application, nine-tenths of the gross proceeds of that sale shall be remitted to CTCAC as recaptured ARRA funds. Exceptions to this requirement may be granted by the

~~CTCAC Executive Director where a sponsor demonstrates that such syndication proceeds would either (i) capitalize a services reserve for special needs projects, or (ii) pay deferred developer fee costs.~~

(a) General. The American Recovery and Reinvestment Act of 2009 was administered by CTCAC under regulations adopted October 22, 2009. Awards made under those prior regulations remain bound by the terms of related executed funding agreements, and regulatory agreements.

~~(f)~~(b) Fees.

(1) No additional processing fees or performance deposits shall be collected from ARRA funding recipients beyond tax credit fees collected pursuant to Section 10335. Such tax credit fees must be paid by all ARRA fund recipients, including an allocation fee, even where an allocation of credits is not ultimately made. CTCAC may charge an ARRA funds recipient an asset management fee for such services. This fee may be in the form of an annual charge during the project's regulatory term, or may be charged at or about project completion. In the event CTCAC contracts out for asset management services, the contracted entity may charge the sponsor an asset management fee directly.(2) Asset management fees shall be $5,000 annually for projects of 30 units or fewer, and up to $7,500 annually for projects of 31 to 75 units. Projects containing more than 75 units, will pay up to $7,500 as a basic asset management fee annually, as well $40 per unit of every unit over 75 units. Project owners may pay a one-time asset management fee equal to the total fee over the 15-year period, or a partial one-time upfront fee. If making a partial payment, the remaining annual payments shall be discounted accordingly to assure an equal total payment to a pure annual payment schedule. Where another State or federal housing entity is a project funding source, project sponsors may propose a plan to CTCAC wherein that source shares asset management information with CTCAC. Sponsors may also propose a plan to CTCAC where a syndicator or investor providing professional asset management services to the project shares asset management information with CTCAC. If CTCAC determines that those asset management functions meet federal requirements, CTCAC may agree to accept that information and discount or forgo a fee altogether.

Reason:

The stricken provisions were adopted by the Committee in October 2010 in anticipation of then-pending federal legislation that would have, in essence, provided an additional year of the federal credit exchange program (Section 1602 of ARRA). That federal legislation was never enacted, and the current regulation provisions were never operational. As a result, the current inoperative text is confusing, leading some tax credit sponsors to inappropriately hearken to its provision when administering a straight tax credit project.

TCAC proposes deleting the inoperative provisions, except for existing subsection (f) listing the fee structure that continues to govern the ARRA funded projects. New language would refernce the earlier regulations that were the basis for existing loan and grant agreements, and recorded regulatory agreements.

Section 10325(c)
Proposed Change:

(c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle except where a pre-existing project-based Section 8 contract is in effect, shall be scored proportionately in the site amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site. Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations**.** Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.

~~Effective in the second round of 2010, the~~ <u>The</u> number of awards received by individuals, entities, affiliates, and related entities is limited to no more than four (4) per competitive round. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint-control over an entity, having significant influence over an entity, or participating as key management of an entity. Related entity disclosure is required at the time of application. <u>Furthermore, no application submitted by a sponsor may benefit competitively by the withdrawal of another, higher-ranked application submitted by the same sponsor or related parties as described above.</u>

Reason:

This change would discontinue the practice of sponsors submitting multiple applications and then, upon learning or surmising the competitive outcomes, withdrawing a higher-scoring application in favor of one of their lower-scoring applications. While the motivations for a withdrawal may vary, TCAC has witnessed strategic withdrawals of higher scoring applications by sponsors in order to advance a lower-scoring application. This outcome is at odds with the competitive scoring system's purpose by allowing a project meeting fewer of the program's policy goals (as reflected in the program scoring) to advance over one meeting more goals.

Under the new rule, if a sponsor withdraws a superior application and another application submitted by the same sponsor becomes fundable as a result, TCAC would skip that second project and fund the next highest scoring application. If no other application remained after the second application, then TCAC would not make another award and would use the unawarded credits in the subsequent round or place them in the Supplemental Set Aside.

The proposed change is meant to discontinue the practice of developers strategically submitting multiple applications hoping that circumstances permit their selecting which of their projects succeeds in the competition. Typically, developers withdraw their higher scoring application

knowing it has a better prospect for winning in a subsequent competitive round. The result of this practice is that TCAC provides credits to the weaker scoring projects due to the strategic withdrawal of stronger applications.

Section 10325(c)(1)(C)
Proposed Change:

(C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior existing public ~~direct federal~~ debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction~~,~~. Outstanding principal balances shall not include any accrued interest on assumed loans.

In addition, public funds include funds from a local community foundation, 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, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be scored as public funds under this scoring factor. Current land and building values for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance must be supported by an independent, third party appraisal, conducted within one year of the tax credit application, and otherwise consistent with the guidelines in Section ~~10322(i)(4)(A)~~ 10322(h)(9). Building values shall be considered only if those existing buildings are to be retained for the project, and the appraised value is not to include off-site improvements. All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded.

To receive points under this subsection for loans, those loans must be "soft" loans, having terms (or remaining terms) in excess of 15 years, and below market interest rates~~,~~ and interest accruals, or residual receipts payments ~~or other preferred terms~~ for at least the first fifteen years of their terms. The maximum below-market interest rate allowed for scoring purposes shall be four percent (4%) simple. RHS Section 514 or 515 financing shall be considered soft debt for scoring purposes in spite of a debt service requirement. Further, for points to be awarded under this subsection, 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.

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 ~~directly benefit the project only, such as~~ consist solely of utility connections, and ~~or~~ curbs, gutters, and sidewalks immediately bordering the property.

~~Similarly, if~~ Only the principal balances of ~~any~~ prior publicly funded or subsidized loans ~~are~~ to be assumed in the course of a proposed acquisition~~,~~ shall be scored competitively. Accrued interest shall not be considered in scoring assumed public debt. Public funds points shall only be awarded for assumed principal balances only upon documented ~~verification of~~ approval of the loan assumption or other required procedure by the public agency holding the promissory note. ~~initially approving the subsidy will be needed to satisfy the commitment requirements~~.

Private "tranche B" loans underwritten based upon rent differentials attributable to rent subsidies shall also be considered public funding for purposes of the final tiebreaker. The amount of private loan counted for scoring purposes would be the lesser of the private lender commitment amount, or an amount 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 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects) from the anticipated contract rent income documented by the subsidy source.

Reason:

The proposed changes would (a) eliminate accrued interest on assumed public funding from competitive consideration, clarify that publicly-guaranteed private loans do not count competitively as public funds, (b) clarify that scoring public land donations require a current appraisal, (c) clarify which publicly funded off-site improvements would count competitively, (d) limit competitively-scored assumed debt to principal balances only, and (e) limit competitive public fund interest rates to 4% simple interest.

Exclusion of Accrued Interest from Public Funds Scoring

Existing regulation language refers to "outstanding principal balances" of "prior" public agency debt or debt that "has been or will be assumed." However, TCAC has competitively counted both principal and accrued interest up to the appraised as-is value of the property. Limiting the competitive weight of assumed public funding by the as-is restricted value may competitively punish the most deeply income-targeted properties since an income appraisal method would lower the property's value. A better alternative to this policy inequity would be to competitively honor current public funding principal balances, regardless of the as-is value of the property. In this way, projects with larger original public commitments would likely be advantaged competitively relative to smaller original subsidy amounts.

By considering only principal amounts and excluding accrued interest, TCAC would also avoid competitively punishing public funding sources charging more modest interest rates, or no interest altogether. By excluding interest from the scoring, TCAC would avoid rewarding very long predevelopment periods, during which significant interest accrues, over projects with shorter predevelopment periods.

Finally, project sponsors may continue to include accrued interest in project development costs along with displaying the public funding source. The proposed change would simply discontinue counting that interest as a competitive advantage.

Public Loan Guarantees not Public Funds

TCAC has seen some confusion on this point over the years, and new language would clearly state that private loans with public guarantees are not public funds for scoring purposes. TCAC sees no compelling reason to competitively reward such funding when comparing two otherwise identical projects. The project with the guarantee would already gain a competitive advantage if it permits the sponsor to lower its basis request or credit amount.

Public Land Donations:

Proposed language clarifies that appraisals are required for public land contributions to be counted for competitive scoring. An additional change aligns a regulatory citation to conform with new appraisal language at Section 10322(h)(9).

Publicly-Funded Off-Sites:

Existing regulations score publicly funded off-site improvements to those that "directly benefit the project only, such as utility connections or sidewalks bordering the property." This language has proven to be ambiguous and confusing to applicants. TCAC routinely reduces tiebreaker scores which are based, in part, upon the provisions in this section of the regulations. Reductions are generally necessary due to uncertainty regarding the "directly benefit" test.

The proposed language would eliminate the ambiguity by listing the off-site improvements TCAC would count in scoring public funding. The revision would limit the relevant off-sites to the two items currently listed as examples (utility connections and sidewalks) as well as two new items: curbs and gutters.

In addition, the regulation would specify that the off-sites must be immediately bordering the property. This proximity language would apply to both utility connections, and to curbs, gutters and sidewalks. TCAC has received applications attempting to receive a scoring benefit for long utility runs tying into distant utility trunk lines. TCAC does not intend to provide a competitive advantage to projects that are remote from existing utilities, nor to projects providing trunk utility lines that could accommodate future local growth and utility tie-ins. While localities may elect to finance such public infrastructure through project financing, TCAC will not view such projects as more competitive than projects developed near existing infrastructure.

Assumed Principal Balances:

While existing regulation language references assumed "principal balances," proposed language would clarify that TCAC would not score accrued interest on public financing for competitive advantage. Current language could perversely reward projects with existing public financing originated at a higher interest rate, relative to projects funded with low- or no-interest public financing.

In an attempt to accurately quantify and score the value of existing public financing, TCAC has limited what it counts competitively to that which can be supported by an appraisal. As noted earlier, the as-is appraisal methodology could paradoxically punish more deeply-targeted projects, especially those housing special needs and homeless populations. With the proposed change, TCAC would no longer tie the existing public debt value to the as-is appraisal. Rather, the outstanding principal balance would receive full competitive credit, regardless of the property's as-is, perhaps as-regulated, value.

Maximum Interest Rates for Public Loans:

The proposed regulation changes would not alter the condition that scored public loans must have "below market interest rates." For this phrase to have meaning, TCAC proposes to establish four percent (4%) simple interest as the maximum rate under which a public loan would be scored competitively.

TCAC has recently been asked its scoring policy for public loans with interest rates at eight percent (8%) simple. TCAC has responded that such a high interest rate conflicts with the intent of the "below market interest rates" clause. The proposed changes eliminate the confusing language regarding "other preferred terms," and establishing 4% simple interest as meeting the below market interest rate test. A 4% maximum would accommodate the vast majority of public loans TCAC sees within tax credit projects, while meeting a reasonable person's standard for "below market." Public loan interest rates in excess of 4% begin to raise concerns regarding accruing debt on the project, and a borrower's ultimate ability to repay that loan.

Section 10325(c)(2)
Proposed Change:

(2) General Partner/Management Company Characteristics.

No one general partner, party having any fiduciary responsibilities, or related parties will be awarded more than 15% of the Federal Credit Ceiling, calculated as of February first during any calendar year unless imposing this requirement would prevent allocation of all of the available Credit Ceiling.

(A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, the applicant must meet the following conditions:

(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 (which must be effective no more than one year prior to the application deadline) 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. 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.

~~1-2 projects in service under 3 years 1 point/over 3 years 2 points~~
~~3-6 projects in service under 3 years 3 points/over 3 years 4 points~~
~~7 or more projects in service under 3 years 5 points/over 3 years 6 points~~

3-6 projects in service less than 3 years	3 points
3-6 projects in service more than 3 years	4 points
7 or more projects in service less than 3 years	5 points
7 or more projects in service more than 3 years	6 points

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

~~2 projects in service under 3 years 1 point/over 3 years 2 points~~
~~3 projects in service under 3 years 3 points/over 3 years 4 points~~
~~4 or more projects in service under 3 years 5 points/over 3 years 6 points~~

3 projects in service less than 3 years	3 points
3 projects in service more than 3 years	4 points
4 or more projects in service less than 3 years	5 points
4 or more projects in service more than 3 years	6 points

(ii) The applicant project's general partner, sponsor, developer, parent company, and principals must submit to CTCAC a list of all rental projects currently operating under a tax credit regulatory agreement. Applicants must meet the compliance standards below for the three years preceding the application due date.

- No more than 10% of the total portfolio has Level 3 deficiencies under the Uniform Physical Conditions Standards established by HUD;
- No more than 10% of the total have findings of household income above income limit upon initial occupancy per property or; and
- No more than 10% of total portfolio have findings of gross rent exceeding the tax credit maximum limits per bedroom size per property or.

All projects of the above-listed entities will be considered when determining the number of noncompliance findings. TCAC shall deduct one (1) point from the total General Partner Experience score for each categorical standard above that is not met.

General partners with fewer than two (2) active California Low Income Housing Tax Credit projects, and general partner's for projects applying through the Nonprofit or Special Needs set-aside with no active California tax credit projects, shall partner with a bona-fide management company currently operating tax credit projects in California and which maintains a minimum combined total of 2 points for a minimum period of 2 years.

In applying for and receiving points in this category, applicants assure that the property shall be owned by entities with equal experience scores for the entire 15-year federal compliance period.

(B) Management Company experience. To receive points under this subsection, the property management company must meet the following conditions:

~~2-5 projects in service under 3 years 0.5 point/over 3 years 1 point~~
~~6-10 projects in service under 3 years 1.5 points/over 3 years 2 points~~
~~11 or more projects in service under 3 years 2.5 points/over 3 years 3 points~~

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

~~1 projects in service under 3 years 0.5 point/over 3 years 1 point~~
~~2-3 projects in service under 3 years 1.5 points/over 3 years 2 points~~
~~4 or more projects in service under 3 years 2.5 points/over 3 years 3 points~~

(i)

6-10 projects in service under 3 years	1.5 points
6-10 projects in service over 3 years	2 points
11 or more projects in service under 3 years	2.5 points
11 or more projects in service over 3 years	3 points

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

2-3 projects in service under 3 years	1.5 points
2-3 projects in service over 3 years	2 points
4 or more projects in service under 3 years	2.5 points
4 or more projects in service over 3 years	3 points

(ii) The property management company must meet the limitations on findings of noncompliance for the three years preceding the application due date or the period of time which they have projects in service less than three years.

- No more than 10% of the total portfolio has Level 3 deficiencies under the Uniform Physical Conditions Standards established by HUD;
- No more than 10% of the total portfolio has findings of household income above income limit upon initial occupancy; and
- No more than 10% of the total portfolio has findings of gross rent exceeding the tax credit maximum limits per bedroom size.

All projects of the above-listed entities will be considered when determining the number of noncompliance findings. CTCAC shall deduct one (1) point from the total Management Company Experience score for each categorical standard above that is not met.

Management Companies with fewer than two (2) active projects in California and management companies for projects applying through the Nonprofit or Special Needs set-aside with no active Low Income Housing Tax Credit projects in California, shall partner with a bona-fide management company currently operating tax credit projects in California and which maintains a minimum combined total of 2 points for a minimum period of 2 years

In applying for and receiving points in this category, applicants assure that the property shall be managed by entities with equal experience scores for the entire 15-year federal compliance period.

Reason:

TCAC proposes amending how it awards both general partner and property management points in the competitive scoring system. Currently general partner and management points are based upon the applicant's or management company's number of existing projects and does not account for the relevant compliance record. The proposed changes would evaluate both the relevant project quantity and past performance quality.

Under the new system the general partner and the management company would still be evaluated on the quantity of projects within their portfolio. In addition, TCAC would evaluate and score them on their portfolio's compliance in three (3) critical areas. Project general partners and management companies would begin to lose points if more than ten percent (10%) of their portfolio had findings regarding (1) serious physical deficiencies, (2) ineligible households, or (3) excessive rents. The 10% noncompliance threshold for IRC Section 42 compliance is a reasonable performance indicator and allows for unusual circumstances before competitive penalties occur. TCAC tested the 10% standard through an in-house review of randomly-selected general partners and management companies. Eighty-five percent (85%) of 45 randomly selected general partners and eighty percent (80%) of 50 randomly selected management companies currently would warrant no penalty points under the proposed system.

The proposed one point deduction per failed requirement (up to a maximum of three points each for the general partner and management company scoring) would reduce the number of entities taking on additional projects while operating with significant noncompliance findings. The three-year review period would sync with TCAC's monitoring schedule, and recognize if more recent improvement had been maintained.

The term "Level 3 deficiencies" is considered a "severe" maintenance violation where health and/or safety living conditions are compromised. Examples include non-functioning smoke detectors, missing fire extinguishers, exposed wiring, water leaks on or near electrical equipment, and failed flooring.

New language would require general partners and management companies currently operating fewer than two Low Income Housing Tax Credit projects to partner with a bona-fide management company currently operating in California and maintaining at least a two competitive point status. Recently TCAC has experience developers and property management entities that are new to California's Low Income Housing Tax Credit (LIHTC) program. These parties frequently have little knowledge of California's market dynamics and program practices. As a result, projects operated and managed by less experienced parties tend to have more compliance deficiencies. TCAC has found that partnering with parties who are more experienced in California leads to better project operation and compliance with TCAC requirements.

Finally, new language would require that properties be owned and operated by parties with the same experience as scored in the initial reservation application. During the 15-year compliance period any new general partner or management company would have the

same experience and score as the outgoing parties. This would assure ongoing quality operation for the tax credit property.

Section 10325(c)(3)(R)
Proposed Change:

(3) 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) 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 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;

(C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed;

(D) removal or withdrawal under threat of removal as general partner from a housing tax credit partnership;

(E) failure to provide physical amenities or services or any other item for which points were obtained (unless funding for a specific services program promised is no longer available);

(F) failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California;

(G) repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;

(H) failure to perform a tenant income recertification upon the first anniversary following the initial move-in certification for all one-hundred percent (100%) tax credit properties, or failure to conduct ongoing annual income certifications in properties with non-tax-credit units;

(I) material misrepresentation of any fact or requirement in an application;

(J) failure of a building to continuously meet the terms, conditions, and requirements received at its certification as being suitable for occupancy in compliance with state or local law, unless it is demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside the control of the owner;

(K) failure to submit a copy of the owner's completed 8609 showing the first year filing;

(L) failure to promptly notify CTCAC of a property management change or changing to a management company of lesser experience contrary to Section 10325(c)(2)(B);

(M) failure to properly notify CTCAC and obtain prior approval of general or limited partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit;

(N) certification of site amenities, distances or service amenities that were, in the Executive Director's sole discretion, inaccurate or misleading;

(O) falsifying documentation of household income or any other materials to fraudulently represent compliance with IRC Section 42; or

(P) failure of American Recovery and Reinvestment Act (ARRA) funded projects to comply with Section 42, CTCAC regulations, or other applicable program requirements;

(Q) failure to provide required documentation of third party verification of sustainable and energy efficient features~~.~~;

(R) failure to correct serious noncompliance, including incorrect rents or income qualification, incorrect utility allowance, or other overcharging of residents,

Negative points given to general partners, co-developers, management agents, consultants, or any other member or agent of the Development Team may remain in effect for up to two calendar years, but in no event will they be in effect for less than one funding round. Furthermore, they may be assigned to one or more Development Team members, but do not necessarily apply to the entire Team. Negative points assigned by the Executive Director may be appealed to the Committee under appeal procedures enumerated in Section 10330.

Reason:

The proposed addition would clearly state that material compliance violations that are not corrected in a timely fashion could earn the project development team negative points in future competitions. This enforcement mechanism may be available under existing provision (G), but the proposed language would add clarity to the prospect.

Section 10325(c)(5)(A)
Proposed Change:

(4) Amenities beyond those required as additional thresholds Maximum 25 points

For site amenities and service amenities combined.

(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 for certain transit amenities described in paragraph (A)(1) and (A)(5) below. 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 crossings, regional parks, golf courses, or any other feature that significantly disrupts the established street grid between the development site and the amenity. ~~determined by the Committee but must not include physical barriers.~~ 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. 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 100 feet to account for close-in parking,

No more than 15 points will be awarded 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. Amenities may include:

Reason:

The first proposed change adds a conforming reference to Section 10325(c)(5)(A)(1) and (5)as an exception to the "in-place" requirement for amenities. The reference is to an existing exception in paragraph (5) for public schools under construction at the time of application, and to a new proposed exception in paragraph (1) described in detail below.

The current language does not adequately describe how distances to amenities are measured for competitive scoring purposes. The proposed language reflects past TCAC practice in scoring applications, while also specifically addressing less common questions regarding unusually shaped development sites and amenities within larger commercial complexes. Measuring distances using a straight line methodology is methodologically simple and meets the intent of the site amenity scoring: A proposed project's residents' nearness to specified existing amenities. Additional language clarifies what is meant by the existing term "physical barriers" by providing examples and an elaboration. The intent behind the clarifications is to assure that residents have ready practical access to important nearby services.

The shorter, higher-scoring distances are meant to accommodate walking access to the amenity. Any physical barriers that inhibit walkability, or even short drives, mitigate against the public policy objective of short-distance access. Over the years, TCAC has become involved in protracted discussions with applicants regarding the intent behind the "physical barrier" provision. The idea behind that long-standing provision is that the straight-line measuring convenience is inappropriate where the actual travel path is inordinately circuitous due to

intervening physical barriers. The most common example is an intervening freeway where the nearest overpass (auto or pedestrian) requires a significant deviation from the straight-line path.

Proposed language would specify that developments with long entry drives may not strike the radius arc from the nearest end of that long drive. Rather, the radius line must start at the nearest corner of the central portion of the lot, not including the drive. TCAC has seen two extreme cases where very long drives access residential sites that are well off the street nearest the project. The distance down the entry drive adds significantly to the walking travel time to the amenity, and such projects ought not to score equally to sites that are not set back from the street in such an extreme fashion.

Finally, proposed language clarifies that amenities within larger shopping complexes or commercial strips require measuring to the amenity itself, not the larger complex or strip. An extreme example would be a grocery store at the far end of a very large shopping center relative to the proposed residential development. In such cases TCAC would score the application based upon the distance from the proposed development to the nearest corner of the amenity structure itself, not the larger complex site's boundary line. TCAC has encountered instances where the distance measurement became difficult because no clear boundary existed between the target amenity's (for example, a grocery store) parking area, and the parking area of neighboring stores in the larger shopping complex.

The proposed new language would allow an additional 100 feet for parking in such instances. The parking accommodation is an attempt to avoid imposing a stricter requirement upon shopping complex or commercial strip amenities by measuring to the exterior wall of the amenity in such cases. Rather, TCAC proposes a standard 100 foot accommodation for such projects. So, a shopping complex amenity may be within one-quarter of a mile, plus 100 feet, of the project site.

Section 10325(c)(5)(A)(1)
Proposed Change:

1. Transit Amenities

   The project is located ~~part of a transit-oriented development strategy~~ where there is a transit station, rail station, commuter rail station, or bus station, or public bus stop within 1/4 mile from the site with service at least every 30 minutes during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday, and the project's density will exceed 25 units per acre. "Transit station" means a rail or light-rail station, ferry terminal, Bus Hub, or Bus Transfer Station within 1/4 mile of the proposed residential development. This includes a planned transit station otherwise meeting this definition, whose construction is programmed into a Regional or State Transportation Improvement Program to be completed prior to the scheduled completion and occupancy of the proposed residential development. 7 points

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

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

The site is located within 1/4 mile of a regular public bus stop, or rapid transit system stop. (For Rural set-aside projects, full points may be awarded where van or dial-a-ride service is provided to tenants, if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided) 4 points

The site is located within 1/3 mile of a regular public bus stop or rapid transit system stop 3 points

A private bus or transit system providing service to residents may be substituted for a public system if it (a) meets the relevant headway and distance criteria, and (b) if service is provided free to the residents. Such private systems must receive approval from the CTCAC Executive Director prior to the application deadline. Multiple bus lines may be aggregated for the above points, only if multiple lines from the designated stop travel to an employment center. Such aggregation must be demonstrated to, and receive prior approval from, the CTCAC Executive Director in order to receive competitive points.

Reason:

The first proposed change deletes reference to a transit oriented development strategy. As a practical matter, TCAC has not been receiving meaningful information in response to this requirement. The scoring driver has been proximity to frequent transit service during key commute hours. The proposed change distills the language down to this essential scoring feature, along with an existing minimal density requirement.

The second change would clarify the TCAC scoring standard of service being Monday through Friday. Again, the intent of the regulation is to reward nearby moderately-frequent transit service during core commute hours. The frequency measure was not meant to apply throughout weekends as well.

Finally, proposed language would acknowledge transit-oriented developments' access to near-term planned transit station. Failing to acknowledge transit integrally planned into the residential development does not reflect the public policy intent of TCAC's transit scoring. The proposed language would permit TCAC to acknowledge, and score accordingly, regional or State transit plans that would deliver intensive transit services to the proposed project's residents. The specific "transit station" language was drawn from the State Department of Housing and Community Development's (HCD's) Transit Oriented Development (TOD) program definition.

The proposed transit station completion date also reflects HCD's standard, except that HCD permits the transit completion date to be up to five years beyond the HCD TOD application date. The proposed TCAC language does not contain that provision in part because competitive tax credit applications are due subsequent to HCD's application and award process, and because the proposed accommodation is a departure from TCAC's longstanding standard that transit amenities must be in place by the TCAC application submittal.

Section 10325(c)(5)(A)(4)
Proposed Change:

4. The site is within 1/4 mile of a full scale grocery store/supermarket of at least 25,000 gross interior square feet where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural set-aside projects). A very large multi-purpose store containing a grocery section may garner these points if the application contains interior measurements and explanations of the grocery portion of that multi-purpose store 5 points

   or within 1/2 mile (1 mile for Rural set-aside projects) 4 points
   or within 1.5 miles (3 miles for Rural set-aside projects) 3 points

   The site is within 1/4 mile of a neighborhood market of 5,000 gross interior square feet or more where staples, fresh meat, and fresh produce are sold (1/2 mile for Rural Set-aside projects). A large multi-purpose store containing a grocery section may garner these points if the application contains interior measurements and explanations of the grocery portion of that multi-purpose store 4 points

   or within 1/2 mile (1 mile for Rural Set-aside projects) 3 points
   The site is within 1/4 mile of a weekly farmers market certified by the California Federation of Certified Farmers' Markets, and operating at least 5 months in a calendar year 2 points

   or within 1/2 mile 1 point

Reason:

Through the proposed language TCAC would recognize the size and variety of grocery sections within larger multi-purpose stores such as Target, Wal-Mart, and Costco. The challenge presented by such stores is measuring those portions of the store that count as "grocery." A typical stand-alone grocery store or neighborhood market has a selection of sundries along with food products.

Large, multi-purpose stores have a variety of products that should clearly not count toward the grocery measurement (e.g., furniture, clothing) even though stand-alone groceries and markets may have a small set of these items. TCAC's intent is to count the interior space appropriately dedicated to foodstuffs and sundries common to grocery stores or neighborhood markets.

Section 10325(c)(5)(A)(5)
Proposed Change:

5. For a ~~Large Family~~ development wherein at least 30 percent (30%) of the residential 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 set-aside 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

Reason:

The proposed change would make public school amenity points available to a broader array of projects. Changes would remove the Large Family housing type reference, and replace it with a more general reference to projects likely to house high numbers of large families. The change would make school proximity points available to at-risk or special needs housing type projects so long as the property is likely to house large families.

Section 10325(c)(5)(A)(8)
Proposed Change:

8. The site is within 1/2 mile (for Rural set-aside projects, 1 mile) of a qualifying medical clinic with a physician, physician's assistant, or nurse practitioner onsite for a minimum of 40 hours each week, or hospital (not merely a private doctor's office). A qualifying medical clinic must accept Medi-Cal payments or have an equally comprehensive subsidy program for low-income patients. 3 points

   The site is within 1 mile (for Rural set-aside projects, 1.5 miles) of a qualifying medical clinic with a physician, physician's assistant, or nurse practitioner onsite for a minimum of 40 hours each week, or hospital 2 points

Reason:

The proposed language would establish an additional criterion for a medical clinic to receive competitive points. Specifically, new language would require the clinic to accept Medi-Cal payments or to have a subsidy program for low-income individuals. Medi-Cal is California's version of the federal Medicaid program and is designed to help low-income individuals, as well as blind or disabled individuals. While an individual may pay a Share of Cost for some medical visits or treatments, the program provides a deep subsidy that significantly reduces medical and dental costs to low-income individuals. Such individuals include those receiving many forms of public assistance, the medically indigent, and persons with disabilities. The proposed changes would add specificity to the criteria TCAC would use to determine a medical facility beneficial to the resident population.

Section 10325(c)(6)
Proposed Change:

(6) Sustainable building methods. Maximum 10 points

Sustainable building methods points shall be awarded to applicant projects committing to the following applicable standards. 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.

Reason:

The proposed language would clarify that projects involving both new construction and rehabilitation are scored on their adherence to both sets of scoring standards. Two recent applicants sought point only for one of the two standards and lost points accordingly. Under such circumstances, applicants must earn points using both the new construction standards and the rehabilitation standards. For example, the newly constructed portion may earn 10 points by developing to a LEED Gold standard, while the rehabilitated portion may improve energy efficiency by 30 percent. Such an application would earn the full ten (10) points. Conversely, if the same project only sought a rehabilitation energy improvement of 25 percent, earning seven (7) points, the application would receive 7 points for the sustainable building method scoring category.

Combined new construction and rehabilitation projects are uncommon, but typically have similar unit counts for both new construction and rehabilitation. Scoring only one portion of the project on energy efficiency is inconsistent with the TCAC goal of maximizing energy efficiency within all nine percent (9%) tax credit projects. Assigning the lower score in such cases appropriately motivates sponsors to strive for full points in both portions of the project.

Section 10325(c)(7)(B)
Proposed Change:

(B) A project that agrees to have at least ten percent (10%) of its units available for tenants with incomes no greater than thirty percent (30%) of area median, and to restrict the rents on those units accordingly, will receive two points in addition to other points received under this subsection. The 30% units must be spread across bedroom size, starting with the largest bedroom sizes and assuring that at least 10% of the larger bedroom sizes are proposed at 30% of area median income. So long as the applicant meets the 10% standard project-wide, the 10% standard need not be met among the smaller units. The CTCAC Executive Director may correct minor applicant errors in carrying out this largest-to-smallest unit protocol. ~~and measurement will begin using 10% of the largest bedroom size; however, the requirement will not exceed a minimum of 10% of the total number of units in the development.~~ (These points may be obtained by using the 30% section of the matrix.)

Reason:

The proposed language would clarify a somewhat confusion provision within the TCAC regulations. The intent of the existing regulation is to assure that applicants, when assigning the 30 percent (30%) Area Median Income (AMI) units, start by assuring at least 10 percent (10%) of the larger units are designated 30% AMI units. For example, a 100-unit project configured as described below would comply with the 10% test as follows:

Units	Bedroom Size	Units @ 30% AMI
42	Three-bedroom	5
38	Two-bedroom	4
20	One-bedroom	1
100		10

In this example, the applicant correctly met the 10% test in the two larger bedroom sizes, and met the 10% test project-wide (10 out of 100 units). The fact that the one-bedroom units did not meet the 10% test is fine, since the applicant (a) met the test in the larger units, and (b) met it project-wide.

The proposed language is meant to clarify the distribution protocol, not change the policy intent of arraying the 10% among the larger units first.

Section 10325(d)(2)
Proposed Change:

(2) Geographic Areas selection. Tax Credits remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round. The funding order shall be followed by funding the highest scoring application, if any, in each of the ten regions. After each region has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. ~~TCAC shall assure that each geographic area receives funding for at least one project in each funding round to the extent that by funding a project in a geographic area, that area will not have exceeded 125% of the amount available in that funding round for the geographic area~~. Projects will be funded in order of their rank so long as ~~at least 50% of the Tax Credits to be awarded to any single project are available under the applicable Geographical Apportionment, and the 125% limit for the Apportionment as a whole is not exceeded.~~ the region's last award does not cause the region's aggregate award amount to exceed 125 percent (125%) of the amount originally available for that region in that funding round. Credits allocated in excess of the Geographic Apportionments by the application of the 125% ~~and 50% rules~~ rule described above will be drawn from the second round apportionments during the first round, and from the Supplemental Set Aside during the second round. However, all Credits drawn from the Supplemental Set Aside will be deducted from the Apportionment in the subsequent round.

~~When the next highest ranking project does not meet the 50% rule then the Committee will skip over the next highest-ranking project to fund a project that does meet this 50% requirement so long as the score of the funded project(s) is no more than 5 points below that of the first project skipped, so that the full Apportionment can be used. Any unused credit from the geographic areas in the second funding round will be added back into the Supplemental Set-Aside. Tax Credits reserved in all geographic areas shall be counted within the housing type goals.~~

~~(A)~~

To the extent that there is a positive balance remaining in a geographic area after a funding round, such amount will be added to the amount available in that geographic area in the subsequent funding round. Similarly, to the extent that there is a deficit in a geographic area after a funding round, such amount will be

subtracted from the funds available for reservation in the next funding round. Any unused credit from the geographic areas in the second funding round will be added back into the Supplemental Set-Aside. Tax Credits reserved in all geographic areas shall be counted within the housing type goals.

Reason:

The proposed change would (a) eliminate the "50% rule," and (b) discontinue permitting TCAC to fund lower-scoring projects within the geographic apportionments.

The 50% Rule:

The regulations currently employ both a "50% rule" and a "125% rule" when reserving a geographic region's apportionment. The 50% rule requires that the last funded project in the region request no more than twice what remains in the apportionment at the time. In essence, the apportionment must still contain at least 50% of what the pending application is requesting.

In addition, TCAC may reserve credits for a project so long as that reservation would not cause TCAC to award more than 125% of the amount originally available to the region. The 125% rule assures that TCAC avoids excessively forward-committing subsequent round or subsequent year credits to the detriment of subsequent-round competitors.

The current language regarding the two rules is confusing, and the 50% rule does not accomplish a meaningful public purpose. The original intent behind both rules was to assure that TCAC did not over-reserve credits in a manner that left subsequent round competitors with significantly fewer credits than the prior-round competitors. The 125% rule alone accomplishes that objective.

TCAC has seen meritorious projects that fail the 50% rule, while an award to that project would not have violated the 125% rule. The following is a hypothetical example.

Region A's original apportionment:	$2 million
125% rule maximum award amount:	$2.5 million
Available balance prior to last award:	$250,000
Next highest-scoring request amount:	$750,000

The next project's request of $750,000 would violate the 50% rule (the apportionment balance of $250,000 is less than 50% of the request). Yet, this award would not exceed the 125% rule.

Awarding $750,000 to the next highest scoring project would not be excessive according to the 125% principle, and yet is prohibited by the 50% rule.

The Five Point Difference Rule:

Currently, regulations permit TCAC to award small amounts remaining in a regional apportionment by skipping to smaller-request applications. TCAC may skip larger-request projects even when that project receives a score that is up to five points more than the smaller-request project. This practice has caused consternation among program users who have brought the matter up in public venues for years.

The current rule emphasizes exhausting a region's credits over funding higher-quality projects. The result has been to fund projects that fail to achieve one or more of the program's objectives as expressed in the scoring system, while skipping over projects that meet more of those objectives. In addition, this system has awarded credits to very small projects that are much less cost-efficient on a per-unit basis. By eliminating the skipping provision, TCAC would discontinue funding lower scoring projects.

Section 10325(f)(1)(B)
Proposed Change:

(B) a market study as described in Section 10322(h)(9) 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 rents for the same unit types in comparable market rate rental properties;

(ii) The proposed unit value ratio stated as dollars per square foot ($/s.f.) will be no more than the 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 SRO and 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

(v) more than 150 units and senior projects.

<u>The CTCAC Executive Director may waive the value ratio requirement in item (ii) above for acquisition/rehabilitation projects with existing federal or state rental assistance or operating subsidies so long as the following conditions are met: the proposed rents and income targeting levels do not increase by more than five percent (5%) and the project has a vacancy rate of no more than five percent (5%) at the time of the tax credit application. Such waiver requests must be approved prior to the application submission and must include evidence from the project market analyst, including relevant market study pages, as to why the project is unable to meet the requirement.</u>

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.

Reason:

TCAC staff has noted and has received input from several market analysts that existing affordable acquisition/rehabilitation projects occasionally have difficulty meeting the value ratio requirement. This is partly because affordable project unit sizes that were reasonable and allowable at construction are now significantly smaller than market rate comparables. The value-ratio requirement also proves problematic when comparing senior acquisition/rehabilitation projects to family/mixed tenancy market comparables (in cases where there is a scarcity of viable senior market rate comparables). The proposed waiver language would help preserve already-leased up, affordable acquisition/rehabilitation projects in cases

where TCAC deems the value-ratio requirement an unnecessary hurdle. TCAC will continue to hold such waiver recipients to all other market study requirements, however, and will review such projects for conformity with the TCAC/CDLAC Joint Market Study Guidelines.

Section 10325(f)(7)(A),(E),(I) and (L)
Proposed Change:

(7) Minimum construction standards. For preliminary reservation applications, applicants shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note that the following minimum specifications will be incorporated into the project design for all new construction and rehabilitation projects:

(A) Energy Efficiency. All new construction buildings shall be fifteen percent (15%) better than the current Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24) including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy. All rehabilitated buildings shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions, with at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for each building.

(B) CALGreen Compliance. New construction buildings of four (4) or more habitable stories shall meet the mandatory provisions of the CALGreen Code (Title 24, Part 11 of the California Code of Regulations). All rehabilitation projects, including rehabilitation projects of four (4) or more habitable stories, are required to meet the mandatory provisions of the CALGreen Code for any building product or system being replaced as part of the scope of work.

(C) Landscaping. A variety of plant and tree species that require low water use shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs. 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.

(D) Roofs. Roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty.

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

(F) Appliances. ENERGY STAR rated appliances, including but not limited to, refrigerators, dishwashers, and clothes washers shall be installed when such

appliances are provided or replaced within Low-Income Units and/or in on-site community facilities unless waived by the Executive Director.

(G) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.

(H) Water heater. For units with individual tank-type water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger.

(I) Floor coverings. ~~For light and medium traffic areas vinyl or linoleum shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick~~. A hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Carpet complying with U.S. Department of Housing and Urban Development/Federal Housing Administration UM44D, or alternatively, cork, bamboo, linoleum, or hardwood floors shall be provided in all other floor spaces unless this requirement is specifically waived by the Executive Director.

(J) Use of Low Volatile Organic Compound (VOC) paints and stains (Non-flat: 150 g/l or less, Flat: 50 g/l or less) for all interior surfaces where paints and stains are applied.

(K) All fiberglass-based insulation shall meet the Greenguard Emission Criteria for Children and Schools http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSchools.aspx).

(L) Consistent with California State law, projects with 16 or more residential units must have an on-site manager's unit. In addition, for every 80 non-manager units in a project, at least one on-site manager's unit shall also be provided. Special needs projects may demonstrate 24-hour desk staffing in lieu of an on-site manager's unit. Scattered site projects totaling 16 or more units must have at least one on-site 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 units.

Reason:

The proposed change at paragraph (A) conforms the basic threshold energy requirement for new construction projects to the standard applied in scoring such projects at Section 10325(c)(6)(B). Specifically, the energy efficiency threshold analysis would not include lighting, plug load, appliances, or process energy consistent with Title 24 and Energy Pro calculations.

The proposed change at paragraph (E) would permit exterior doors to have fiberglass facing. TCAC has been approached about accepting this exterior door treatment, and has learned of its durability. The proposed language would explicitly permit its use.

The proposed change at paragraph (I) would eliminate specific thickness requirements and simply specify that kitchens and bathrooms should have hard, water resistant, and cleanable floor surfaces. The intent of the existing provision is to avoid carpeting or other non-hard surfaces in areas that tend to get wet. The existing thickness provisions attempted to specify durability standards that may be met with a variety of materials and thicknesses. TCAC's Executive

Director receives many waiver requests for materials such as sheet fiberglass and ceramic tiles that are less thick but very durable.

The new proposed language at paragraph (L) would (a) move the multiple on-site managers unit requirement from Section 10327(g)(1) to the minimum construction standards section, and (b) establish on-site managers unit requirements for scattered sites projects.

The minimum construction standards section of these regulations is the more logical location for a general development requirement associated with on-site managers' units. The current language located at Section 10327(g)(1) addresses minimum operating expenses, which is less germane to the designated manager's units topic.

The proposed scattered sites requirements would establish standards in an area of some confusion at the moment. In the absence of a rule, projects of 100 or more units could operate without an on-site manager at all. For example, 10 sites of 10 units each would not invoke the resident "caretaker" requirement of the California Code of Regulations Section 42 since no "apartment house" would have 16 or more units. Therefore, TCAC proposes that scattered site projects of 16 or more units must have an on-site manager at one of the properties.

Furthermore, TCAC's compliance monitoring experience has been that larger sites lacking a resident manager are more frequently less well-maintained, have more management issues, and more Section 42 compliance violations. Therefore, TCAC also proposes that each location containing 16 or more units have a resident manager's unit. This is consistent with State law, and prudent property management.

Section 10325(g)(3)(B)
Proposed Change:

(3) SRO projects. To be considered Single Room Occupancy (SRO) housing, the application shall meet the following additional threshold requirements:

(A) Average targeted income is no more than forty percent (40%) of the area median income;

(B) 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 maximum size for an SRO unit shall be 500 square feet, while the minimum size shall be 200 square feet. At least 90% of the units in the project must meet these requirements;

Reason:

TCAC regulations Section 10325(g)(2)(E) establishes a 500 square foot minimum for one-bedroom units for senior households, while subsection (3) establishes no similar minimum for single room occupancy (SRO) units. State Health and Safety Code Section 17958.1 establishes 150 square feet for "efficiency units" which "may also have partial kitchen or bathroom facilities. However, TCAC's compliance monitoring experience has been that SROs with excessively small units tend to be older properties and more frequently have ongoing management and maintenance problems. TCAC has recently provided credits to project sponsors to demolish and reconstruct such obsolescent projects in favor of larger efficiency units.

TCAC recognizes that some historic SRO properties contain existing units below the proposed 200 square foot standard. However, TCAC has funded many projects that have consolidated smaller units into larger efficiencies that meet the proposed 200 square foot minimum. Rather than perpetuate inadequate living conditions, better public policy for competitive nine percent (9%) tax credit projects is to require an adequate minimum size standard.

Section 10325(g)(5)(B)
Proposed Change:

(5) At-risk projects. To be considered At-risk housing, the application shall meet the requirements of R & T Code subsection 17058(c)(4), except as further defined in subsection (B)(i) below, as well as the following additional threshold requirements, and other requirements as outlined in this subsection:

(A) Projects are subject to a minimum low-income use period of 55 years; and,

(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 due to market or other conditions;

(ii) the project 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 be currently subject to, or have been subject to, within five years preceding the application deadline, <u>the later of</u> Federal <u>or State</u> 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;

Reason:

The proposed change would clarify that expiring use restrictions associated with Low Income Housing Tax Credits qualifies a project as at-risk, whether those restrictions are invoked by federal or State provisions. As currently written, the regulations do not clearly include within the at-risk category those earlier projects that had longer use restrictions by virtue of receiving State of California low income housing tax credits. The proposed additional language would clarify that the expiration of the longer State-invoked term would qualify a project as at-risk.

Section 10326(g)(4)
Proposed Change:

(4) Financial feasibility. Applicants shall provide the financing plan for the proposed project consistent with Section 10325(f)(5). ~~, and shall demonstrate the project's financial feasibility and viability as a qualified low income housing project throughout the extended use period. A 15-year pro forma of all revenue and expense projections is required, along with a comparable operating budget from a similar existing occupied project, with detailed information as requested on Committee forms. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327 below.~~

Reason:

The proposed change would conform the four percent (4%) tax credit financial feasibility requirement to that of the nine percent (9%) credit program. The following changes result:

(4) Financial feasibility. Applicants shall provide the financing plan for the proposed project, and shall demonstrate the proposed project~~'s~~ is financially feasible and viable ~~feasibility and viability~~ as a qualified low income housing project throughout the extended use period. A fifteen year ~~15-year~~ pro forma of all revenue and expense projections starting as of the planned placed in service date for new construction projects, and as of the rehabilitation date for acquisition/rehabilitation projects, is required~~, along with a comparable operating budget from a similar existing occupied project, with detailed information as requested on Committee forms~~. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327 of these regulations ~~below~~.

The substantive changes would be (a) specifying the fifteen year pro forma's starting date, and (b) deleting the requirement to provide an operating budget from a comparable project. These changes were made to the cross-referenced 9% credit threshold requirements under previous regulation revisions establishing a standard starting date for pro formas and discontinuing a comparable requirement that was neither helpful nor necessary for TCAC's analysis of the project's operating budget.

Section 10326(g)(5)
Proposed Change:

(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)(2)(A) and (B) shall be required to complete training as prescribed by CTCAC prior to a project's placing in service. The following documentation is required to be submitted at the time of application:

Reason:

The proposed change would codify the practice of TCAC requiring and providing training to general partners and management companies who are new to California's tax credit program. The language would establish the competitive scoring minimums at Section 10325(c)(2) as the indicator of documented experience. TCAC's experience is that sponsors and management companies with fewer projects than the minimum scoring standards tend to be the source of more compliance deficiencies. TCAC intends to continue a regular annual training program, as well as a curriculum of special training for specific sponsors and management companies.

Section 10327(c)(5)(A)
Proposed Change:

Exceptions to limits.

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

A twenty percent (20%) increase to the unadjusted eligible basis for a development that is paid for in whole or in part out of public funds and is required by a public awarding body to pay state or federal prevailing wages;

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

A two percent (2%) increase to the unadjusted eligible basis where a day care center is part of the development;
An increase equal to any Local Development Impact Fees as defined in Section 10302 of these regulations if the fees are documented in the application submission by the entities charging such fee.

A two percent (2%) increase to the unadjusted eligible basis where 100% of the units are for special needs populations;

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

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

Reason:

New language would clarify that the prevailing wage exception to the threshold basis limits is available only to projects funded by a public source where that source is requiring the payment of prevailing wages. This language clarifies longstanding TCAC policy.

The proposed language would acknowledge the additional costs associated with an on-site parking structure, as well as the costs associated with podium parking. Both on-site parking structure types add significantly to the cost of development and ought to be reflected in a larger limit to the eligible basis that may be claimed for a project.

The current regulation wording appears to limit the basis increase to podium parking structures only. The proposed language would clearly accommodate similarly costly stand-alone or adjacent on-site parking structures.

An additional clarifying change incorporates a basis limit increase for local development impact fees functionally equivalent to the exception from the threshold basis limit definition at Section 10302(nn). This conforming change complements the change made to Section 10302(nn) above.

Section 10327(c)(7)
Proposed Change:

(7) Acquisition costs. Applications including acquisition and rehabilitation costs for existing improvements shall be underwritten using the lesser amount of the purchase price or the "as is" appraised value of the subject property (as defined in Section 10322(i)(4)(A)) and its existing improvements without consideration of the future use of the property as rent restricted housing except if the property has existing long term rent restrictions that affect the as-is value of the property. The land value shall be based upon an "as if vacant" value as determined by the appraisal methodology described in Section ~~10322(i)(4)~~ 10322(h)(9) of these regulations. If the purchase price is less than the appraised value, the savings shall be prorated between the land and improvements based on the ratio in the appraisal. The Executive Director may waive this requirement where a local governmental entity is purchasing, or providing funds for the purchase of land for more than its appraised value in a designated revitalization area when the local governmental entity has determined that the higher cost is justified.

Reason:

The proposed language would correctly cross-reference to the proposed change at Section 10322(h)(9) above.

Section 10327(g)(1)
Proposed Change:

(g) Underwriting criteria. The following underwriting criteria shall be employed by the Committee in a pro forma analysis of proposed project cash flow to determine the minimum Tax Credits necessary for financial feasibility and the maximum allowable Tax Credits:

(1) Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published by the Committee staff annually. ~~(Consistent with California State law, projects with 16 or more residential units must have an on-site manager's unit. In addition, for every 80 non-manager units in a project, at least one on-site manager's unit shall also be provided. Special needs projects may demonstrate 24-hour desk staffing in lieu of an on-site manager's unit.)~~ The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to TCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting when the equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities.

Reason:

The proposed change would move the current multiple resident manager requirement from the minimum operating expense discussion to the minimum construction standards provisions of Section 10325(f)(7)(L) as described earlier in this statement of reasons. The policy would not change.

Section 10337(a)
Proposed Change:

Section 10337. Compliance

(a) Regulatory Agreement. All recipients of Tax Credits, whether Federal only, or both Federal and State, are required to execute a regulatory agreement, as a condition to the Committee's making an allocation, which will be recorded against the property for which the Tax Credits are allocated, and, if applicable, will reflect all scoring criteria proposed by the applicant in the competition for Federal and/or State housing Credit Ceiling.

Where a Project is receiving renewable project-based rental assistance:

(1) the Sponsor shall in good faith apply for and accept all renewals available;

(2) if the project-based rental assistance is terminated through no fault of the owner, the property owner shall notify CTCAC in writing immediately and shall make every effort to find alternative subsidies or financing structures that would maintain the deeper income targeting contained in the recorded CTCAC regulatory agreement. Upon documenting to CTCAC's satisfaction unsuccessful efforts to identify and obtain alternative resources, the owner may increase rents and income targeting for Rent Restricted Units above the levels allowed by the recorded regulatory agreement up to the federally-permitted maximum. Rents shall be raised only to the extent required for Financial Feasibility, as determined by CTCAC. Any necessary rent increases shall be phased in as gradually as possible, consistent with maintaining the project's Financial Feasibility.

Reason:

The proposed change would require property owner's to maintain project-based rental assistance. In addition, the change would codify TCAC's policy of permitting rent increases where project-based rental assistance is lost. Proposed language would explicitly require the property owner to seek alternative financial strategies before resorting to disruptive rent increases. The rule would also permit rents and income targeting to exceed those originally agreed upon within the recorded regulatory agreement. The intent is to acknowledge that the unexpected loss of rental subsidies could jeopardize a project's financial feasibility, and that rent increases may be necessary in that event. However, proposed language also requires project owners to seek all alternative remedies before proposing rent increases, and stipulates that rent increases be implemented as gradually as possible to minimize hardships on extremely low income residents.
