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DATE: January 8, 2014
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Final Proposed 2014 Regulation Changes: Responses to Comments Received

On October 25, 2013 the California Tax Credit Allocation Committee (TCAC or the Committee) released proposed regulation changes for program year 2014. TCAC staff subsequently held four public hearings on the following dates:

- Oakland, Tuesday, November 12, 2013
- Sacramento, Wednesday, November 13, 2013
- San Diego, Thursday, November 14, 2013
- Los Angeles, Friday, November 15, 2013

In addition, TCAC took written public comment through Monday, December 9, 2013. Seventy (70) individuals, organizations, and groups formally commented on the initial proposed regulation changes. TCAC staff has carefully considered all comments received, and has finalized the recommendations to the Committee for consideration and adoption on Wednesday, January 29, 2014. The attached final statement of reasons summarizes comments received, TCAC staff's responses to those comments, and any revised proposed changes. Additional changes or revisions are signified by double-underlined additions (additions), and double-strikeout deletions (~~deletions~~) to the original proposed changes, which are signified by the original underlining (underlining) and original strikeouts (~~strikeouts~~).

Staff had originally proposed 36 substantive regulation changes. Staff intends to proceed with eleven (11) changes as originally proposed:

1. Add the term "tribal chairperson" to the local notification requirement. **Section 10305(f), page 2 of the attached draft.**
2. Except tribal trust land from the general program appraisal requirements. **Section 10322(h)(9), page 24.**
3. Remove the final reservation submittal requirement. **Section 10322(i)(1), page 30.**
4. Lengthen the permissible distances for rural off-site services that may serve as an alternative to on-site services. **Section 10325(c)(5)(B), page 46.**
5. Add references to the Sustainable Building Workbook and clarify when the workbook is required and when it may be forgone. **Section 10325(c)(6)(H)(1) through (5), page 52.**

6. Add three- and four- bedroom units to one- and two-bedroom unit size minimums that may be waived by the TCAC Executive Director. **Section 10325(g)(1), page 78.**
7. Establish that minimum experience scoring references for general partners and property managers do not include points available for passing a training examination as described earlier in regulation. **Section 10326(g)(5), page 89.**
8. Designate 9% credit applications proposing Special Needs housing type projects as DDA projects. **Section 10327(d)(2), page 94.**
9. Add projects on tribal land to the list of exceptions to the property tax underwriting assumptions. **Section 10327(g)(2), page 96.**
10. Establish a second underwriting submittal deadline at 180 days following a preliminary reservation for competitive applicants not bound by 180-day readiness requirement. Also, remove submittal items from carryover allocation provisions. These changes would move submittals from carryover to the 180-day deadline, and would replace the final reservation submittal requirement altogether. **Section 10328(c) through (e), page 97.**
11. Specify that, in the event rental or operating subsidies are lost over time, TCAC may accommodate Special Needs projects transitioning to more general populations as needed for financial viability. **Section 10337(a)(2), page 99.**

Pursuant to comments received, TCAC staff has amended the following 24 original substantive proposals. Two related original proposals affecting different regulation sections are both summarized in item 18 below:

1. Continue to establish and define the term “Tribe,” but incorporate other tribal housing entities into the definition. **Section 10302(oo), page 1 of the attached draft.**
2. Continue to require that applications proposing At-risk, Special Needs, or SRO housing types be considered, first, within those relevant set-asides before cascading into a geographic apportionment. However, clarify that qualified nonprofit applicants may elect to compete, first, in the Nonprofit set-aside notwithstanding the project’s status as an at-risk, special needs, or SRO application. **Section 10315, page 2.**
3. Continue to update the homeless population definition as originally proposed but reference only the first category, individuals or families lacking a nighttime residence, for purposes of the Nonprofit set-aside priority. The remaining categories would establish a broader homeless definition for purposes of the Special Needs housing type. **Section 10315(b), page 3.**
4. Continue to eliminate the option for rural applicants to compete in the At-risk set-aside, and add HOME funded projects to the RHS apportionment within the rural set-aside. Also, continue to establish a two-year Native American pilot apportionment within the rural set-aside. However, new language would also clarify that qualifying HOME funding must be at least \$1 million, and eliminate previous RHS priorities. Additional new language would clarify that tribal pilot apportionment projects may be on trust land or land held in fee by a tribe, and that tribes may contract with other parties for competitive experience. **Section 10315(c) and (d), page 7.**
5. Withdraw the proposal to eliminate Single Room Occupancy (SRO) reference from the Special Needs/SRO set-aside. **Section 10315(e), page 13.**
6. Continue to eliminate confusing language and clarify the general State statutory restriction on using State credits in projects receiving a federal 130% basis increase due to its DDA or QCT status. Also continue to create an exception to the general rule for Special Needs housing type applications for State credits. However, also clarify that existing Section 202 projects may

access 4%-plus-State credits in spite of existing over-income households preventing the project from being a 100 percent tax credit project. Finally, also clarify that 4% projects receiving the 130 percent (130%) federal basis boost may still apply for State credits if the project is a qualified Special Needs development. **Section 10317(c) and (d), page 17.**

7. In establishing minimum qualifications for subsequent parties entering a project's ownership structure during the regulated life of the project, new language would clarify that TCAC need not review and approve new limited partners. **Section 10320(b), page 19.**
8. While still clarifying the discussion of a complete application through reorganization and wording changes, withdraw the proposal to permit the TCAC Executive Director to request clarifying scoring omissions from parties other than the project's applicant or developer. **Section 10322(d) through (f), page 21.**
9. In establishing a documentation standard for redevelopment funding and State Department of Finance approval, add CDLAC-adopted language accepting a written DOF communication that a Final and Conclusive Determination Letter is unnecessary. **Section 10322(h)(16), page 25.**
10. Continue to add an alternative to a chain of title report for property on tribal trust land, and continue to clarify that appraisals are to be submitted with preliminary reservation applications. However, withdraw originally-proposed language requiring existing replacement reserves be used in any proposed rehabilitation. **Section 10322(h)(25)(A), (26)(A), and (26)(C) page 26.**
11. Continue relocating the requirement that points for assumed public debt would only be awarded for the original loan principal amount, and only when the public lender provides written approval of the assumption. Also, continue excluding public funding for land acquisitions from competitive consideration within the tribal pilot apportionment. However, new language would clarify that unsuccessful tribal apportionment applications cascading into the rural completion could have such a land contribution counted competitively in that subsequent competition. Finally, continue clarifying that the 15-year loan term minimum standard is an "at least" standard rather than an "in excess of" standard. **Section 10325(c)(1)(C), page 35.**
12. Continue eliminating experience scoring features for portfolio projects in service less than three (3) years, and specifying that relevant general partner and property management experience is demonstrated through active California tax credit projects. Continue reducing the minimum required capacity of contracted management companies for inexperienced general partners and requiring the general partner to acquire relevant tax credit property training. Finally, continue assuring that any new tax credit property general partner would be equally experienced as the exiting GP for the duration of the 15-year tax credit period. However, new suggested clarifying edits would clearly focus on property management, rather than "operation," and would evaluate the property management entity's experience with a project, not the project's longevity. **Section 10325(c)(2), page 39.**
13. Continue establishing additional sustainable building method scoring options for rehabilitation projects. However, new language would also establish that TCAC would measure against the current (2008) Title 24 code for 2014, with higher spreads over the 2008 code once the 2013 code goes into effect July 1, 2014. **Section 10325(c)(6)(D) through (F), page 47.**
14. Continue establishing 180-day submittal requirements that mitigate the need for a Final Reservation submittal for 9% projects, and add conforming tribal references and eliminate an historic reference to a 180-day extension. In addition, clarify confusing language regarding readiness scoring, and 180-day obligations in light of that scoring. **Section 10325(c)(8), page 56.**

15. Withdraw the proposal to eliminate the State credit exchange point option for projects requesting State credits. Also modify the proposed update to the Universal Design standards while continuing to increase available points from one (1) to two (2) for Universal Design and smoke-free residences. **Section 10325(c)(9), page 58.**
16. Modify the proposed new initial tiebreaker for single-jurisdiction geographic apportionment applications to rely upon a support letter from each of the two jurisdiction's respective housing agencies. Also, continue to include a reference to the Native American Housing Block Grant as a public operating subsidy for final tiebreaker purposes. **Section 10325(c)(10)(A), page 63.**
17. Continue to incorporate the Native American pilot apportionment into the application selection sequence, and establish that State credit requests within the set-asides would be honored, even if that would require forward committing subsequent-year State credits. New proposed language would also now clearly apply the one-dollar rule for apportionments within the rural set-aside. **Section 10325(d)(1), page 67.**
18. Add acceptance of an attorney's letter to the proposed title status reports as sufficient rather than title reports for tribal trust land sites. **Section 10325(f)(2), page 69; and Section 10326(g)(2), page 88.**
19. With new language, clarify that property owners must commit to maintaining the installed energy efficiency and sustainability quality of original features upon replacement. Continue to incorporate Sustainable Building Method Workbook references, delete inappropriate HERS II report references, and correct relevant references and standards. **Section 10325(f)(7), page 72.**
20. Withdraw new proposed rehabilitation criteria for projects requesting 9% credits, except for the \$40,000 minimum construction cost standard. **Section 10325(f)(10), page 76.**
21. Delay establishing the 62-years-of-age standard for the competitive Senior housing type threshold until 2015. Withdraw the proposed Universal Design standard construction for all Senior housing type units and instead propose that, effective in 2015, at least half of the Senior units on an accessible path must be accessible under California Building Code Chapter 11(B). Continue with removal an historic start date for emergency call systems requirements. **Section 10325(g)(2), page 79.**
22. Continue to update the Special Needs descriptive language to include individuals living with physical and sensory disabilities. However, new proposed language would specify that these individuals would be transitioning from various institutions. Broaden proposed language to reference homeless youth rather than just emancipated youth transitioning out of foster care. Continue deletion of historic references to teenage parents. **Section 10325(g)(4), page 85.**
23. Withdraw discontinuation of the one percent (1%) basis limit boost for tax exempt bond projects for each unit targeted to households at 50 percent of AMI and below. **Section 10327(c)(5)(C), page 93.**
24. Clarify that the proposed priority protocol for housing persons with physical or sensory impairments applies to vacant accessible units only. **Section 10337(b), page 99.**

Finally, in response to received comments, TCAC staff is proposing three modifications to initially-proposed clarifying changes as follows:

1. Modify FHA-insurance documentation requirements by requiring a MAP lender letter. **Section 10325(f)(3), page 70.**
2. Clarify that developer fee limits apply to simultaneous phases only where both phases seek either all 9% credits, or all 4% credits. **Section 10327(c)(2)(C), page 90.**

3. Move operating income and expense assumptions from Special Needs paragraph to the location of a more general underwriting discussion. Add new clarification that TCAC would accept specified alternative underwriting assumptions if a conventional lender or the equity partner require it. **Section 10327(g)(1), page 94.**

Attachment

**2014 Final Statement of Reasons
January 8, 2014**

Section 10302(dd)

Initial Proposed Change:

- dd) QAP. The “Low Income Housing Tax Credit Program Qualified Allocation Plan,” ~~adopted by the Committee on December 11, 1997~~ as adopted in regulation Sections 10300 et.seq., and in accordance with the standards and procedures of IRC Section 42(m)(1)(B).

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(ii)

Initial Proposed Change:

- ii) Reservation. As provided for in H & S Code Section 50199.10(e) the initial award of Tax Credits to an Eligible project. ~~Reservations may be preliminary or final.~~ Reservations may be conditional.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10302(oo)

Initial Proposed Change:

- oo) Tribe. A federally recognized tribal entity located in California.

~~ee)nn)~~ Waiting List. A list of Eligible Projects approved by CTCAC following the last application cycle of any calendar year, pursuant to Section 10325(h) below.

Comments Received: Four commenters suggested that TCAC define “Tribe” as “A federally recognized Indian tribe or an entity established by the tribe to undertake Indian housing projects, including projects funded with federal tax credits.”

Another commenter proposed a similar alternative definition, but with the additional requirement that the entity “serves as the project sponsor and the sole general partner of the LIHTC ownership entity.” Such a designation would ensure that a tribe has a material role in the development and operation of the development.

Response to Comments: The suggested language incorporating entities established by tribes improves upon the original proposed definition. The sole general partner suggestion would be overly proscriptive, and may inhibit a relationship preferred or even required by lenders and equity partners.

Final Proposed Change:

oo) Tribes. A federally recognized ~~tribal entity~~ Indian tribe located in California, or an entity established by the tribe to undertake Indian housing projects, including projects funded with federal Low Income Housing Tax Credits.

nn) Waiting List. A list of Eligible Projects approved by CTCAC following the last application cycle of any calendar year, pursuant to Section 10325(h) below.

Section 10305(f)

Initial Proposed Change:

(f) Notification. Upon receipt of an application, CTCAC shall notify the Chief Executive Officer (e.g., city manager, county administrative officer, tribal chairperson) of the local jurisdiction within which the proposed project is located and provide such individual an opportunity to comment on the proposed project (IRC Section 42(m)(1)(ii)).

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10315

Initial Proposed Change:

Section 10315. Set-asides and Apportionments

CTCAC shall review each competitive application applying as an at-risk or special needs housing type under subsection (h) below, first, within that housing type’s relevant set-aside. In addition, applicants competing within either the At-risk or Special Needs set-aside shall be considered as that housing type for purposes of paragraph (g).

Comments Received: A commenter urged TCAC to modify its funding sequencing to award one reservation in each set-aside and region, then cycle back through the entire list of set-asides and regions for a second award in each. This would replicate TCAC’s process in the regions, and allow more senior projects throughout the cascade, rather than concentrated in the set-asides.

Two commenters endorsed the proposal to consider all at-risk and special needs projects in those set-asides prior to their competing in the regions.

One commenter strongly supported sending at-risk and special needs projects through those set-asides first, the proposed 62+ age standard, and counting at-risk set-aside awards against the at-risk housing type, even where the applicant declared the project a senior housing type.

Three other commenters endorsed the proposal, but urged TCAC to clarify that nonprofit-sponsored applications could, first, be considered under the Nonprofit set-aside, and then cascade to the At-risk or Special Needs/SRO set-aside. In essence, TCAC would honor a Nonprofit set-aside application, even for at-risk, special needs, or SRO housing types.

Response to Comments: The set-aside award sequencing is established in Section 10325(d)(1), and the topic of modifying that sequence will be taken up in response to comments there.

The suggestion that TCAC clarify how Nonprofit set-aside applicants access that set-aside, even when proposing a Special Needs, SRO, or At-risk housing type has merit. TCAC intends to continue accepting qualified applications for the Nonprofit set-aside, even when the project qualifies for the other non-rural set-asides.

TCAC staff has also noted an incorrect reference to “subsection (h) below” in the proposed text. The reference should be to re-lettered “subsection (g).” Also, staff proposes including “SRO” in the Special Needs/SRO reference in response to comments received at Section 10315(e) below.

Final Proposed Change:

Section 10315. Set-asides and Apportionments

CTCAC will accept applications from Qualified Nonprofit Organizations for the Nonprofit set-aside upon the request of the qualified applicant, regardless of the proposed housing type. Thereafter, CTCAC shall review each non-rural pending competitive application applying as an at-risk or special needs housing type under subsection (h)(g) below, first, within that housing type’s relevant set-aside. In addition, applicants competing within either the At-risk or Special Needs/SRO set-aside shall be considered as that housing type for purposes of paragraph (g).

Section 10315(b)

Initial Proposed Change:

- (a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).
- (b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:
 - First, projects with McKinney Act, State Supportive Housing Program funding committed, or Mental Health Services Act (MHSA) funding committed or anticipated.
 - Second, projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
 - Other qualified homeless assistance projects.

To compete as a homeless assistance project, at least fifty percent (50%) of the units within the project must ~~house~~ be designated for households as follows:

- ~~(1) Moving from an emergency shelter; or~~
- ~~(2) Moving from transitional housing; or~~

- ~~(3) Currently homeless which means:~~
- ~~(A) An individual who lacks a fixed, regular, and adequate nighttime residence; or~~
 - ~~(B) An individual who has a primary nighttime residence that is:

 - ~~(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or~~
 - ~~(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or~~
 - ~~(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.~~~~
- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
- (A) Has a primary nighttime residence that is a public or private place not meant for human habitation;
 - (B) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
 - (C) Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
- (2) Individual or family who will imminently lose their primary nighttime residence, provided that:
- (A) Residence will be lost within 14 days of the date of application for homeless assistance;
 - (B) No subsequent residence has been identified; and
 - (C) The individual or family lacks the resources or support networks needed to obtain other permanent housing.
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
- (A) Are defined as homeless under the other listed federal statutes;
 - (B) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
 - (C) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and
 - (D) Can be expected to continue in such status for an extended period of time due to special needs or barriers.
- (4) Any individual or family who:
- (A) Is fleeing, or is attempting to flee, domestic violence;
 - (B) Has no other residence; and
 - (C) Lacks the resources or support networks to obtain other permanent housing.

Any amount of Tax Credits not reserved for homeless assistance projects during a reservation cycle shall be available for other applications qualified under the Non-profit set-side.

Comments Received: Four commenters urged TCAC to consider proposed homeless categories 3 and 4 as special needs populations, but not for purposes of the homeless priority under the nonprofit set-aside. The priority ought to be the currently homeless.

One commenter urged TCAC to use only the category (1) definition of homelessness, and add the other three definitions to the Special Needs set-aside description at Section 10325(g)(4). Alternatively, TCAC could competitively reward homeless assistance projects that are housing the most vulnerable homeless populations, or cross-reference portions of Health and Safety Code Subsections 50675.14(b)(2), (c), and (d). The same commenter urged TCAC to increase the number of days an individual may be institutionalized and remain eligible under the homeless definition (see proposed change at paragraph (b)(1)(C) above).

Another commenter endorsed TCAC's use of the current Hearth Act homeless definition, and the ongoing prioritization of McKinney, SHP, or MHSA funded projects.

Response to Comments: The arguments to retain TCAC's emphasis on truly homeless persons are compelling. Four commenters urged priority consideration only for categories (1) and (2) for the Nonprofit set-aside, while one commenter urged using only category (1).

Category (1) incorporates the Hearth Act language while retaining this set-aside's emphasis on the existing homeless population. TCAC staff will recommend referencing only category (1) as the Nonprofit set-aside's homeless assistance priority. However, consistent with received comments, TCAC will retain all four categories for later reference as qualified Special Needs housing types (Section 10315(e) below).

Final Proposed Change:

- (a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).
- (b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:
 - First, projects with McKinney Act, State Supportive Housing Program funding committed, or Mental Health Services Act (MHSA) funding committed or anticipated.
 - Second, projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
 - Other qualified homeless assistance projects.

To compete as a homeless assistance project, at least fifty percent (50%) of the units within the project must house be designated for homeless households as follows described in category (1) immediately below:

- (1) ~~Moving from an emergency shelter; or~~

- ~~(2) Moving from transitional housing; or~~
- ~~(3) Currently homeless which means:~~
- ~~(A) An individual who lacks a fixed, regular, and adequate nighttime residence; or~~
- ~~(B) An individual who has a primary nighttime residence that is:~~
- ~~(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or~~
- ~~(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or~~
- ~~(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.~~
- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
- (A) Has a primary nighttime residence that is a public or private place not meant for human habitation;
- (B) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
- (C) Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
- (2) Individual or family who will imminently lose their primary nighttime residence, provided that:
- (A) Residence will be lost within 14 days of the date of application for homeless assistance;
- (B) No subsequent residence has been identified; and
- (C) The individual or family lacks the resources or support networks needed to obtain other permanent housing.
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
- (A) Are defined as homeless under the other listed federal statutes;
- (B) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
- (C) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and
- (D) Can be expected to continue in such status for an extended period of time due to special needs or barriers.
- (4) Any individual or family who:
- (A) Is fleeing, or is attempting to flee, domestic violence;
- (B) Has no other residence; and
- (C) Lacks the resources or support networks to obtain other permanent housing.

Any amount of Tax Credits not reserved for homeless assistance projects during a reservation cycle shall be available for other applications qualified under the Non-profit set-side.

Section 10315(c) and (d)

Initial Proposed Change:

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar (c)(in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. 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. 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:
- (1) ~~They qualify and choose to compete in the At-risk set-aside, in which case they will no longer be considered rural and will be evaluated as non-rural projects for purposes of these regulations; or~~
 - (2) ~~The~~ the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year, ~~in which case~~ In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.
- (d) (1) RHS and HOME 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 or HOME funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance, or other committed 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), or for HOME reservations issued by the relevant Participating Jurisdiction;
 - 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.

- (2) Native American pilot apportionment. In each of the 2014 and 2015 program years, one million dollars (\$1 million) in annual federal credits shall be available for applications proposing projects on land held in trust or to be held in trust by a Native American Tribe. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by TCAC under Section 10305(h). In addition, tribal communities shall partner with a developer and with a property management entity that would garner the maximum points available for General Partner/Management Company Characteristics under Section 10325(c)(2).

Comments Received: Three commenters urged that HOME funds be considered first priority, along with RHS rental-assistance projects, regardless of whether the HOME project has project-based rental subsidies. The time-sensitivity of HOME funding alone should put HOME-funded projects on competitive par with rental-assisted RHS projects. Two commenters urged elimination of the two subsequent RHS priorities from the apportionment.

Four commenters supported including HOME funding in the RHS apportionment.

One commenter opposed eliminating the option for rural projects to apply in the at-risk set-aside. The commenter noted that the Rural Housing Service (RHS) at-risk need is great and the rural set-aside alone is inadequate to meet the pressing need for credits.

Four commenters recommended a \$1 million minimum HOME commitment for apportionment eligibility. A fifth commenter asked if the \$1 million minimum applied to HOME funding.

One commenter stated that up to ten (10) Section 514 awardees may be competing in the RHS apportionment in 2014, so adding HOME funded projects to the apportionment may exacerbate an already oversubscribed system. In addition, the commenter noted that the State Department of Housing and Community Development (HCD) does not provide HOME funds to 9% credit competitors.

One commenter urged increasing the new RHS/HOME apportionment from 14 percent (14%) to 20 percent (20%). Another commenter also suggested an apportionment increase of an unspecified amount. Such an increase would induce in more HOME funding for new construction in rural areas.

One commenter urged TCAC to clarify that an applicant for the tribal pilot program could be either a federally-recognized tribe or a Tribally Designated Housing Entity, or a tribal Housing Authority. TCAC should also specify that these tribal entities should be the ownership entity's General Partner. Four commenters recommended that, rather than using the current TCAC scoring system, TCAC establish some of the criteria as threshold features, and then base the competition upon relative need using the NAHASDA/Indian Housing Block Grant formula allocation. This would evaluate need rather than other broader market features.

For tribal applicants, another commenter specifically recommended eliminating the leverage scoring; award general partner and management points based upon 50-74 units in service for more than three years, with 75+ unit garnering additional points; eliminate current Housing Needs scoring; eliminate amenity maximum distances, look for open space rather than public parks, and eliminate groceries and libraries from scoring; use current sustainability scoring;

establish income targeting threshold and do not score; retain readiness scoring and other federal and state policies scoring. The same commenter urged scoring percentage of units set aside for enrolled tribal members. The commenter also advocated eliminating the final tiebreaker, and use NAHASDA need components instead.

The same commenter also suggested evaluating waiting lists and market studies; seeking attorney's letters regarding tribal site control; view tribes as lenders in financing review; accommodate tribes contracting for capacity; and use HUD tribal housing cost limits as TCAC basis limits for tribes.

A commenter also urged TCAC not to rely upon other public funding in making funding decisions, establish minimum public funding thresholds instead. Also, evaluating tribal development and property management capacity should not result in tribes playing a subordinate role in the development. Rather, TCAC should recognize experience beyond tax credit-related projects, and should encourage partnerships wherein the tribe controls the project.

The same commenter also urged TCAC to either adopt HUD cost limits rather than TCAC's current basis limits, or create a "Tribal Housing" basis limit increase to account for higher development costs in tribal areas. Finally, the commenter urged TCAC to set-aside a larger amount of annual federal credit for tribes, suggesting perhaps \$3.5 million. This larger amount would incentivize tribes to apply with possibly four or five awards being available.

Two other commenters encouraged a larger unspecified amount being apportioned from the rural set-aside for tribal projects. The same commenter expressed concern that TCAC's amenities scoring may result in more suburban tribal awards, underserving truly rural tribes. Finally, the same commenter urged TCAC to forgo requiring tribal communities to exceed the new Title 24 energy efficiency standards.

Six additional commenters stated that \$1 million in annual federal credits may not be adequate to demonstrate the effect of TCAC's scoring on tribal applications generally. One of these commenters suggested \$3.2 million as an alternative apportionment. Another commenter suggested a \$3 million initial apportionment for the Native American pilot apportionment.

Two commenters also expressed concern over the site amenities and public funds scoring, believing that those factors could inhibit tribes from truly competing for 9% credits.

A commenter recommended that TCAC substitute the word "contract" for the word "partner" in the last sentence's reference to relationships with developers and property management entities.

Five commenters recommended that TCAC permit "projects on an Indian reservation, whether the land is owned in fee or in trust and on land owned by a tribe, whether in fee or in trust." The phrase "to be held in trust" is confusing and unenforceable.

Five commenters urged TCAC to forgo the additional requirement that tribal applicants partner with an experienced general partner and property management company. Many Indian housing authorities have experience developing and operating regulated affordable rental housing, and if this experience meets TCAC's scoring minimums, that should be sufficient. All three commenters stated that TCAC should permit tribes to contract with consultants with experience in states other than California. Such organizations' expertise with Native American communities and funding sources is helpful.

A syndicator commented that their organization would look for the development team to have a party experienced successfully developing tax credit projects on tribal trust land. The experienced party could be a general partner, a developer, or a consultant. The same commenter urged using a needs-based scoring system rather than a system that evaluates proximity to amenities. Emphasizing proximity to amenities may lead to less desirable locations relative to tribal needs.

Five commenters urged TCAC to permit urban tribes to compete for the available pilot program credits, rather than restricting participation to rural tribes. One of the commenters noted that “70% of all American Indians in California live in Urban environments. 21% of them live in poverty.”

Two commenters supported the Native American pilot program as proposed.

Three commenters stated that two years may not be a long enough pilot program to engage Native American tribes and allow TCAC to learn about the effective statewide demand among tribes. The same commenters stated that non-rural tribes should be permitted to compete in the other set-asides and regions.

One commenter stated that TCAC’s amenity scoring will disadvantage very remote rural tribes. Another commenter stated that most of the top 12 California tribes in terms of federal NAHASDA funding, representing about 32,000 tribal members, could not compete successfully under the standard TCAC scoring system. The same commenter stated that TCAC’s experience scoring will eliminate material participation by tribes in the project development and operation. Finally, this commenter urged TCAC to specify that housing tribal members, rather than non-tribal workers, is the pilot apportionment’s goal.

Another commenter stated that TCAC, USDA Rural Development, and the federal Department of Housing and Urban Development ought to coordinate to help Native American communities in California. Similar definitions and standards would be advantageous.

Response to Comments: Arguments equating time-sensitive HOME funding, albeit without accompanying project-based rental assistance, as beneficially equivalent to RHS funding with rental assistance are compelling. The upshot of these comments is that RHS-funded and HOME-funded new construction projects ought to compete equally against one another on their own merits. This sentiment is consistent with comments urging TCAC to remove the descending priority RHS categories in this apportionment. In response, TCAC staff proposes eliminating the listed priority order, leaving the backbone scoring and tiebreaker system to decide the funding order.

The argument against eliminating the additional at-risk set-aside option for rural projects is not persuasive in light of (a) the recent competitive success of such projects in the rural set-aside, (b) the relatively large amount of credits available to rural projects, and (c) the compelling need to preserve at-risk projects in non-rural areas of California.

The suggestion that HOME funding ought to have the same \$1 million threshold as the RHS funding does is fair, and its omission was a drafting oversight.

The argument against opening the RHS apportionment to HOME funds because HCD does not currently provide HOME funding for new construction projects seeking 9% credits is not compelling. Other local Participating Jurisdictions committing scarce HOME funding for needed new construction projects is as compelling a public benefit as a commitment of RHS

funding. Both the arguments for a larger apportionment, and the claims of extraordinary looming demand for 9% credits among RHS new construction projects are unsubstantiated at this time. A dearth of Section 515 funding makes future demand for this apportionment uncertain. However, TCAC will look to the 2014 competition as a data point in considering future adjustments to the RHS/HOME apportionment.

TCAC staff has proposed clarifying the “Tribe” definition under Section 10305(oo) above, which clarifies who may apply for the tribal pilot apportionment.

While TCAC staff understands the arguments for alternative scoring systems, the proposed system will fund meritorious projects sponsored by California tribes, and will educate TCAC and the larger affordable housing community about the applicability of TCAC’s scoring system to tribal housing development.

Recommendations that TCAC emphasize housing tribal members have merit, but TCAC will await application proposals to learn of interest and demand for employee and other housing among tribes. A broader initial approach will entertain a fuller array of proposals, and will provide data on tribal interest and effective demand.

Comments endorsing the centrality of tribal control and leadership have merit. TCAC is attempting to balance tribal involvement and control with the mutual interest in the success of California’s initial 9% credit housing developments on tribe-controlled lands. New proposed language clarifies that tribes may either contract or partner with required expertise in developing and managing tax credit projects.

The suggestion that TCAC adjust its basis limits for tribal applications is premature. TCAC staff will evaluate data from the 2014 competition to determine if significant cost differences exist between tribal projects and other rural developments.

While TCAC understands and is sympathetic to calls for a larger apportionment for tribes, the initial \$1 million annually is proportionate to tribal populations in California. Again, TCAC awaits effective demand data that will result from the initial 2014 competition. New proposed language clarifies that the \$1 rule will be employed for the pilot apportionment, as it has been for the parallel RHS apportionment (see page 66).

TCAC staff also understands calls for a longer pilot period, but awaits data before determining if a permanent set-aside or simply a set of scoring adjustments would accommodate circumstances faced by Native American tribes in California.

Confusion expressed over the predictive phrase regarding land “to be held in trust” is understandable and commenter-suggested alternative language is an improvement.

The suggestion that TCAC, USDA Rural Development, and HUD coordinate on Native American housing strategies has merit and TCAC will reach out to our federal partners as we move forward.

Final Proposed Change:

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar (c)(in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. 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. 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:

- (1) ~~They qualify and choose to compete in the At-risk set-aside, in which case they will no longer be considered rural and will be evaluated as non-rural projects for purposes of these regulations; or~~
- (2) ~~The the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year, in which case In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.~~

(d) (1) RHS and HOME 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, or a reservation from a Participating Jurisdiction or the State of California of at least \$1,000,000 in HOME funding. in the following priority order:~~

- ~~• First, to projects with RHS or HOME funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance, or other committed 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), or for HOME reservations issued by the relevant Participating Jurisdiction;~~
- ~~• 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 and HOME program apportionment eligibility requirements shall compete under the RHS and HOME 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 or HOME 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.

(2) Native American pilot apportionment. In each of the 2014 and 2015 program years, one million dollars (\$1 million) in annual federal credits shall be available for applications proposing projects on land held in trust or to be held in trust by a Native American Tribe an Indian reservation, whether the land is owned in fee or in trust. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by TCAC under Section 10305(h). In addition, tribal communities shall partner with or contract with a developer and with a property management

entity that would garner the maximum points available for General Partner/Management Company Characteristics under Section 10325(c)(2).

Section 10315(e) - (j)

Initial Proposed Change:

- (e)(d) “At-Risk” set-aside. Five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify and apply as an “At risk” housing type pursuant to these regulations subsection (g) below. ~~Awards to rural projects electing to compete outside of the rural set-aside pursuant to Section 10315(c)(1) shall be limited to no more than 20 percent (20%) of the annual at-risk set-aside as of February first. Notwithstanding this limitation, CTCAC shall make an award to such a rural project if one unreserved dollar remains under the 20% limitation.~~
- (f)(e) Special Needs/SRO set-aside. Four percent (4%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify and apply as a Special Needs or Single Room Occupancy housing type projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the Nonprofit Set Aside, but is not ~~funded~~ awarded credits from that set-aside, will shall be eligible to be considered under this Special Needs/SRO set-aside.
- (g)(f) Supplemental Set-Aside. An amount equal to three percent (3%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be held back to fund overages that occur in the second funding round set-asides and/or in the Geographic Apportionments because of funding projects in excess of the amounts available to those Set Asides or Geographic Apportionments, the funding of large projects, such as HOPE VI projects, or other Waiting List or priority projects. In addition to this initial funding, returned Tax Credits and unused Tax Credits from Set Asides and Geographic Apportionments will be added to this Supplemental Set Aside, and used to fund projects at year end so as to avoid loss of access to National Pool credits.
- (h)(g) 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%
Special Needs	15%
Seniors	15%

(f)(h) 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		16.7%	17.6%
Balance of Los Angeles County		16.3%	17.2%
<u>North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)</u>			<u>10.8%</u>
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%
<u>Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)</u>			<u>6.7%</u>
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%

(i) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

Comments Received: Two commenters supported the proposed change at paragraph (e) (proposed paragraph (d)) eliminating the At-risk set-aside option for rural projects. One of the commenters recommended that TCAC delay eliminating SROs from the current Special Needs/SRO set-aside. This significant change could harm pipeline SRO projects planning to compete under that set-aside.

One commenter opposed eliminating the opportunity for RHS-funded at-risk projects from competing in the At-risk set-aside if residing in a rural area. The commenter argued the at-risk threat is large and real in rural areas, and such projects ought to be preserved if successful in the At-risk set-aside competition.

Two other commenters supported eliminating SROs from the set-aside if they do not meet the special needs definition effective in 2014. One other commenter was in general agreement with the proposed elimination of SROs from the set-aside unless they met the special needs thresholds. One commended TCAC for continuing to view special needs SRO projects under the current set-aside. The same commenter also urged TCAC to continue allowing SROs to compete in the regional competitions and other set-asides.

Four commenters recommended forgoing the SRO elimination pending further study and discussion with stakeholders.

Three commenters opposed eliminating SROs from the Special Needs/SRO set-aside as these properties serve a unique population in urban core neighborhoods. One commenter noted that SRO's would almost never work as Tax Exempt Bond/4% tax credit projects due to their low rent stream and inability to support debt.

Response to Comments: Arguments against eliminating SROs from the current Special Needs/SRO set-aside are persuasive. TCAC views SROs as valuable in housing extremely low-income households, and recognizes that smaller percentages of SRO units may still be held for special needs populations with on-site services. Staff is withdrawing the proposal to eliminate SROs from the Special Needs/SRO set-aside.

While one commenter opposed restricting all rural applications to the rural set-aside, the large percentage set aside for rural communities, along with the historic success of RHS at-risk projects in that set-aside argues for the proposed change.

The remaining changes will be recommended as originally proposed.

Final Proposed Change:

(d) "At-Risk" set-aside. Five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify and apply as an "At risk" housing type pursuant to ~~these regulations subsection (g) below~~. ~~Awards to rural projects electing to compete outside of the rural set-aside pursuant to Section 10315(c)(1) shall be limited to no more than 20 percent (20%) of the annual at-risk set-aside as of February first. Notwithstanding this limitation,~~

~~CTCAC shall make an award to such a rural project if one unreserved dollar remains under the 20% limitation.~~

(f)(e) ~~Special Needs/SRO/SRO~~ set-aside. Four percent (4%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify and apply as a Special Needs or Single Room Occupancy or Single Room Occupancy housing type projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the Nonprofit Set Aside, but is not ~~funded~~ awarded credits from that set-aside, ~~will~~ shall be eligible to be considered under this ~~Special Needs/SRO/SRO~~ set-aside.

(g)(f) Supplemental Set-Aside. An amount equal to three percent (3%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be held back to fund overages that occur in the second funding round set-asides and/or in the Geographic Apportionments because of funding projects in excess of the amounts available to those Set Asides or Geographic Apportionments, the funding of large projects, such as HOPE VI projects, or other Waiting List or priority projects. In addition to this initial funding, returned Tax Credits and unused Tax Credits from Set Asides and Geographic Apportionments will be added to this Supplemental Set Aside, and used to fund projects at year end so as to avoid loss of access to National Pool credits.

(h)(g) 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%
Special Needs	15%
Seniors	15%

(i)(h) 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		16.7%	17.6%
Balance of Los Angeles County		16.3%	17.2%
<u>North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)</u>			<u>10.8%</u>
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%
<u>Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)</u>		<u>6.7%</u>
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%

- (j)(i) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

Section 10317(a) – (j)

Initial Proposed Change:

Section 10317. State Tax Credit Eligibility Requirements

- (a) General. In accordance with the R & T Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the “tax” (as defined by R & T Code Section 12201) a State Tax Credit in an amount equal to ~~the amount determined in the Revenue and Taxation Code, no more than 30 percent (30%) of a credit ceiling~~ project’s requested construction-related eligible basis. The maximum State Tax Credit award amount for a tax exempt bond project, or basis described in paragraph (f) below, is 13 percent (13%) of that project’s requested eligible basis. Award amounts shall be computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.
- (b) Allocation of Federal Tax Credits required. State Tax Credit recipients shall have first been awarded Federal Tax Credits, or shall qualify for Tax Credits under Section

42(h)(4)(b), as required under H & S Code Section 50199.14(e) and the R & T Code Section 12206(b)(1)(A). State Farmworker Credits are exempt from this requirement.

- (c) ~~Limit on Credit amount. The combined amount of Federal and State Tax Credits allocated to a building shall be limited to the lesser of the amount of State Credits pursuant to R & T Code Section 12206(c) plus the amount of Federal Tax Credits allocated under Section 42 computed on one hundred percent (100%) of the qualified basis of the building, or the amount sufficient for financial feasibility.~~
- ~~(d) Credit Ceiling Applications. Except for Special Needs applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area (DDA). Applicants not eligible for the 130% basis adjustment may apply for an allocation of State credits in addition to federal Credit Ceiling credits. In addition, applicant projects eligible for the federal basis adjustment may elect to forgo the federal adjustment and apply for State credits in addition to the requested federal credits.~~
- (d) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(F)(ii), 17058(b)(2)(E)(ii), and 23610.5(b)(2)(E)(ii), applications for Special Needs projects within a QCT or DDA may request the federal 130% basis boost and may also request State credits. Under authority granted by Internal Revenue Code Section 42(d)(5)(B)(v), CTCAC designates Special Needs housing type applicants for credit ceiling credits as Difficult Development Area projects, regardless of their location within a federally-designated QCT or DDA.

Comments Received: Nine commenters supported the proposed changes, with one commenter urging TCAC to clarify that Tax Exempt Bond/4% applicants proposing a Special Needs housing type could also access both the federal basis boost and State credits.

Another commenter urged TCAC to clarify in the same section that existing Section 202 projects are exempted from the 100% tax credit unit requirement, just as Section 236 projects are currently (paragraph (g)(1)).

Three commenters recommended that TCAC administratively apply a lower minimum score for 4%-plus-State tax credit applications. This would facilitate both special needs and rehabilitation projects using Tax Exempt Bond financing. One of the three commenters specifically suggested a 90-point minimum scoring threshold.

One commenter suggested clarifying that in a State credit exchange scenario the project would not automatically lose its entire 30% federal basis boost in exchange for the State credits.

Another commenter stated that disallowing State credits where a federal 30 percent (30%) basis boost is taken would disproportionately burden the Capital Region and the Rural set-aside areas.

Response to Comments: The suggestion that TCAC apply the current HUD Section 236 exception policy to HUD Section 202 projects would consistently extend current policy to a similar class of federally-funded projects. Since federal anti-displacement policies in those two programs are similar, a consistent TCAC policy is appropriate.

TCAC will consider a lower scoring minimum for 4%-plus-State credit applications in 2014. The minimum score will be set based upon anticipated demand, and the scores received in the most recent competitive rounds.

The exchange protocols are described in subsection (e) and are not amended in this proposed regulation change package. That subsection states that State credits may be delivered to a project in exchange for an “equivalent” amount of federal credits. This does not imply elimination of the 30 percent federal basis boost for projects located in a DDA or QCT, and that has not been the history of TCAC exchange practices.

Finally, disallowing State credit applications where the 130 percent (130%) federal basis calculation is employed is a longstanding State statutory provision. State legislation in 2013 (AB 952) actually broadened the policy to permit both the federal basis boost and State credits in Special Needs projects only. TCAC would need additional statutory authority to extend this policy to rural or Capital Region applications.

Final Proposed Change: Proceed with changes as initially proposed. Also, clarify that Special Needs applications may apply for federal credits using the 130% federal basis boost and State credits. Also, clarify that Section 202 projects may also apply for a combination of 4%-plus-State credits, in spite of existing over-income residents regulated by HUD.

Section 10317. State Tax Credit Eligibility Requirements

Note: Section 10317(a) through (d) will be recommended as originally proposed, and subsections (e) and (f) will remain unchanged.

- (g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:
- (1) the project is comprised of 100% tax credit eligible units, excluding managers' units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to ~~that~~ those program's use restrictions. Projects under those circumstances may propose a lesser percentage of eligible units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;
 - (2) the project is not eligible for the 130% basis adjustment, unless proposing a Special Needs housing type;

Section 10320(b)

Initial Proposed Change:

- (b) Tax Credits and ownership transfers. No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. Said approvals shall not be unreasonably withheld. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(M), in addition to other remedies. The following requirements apply to all ownership or Tax Credit transfers requested after January 31, 2014.
- (1) Any transfer of project ownership (including changes to any general partner, limited partner, member, or equivalent responsible party), or allocation of Tax Credits shall

be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.

- (2) The entity replacing a party or acquiring ownership or Tax Credits shall be subject to a “qualifications review” by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee ~~upon request~~. Any general partner change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(2)(A) as the exiting general partner. At a minimum this must be three (3) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the three projects must be Low Income Housing Tax Credit projects in California. If the new general partner does not meet these experience requirements, then substitution of general partner shall not be permitted.

Comments Received: Four commenters recommended removing the term “limited partner” from the parties requiring a qualifications review. Investors frequently change following construction financing closing, typically to an affiliate entity. TCAC’s review is unnecessary in these cases. One of the commenters noted that TCAC does not score, nor has it established limited partner standards for a “qualifications review.”

One commenter noted that the minimum general partner (GP) qualifications would be either three projects in service for over three years, or the training required at Section 10326(g)(5). That training is referenced for management company qualifications, not for GPs. Is TCAC’s intent for GPs to take the property management training?

One commenter urged an accommodation for existing GPs re-syndicating existing tax credit projects. These parties should be permitted to retain the current ownership structure.

One commenter opposed the paragraph (b)(1) language expanding the term “transfer of project ownership” to include changes in the partnership’s component parties. The commenter argued that the recorded regulatory agreement governs the project, regardless of the successor parties.

Another commenter argued that TCAC need not approve ownership changes for the entire extended use period. The commenter stated that the regulatory agreement adequately protects the State’s public interest, and TCAC ought not to interfere with open market transactions.

Response to Comments: TCAC agrees that limited partner reviews are unnecessary. TCAC’s interest is in the General Partner and its members. The State has an interest in the continuity of partnership components, specifically General Partners, since they are crucial to a project’s successful operation. This public interest remains in place for the entire 55-year contract compliance period.

The training referenced at Section 10326(g)(5) is applicable to both General Partners and property management entities. Existing GPs remaining in a new partnership would be deemed qualified unless the property or GP has experienced performance problems as documented by TCAC compliance monitoring or other means.

Final Proposed Change:

- (b) Tax Credits and ownership transfers. No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. Said approvals shall not be unreasonably withheld. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(M), in addition to other remedies. The following requirements apply to all ownership or Tax Credit transfers requested after January 31, 2014.
- (1) Any transfer of project ownership (including changes to any general partner, ~~limited partner~~, member, or equivalent responsible party), or allocation of Tax Credits shall be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.
- (2) The entity replacing a party or acquiring ownership or Tax Credits shall be subject to a “qualifications review” by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee ~~upon request~~. Any general partner change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(2)(A) as the exiting general partner. At a minimum this must be three (3) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the three projects must be Low Income Housing Tax Credit projects in California. If the new general partner does not meet these experience requirements, then substitution of general partner shall not be permitted.
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Section 10322(d) - (f)

Initial Proposed Change:

Section 10322. Application Requirements

- (a) Separate Application. A separate application is required for each project.
- (b) Application forms. Applications shall be submitted on forms provided by the Committee. Applicants shall submit the most current Committee forms and supplementary materials in a manner, format, and number prescribed by the Committee.
- (c) Late application. Applications received after an application-filing deadline shall not be accepted.
- (d) Incomplete application. Determination of completeness, compliance with all Basic and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline. Applications not meeting all Basic Threshold Requirements or relevant Additional Threshold (Housing Type) Requirements shown in Sections 10325(f) and (g) or any other application submission requirements described in these Regulations, shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete. An applicant shall be

notified by the Committee should its application be deemed incomplete and the application will not be scored.

- (e) Complete application. ~~Determination of completeness, compliance with all Basic and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline.~~ No additional documents pertaining to the Basic or Additional Threshold Requirements or scoring categories shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is a clear reproduction or application assembly error, or an obviously transposed number. In such cases, applicants shall be given up to five (5) business days from the date of receipt of staff notification, to submit said documents to complete the application. For threshold or scoring omissions other than reproduction or assembly errors, the Executive Director may request additional clarifying information from third party sources other than the applicant, developer or consultant, such as local government entities, but this is entirely at the Executive Director's discretion. ~~Applicants submitting applications with missing, incomplete or inconsistent documents not related to Basic or Additional Thresholds or scoring criteria described in Section 10325(c),~~ Upon the Executive Director's request, the information sources shall be given up to five (5) business days, from the date of receipt of staff notification, to submit said documents to ~~complete~~ clarify the application. The applicant may be required to certify that all evidentiary documents deemed to be missing from the application had been executed on or prior to, the application-filing deadline. If required documents are not submitted within the time provided, the application shall be considered incomplete and no appeal will be entertained.
- (f) Application changes. ~~An application may not be changed, nor may any additional information with respect to scoring or meeting the Basic or Additional Threshold Requirements be submitted subsequent to the application filing deadline, except~~ Only the Committee may change an application as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never improve the score of the application as submitted, and may reduce the application's score and/or credit amount.

Comments Received: Four commenters proposed that paragraph (e) specify that TCAC would concurrently notify an applicant if any clarifying information is requested from a knowledgeable party. One of the commenters stated that the applicant would assure that any information would be provided within the five-day timeline.

One commenter stated that the developer should remain the principal point of contact by TCAC on all application matters.

Another commenter supported permitting TCAC to gather clarifying information from applicants.

Response to Comments: TCAC understands applicants' interest in all communications between development team members and TCAC. However, involving the applicant in obtaining clarifying information may undermine the fair competitive process by allowing, in essence, the applicant to provide additional information beyond what was contained in the original application. Staff intends to give the matter more consideration, and therefore, proposes removing the proposed new language permitting clarifying information regarding scoring matters.

Final Proposed Change:

Section 10322. Application Requirements

- (a) Separate Application. A separate application is required for each project.
- (b) Application forms. Applications shall be submitted on forms provided by the Committee. Applicants shall submit the most current Committee forms and supplementary materials in a manner, format, and number prescribed by the Committee.
- (c) Late application. Applications received after an application-filing deadline shall not be accepted.
- (d) Incomplete application. Determination of completeness, compliance with all Basic and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline. Applications not meeting all Basic Threshold Requirements or relevant Additional Threshold (Housing Type) Requirements shown in Sections 10325(f) and (g) or any other application submission requirements described in these Regulations, shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete. An applicant shall be notified by the Committee should its application be deemed incomplete and the application will not be scored.
- (e) Complete application. ~~Determination of completeness, compliance with all Basic and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline.~~ No additional documents pertaining to the Basic or Additional Threshold Requirements or scoring categories shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is a clear reproduction or application assembly error, or an obviously transposed number. In such cases, applicants shall be given up to five (5) business days from the date of receipt of staff notification, to submit said documents to complete the application. For threshold ~~or scoring~~ omissions other than reproduction or assembly errors, the Executive Director may request additional clarifying information from ~~third party~~ third party sources ~~other than the applicant, developer or consultant,~~ such as local government entities, but this is entirely at the Executive Director's discretion. ~~Applicants submitting applications with missing, incomplete or inconsistent documents not related to Basic or Additional Thresholds or scoring criteria described in Section 10325(c),~~ Upon the Executive Director's request, the information sources shall be given up to five (5) business days, from the date of receipt of staff notification, to submit said documents to ~~complete~~ clarify the application. The applicant may be required to certify that all evidentiary documents deemed to be missing from the application had been executed on or prior to, the application-filing deadline. If required documents are not submitted within the time provided, the application shall be considered incomplete and no appeal will be entertained.
- (f) Application changes. ~~An application may not be changed, nor may any additional information with respect to scoring or meeting the Basic or Additional Threshold Requirements be submitted subsequent to the application filing deadline, except~~ Only the Committee may change an application as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never improve the score of the application as submitted, and may reduce the application's score and/or credit amount.

Section 10322(h)(9)

Initial Proposed Change:

- (9) Appraisals. Appraisals are required for all competitive applications except for tribal trust land and new construction projects that have third party purchase contracts or evidence of a purchase from a third party. If land is donated or leased from a public entity or available through a related party purchase, an appraisal is required to establish value for competitive scoring.
- (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, and costs shall be evidenced by sales agreements, purchase contracts, or appraisals. ~~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.~~ Tribal trust land is excluded from this requirement. However, existing improvement values must be supported by an appraisal pursuant to this section.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(h)(14)

Initial Proposed Change:

- (14) Identification of local jurisdiction. The following information related to the local jurisdiction within which the proposed project is located:
 - (A) Jurisdiction or Tribe (e.g., City of Sacramento)
 - (B) chief executive officer or Tribal chairperson and title (e.g., Susan Smith, City Manager)
 - (C) mailing address
 - (D) telephone number
 - (E) fax number

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(h)(16)

Initial Proposed Change:

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

Comments Received: Two commenters noted that Final and Conclusive Determination Letters only apply to commitments of future tax increment, and urged TCAC to permit other forms of DOF sign-off on using old redevelopment resources. Specifically, the commenters suggested evidence including the project's listing on an approved ROPS list.

Another commenter urged TCAC to distinguish between projects requiring a Final and Conclusive Determination Letter and those that do not. Among the latter would be projects not funded with redevelopment property tax trust fund (RPTTF) dollars, where all of the RPTTF funds have been disbursed. The same commenter noted that potential delays in DOF documentation could jeopardize especially first-round 2014 applicants.

A third commenter urged TCAC to consider alternative documentation of DOF approval.

Response to Comments: TCAC understands expressed concerns regarding timeliness in obtaining information from the State Department of Finance (DOF). However, TCAC has recent

experience with credit reservation recipients subsequently learning of DOF concerns regarding former redevelopment funding or resources. These recent concerns followed projects being on approved ROPS lists and other indicia of compliance with State law.

The State's interest is to forgo committing credits to projects wherein the status of former redevelopment resources remains unresolved. TCAC has also worked closely with DOF representatives to facilitate timely decision-making and communication regarding pending TCAC applications.

TCAC's intent with this change is to sync with established rules promulgated by the California Debt Limit Allocation Committee (CDLAC). TCAC staff is therefore adding a clause not contained in the original proposed rule.

Final Proposed Change: Proceed with change as initially proposed, with a clarifying edit.

- (16) Financing plan. A detailed description of the financing plan, and proposed sources and uses of funds, to include construction, permanent, and bridge loan sources, and other fund sources, including rent or operating subsidies and reserves. The commitment status of all fund sources shall be described, and non-traditional financing arrangements shall be explained. Those projects with redevelopment-related project financing subject to Department of Finance (DOF) approval are required to provide within the CTCAC application a Final and Conclusive Determination Letter, or other written communication from DOF stating that DOF does not issue, or concludes is unnecessary, Final and Conclusive Determinations for this form of redevelopment financing obligation.
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Section 10322(h)(25)

Initial Proposed Change:

- (h) Standard application documents. The following documentation relevant to the proposed project is required to be submitted with all applications:

Note: Other than the proposed changes above to subsection (9), (14) and (16), items (h)(1) – (24) will remain unchanged.

- (24) Self-scoring sheet as provided in the application.
- (25) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:
- (A) a chain of title report or, for tribal trust land, an attorney's opinion regarding chain of title;
 - (B) a third party tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
 - (C) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).

- (26) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:
- (A) an independent, third party appraisal prepared and submitted with the preliminary reservation application consistent with the guidelines in Section 10322(h)(9).
 - (B) a Capital Needs Assessment (“CNA”) performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building’s major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will also include a 15-year reserve study, indicating anticipated dates and costs of future replacements of all major building components that are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary and financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.
 - (C) in cases where the property to be acquired is already regulated by CTCAC or another public funding source, evidence within the preliminary reservation application (i) of any replacement reserve balance, and (ii) that any replacement reserve is being used for the rehabilitation and is not accruing to the benefit of the seller.
- (27) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide income, rent and family size information for the current tenant population.
- (28) Tenant relocation plan. Applicants proposing rehabilitation or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.
- (29) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).

- (30) Nonprofit Set-Aside application. Applicants requesting Tax Credits from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:
- (A) IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;
 - (B) proof of designation as a nonprofit corporation under Health and Safety Code Section 50091;
 - (C) proof that one of the exempt purposes of the corporation is to provide low-income housing;
 - (D) a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;
 - (E) a third party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,
 - (F) a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).
- (31) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations, shall provide verification that the proposed project is located in an eligible rural area. Evidence that project is located in an area eligible for Section 515 financing from RHS may be in the form of a letter from RHS's California state office.
- (32) RHS Section 514, 515 or 538 program applications. Rural housing applicants requesting Tax Credits from amounts made available for projects financed by the RHS Section 514, 515, or 538 program shall submit evidence from RHS that such funding has been requested, obligated or committed as defined by RHS.
- (33) HOME funds match. Applicants requesting State Tax Credits to match HOME funds shall provide a letter from the local jurisdiction stating why local matching funds are not being provided.

Comments Received: Four commenters, three sympathetic with TCAC's intent, argued that the replacement reserve policy proposed under paragraph (26)(C) would be ineffective since existing partnership agreements may govern the disposition of replacement reserve balances. Under such conditions, sellers would likely boost the sales price to account for the lost reserve, defeating TCAC's interest in reserves being used for the proposed rehabilitation. One commenter suggested a TCAC regulatory agreement amendment could head this dynamic off in the future. Another of the four commenters suggested an alternative rule prohibiting sellers from taking cash out as part of a sale.

One local governmental commenter supported the proposed replacement reserve policy at paragraph (26)(C).

One commenter noted that partnership agreements typically govern what becomes of replacement reserves upon sale, and that public lenders like HCD require reserves to remain in place at the current funded level.

Response to Comments: TCAC acknowledges that existing partnership agreements typically govern the fate of project replacement reserves upon sale. Also, TCAC's current recorded regulatory agreements are silent on this point. The suggestion that future TCAC policy and regulatory agreements govern this merits further consideration and, perhaps future rulemaking.

Final Proposed Change: Proceed with changes as initially proposed, except eliminate proposed change at paragraph (26)(C) regarding replacement reserves.

Note: Section 10322(h)(25) through (h)(26)(B) will be recommended as originally proposed, as will subsequent Sections 10322(h)(27) through (h)(33).

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

(A) an independent, third party appraisal prepared and submitted with the preliminary reservation application consistent with the guidelines in Section 10322(h)(9).

(B) a Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will also include a 15-year reserve study, indicating anticipated dates and costs of future replacements of all major building components that are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary and financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.

~~(C) in cases where the property to be acquired is already regulated by CTCAC or another public funding source, evidence within the preliminary reservation application (i) of any replacement reserve balance, and (ii) that any replacement reserve is being used for the rehabilitation and is not accruing to the benefit of the seller.~~

Section 10322(i)

Initial Proposed Change:

~~(i) Additional Subsequent application documents. In addition to all above requirements of this Section, the following documentation relevant to the proposed project is required to be submitted with applications having certain characteristics, as described below:~~

~~(1) Final Reservation application. Applicants proposing a final reservation application shall provide the following unless previously submitted as a Readiness to Proceed requirement:~~

~~(A) an executed construction contract;~~

~~(B) recorded deeds of trust for all construction loan financing;~~

~~(C) a current title report (dated no later than 30 days before the application deadline or no earlier than January 1st of the year in which the building must be placed-in-service as provided in section 10328(c), whichever applies);~~

~~(D) binding commitments for permanent financing;~~

~~(E) binding commitments for any other financing required to complete project construction;~~

~~(F) a construction lender trade payment breakdown of approved construction costs; and,~~

~~(G) an executed partnership agreement, or if not yet executed, a commitment letter between the applicant and investor verifying the expected equity raise, pay-in schedule and costs of syndication;~~

~~(H) building permits;~~

~~(I) a completed updated application;~~

~~(J) a detailed explanation of any changes from the initial application; and~~

~~(K) an updated development timetable as of Final Reservation filing date.~~

~~The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.~~

~~(2)(i) 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)~~(1) 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)~~(2) an audited certification, prepared by an independent Certified Public Accountant under generally accepted auditing standards, with all disclosures and notes. ~~Effective July 1, 2013, the~~ The Certified Public Accountant (CPA) or accounting firm shall not have acted a manner that would impair independence as established by the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct Section 101 and the Securities and Exchange Commission (SEC) regulations 17 CFR Parts 210 and 240. Examples of such impairing services, when performed for the final cost certification client, include bookkeeping or other services relating to the accounting records, financial information systems design and implementation, appraisal or evaluation services, actuarial services, internal audit outsourcing services, management functions or human resources, investment advisor, banking services, legal services, or expert services unrelated to the audit. Both the referenced SEC and AICPA rules shall apply to all public and private CPA firms providing the final audited cost certification. In order to perform audits of final cost certifications, the auditor must have a peer review of its accounting and auditing practice once every three years consistent with the AICPA Peer Review Program as required by the California Board of Accountancy for California licensed public accounting firms (including proprietors); and make the peer review report publicly available and submit a copy to CTCAC along with the final cost certification. If a peer review reflects systems deficiencies, CTCAC may require another CPA provide the final cost certification. This certification shall:
- ~~(1)~~(A) reflect all costs, in conformance with 26 CFR §1.42-17, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan. Projects developed with general contractors who are Related Parties to the developer must be audited to the subcontractor level; and
- ~~(2)~~(B) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.
- ~~(3)~~(C) certify that the CPA has not performed any services, as defined by AICPA and SEC rules, that would impair independence.
- ~~(C)~~(3) an itemized breakdown of placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date(s) on the certificate(s) of occupancy, a detailed explanation is required;
- ~~(D)~~(4) photographs of the completed building(s);
- ~~(E)~~(5) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
- ~~(F)~~(6) a certification from the syndicator of equity raised and syndication costs in a Committee-provided format;
- ~~(G)~~(7) a project ownership profile on a Committee-provided form;

- ~~(H)~~(8) a sponsor-signed certification documenting the services currently being provided to the residents, including identifying service provider(s), describing services provided, stating services dollar value, and stating services funding source(s) (cash or in-kind), with attached copies of contracts and MOUs for services.
- ~~(I)~~(9) a copy of any cost certification submitted to, required by and/or and approved by RHS or any other lender;
- ~~(J)~~(10) a list of all amenities provided at the project site, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided. In addition, the sponsor must provide a list of any project amenities not included in basis for which the property owner intends to charge an optional fee to residents.
- ~~(K)~~(11) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;
- ~~(L)~~(12) if applicable, a certification from a third party tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
- ~~(M)~~(13) all documentation required pursuant to the Compliance and Verification requirements of Sections 10325(f)(7) and 10326(g)(6);
- ~~(N)~~(14) all documents required pursuant to the Compliance and Verification requirements of Section 10327(c)(5)(B);
- ~~(O)~~(15) if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;
- ~~(P)~~(16) a certification from the project architect or, in the case of rehabilitation projects, from an architect retained for the purpose of this certification, that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws. In the case of rehabilitation projects proceeding without an architect, the entity performing the Capital Needs Assessment shall note necessary fair housing improvements, and the applicant shall budget for and implement the related construction work;
- ~~(Q)~~(17) all documentation required pursuant to the Compliance and Verification requirements of Section 10325(c)(6), if applicable; and
- ~~(R)~~(18) a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(21) of these regulations. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS rater, in accordance with current HERS regulations.
- (19) for tribal trust land, the lease agreement between the Tribe and the project owner.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

~~(3) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:~~

~~a. a chain of title report;~~

~~b. a third party tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,~~

~~c. if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).~~

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

~~a. an independent, third party appraisal prepared consistent with the guidelines in Section 10322(h)(9).~~

~~(B) a Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will also include a 15-year reserve study, indicating anticipated dates and costs of future replacements of all major building components that are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary and financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.~~

~~Subsections (A) and (B) above shall not apply if the project previously received a reservation of Tax Credits and these requirements were met in the original application.~~

~~(5) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide income, rent and family size information for the current tenant population.~~

~~(6) Tenant relocation plan. Applicants proposing rehabilitation or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the~~

~~Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.~~

- ~~(7) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).~~
- ~~(8) Nonprofit Set-Aside application. Applicants requesting Tax Credits from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:~~
- ~~a. IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;~~
 - ~~b. proof of designation as a nonprofit corporation under Health and Safety Code Section 50091;~~
 - ~~c. proof that one of the exempt purposes of the corporation is to provide low-income housing;~~
 - ~~d. a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;~~
 - ~~e. a third party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,~~
 - ~~f. a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).~~
- ~~(9) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations, shall provide verification that the proposed project is located in an eligible rural area. Evidence that project is located in an area eligible for Section 515 financing from RHS may be in the form of a letter from RHS's California state office.~~
- ~~(10) RHS Section 514, 515 or 538 program applications. Rural housing applicants requesting Tax Credits from amounts made available for projects financed by the RHS Section 514, 515, or 538 program shall submit evidence from RHS that such funding has been requested, obligated or committed as defined by RHS.~~
- ~~(11) HOME funds match. Applicants requesting State Tax Credits to match HOME funds shall provide a letter from the local jurisdiction stating why local matching funds are not being provided.~~

Comments Received: Six commenters endorsed eliminating the Final Reservation process, and one of those commenters urged clarification as to its retroactivity. This would exempt 2012 and 2013 allocation recipients from having to submit a Final Reservation package.

Response to Comments: TCAC staff will put out an advisory that, if adopted by the Committee on January 29, 2014 then final reservation packages would not be required immediately thereafter.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10322(j)

Initial Proposed Change:

- (j) Re-application. Proposals submitted under Section 10326 of these regulations do not require new applications for minor changes in costs or Tax Credits alone. Committee staff will normally adjust the Credit amount for projects requesting Tax Credit increases under Section 10326 only at one time, when the placed-in-service package is received and reviewed by Committee staff. However, reapplication is required and applications will be reviewed if the Executive Director deems it necessary to have the Committee take formal action due to substantial changes or an extraordinary increase in Tax Credits requested. ~~For applications initially approved after February 1, 2005,~~ "Substantial changes" for this purpose will mean any significant change in unit mix, number of buildings or building layout, or development cost increases greater than 20% of the original costs, and an "extraordinary increase" in Tax Credits will mean an increase greater than 15% of the original reservation amount. It is the applicant's responsibility to notify CTCAC of any such changes and when CTCAC is notified accordingly, new applications may be required. Reapplications at placed-in-service that are requesting additional Tax Credits will be required to submit a fee equal to one percent (1%) of the first year's credit amount. For all other projects, except in unusual, extreme cases such as fire, or act of God, where a waiver of this subsection is permitted by the Executive Director, a re-application for a development that has already received a Tax Credit reservation or allocation shall be evaluated as an entirely new application, and shall be required to return its previously reserved or allocated Tax Credits prior to or simultaneously with its new application. All re-applications shall be subject to negative points under Section 10325(c)(3) if applicable (for example, a project that does not meet the original placed-in-service deadline would receive negative points hereunder). Re-applications shall be subject to the regulations in effect at the time the re-application is submitted. For projects submitted under Section 10326 of these regulations that are requesting additional Tax Credits, the basis limits to be used in the final underwriting shall be those in effect during the year the development is placed-in-service.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(1)(C)

Initial 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 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 even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds 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, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreements negotiated between public entities and private developers, 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(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. For Tribal pilot apportionment applications, land purchased with public funds shall not be eligible for public funds points.

To receive points under this subsection for loans, those loans must be "soft" loans, having terms (or remaining terms) ~~in excess of~~ at least 15 years, and below market interest rates and interest accruals, or residual receipts payments 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, or the Applicable Federal Rate if compounding. 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 consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property.

~~Only the principal balances of prior publicly funded or subsidized loans 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, even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.~~

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 or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

Comments Received: One commenter supported the clarifying changes regarding assumed public debt.

Another commenter believes omitting land contributions from tribes would disadvantage those applications in the geographic competitions.

One commenter objected to an unfair competitive advantage realized by public housing entities when they contribute a property to, in essence, themselves as the project developer. No other developer can generate this competitive advantage by donating land to the project.

Response to Comments: As proposed, the Native American pilot apportionment would only be available to rural tribes. By regulation, rural projects may only compete in the rural set-aside. However, nothing prevents a non-rural tribe from competing in either their geographic apportionment or in one of the non-rural set-asides. Land contributions from tribes competing outside of the pilot apportionment would count competitively as public funding, and new language accommodates unsuccessful pilot apportionment Tribal applications that compete in the general rural set-aside.

Final 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 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 even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds 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, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreements negotiated between public entities and private developers, 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(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. For Tribal pilot apportionment applications, land purchased with public funds shall not be eligible for public funds points. However, unsuccessful Tribal pilot program applicants subsequently competing within the rural set-aside competition could have such tribal land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

To receive points under this subsection for loans, those loans must be “soft” loans, having terms (or remaining terms) ~~in excess of~~ at least 15 years, and below market interest rates and interest accruals, or residual receipts payments 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, or the Applicable Federal Rate if compounding. 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 consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property.

~~Only the principal balances of prior publicly funded or subsidized loans 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, even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.~~

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 or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

Section 10325(c)(2)

Initial 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 proposed general partners, or a key person within the proposed general partner organization, 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.

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:

3 projects in service less than 3 years	3 points
3 <u>Special Needs</u> projects in service more than 3 years	4 points
4 or more projects in service less than 3 years	5 points
4 or more <u>Special Needs</u> projects in service more than 3 years	6 points

- (ii) General partners with fewer than two (2) active California Low Income Housing Tax Credit projects in service more than three years, and general partners for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit tax-credit projects in service more than three years, shall ~~partner~~ contract with a bona-fide management company currently operating two (2) California Low Income Housing Tax Credit tax-credit projects in California in service more than three years and which itself earns a minimum ~~combined-total of three (3)~~ two (2) points at the time of application.

In applying for and receiving points in this category, applicants assure that the property shall be operated by a general partner in conformance with Section 10320(b)(~~2~~).

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

(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 <u>Special Needs</u> projects in service over 3 years	2 points
4 or more projects in service under 3 years	1.5 points
4 or more <u>Special Needs</u> projects in service over 3 years	3 points

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

- (ii) Management companies with fewer than two (2) active California Low Income Housing Tax Credit projects in California in service more than 3 years, and management companies for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit projects in California in service more than 3 years, shall partner contract with a bona-fide management company currently operating two (2) California Low Income Housing Tax Credit tax credit projects in California in service more than three years and which itself earns a minimum combined total of ~~three (3)~~ two (2) points at the time of application.

~~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.~~

When contracting with a California-experienced property management company under the terms of paragraph (A)(ii) or (B)(ii) above, the general partner or property co-management entity must obtain training in: project operations, on-site certification training in federal fair housing law, and manager certification in IRS Section 42 program requirements from a CTCAC-approved, nationally recognized entity. Additionally, the experienced property management agent must remain for a period of at least 3 years from the placed-in-service date (or, for ownership transfers, 3 years from the sale or transfer date) to allow for at least one (1) CTCAC monitoring visit to ensure the project is in compliance with IRC Section 42. Thereafter, the experienced property manager may transfer responsibilities to the remaining general partner or property management firm following formal written approval from CTCAC.

In applying for and receiving points in these categories, applicants assure that the property shall be owned and managed by entities with equivalent experience scores for the entire 15-year federal compliance and extended use period, pursuant to Section 10320(b). The experience must include at least two (2) Low Income Housing Tax Credit projects in California in service more than 3 years.

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. For points to be awarded in subsection (B), an enforceable management agreement executed by both parties for the subject application must be submitted at the time of application. "Projects" as used in subsections (A) and (B) means multifamily rental affordable developments of over 10 units that are subject to a recorded regulatory agreement, or, in the case of housing on tribal lands, where federal HUD funds have been utilized in

affordable rental developments. General Partner and Management Company experience points may be given based on the experience of the principals involved, or on the experience of municipalities or other nonprofit entities that have experience but have formed single-asset entities for each project in which they have participated, notwithstanding that the entity itself would not otherwise be eligible for such points. For qualifying experience, “principal” is defined as an individual overseeing the day-to-day operations of affordable rental projects such as an Executive Director for General Partner experience or a Director of Compliance for Management Company experience. ~~Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.~~

~~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 compliance period.~~

Comments Received: One commenter urged clarifying under paragraph (A)(ii) whether an inexperienced General Partner (GP) must partner with another experienced GP, or simply contract with an experienced property manager. The same commenter urged inserting the word “property” before the term “management company,” and changing the term “operating” to “managing” where referring to property management in this subsection.

Another commenter recommended that the proposed “principal” description in the proposed final paragraph include “senior management personal of the General Partner and Property Management Company,” since these terms are more widely recognized within the private development community.

One commenter urged TCAC’s scoring to consider a management company’s experience with a project (three years) rather than the project’s time in service. A new property manager taking over an older project ought not to benefit from that project under the three-year rule.

A commenter urged TCAC to clarify, in the first paragraph following (B)(ii), that the three-year property management continuity could be met by different experienced property managers over that period. That is, TCAC should allow for another experienced property manager to be substituted in during the three year period.

Another commenter suggested that TCAC look for management experience only within the 10 years prior to the application, just as paragraph (A)(i) requires such recent experience of scored General Partners.

One commenter urged TCAC to assure that all property management staff persons are knowledgeable regarding the Low Income Housing Tax Credit program, verified by an affidavit by each management company staffer.

Another commenter urged TCAC to accommodate developers taking over property management if the developer hires a key experienced staffer to head up the property management operation.

Response to Comments: Proposed paragraph (A)(ii) as written, would require inexperienced general partners to contract with an experienced property management company. Of course,

requisite general partner experience could be garnered by proposing an experienced co-General Partner, thereby mitigating the need for the maximally experienced property manager. As a practical matter, all successful competitors in recent years have scored maximum points for both general partner and property management experience.

Using the term “managing” properties rather than “operating” them when speaking of property management entities is a worthy clarifying edit. Also, the recommended use of the term “senior management personnel” is also helpful in clarifying the term principal in the proposed text.

The suggested clarification that experience is relative to the property manager, not the project is also helpful.

Substituting for an original experienced property management entity with an equally experienced party during the initial three years, while not ideal, should be permitted in unusual circumstances.

TCAC’s recent experience standard (ten years) for general partners ought to also be applied when scoring property management entities. In addition, new language clarifies TCAC’s practice of honoring property management experience only once the specific project has placed in service. However, requiring affidavits from all property management staff as to their experience and knowledge would be overbearing.

Permitting a general partner to take over property management if they bring on an experienced property manager would be consistent with the proposed language describing an organizational “principal.”

Final 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.

(B) General partner experience. To receive points under this subsection for projects in existence for over 3 years, the proposed general partners, or a key person within the proposed general partner organization, 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.

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:

3 projects in service less than 3 years	3 points
3 <u>Special Needs</u> projects in service more than 3 years	4 points
4 or more projects in service less than 3 years	5 points
4 or more <u>Special Needs</u> projects in service more than 3 years	6 points

- (ii) General partners with fewer than two (2) active California Low Income Housing Tax Credit projects in service more than three years, and general partners for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit tax credit projects in service more than three years, shall partner contract with a bona-fide management company currently ~~operating~~ managing two (2) California Low Income Housing Tax Credit tax credit projects in California in service more than three years and which itself earns a minimum ~~combined total of three (3)~~ two (2) points at the time of application.

In applying for and receiving points in this category, applicants assure that the property shall be operated by a general partner in conformance with Section 10320(b)(2).

- (B) Management Company experience. To receive points under this subsection, the property management company must meet the following conditions: To obtain points for projects previously managed, the ending date of the property management role must be no more than 10 years from the application deadline. In addition, the property management experience with a project shall not pre-date the project's placed-in-service date.

(i) 6-10 projects in service under 3 years	1.5 points
6-10 projects <u>in service managed</u> over 3 years	2 points
11 or more projects in service under 3 years	2.5 points
11 or more projects <u>in service managed</u> 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 <u>Special Needs projects in service managed</u> over 3 years	2 points
4 or more projects in service under 3 years	1.5 points
4 or more <u>Special Needs projects in service managed</u> over 3 years	3 points

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

- (ii) Management companies ~~with~~ managing fewer than two (2) active California Low Income Housing Tax Credit projects ~~in California in service for more than 3 years~~, and management companies for projects applying through the Nonprofit or Special Needs set-aside ~~with~~ managing no active California Low Income Housing Tax Credit projects ~~in California in service for more than 3 years~~, shall ~~partner contract~~ partner contract with a bona-fide management company currently ~~operating~~ managing two (2) California Low Income Housing Tax Credit ~~tax credit projects in California in service for more than three years~~ and which itself earns a minimum combined total of ~~three (3)~~ two (2) points at the time of application.

~~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.~~

When contracting with a California-experienced property management company under the terms of paragraph (A)(ii) or (B)(ii) above, the general partner or property co-management entity must obtain training in: project operations, on-site certification training in federal fair housing law, and manager certification in IRS Section 42 program requirements from a CTCAC-approved, nationally recognized entity. Additionally, the experienced property management agent or an equally experienced substitute, must remain for a period of at least 3 years from the placed-in-service date (or, for ownership transfers, 3 years from the sale or transfer date) to allow for at least one (1) CTCAC monitoring visit to ensure the project is in compliance with IRC Section 42. Thereafter, the experienced property manager may transfer responsibilities to the remaining general partner or property management firm following formal written approval from CTCAC.

In applying for and receiving points in these categories, applicants assure that the property shall be owned and managed by entities with equivalent experience

scores for the entire 15-year federal compliance and extended use period, pursuant to Section 10320(b). The experience must include at least two (2) Low Income Housing Tax Credit projects in California in service more than 3 years.

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. For points to be awarded in subsection (B), an enforceable management agreement executed by both parties for the subject application must be submitted at the time of application. "Projects" as used in subsections (A) and (B) means multifamily rental affordable developments of over 10 units that are subject to a recorded regulatory agreement, or, in the case of housing on tribal lands, where federal HUD funds have been utilized in affordable rental developments. General Partner and Management Company experience points may be given based on the experience of the principals involved, or on the experience of municipalities or other nonprofit entities that have experience but have formed single-asset entities for each project in which they have participated, notwithstanding that the entity itself would not otherwise be eligible for such points. For qualifying experience, "principal" is defined as an individual overseeing the day-to-day operations of affordable rental projects such as an Executive Director for General Partner experience or a Director of Compliance for Management Company experience. ~~Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.~~

~~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 compliance period.~~

Section 10325(c)(5)(B)

Initial Proposed Change:

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

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

The amenities must be available within 6 months of the project's placed-in-service date. Applicants must commit that services shall be provided for a period of 10-years.

All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development (1½ miles for Rural set-aside projects) provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. All organizations providing services for which the project is claiming service amenities points must have at least 24 months experience providing services to one of the target populations to be served by the project.

Comments Received: Two commenters supported the proposed change.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(6)(D) through (F)

Initial Proposed Change:

(D) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; or 2011 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

~~(D)~~(E) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) based on existing conditions. Points are awarded based on the building(s) percentage decrease in estimated annual Time Dependent Valuation (TDV) energy use (or improvement in energy efficiency) in the building's Home Energy Rating System II (HERS II) rating post rehabilitation as demonstrated using the appropriate performance module of California Energy Commission (CEC) approved software (e.g., EnergyPro, Micropas):

Improvement Over Current

15 percent	3 points
20 percent	5 points
25 percent	7 points
30 percent	10 points

(F) For projects receiving points under section 10325(c)(6)(D), applicants may be awarded points for committing to develop their project beyond the minimum requirements of the green building program chose in section 10325(c)(6)(D):

<u>LEED</u>		<u>Silver</u>	<u>Gold</u>
<u>GreenPoint Rated</u>	<u>65</u>	<u>95</u>	<u>120</u>
<u>2011 Enterprise Green Communities</u>		<u>Moderate Rehabilitation</u>	<u>Substantial Rehabilitation</u>
	<u>2 points</u>	<u>3 points</u>	<u>5 points</u>

~~(E)~~(G) Additional Rehabilitation Project Measures. For project's receiving points under section 10325(c)(6)(D) applicants may be awarded points for committing to developing, and/or managing, their project with one or more of the following:

Note: Other than the proposed renumbering change above, the Additional Rehabilitation Project Measures subsection will remain unchanged.

Comments Received: Three commenters supported the additional scoring options for rehabilitation projects.

While supporting the additional options for rehabilitation projects, one commenter urged TCAC to delay the current spreads over Title 24 to accommodate projects that have already been fully designed under current building codes. Two other commenters urged reducing the spreads over Title 24 as the State code gets more rigourous.

Two other commenters argued that the new Title 24 standards will add cost, and urged TCAC to allow projects to be competitive without exceeding the new Title 24 standards. One of these commenters also urged forbearance for projects already completing design drawings which have been submitted for plan check under the current Title 24 standards.

One commenter also endorsed the additional sustainability options for rehabilitation projects, but believes TCAC should resolve a sometimes-inherent conflict between energy efficiency and historic preservation. TCAC should consider points in the sustainability section for historic rehabilitation itself, or have alternative sustainability options for historic properties.

One commenter recommended that paragraph (E) continue to reference the HERS-II rating system, to make clear that a HERS-II rater should be doing the work. The same commenter stated that software is available to measure appliances, plug loads, and lighting and TCAC ought to incorporate that technology into its system. This commenter also recommended eliminating references to Certified Energy Plans Examiners (elsewhere in Section 10325(c)(6)) as that certification is going away.

One commenter noted that points under the paragraph re-lettered as (G) ought to reference new paragraph (D) and re-lettered paragraph (E), consistent with the current regulations.

Another commenter noted that San Francisco rehabilitation projects may have difficulty reaching the higher compliance levels proposed in paragraph (F) due to the climate, the stock itself, and historic preservation requirements.

One commenter urged TCAC to score, under new paragraph (G), solar water heating even where residents are not individually metered for water usage.

Another commenter urged clarification that “Green Point Rated Elements” suffices for the proposed rehabilitation scoring at paragraph (D). Also, the same commenter asked TCAC to clarify the meaning of the proposed paragraph (D) phrase “to the extent it can be applied to existing multifamily building.” The same commenter recommended that TCAC recognize recent property improvements in evaluating proposed energy improvements to the property. Specifically, a five-year look-back by a HERS rater should be accounted for if the property has undergone energy improvements that recently.

Response to Comments: TCAC shares commenters’ concerns regarding the Title 24 changes scheduled to occur July 1, 2014 (2013 version). The California Energy Commission’s unexpected delay in implementing the new standards and remaining uncertainty as to the final nature of those new standards makes establishing improvement percentages beyond those standards difficult. Therefore, TCAC staff will propose new standards against the existing (2008 version) Title 24 code. The percentage improvement standards will remain unchanged through June 30, 2014. That is, applicants will still be required to exceed the current 2008 Title 24 code by 15 percent as a threshold matter (Sections 10325(f)(7) and 10326(g)(6)). In addition, to garner competitive points, first round 9% credit applicants must continue to exceed the 2008 code by 17.5%, 20%, or 25% (Section 10325(c)(6)(B)).

For applications received after July 1, 2014 the new TCAC standards (still measured against the 2008 Title 24 code) will all be increased by 15 percent (15%). This means that the basic threshold standard will increase to 30 percent (30%) better than the 2008 code, and the scoring standards will increase to 32.5%, 35%, or 40% better than the 2008 code.

Bear in mind that the Title 24 code itself will get approximately 22 percent (22%) more rigorous on July 1, 2014. So, the new improvements over the 2008 code would approximately equate to the following improvements over the new 2013 code:

	2013 (over 2008)	2014 (over 2008)	2014 (over 2013)
<i>Min. Construction Standard</i>	15.0%	30.0%	7.00%
<i>2 Points</i>	17.5%	32.5%	9.50%
<i>3 Points</i>	20.0%	35.0%	12.00%
<i>5 Points</i>	25.0%	40.0%	17.00%

In essence, TCAC is reducing the spread required over the new Title 24 standard taking effect July 1, 2014. This approach would employ a “glide path” to the California Energy Commission’s goal of zero net energy residential development by 2020. That is, the required and competitive spreads over Title 24 will decline as the Title 24 code itself gets more rigorous. Finally, as the code itself arrives at a zero net energy standard, TCAC would no longer seek an improvement beyond code.

While TCAC is generally reluctant to change standards between the new competitive rounds, delaying the new standard until the second round would accommodate pipeline projects already receiving plan check review under TCAC’s current standards. Second round applicants, who

understood that the 2013 Title 24 standards were scheduled to be implemented January 1, 2014 have time to anticipate and adjust to the new standards. TCAC’s interest is in assuring that projects funded after adoption of the new code adhere to and exceed that code. This will assure TCAC’s continued commitment to long-term energy efficiency in its affordable housing portfolio.

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TCAC agrees that re-lettered paragraph (G) ought to now reference both new paragraph (D) and re-lettered paragraph (E) which was formerly paragraph (D).

TCAC also proposes deleting an initial proposed reference to Micropas as a California Energy Commission (CEC) approved software for renovations. TCAC is advised that Micropas software is not updating for 2014 and so should not be used as an example of CEC-approved software at this time. TCAC’s intent is to more directly reference CEC-approved software for rehabilitation modeling for getting reliable estimates, not to remove HERS raters from the process. For placed-in-service modeling and certification, TCAC will continue to require a CEPE (who are frequently also HERS raters) signature.

Also, it is not yet clear whether and how 2014 software would estimate appliances, plug loads, and lighting in modeling. Therefore, TCAC will continue to focus on regulated loads (e.g., heating, cooling, and water heating) and await the larger industry’s experience before incorporating other modeling.

While two commenters highlighted the sustainability challenges facing historic preservation projects, TCAC will continue to induce such projects to improve their energy efficiency. While the new available standards (LEED, etc.) may be difficult for an historic property, the percentage improvements established in paragraph (E) should generally be readily attainable.

Final Proposed Change: In response to comments, TCAC staff proposes the following changes to Section 10325(c)(6), as well as Section 10325(f)(7):

Section 10325(c)(6)(B)

- (B) For first round 2014 project’s receiving points under section 10325(c)(6)(A), additional points for energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the 2008 Title 24, Part 6, of the California Building Code (the 2008 Standards) ~~under which the project is constructed~~, shall be awarded as follows:

Percentage better than the current <u>2008</u> Standards	Low-Rise Multifamily (3 or fewer habitable stories)	Multifamily of 4 or more habitable stories
17.5 percent	2 points	3 points
20 percent	3 points	5 points
25 percent	5 points	

For second round 2014 projects, the same scoring methodology shall be applied for higher percentage better than the 2008 Title 24 standards as follows:

<u>Percentage better than the 2008 Standards</u>	<u>Low-Rise Multifamily (3 or fewer habitable stories)</u>	<u>Multifamily of 4 or more habitable stories</u>
<u>32.5 percent</u>	<u>2 points</u>	<u>3 points</u>
<u>35 percent</u>	<u>3 points</u>	<u>5 points</u>
<u>40 percent</u>	<u>5 points</u>	

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Section 10325(c)(6)(D) through (F):

(D) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; or 2011 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

~~(D)(E)~~ Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) based on existing conditions. Points are awarded based on the building(s) percentage decrease in estimated annual Time Dependent Valuation (TDV) energy use (or improvement in energy efficiency) in the building's Home Energy Rating System II (HERS II) rating post rehabilitation as demonstrated using the appropriate performance module of California Energy Commission (CEC) approved software (e.g., EnergyPro, Micropas):

Improvement Over Current

15 percent	3 points
20 percent	5 points
25 percent	7 points
30 percent	10 points

(G) For projects receiving points under section 10325(c)(6)(D), applicants may be awarded points for committing to develop their project beyond the minimum requirements of the green building program chose in section 10325(c)(6)(D):

<u>LEED</u>		<u>Silver</u>	<u>Gold</u>
<u>GreenPoint Rated</u>	<u>65</u>	<u>95</u>	<u>120</u>
<u>2011 Enterprise Green Communities</u>		<u>Moderate Rehabilitation</u>	<u>Substantial Rehabilitation</u>
	<u>2 points</u>	<u>3 points</u>	<u>5 points</u>

(E)(G) Additional Rehabilitation Project Measures. For project's receiving points under section 10325(c)(6)(D) or (E) applicants may be awarded points for committing to developing, and/or managing, their project with one or more of the following:

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Section 10325(f)(7):

- (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~~ For all 2014 competitive first round applications and noncompetitive applications received prior to June 30, 2014, new construction buildings shall be fifteen percent (15%) better than the ~~current 2008~~ 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 2014 competitive second round new construction applications and noncompetitive new construction applications received on July 1, 2014 or thereafter shall be thirty percent (30%) better than the 2008 standards. 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.

Section 10325(c)(6)(H)(1) through (5)

Initial Proposed Change:

~~(F)~~(H) Compliance and Verification:

1. For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building

methods of Section 10325(c)(6) have been incorporated into the project, if applicable. For applications incorporating the requirements of subsections (A) and (D) Green Communities option, and for applications incorporating the requirements of subsections (B), (E), and (G) above, applicants must include a completed Sustainable Building Method Workbook.

2. For placed-in-service applications to receive points under sections 10325(c)(6)(A) and (C) and sections 10325(c)(6)(D) and (F), the applicant must submit the appropriate required third party verification documentation showing the project has met the requirements for the relevant program.
3. For placed-in-service applications to receive points under section 10325(c)(6)(B), the applicant must submit a completed Sustainable Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. This compliance form must be the output from the building(s) modeled “as built” and reflect all relevant changes that impact the building(s) energy efficiency that were made after the preliminary reservation application. The compliance form must be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Plans Examiner (CEPE). Documentation for measures that require verification by California Home Energy Rating System (HERS) Raters must also be submitted.
4. For placed-in-service applications to receive points under section 10325(c)(6)(~~D~~E), the applicant must submit a completed Sustainable Building Method Workbook and the California Energy Commission HERS II energy consumption and analysis report from the appropriate performance module of CEC approved software, developed using the Home Energy Retrofit Coordinating Committee’s multifamily auditing and analysis protocols, which shows the pre- and post- rehabilitation ~~HERS II~~ estimated ~~annual~~ (TDV) energy use demonstrating the required improvement and is signed by a qualified HERS Rater.
5. For placed-in-service applications to receive points under section 10325(c)(6)(~~E~~G) the applicants must submit a completed Sustainable Building Method Workbook and the following documentation:
 - (i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project’s solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter.

- (ii) For sustainable building management practices implemented by appropriately trained onsite staff, the applicant must submit a copy of the energy management and maintenance manual, provide evidence onsite staff has been certified in green building operations and maintenance through the Building Performance Institute Multifamily Energy Efficient Building Operator or equivalent training, and submit the building commissioning plan drafted in accordance with the California Commissioning Collaborative's best practice recommendations for existing buildings or the GreenPoint Rated Multifamily Commissioning requirements. Owner certification of ongoing sustainable building management practices will be provided annually in accordance with Section 10337(c)(3)(A).
- (iii) For sub-metered central hot water systems, the applicant must demonstrate compliance with CPUC regulations for hot water sub-metering and billing by submitting a copy of the Utility Service Agreement from project's local utility provider.

Comments Received: Two commenters endorsed the clarification of workbook applicability.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(7)

Initial Proposed Change:

(7) Lowest Income in accordance with the table below Maximum 52 points

(A) The "Percent of Area Median Income" category may be used only once. For instance, 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income cannot be used twice for 100% at 50% and receive 50 points, nor can 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income for 25 points and 40% of Income Targeted Units to Total Units at 50% of Area Median Income be used for an additional 20 points. However, the "Percent of Income Targeted Units" may be used multiple times. For example, 50% of Targeted Units at 50% of Area-Median Income for 25 points may be combined with another 50% of Targeted Units at 45% of Area Median Income to achieve the maximum points. All projects must score at least 45 points in this category to be eligible for 9% Tax Credits.

Only projects competing in the Rural set aside may use the 55% of Area median income column.

Lowest Income Points Table:

	Percent of Area Median Income						
	80	75	70	65	60	55	50
						55	50
						45	40
						35	30
						25*	20
						17.5*	15*
						12.5*	10*
						7.5*	5*
						2.5*	5
						10	7.5
						12.5	10
						15	12.5
						17.5	15
						20	17.5
						22.5	20
						25	22.5
						27.5	25
						30	27.5
						32.5	30
						35	32.5
						37.5	35
						40	37.5
						42.5	40
						45	42.5
						47.5	45
						50	47.5
						50	50

* Available to Rural set-aside projects only

- (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 the various bedroom-count units, starting with the largest bedroom-count units (e.g. four bedroom units), and working down to the smaller bedroom-count units, assuring that at least 10% of the larger units 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 all of the smaller units. The CTCAC Executive director may correct applicant errors in carrying out this largest-to-smallest unit protocol. (These points may be obtained by using the 30% section of the matrix.)

All projects, except those applying under section 10326 of these regulations, will be subject to the minimum low income percentages chosen for a period of 55 years (50 years for projects located on tribal trust land), unless they receive Federal Tax Credits only and are intended for eventual tenant homeownership, in which case they must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

Comments Received: One commenter stated that syncing the regulatory term with the land lease term could create tax complications related to the “true debt” test.

Response to Comments: The 50-year term accommodation was suggested to TCAC by parties who have helped develop tax credit properties on Native American reservations. TCAC’s experience has been that lease terms are frequently co-terminus with tax credit regulatory

agreement terms. Therefore, TCAC is not aware of tax complications resulting from such a structure.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(c)(8)

Initial Proposed Change:

- (8) Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 180 days of the Credit Reservation, as evidenced by submission, within that time, of: a completed updated application along with a detailed explanation of any changes from the initial application, an executed construction contract, a construction lender trade payment breakdown of approved construction costs, recorded deeds of trust for all construction financing (unless a project's location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) or the applicable tribal documents and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 180 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

~~For projects receiving competitive reservations in the first round of 2012, the 180-day references in the preceding paragraph shall be extended by thirty (30) days.~~

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet these two timelines shall result in rescission of the Tax Credit Reservation. The following must be delivered:

- (A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);
- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA, and NEPA, and applicable tribal land environmental reviews) necessary to begin construction are either finally approved or unnecessary;
- (C) evidence of all necessary public or tribal approvals except building permits; and
- (D) evidence of design review approval.

For paragraphs (B), (C), and (D) an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that time period were resolved within that 30-day period to garner local approval readiness points.

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 180-day requirements shall not apply to projects that do not obtain the maximum points in this category.

Comments Received: One commenter urged inserting the word “form” in the first sentence to clarify that the update is just to the TCAC form, not to an entire application with attachments.

One commenter urged TCAC to move the last paragraph in this subsection up to the portion that discusses scoring. In its current location, it seems to have implications at the 180-day mark, while its real effect is at the application stage.

One commenter supported the 180-day changes to the extent they mitigate the need for a Final Reservation submittal.

Response to Comments: Each of the comments has merit, and TCAC staff proposes the following clarifications to the readiness scoring process.

Note: The third paragraph in subsection (8) now reflects new regulation language adopted since the October 25, 2013 publication of TCAC’s initial statement of reasons for this

Final Proposed Change:

- (8) Readiness to Proceed. 20 points will be available to projects that document items (A) through (D) below, and commit ~~meet ALL of the following, and are able~~ to begin construction within 180 days of the Credit Reservation, as evidenced by submission, within that time, of: a completed updated application form along with a detailed explanation of any changes from the initial application, an executed construction contract, a construction lender trade payment breakdown of approved construction costs, recorded deeds of trust for all construction financing (unless a project’s location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) or the applicable tribal documents and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 180 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

~~For projects receiving competitive reservations in the first round of 2012, the 180-day references in the preceding paragraph shall be extended by thirty (30) days.~~

For projects that are federal funding recipients and receiving competitive reservations in the first round of 2013, the 180-day references in the preceding paragraph shall be extended by forty-five (45) days. The extension is provided to

projects documenting that the federal government shutdown impacted their ability to meet Readiness to Proceed requirements.

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet the 90 day due date, or the 180-day due date if applicable, these two timelines shall result in rescission of the Tax Credit Reservation.

Five (5) points shall be awarded for submittals within the application documenting each of the following criteria, up to a maximum of 20 points. The 180-day requirements shall not apply to projects that do not obtain the maximum points in this category. ~~The~~ Within the preliminary reservation application, the following must be delivered:

- (A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);
- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA, and NEPA, and applicable tribal land environmental reviews) necessary to begin construction are either finally approved or unnecessary;
- (C) evidence of all necessary public or tribal approvals except building permits; and
- (D) evidence of design review approval.

For paragraphs (B), (C), and (D) an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that time period were resolved within that 30-day period to garner local approval readiness points.

~~In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 180 day requirements shall not apply to projects that do not obtain the maximum points in this category.~~

Section 10325(c)(9)(A), (B) and (C)

Initial Proposed Change:

(9) Miscellaneous Federal and State Policies Maximum 2 points

- (A) State Credit Substitution. For applicants that agree to exchange Federal Tax Credits for State Tax Credits in an amount that will yield equal equity as if only Federal Credits were awarded. Applicants requesting State credits within the submitted application shall not receive points for State Credit Substitution.

2 points

- (B) Universal Design. Project design incorporates the principles of Universal Design in at least half of the project's units by including: ~~accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances.~~
- Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34" clear width for all doors on an accessible path.
 - Interior doors with lever hardware and 42" minimum width hallways.
 - Fully accessible bathrooms complying with the 2010 ADA Standards for Accessible Design and CBC 11A and 11B. In addition a 30"x48" clearance parallel to and centered on the bathroom vanity allowing for parallel approach.
 - Accessible kitchens with 30"x48" clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and sink).
 - Accessible bedroom size shall be as described in the Fundamental Design Criteria: Master Bedroom 150-200 square feet, with a minimum room dimension of 12'.
 - Universally Designed units shall include an ISA symbol (raised and tactile, a minimum of 1" x1") incorporated into the Unit signage.
 - Accessible Parking in addition to what is minimally required by the 2010 ADA Standards for Accessible Design is not required.
 - Audio and visual doorbells required by UFAS shall be installed.
 - Closets, balconies, shall be located on an accessible route.
- 4 2 points
- (C) Smoke Free Residence. The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 4 2 points
- (D) Historic Preservation. The project proposes to use Historic Tax Credits 1 point
- (E) Qualified Census Tract. The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 2 points
- (F) Eventual Tenant Ownership. The project proposes to make tax credit units available for eventual tenant ownership and provides the information described in Section 13025(c)(7) of these regulations. 1 point

Comments Received: One commenter endorsed providing options such as smoke-free buildings if sponsors cannot meet the Universal Design (UD) standards.

Eight commenters suggested delaying implementing proposed changes in this subsection, and urged TCAC to work with stakeholders to identify alternative point options and to refine the proposed UD changes. Two of the commenters suggested UD may merit additional points in light of its cost and challenges. Also, six commenters stated that the smoke-free option may not be available to Special Needs projects as a practical matter when implementing a harm reduction policy. One of those commenters suggested, as an alternative, reducing the 50 percent (50%) standard for a smoke free building for special needs projects. One commenter questioned the value of the proposed UD standards, such as the parallel access to major appliances such as dishwashers.

Five commenters advocated continuing allowing State credit exchange point awards even when the applicant is requesting State credits since the available alternatives are costly. One of the five commenters alternatively suggested doing away with the Miscellaneous Federal and State Policies scoring category altogether.

Two commenters suggested clarifying that the 50 percent (50%) UD requirement would apply only to units on an accessible route. In some properties, this could be 50% of the ground floor units only. Another commenter stated that such a high percentage of units redesigned to this standard may not be physically or financially feasible.

Five commenters stated that the 150 square foot minimum bedroom size is an arbitrary standard and one of these commenters stated that requiring one bedroom wall 12 feet in length or longer ought to suffice.

Four commenters stated that eliminating the State credit exchange opportunity for non-DDA and non-QCT projects is systematically unfair to those areas of the state. One commenter stated that forcing non-DDA and non-QCT projects to choose other options would increase those projects' development costs.

Two commenters generally supported eliminating the State credit exchange points for projects already requesting State credits, but stated that prohibiting smoking would not further a "housing first" approach to special needs populations. The same commenters also urged delaying implementation of the new UD standards in order to accommodate pipeline projects.

Two commenters noted that a system forcing UD standards would hurt rehabilitation projects.

Another commenter noted that rehabilitation projects would not meet the UD standards and new construction projects could incur substantial additional costs. The existing properties that could not meet the proposed UD standards include older HUD-funded properties.

One commenter endorsed awarding points for either additional accessible units or units with additional mobility features, such as those in the proposed UD standards. The same commenter opposed the ISA signage feature as unnecessary and potentially stigmatizing. The management company should retain a list of the accessible units within the project's management office, but not call out the units in such a visibly public way.

One commenter endorsed the UD standards for points as proposed.

One commenter suggested specific adjustments to the proposed UD standards including (a) requiring audio and visual wiring only, rather than the installed equipment; reducing or eliminating the 150 square foot minimum and 12-foot wall length requirements for master bedrooms; and clearly defining or referencing all acronyms and technical terms (generally

capitalized in the proposed text). The same commenter urged permitting the project's architect to certify to UD compliance, rather than a Certified Accessibility Specialist (CASp) as proposed in the Senior housing type rule. The proposed text is unclear who would certify in this point category. Finally, the commenter suggested adding two points for a transit-oriented development in the "Miscellaneous Federal and State Policies" scoring category.

Finally, a commenter asked that the project architect be permitted to certify to the project's incorporation of the listed standards, as well as the proposed Certified Accessibility Specialist. The same commenter recommended a specific additional State policy, transit-oriented development in this scoring category.

Response to Comments: The major concern expressed by commenters was the elimination of the State credit exchange option for those projects requesting State credits. Of particular concern is the challenge this would pose for projects residing outside of a Difficult Development Area (DDA) and outside of a Qualified Census Tract (QCT), for Special Needs projects requesting State credits, and for rehabilitation projects generally. Such projects almost invariably request State credits, and would be forced to choose another option for obtaining the two points available in this scoring category. Particularly, the new Universal Design (UD) and smoke-free options may not be viable choices for special needs projects, where cost-efficiency and harm reduction are priorities. TCAC staff finds these concerns to be legitimate, and agrees with commenters who recommend developing additional viable alternatives before implementing the change to the State credit exchange option. TCAC will attempt to convene a working group to develop additional policy alternatives, since State credit exchanges may become unnecessary over time, and awarding points for agreeing to an exchange may become unnecessary.

TCAC staff is not inclined reduce the requisite smoke-free option percentage below 50 percent (50%) of a building since that seems a reasonable percentage for a meaningful nonsmoking environment.

Staff agrees that UD standards ought to be applied to at least 50% of the units on an accessible route, if they were to be mandatory. However, in this scoring section (Section 10325(c)(9)) the standard is a voluntary point-earning feature. The comment is germane as it relates to TCAC staff's proposal to add UD standards as a mandatory feature of all Senior housing type units.

Several commenters expressed concerns with specific features of the new proposed UD standards including the parallel path to major appliances and fixtures, the ISA signage feature, the 150-square-foot master bedroom, and the installation of audio and visual features rather than just pre-wiring for such features. In addition, a commenter asked that TCAC define acronyms and locate referenced standards for program users.

In response, TCAC staff proposes to eliminate the ISA requirement, and will spell out acronyms where they continue to be referenced. New language also eliminates the reference to "the fundamental Design Criteria" since TCAC already has minimum and maximum bedroom sizes as appropriate. In addition, TCAC staff is proposing that all tax credit projects adhere to California Building Code (CBC) Chapter 11(B). This would require adherence to accessibility requirements related to parking, allowing the removal of that feature in this scoring category. The remaining proposed standards are bona fide improvements over California adaptability requirements for new construction.

Final Proposed Change:

- (9) Miscellaneous Federal and State Policies Maximum 2 points
- (A) State Credit Substitution. For applicants that agree to exchange Federal Tax Credits for State Tax Credits in an amount that will yield equal equity as if only Federal Credits were awarded. ~~Applicants requesting State credits within the submitted application shall not receive points for State Credit Substitution.~~ 2 points
- (B) ~~Universal Design~~Enhanced Accessibility and Visitability. Project design incorporates California Building Code Chapter 11(B) and the principles of Universal Design in at least half of the project's units by including: ~~accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances.~~
- Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34" clear width for all doors on an accessible path.
 - Interior doors with lever hardware and 42" minimum width hallways.
 - Fully accessible bathrooms complying with the 2010 ADA Standards for Accessible Design and California Building Code (CBC) Chapter 11(A) and 11(B). In addition a 30"x48" clearance parallel to and centered on the bathroom vanity allowing for parallel approach.
 - Accessible kitchens with 30"x48" clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and sink).
 - Accessible master bedroom size shall be as described in the Fundamental Design Criteria: Master Bedroom 150-200 square feet, with a minimum room dimension of 12' at least 120 square feet (excluding the closet), shall accommodate a queen size bed, shall provide 36" in clearance around three sides of the bed, and shall provide required accessible clearances, free of all furnishings, at bedroom and closet doors. The master bedroom closet shall be on an accessible path.
 - ~~Universally Designed units shall include an ISA symbol (raised and tactile, a minimum of 1" x1") incorporated into the Unit signage.~~
 - ~~Accessible Parking in addition to what is minimally required by the 2010 ADA Standards for Accessible Design is not required.~~
 - Audio Wiring for audio and visual doorbells required by UFAS shall be installed.
 - Closets, balconies, shall be located on an accessible route.
 - These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.

- Applicant must commit to obtaining confirmation from a Certified Accessibility Specialist that the above requirements have been met. 4 2 points
- (C) Smoke Free Residence. The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 4 2 points
- (D) Historic Preservation. The project proposes to use Historic Tax Credits 1 point
- (E) Qualified Census Tract. The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 2 points
- (F) Eventual Tenant Ownership. The project proposes to make tax credit units available for eventual tenant ownership and provides the information described in Section 13025(c)(7) of these regulations. 1 point

Section 10325(c)(10)(A)

Initial Proposed Change:

(10) Tie Breakers

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

For applications for projects within single-jurisdiction regions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence of a funding commitment to the project by a City housing agency. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and

Second, the highest of the sum of the following two ratios:

- (A) Committed permanent public funds, as described in Section 10325(c)(1)(C), defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, public funds shall be discounted by the proportion of the project that is non-residential. Permanent funds shall be demonstrated through documentation including but not limited to public funding award letters, committed land donations, or documented project-specific local fee waivers.

The numerator of this ratio may include permanent funding committed by a Community Foundation or a charitable foundation where a public body appoints a majority of the voting members. Additionally the numerator may include the value of land and improvements contributed by an unrelated organization formed under Internal Revenue Code Section 501(c), so long as the contributed asset has been held by the organization for at least 10 years prior to the application due date. Such foundation or organization contributions must be in the form of a grant or residual receipts loan. Local land donations include land leased from a public entity, or permitted foundation or organization for a de minimis annual lease payment. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

The numerator of projects with public operating- or rental-subsidies may be increased by 25 percent (25%) of the percentage of proposed tax credit assisted units benefitting from the subsidy. Such subsidies must be received from one or more of the following programs: Project Based Section 8; PRAC (Section 202 and 811); USDA Section 521 Rental Assistance; Shelter Plus Care; McKinney Act Supportive Housing Program Grants; ~~Shelter Plus Care~~ Native American Housing Block Grant (IHBG); California Mental Health Services Act operating subsidies; and Public Housing Annual Contributions contracts. Applicants seeking scoring consideration for other public sources of operating- or rent-subsidies must receive written Executive Director approval prior to the application due date.

Comments Received: Four commenters endorsed a single-jurisdiction regional tiebreaker, but urged TCAC to consider either local public funding or a resolution of support from the full governing body as equivalent in the first tiebreaker for those regions. Two other commenters made the same recommendation, but also suggested accepting a City resolution or a support letter from the governing body. One additional commenter stated that City support may not be in the form of financing.

One commenter opined that a local government recommendation of “support” or “strongly support” ought to suffice for the initial single-jurisdiction tiebreaker, not funding.

Another commenter recommended using an official City Council selection as the tiebreaker to avoid any confusion or conflicts among local agencies. Otherwise, TCAC must define more clearly the term “City housing agency.” Finally, the same commenter also noted that any City funding source would indicate support for the project, but not necessarily for 9% credits.

A second commenter noted that the term “City housing agency” is not clearly defined.

One commenter urged clarifying that the first and second tiebreakers would still apply in single-jurisdiction regions if the local funding test did not resolve the tie.

One local governmental commenter urged TCAC to discontinue its scoring emphasis on local governmental funding in light of the scarce public resource environment. Another commenter also urged TCAC to develop an alternative to the public funds emphasis, since it incentivizes smaller projects. A smaller project with a smaller total development cost fares better competitively than a larger, more costly project with the same amount of public funding.

One commenter urged TCAC to discontinue counting housing authority “seller carryback” financing or land contributions as public funds or tiebreaker advantage when the developer is a related party.

Two commenters urged TCAC to amend the first tiebreaker to increase the proportion of competitive credits awarded to senior only projects, with one commenter specifically recommending a 20 percent (20%) goal. Another commenter also urged more closely syncing the senior housing type percentage goal with California’s senior demographics. This commenter noted that 21 of 102 awards of 9% credit in 2012 were for Senior projects (20.6%), while only 15 of 84 were Senior projects in 2013 (17.8%).

One commenter urged TCAC to score multiple housing type projects in a manner that favors them in the competition. That is, if one of the project’s housing types had yet to be met at the point in the competition when it is being considered against another tie-scoring applicant, that housing type would be considered under the first tiebreaker.

One commenter urged applying the senior housing type limit (15 percent (15%)) of the combined State and federal credits available) to the set-asides separately. Specifically, the commenter suggested limiting the set-asides to no more than 15% of their apportioned federal credits (for example, 15% of the 42% apportioned to the set-asides would be the senior housing type limit. Thereafter, the first tiebreaker would favor other housing types.

One commenter suggested that TCAC establish the housing type goals in the set-asides as well. Specifically, the commenter asked that the rural set-aside be allowed no more than 15% of its credits for senior housing type awards.

Response to Comments: Regarding the proposed single-jurisdiction geographic apportionment tiebreaker, TCAC staff is persuaded that formal City support, rather than funding, ought to be the initial determining factor among competing applications. New proposed language would state that the formal written support could specify support in the geographic apportionment competition only.

In response to comments regarding the phrase “a City housing agency,” TCAC staff now proposes the specific terms “Los Angeles Housing + Community Investment Department” and the “San Francisco Mayor’s Office of Housing and Community Development.” In addition, new language makes clear that the City support tiebreaker only applies in the regional competition, not in the set-asides.

Regarding the comment that TCAC should clarify that in single-jurisdiction regions the current first and final tiebreakers would still apply, the proposed language “Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:” is sufficiently clear.

Regarding increasing the Senior housing type goal, TCAC is aware of the California Department of Aging’s demographic forecasts for the growth of the senior cohort. For example, the Department of Aging estimates that over 25 percent (25%) of Californians will be 60 or older by 2050. By 2024 the percentage of Californians 85 and over is expected to grow by over 21 percent. This data illustrates the importance of public policies that house persons in these age groups. In light of this data, TCAC continues to propose more effectively targeting the older age cohort, 62+.

TCAC currently funds a significant number of seniors, many in senior-only housing. The following table illustrates TCAC’s senior-only funding in recent years.

	<u>4% Credit Awards</u>	<u>9% Credit Awards</u>
2010	33% (16 projects)	13% (10 projects)
2011	25% (31 projects)	15% (16 projects)
2012	26% (25 projects)	21% (21 projects)
2013	25% (24 projects)	18% (15 projects)

As the data illustrates, with no housing type goals whatsoever, one could reasonably expect between a quarter and a third of TCAC’s 9% credit awards would fund senior housing type projects. Instead, typically 15% to 20% of TCAC’s 9% awards are to this housing type (consistently the second most frequent housing type funded with 9% credits, behind large family). In other words, TCAC could award another 10% to 13% of its nine percent credits to senior projects, at the expense of other valued housing types including special needs, single room occupancy, at-risk, and large family.

Rather than ratchet up a housing type already receiving a healthy percentage of the State’s tax credit resources, TCAC proposes more narrowly targeting this housing type to the neediest senior population: age 62 and above. This would more closely align the senior housing type goal with the percentage of Californians in that age cohort. The older California cohort is also experiencing significant growth over the next several decades, and should provide ample demand for the senior units produced under this housing type.

Finally, the suggestion that the senior housing type percentage be applied separately in the set-asides has merit. The concern is that the rural set-aside in particular could experience large awards to senior housing type projects, thereby preemptively drawing down against the round’s senior housing type goal. As a practical matter, rural applicants need not worry about invoking the first tiebreaker (exceeding housing type goals) because their set-aside is funded early in the process. Funding rural senior housing types is at the expense of subsequent senior housing types in the geographic apportionments.

However, under changes proposed in this regulation package, awards from the at-risk and special needs/SRO set-asides will no longer count against the senior housing type. As a practical matter, most nonprofit set-aside winners are typically special needs housing types with an emphasis on housing homeless populations. TCAC will monitor results from the set-asides in 2014 and evaluate the need to regulate housing types specifically in the rural set-aside.

Final Proposed Change:

(10) Tie Breakers

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

For applications for projects within single-jurisdiction ~~regions~~ regional competitions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence

within the submitted application of a funding commitment to a formal letter of support for the project by a City housing agency, from either the San Francisco Mayor's Office of Housing or the Los Angeles Housing + Community Investment Department respectively. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and

Note: Subsequent paragraph (A) will remain as described in the original proposed changes.

Section 10325(d)(1)

Initial Proposed Change:

Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Tax Credits shall be made for those applications of highest rank in the following manner.

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.
 - (A) For an application to receive a reservation within a statutory set-aside, there shall be at least one dollar of Credit not yet reserved in the set-aside.
 - (B) If there is a zero or negative amount of Tax Credits in either the Federal or State Tax Credit categories requested by the applicant, the application shall be by-passed in favor of the next highest-ranking application. Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary

State credits shall be reserved from the subsequent year's aggregate annual State credit allotment.

Comments Received: One commenter suggested that TCAC establish the housing type goals in the set-asides as well. Specifically, the commenter asked that the rural set-aside be held to the 15% senior housing type goal.

Earlier comments under proposed Section 10315(c)(2) [pages 8 and 9] expressed concern regarding the \$1 million Native American pilot apportionment's adequacy. TCAC's response is to clarify the one-dollar rule's applicability to set-aside sub-apportionments as well.

Response to Comments: The housing type goal comment is addressed in responses to the preceding proposed regulation change at Section 10325(c)(10).

TCAC staff is also responding to earlier comments regarding available amounts for tribal application by clarifying the one-dollar rule's applicability to set-aside sub-apportionments as well.

Final Proposed Change:

Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Tax Credits shall be made for those applications of highest rank in the following manner.

- (2) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.
- (C) For an application to receive a reservation within a ~~statutory~~ set-aside, or within a rural set-aside apportionment, there shall be at least one dollar of Credit not yet reserved in the set-aside or apportionment.
- (D) ~~If there is a zero or negative amount of Tax Credits in either the Federal or State Tax Credit categories requested by the applicant, the application shall be by-passed in favor of the next highest-ranking application. Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary~~

State credits shall be reserved from the subsequent year's aggregate annual State credit allotment.

Section 10325(f)(2)

Initial Proposed Change:

- (3) Demonstrated site control. Applicants shall provide evidence that the subject property is within the control of the applicant.
 - (A) Site control may be evidenced by:
 - (i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report;
 - (ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property;
 - (iii) an executed disposition and development agreement between the applicant and a public agency; or,
 - (iv) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.
 - (B) A current title report (within 90 days of application), or for tribal trust land a title status report, shall be submitted with all applications for purposes of this threshold requirement.
 - (C) The Executive Director may determine, in her/his sole discretion, that site control has been demonstrated where a local agency has demonstrated its intention to acquire the site, or portion of the site, through eminent domain proceedings.

Comments Received: Five commenters urged TCAC to accept an uncertified title status report to verify the status of Native American tribal trust land, due to difficulty obtaining even an uncertified title status report from the federal Bureau of Indian Affairs. TCAC should also accept a certification from the tribe's governing body or chairperson verifying tribal ownership and site control. Also, TCAC's own proposed Section 10322(h)(25)(A) change would honor a tribal attorney's letter.

Response to Comments: The argument for consistency with Section 10322(h)(25)(A) is compelling, and TCAC staff proposes conforming changes accordingly. Also, the proposed language does not specify a "certified" title status report, and TCAC would accept either an uncertified or a certified title status report.

Final Proposed Change:

- (2) Demonstrated site control. Applicants shall provide evidence that the subject property is within the control of the applicant.
 - (B) Site control may be evidenced by:
 - (v) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;
 - (vi) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property;
 - (vii) an executed disposition and development agreement between the applicant and a public agency; or,
 - (viii) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.
 - (D) A current title report (within 90 days of application), or for tribal trust land a title status report or an attorney's opinion regarding chain of title and current title status, shall be submitted with all applications for purposes of this threshold requirement.
 - (E) The Executive Director may determine, in her/his sole discretion, that site control has been demonstrated where a local agency has demonstrated its intention to acquire the site, or portion of the site, through eminent domain proceedings.
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Section 10325(f)(3)

Initial Proposed Change:

- (3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:
 - (A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;
 - (B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;

- (C) have a term of at least fifteen (15) years if it is permanent financing;
- (D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,
- (E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and
- (F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application.

For projects using FHA-insured debt, the submission of a ~~multifamily accelerated processing invitation~~ letter from the U.S. Department of Housing and Urban Development (HUD) indicating that, together with the submission of a multifamily accelerated processing firm commitment application has been accepted by HUD for processing will suffice to satisfy the requirements of this enforceable financing commitment requirement.

Comments Received: One commenter opposed the new FHA language as costly at the predevelopment stage. Rather, TCAC should accept an underwriting letter from the applicant's MAP lender as evidence of enforceable FHA financing.

Another commenter urged that TCAC not request documentation unavailable at the TCAC application stage.

A commenter also asked TCAC to permit excessive cash flow when HUD financing is present in a project, if the cash flow is paying a seller note. HUD will not permit such a payment to be characterized as "must pay" debt, so it will appear to be excessive cash flow to TCAC, but it is not.

Response to Comments: TCAC is sensitive to adding costs at the preliminary application stage and will therefore propose accepting an underwriting letter from the FHA MAP lender.

TCAC is not inclined to circumvent a HUD policy by re-characterizing cash flow as committed to must-pay debt.

Final Proposed Change:

- (3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:

- (A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;
- (B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;
- (C) have a term of at least fifteen (15) years if it is permanent financing;
- (D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,
- (E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and
- (F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application.

~~For projects using FHA-insured debt, the submission of a multifamily accelerated processing invitation letter from the U.S. Department of Housing and Urban Development (HUD) indicating that, a Multifamily Accelerated Processing (MAP) lender stating that they have underwritten the project and that it meets the requirements for submittal of together with the submission of a multifamily accelerated processing firm commitment application to HUD. application has been accepted by HUD for processing will suffice to satisfy the requirements of this enforceable financing commitment requirement.~~

Section 10325(f)(7)

Initial Proposed Change:

- (8) 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 proposed project's 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. Finally, a statement shall commit

the property owner to at least the following standards when replacing each of the following listed systems or materials:

- (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. Except for applicants developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED) or GreenPoint Rated Multifamily Guidelines, a completed Sustainable Building Method Workbook must be submitted at the time of application.
- (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 hardwood faces, 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. 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 for either another on-site manager or other maintenance personnel. 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. Scattered sites within 100 yards of each other shall be treated as a single site for purposes of the on-site manager rule only.

If a rehabilitation applicant does not propose to meet the requirements of this subsection, its Capital Needs Assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive. All exemptions must be approved in advance by the Executive Director.

Compliance and Verification: For placed-in-service applications, for subsection (A), applicants with new construction projects must submit the appropriate California Energy Commission (CEC) compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. For subsection (A) applicants with rehabilitation projects, the applicant must submit the ~~California Energy Commission HERS II~~ energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation HERS II estimated annual Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service package. With the exception of applicants developing a project in accordance with the minimum requirements of LEED or GreenPoint Rated Multifamily Guidelines, applicants must submit a completed Sustainable Building Method Workbook. For subsections (B) through (K) applicants shall submit third party documentation from one of the following sources confirming the existence of items, measures, and/or project characteristics: a certified HERS Rater, a certified GreenPoint rater, or a US Green Building Council certification. Failure to produce appropriate and acceptable third party documentation for (A) through (K) of this subsection may result in negative points.

Comments Received: Three commenters urged TCAC to clarify that the ongoing maintenance of standards upon eventual replacement does not mean maintaining the property to subsequent, potentially more rigorous standards. Rather, the intent should be to prohibit any reductions in energy efficiency or sustainability upon replacement.

Another commenter stated that replacement policies should be stated in the regulatory agreement, eliminating confusion regarding applicable regulations down the road.

One commenter suggested that overlay roofs ought to be exempted from the equal-quality replacement policy, since such roofing does not obtain a three-year workmanship guarantee.

Two commenters urged TCAC to continue the 15 percent (15%) better than the 2008 Title 24 standard until the impacts of the new Title 24 standard are better understood. One alternatively asked TCAC to clarify that the applicable Title 24 version would be the one under which the project's building plans were submitted locally for approval. One other commenter stated that the 15% better than Title 24 threshold ought to be set aside until we learn more about the new Title 24 standard.

One commenter suggested that rehabilitation projects meeting one of the listed state or national standards ought to be deemed compliant as an alternative to the ten percent (10%) improvement standard. The same commenter urged TCAC to forgo extensive sustainability analysis and documentation prior to a tax credit award.

One commenter noted that, in paragraph (A), end uses are not analyzed for purposes of new construction minimum energy standards, while for rehabilitation they are. The new Title 24 code (2013 version) will permit including end uses such as plug loads and lighting. The same commenter urged TCAC to permit HERS-II raters to perform the Title 24 comparative analysis for new construction projects, rather than CEPES alone.

Response to Comments: TCAC staff agrees that the regulation language should prohibit reductions in energy efficiency or sustainability upon replacement. Overlay roofing of at least the same quality as the original roofing would sufficiently meet the quality maintenance objective, even without a three-year workmanship guaranty.

The proposed Title 24 standards are addressed in Section 10325(c)(6)(B) and (f)(7) on pages 47-51 above. TCAC will also consider adding the same provision in future regulatory agreements.

Rehabilitation projects improved to one of the proposed standards almost certainly would realize an energy efficiency improvement of over 10 percent (10%), and the documentation of such improvement would not be onerous.

TCAC staff will revisit the need for workbook information at initial application, and propose changes in a subsequent regulation change proposal if necessary.

For placed-in-service modeling and certification, TCAC will continue to require a CEPE signature (CEPEs who are frequently also HERS raters). CEPEs are capable of both compliance reviews and energy performance modeling.

Final Proposed Change:

- (8) 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 proposed project's 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. Finally, a statement shall commit the property owner to at least the following standards maintaining the installed energy efficiency and sustainability features' quality when replacing each of the following listed systems or materials:

Note: The remaining original proposed changes in the balance of this subsection, with the exception of new paragraph (M) as follows, remain unchanged as final proposals. Please consult comment responses on page 81 for the discussion of the paragraph (M) change.

(M) All tax credit recipient projects shall adhere to the provisions of California Building Code Chapter 11(B) regarding accessibility to privately owned housing made available for public use. Tax credits shall be viewed as invoking those requirements as applicable, including a minimum of five percent (5%) of the units with mobility features, and two percent (2%) with communications features. Effective in 2015, those percentages rise to ten percent (10%) and four percent (4%) respectively. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.

Section 10325(f)(10)

Initial Proposed Change:

- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to: ~~complete, at a minimum, the higher of:~~
- (A) ~~\$20,000 Complete, at a minimum, the higher of \$40,000 in hard construction costs per unit (except for those projects defined as "at risk" pursuant to these regulations, which must complete a minimum of \$10,000 in hard construction costs per unit); or 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I);~~
 - (B) ~~20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).~~ Propose rehabilitating a property that is at least 20 years old; and
 - (C) Propose a 100 percent (100%) tax credit project to be regulated at rents and income targeting averaging 40 percent (40%) of Area Median Income (AMI).

Comments Received: Six commenters stated that the proposed rehabilitation criteria should not be applied to market rate properties being proposed for rehabilitation and regulation by TCAC. Three commenters stated that the standards should not be applied to projects that have never been syndicated. One of the commenters also urged TCAC not to apply the standards to at-risk projects.

Five commenters stated that, while supporting the \$40,000 hard cost minimum, the 20-years-old standard seems arbitrary and may prohibit younger properties from seeking much-needed 9%

credits. The commenters strongly opposed the proposed 40 percent (40%) AMI average affordability standard as especially harmful in weaker rental submarkets. Another commenter made the same argument for projects in rural areas. Yet another commenter stated that the 40% AMI standard would increase relocation risk for developers of such projects.

One commenter also urged TCAC to support rehabilitations that involve adaptive reuse, conversion of hotel rooms into full housing units, improving substandard market rate units, and historic preservation. Another similarly urged TCAC to accept cost-approach appraisals for 4% applications, thereby increasing a project's eligible acquisition basis and delivering more credits to the project.

Two other commenters respectively "adamantly" and "vehemently" opposed both the proposed 20-years-old standard and the 40% AMI standard. Newer properties occasionally still require 9% credits for repairs and replacements, and many projects could not operate feasibly at 40% AMI average rents. Finally, the 40% average could result in significant relocation of existing over-income residents.

Another commenter noted that the 40% AMI standard would work against the necessity for properties to carry more conventional debt in the absence of redevelopment agency funding.

Nine additional commenters recommended removal, or at least delay, of the 40% AMI proposal.

One commenter proposed, as an alternative to the 40% AMI average affordability for rehabilitation projects, a five percent (5%) reduction in average affordability for an already-regulated property.

Two commenters recommended raising the proposed 40% AMI level to 45% in low median income areas, while another two commenters recommended this option only if TCAC does not forgo the income targeting idea altogether. Another commenter opposed the 40% AMI standard, and urged eliminating it or raising it to an unspecified higher standard.

One commenter endorsed the policy intent of encouraging rehabilitation projects to use Tax Exempt Bond and 4% tax credit structures, and urged using a \$60,000 per unit hard cost standard, along with a 25-year minimum property age standard. The same commenter urged TCAC to loosen requirements and scoring for 4%-plus-State-credit projects. Another commenter also suggested a 25-year minimum property age for 9% rehabilitation applications.

Two commenters supported the regulation changes as proposed, with one commenter endorsing limiting publically assisted projects from accessing 9% credits.

Two commenters opposed the \$40,000 per unit hard cost minimum as causing some projects to become infeasible. One of these commenters opposed the 40% AMI standard and asked that, if the rehabilitation revisions are adopted, that a waiver be available for projects far along in predevelopment. The other commenter suggested a two-year implementation delay if TCAC elects to go forward with the rehabilitation changes.

One commenter opposed TCAC's proposed changes, stating that TCAC's current system evaluates relative merits among competing projects, both new construction and rehabilitation, and that system ought to stand.

One commenter urged delaying implementation of rehabilitation restrictions until a more thorough discussion could take place.

One commenter counter-proposed a minimum property age standard of 17 years, rather than the proposed 20-year minimum. Another commenter stated that the proposed 20-year standard ought to be waived if a project demonstrates financial distress.

Response to Comments: In responses to TCAC’s proposed tightening of rehabilitation qualifications for 9% tax credits, TCAC learned not only of specific concerns, but of a general lack of consensus that recent award practices are problematic. Several commenters argued that rehabilitation projects are cost-effective, credit-efficient alternatives to new construction. In addition, commenters noted the merit of preserving existing affordable housing resources as well as the value of bringing existing market rate properties into the affordable housing portfolio.

TCAC staff was also persuaded that rehabilitating existing stock using Tax Exempt (TE) bond financing and 4% credits was not always viable for distressed properties lacking the proposed deeper income targeting and rents, or that were less than 20 years old.

Therefore, TCAC staff shall propose only the \$40,000 per unit in hard cost threshold, and will continue to work with stakeholders to identify classes of rehabilitation projects that lend themselves to a TE bond 4% tax credit model.

Final Proposed Change:

- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to: ~~complete, at a minimum, the higher of:~~
 - ~~(A) \$20,000 ~~Complete complete, at a minimum, the higher of \$40,000 in hard construction costs per unit (except for those projects defined as “at risk” pursuant to these regulations, which must complete a minimum of \$10,000 in hard construction costs per unit); or 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I);~~~~
 - ~~(B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I). ~~Propose rehabilitating a property that is at least 20 years old; and~~~~
 - ~~(C) ~~Propose a 100 percent (100%) tax credit project to be regulated at rents and income targeting averaging 40 percent (40%) of Area Median Income (AMI).~~~~

Section 10325(g)(1)

Initial Proposed Change:

- (1) Large Family projects. To be considered large family housing, the application shall meet the following additional threshold requirements.
 - (A) At least thirty percent (30%) of the Tax Credit units in the project shall be three-bedroom or larger units, with the remaining units configured based on the demand established in the basic threshold requirements except that for projects qualifying for and applying under the At-risk set-aside, the Executive Director may grant a waiver from this requirement if the applicant shows that it would be cost prohibitive to comply;

- (B) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. ~~These limits may be waived for rehabilitation projects, at the discretion of the Executive Director.~~ Three-bedroom units shall include at least 1,000 square feet of living space and four-bedroom units shall include at least 1,200 square feet of living space, unless these restrictions conflict with the requirements of another governmental agency to which the project is subject to approval. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director. ~~(bedrooms~~ Bedrooms shall be large enough to accommodate two persons each and living areas shall be adequately sized to accommodate families based on two persons per bedroom.);

Comments Received: One commenter urged TCAC to also build in a waiver feature for common area space and community rooms in rehabilitation projects (established in current paragraph (E)).

One commenter strongly supported the proposed additional waiver latitude.

Response to Comments: The presence of common area space, including community rooms is fundamental to a sound large family project. While existing bedrooms may be undersized, the absence of adequate common area space would make such a project truly less desirable from a public policy perspective. Therefore, TCAC staff is not prepared to propose a waiver provision for large family common space at this time.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(1)(I)

Initial Proposed Change:

- (1) Large Family projects.

Note: Other than the proposed change above to paragraphs (B) and (E) above, items (g)(1)(A) – (H) will remain unchanged.

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

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed. Note: TCAC staff did not propose a change to paragraph (E) in their initial proposed regulation changes.

Section 10325(g)(2)

Initial Proposed Change:

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

- (A) All units shall be restricted to ~~households eligible under the provisions of California Civil Code 51.3~~ residents who are 62 years of age or older

(except for projects utilizing federal funds whose programs have differing definitions for senior projects), and further be subject to state and federal fair housing laws with respect to senior housing;

- (B) ~~The project shall be on a suitable site. Access to basic services shall be available by other than resident-owned transportation;~~ All residential units and the project itself shall be developed using the Universal Design standards contained in Section 10325(c)(9)(B). Applicant must commit to obtaining a third-party confirmation of meeting CTCAC's Universal Design Standards from a Certified Accessibility Specialist.
- (C) Projects over two stories shall have an elevator;
- (D) No more than twenty percent (20%) of the low-income units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study. One larger unit may be included for use as a manager's unit without a waiver;
- (E) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director;
- (F) ~~For projects receiving Tax Credits after 2000, emergency~~ Emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring system is approved by the Executive Director;
- (G) Common area(s) shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall be allowed to include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments of 20 units or fewer are exempt from this requirement;
- (H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
- (I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units subject to the further provision that gas connections for dryers shall be provided where gas is otherwise available at the property;

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

Comments Received: Eleven commenters opposed the 62+ age feature as eliminating a significant portion of higher-income seniors who help senior projects' financial viability by affording rents at the higher income targets. Two of these commenters also noted that the local health department used a 55+ age standard and helped house extremely low-income seniors and seniors with mental or physical health issues. The second commenter regarding the local health department standard described a particular relevant project as a "special needs senior project."

Two of the commenters cited above urged compatibility with other funding sources that use the 55+ standard.

One commenter noted that limited project-based Section 8 and HUD Section 202 funding made the 62+ age standard more difficult to achieve by eliminating a cohort of seniors who could pay higher rents. The same commenter stated that he would support an incentive system to promote housing more extremely low-income (ELI) seniors.

Another commenter stated that the 62+ standard is too restrictive, prohibiting live-in family members who are not at least 62 years of age. The same commenter argued that converting a market rate senior project to affordable would be made more difficult with this standard, and could cause significant displacement. Finally, the same commenter observed that 4%-plus-State-credit applicants would also be held to the same standards, creating a financial burden associated with a lower-income tenant population.

One commenter asked if the 62+ standard would accommodate a senior older than 62 married to a spouse of say, 55. The same questioner asked if a household could include a disabled relative under the age of 62.

Two commenters supported TCAC moving to the 62+ years of age standard for senior projects, but urged delaying the Universal Design (UD) requirement until 2015. One of the two commenters suggested reducing the percentage of UD units required in senior projects from the proposed 100 percent.

Four other commenters urged delaying the 62+ age feature until 2015 to accommodate pipeline projects already underwritten based upon a more inclusive senior market assumption. One of these commenters posed an alternative approach which was to include adults with disabilities regardless of age. Five other commenters urged delaying the new age standard until a later date (three specified 2015, one suggested 2016, and one simply urged that any change be "implemented gradually") to accommodate pipeline projects, and urged an explicit Universal Design (UD) exception for senior rehabilitation projects. The same commenters noted the proposed UD standards' deviation from State Code and federal accessibility standards. Another commenter suggested a waiver for 2014 senior project applicants who have already received their local entitlements prior to the regulation adoption. Two of the commenters urged providing TCAC's Executive Director with the authority to waive the UD requirements in rehabilitation projects.

One commenter opposed the 62+ standard noting that California Code incorporates both the 55+ and the 62+ standards. The same commenter also stated that the 62+ standard could slow down lease-up rates in some markets, and that the UD proposal would make most senior rehabilitation projects impossible.

Four commenters recommended forgoing the UD requirements because they are costly and may not be suitably targeted to the variety of accommodation needs. One of these commenters urged TCAC to delay implementation if it elects to go forward with the proposed changes.

One commenter urged exempting rehabilitations and adaptive reuse projects from the UD requirements, and stated that UD ought not to be required of all senior units.

Five commenters recommended delaying the UD requirement for senior projects until TCAC had convened a working group consisting of architects, housing providers, and disability rights organizations. Two other commenters noted that potential 2014 applicants currently seeking entitlements for senior projects had not had time to incorporate UD standards.

Two commenters urged applying accessibility standards to “units which are on an accessible route,” meaning either ground floor or on a floor serviced by an elevator.

Three commenters stated that the UD requirement would eliminate needed senior rehabilitation projects and senior projects in urban cores. One of the commenters noted how each standard presented challenges in typical existing properties, with only the proposed accessible parking and tactile ISA symbol requirements being non-problematic in existing properties. That commenter argued against “one size fits all approach.” The other commenter asked that, if the change is put in place, confirm that the project’s architect may certify if that architect possesses the correct accessibility certification.

Three commenters endorsed the proposed UD standard within senior projects as accommodating seniors who become physically disabled over time.

Another commenter also endorsed 100 percent (100%) mobility accessibility for senior housing, although the commenter referenced adherence to Chapter 11(B) of the California Building Code. The same commenter supported a post-completion certification from either a Certified Accessibility Specialist (CASp) or an architect. Finally, the same commenter urged TCAC to remove the two-bedroom limitation for senior projects so live-in aides and equipment can be accommodated.

Two commenters urged TCAC to accept a certification of UD compliance from the project’s architect. One of these commenters also urged delaying the UD standard so developers could adjust to it and pipeline projects could move forward as designed.

Response to Comments: Among the proposed changes for 2014, the set of changes affecting the senior housing type generated the most comment. Several commenters objected to the proposed 62+ age standard, and several more objected to the 100 percent (100%) Universal Design (UD) threshold for senior projects.

TCAC staff first wants to clarify that project sponsors could continue to propose senior projects using a 55+ standard when applying for 4% credits without State credits. Also, a 55+ senior standard could be used in a project applying as a different housing type (e.g., special needs, SRO, or at-risk). One example given in received comments was a special needs project which could be eligible at the 55+ standard if it successfully applied as a Special Needs housing type.

The 62+ standard comports with several federal funding sources for multifamily housing, and is required by State law for any project of 35 units or fewer (California Civil Code Section 51.3(b)(4)). Where a sponsor is using funding sources with varying senior definitions, sponsors

generally operate under the more restrictive of the differing provisions. This generally leaves a project in compliance with each rule (or at least not violating any of them).

Comments asking for clarity in the legal reference to the 62+ standard were warranted, and TCAC will attempt to clarify the standard in regulation.

Of the 34 senior housing type projects receiving 9% credit awards in 2012 and 2013, twenty (59%) used the 62+ standard. Of those 20, eleven (11) also had a project-based operating or rental subsidy. So, 45% of the funded senior projects using the 62+ standard lacked an ongoing subsidy. Considering the senior over-subscription rate, TCAC staff concludes that adequate demand will remain for senior housing type projects using the 62+ standard. To the extent demand does decline, senior housing type projects will be less likely to lose under the first tiebreaker within the regional competitions.

TCAC staff is sensitive to requests for a delay in implementing changes to allow pipeline projects to proceed as structured under current market analyses and tenancy assumptions. Therefore TCAC staff will propose a 2015 effective date for the 62+ standard.

A greater concern was raised among commenters regarding the Universal Design (UD) standard proposed at Section 10325(c)(8), and its 100% applicability to senior housing type projects. Broad accessibility, beyond adaptability, for senior housing type projects is good public policy. However, requiring accessible units that are not on an accessible route is not reasonable. Also, a 100% applicability to rehabilitation projects is likely unworkable.

Also persuasive is the argument that accessibility ought to be a feature of all TCAC projects, and this approach will accommodate seniors and other persons with disabilities to a much greater degree than applying accessibility standards to all of a single housing type.

Finally, a number of commenters were unfamiliar with the proposed UD standards (as was TCAC) and had questions and concerns in requiring their implementation in all senior projects.

Therefore, TCAC staff is proposing (a) to decouple the link between senior housing type projects and the proposed UD standards at Section 10325(c)(9); (b) require all TCAC properties to adhere to State accessibility requirements for publicly-funded projects in 2014, and higher percentages in 2015 (see proposed change at page 73, Section 10325(f)(7)(M)); (c) require in 2015 that all senior housing type projects provide half of all units on an accessible route with accessibility features described in California Building Code Chapter 11(B); and (d) convene in 2014 a working group of developers and independent living experts and refine TCAC's accessibility and Universal Design policies.

Final Proposed Change:

- (2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements:
 - (A) All units shall be restricted to ~~households eligible under the provisions of California Civil Code 51.3~~ households eligible under the provisions of California Civil Code Section 51.3. ~~However, starting in 2015 all units shall be restricted to residents who are 62 years of age or older under applicable provisions of California Civil Code Section 51.3 and the federal Fair Housing Act~~ (except for projects utilizing federal funds whose programs have differing definitions for senior projects), and further be

subject to state and federal fair housing laws with respect to senior housing;

- (B) ~~The project shall be on a suitable site. Access to basic services shall be available by other than resident-owned transportation; All residential units and the project itself shall be developed using the Universal Design standards contained in Section 10325(c)(0)(B). Applicant must commit to obtaining a third-party confirmation of meeting CTCAC's Universal Design Standards from a Certified Accessibility Specialist. Effective in 2015, for new construction projects, one half of all units on an accessible path (ground floor and elevator-serviced) shall be mobility accessible under the provisions of California Building Code (CBC) Chapter 11(B). For rehabilitation projects, 25% of all units on an accessible path (ground and elevator-serviced) shall be mobility accessible under the provisions of CBC Chapter 11(B). All projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.~~
- (C) Projects over two stories shall have an elevator;
- (D) No more than twenty percent (20%) of the low-income units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study. One larger unit may be included for use as a manager's unit without a waiver;
- (E) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director;
- (F) ~~For projects receiving Tax Credits after 2000, emergency~~ Emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring system is approved by the Executive Director;
- (G) Common area(s) shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall be allowed to include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments of 20 units or fewer are exempt from this requirement;
- (H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;

- (I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units subject to the further provision that gas connections for dryers shall be provided where gas is otherwise available at the property;
- (J) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Section 10325(g)(3)(H)

Initial Proposed Change:

- (3) SRO projects.

Note: No changes are proposed for paragraphs (g)(3)(A) through (G).

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

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(4)

Initial Proposed Change:

- (4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are individuals living with physical, sensory, developmental, or mental health disabilities; are developmentally disabled; are survivors of physical abuse; are homeless as described in Section 10315(b); have are individuals with chronic illness, including HIV and mental illness; are displaced teenage parents (or expectant teenage parents) are emancipated youth transitioning out of foster care; or another specific group determined by the Executive Director to meet the intent of this housing type. The Executive Director shall have sole discretion in determining whether or not an application meets these requirements. In the case of a development that is less than 75% special needs, the non-special needs units must meet another housing type (for example, large family), although the project will be considered as a special needs project for purposes of Section 10325. The application shall meet the following additional threshold requirements:

Comments Received: Five commenters supported the proposed changes.

Three commenters opposed including individuals living with physical or sensory disabilities under the special needs thresholds, and instead urged TCAC to increase accessibility requirements in all projects. The three commenters suggested requiring 10 percent (10%) of all tax credit projects' units to be accessible. This approach would be more compatible with the Olmstead decision, and would accommodate the intended populations more effectively. Two of

the commenters stated that, unlike other special needs populations, individuals with physical or sensory disabilities may not need intensive on-site services. Instead, they may just need an accessible unit in an integrated living environment.

Rather than include physical and sensory disabilities within the special needs description, one commenter recommended (a) requiring that ten percent (10%) of every tax credit project's units be accessible to "people with mobility needs," and four percent (4%) accessible to "people with communication needs;" (b) requiring outreach to people who need the accessibility features in question; and (c) requiring people who need the accessibility features be given priority for the appropriately accessible units. The current proposal risks segregating individuals with disabilities, rather than providing integrated opportunities for physically disabled individuals.

The same commenter stated that if TCAC leaves physical and sensory disabilities in the list of special needs populations, TCAC ought to specify the number of accessible units required, and the types of services required. CTAC ought to also consider the impact of including such projects on other special needs project proposals. TCAC may want to specify that these would be populations transitioning out of nursing homes, development centers, hospitals, or other facilities. This approach would better tie with the Olmstead decision regarding de-institutionalization.

Two commenters urged greater clarity in defining physical and sensory disabilities, and that TCAC use the State Department of Housing and Community Development's transition aged youth (TAY) definition rather than the proposed text. Another commenter suggested the regulations simply use the more typical term "transition-aged youth" rather than the proposed "emancipated youth transitioning out of foster care." A fourth commenter recommended using the phrase "transition aged (18-22) and emancipated youth" as more accurate and inclusive.

One commenter urged TCAC to support federal efforts to integrate HUD Section 811 projects into the 9% credit competition.

Response to Comments: TCAC staff agrees with commenters who urged a more integrated approach to housing persons with physical and sensory disabilities. To this end, new language at Section 10325(f)(M) on page 73 of this statement of reasons would require adherence to California Building Code Chapter 11(B) mobility requirements for five percent (5%) of all projects' units, and 11(B) sensory requirements for two percent (2%) of all units in 2014. The same provisions would increase those percentages to 10 percent (10%) and four percent (4%) respectively in 2015. However, TCAC staff also sees value in accommodating projects that would want to house larger percentages of persons with physical disabilities in accessible housing. Therefore, staff continues to recommend new language referencing housing these populations.

Staff also agrees with commenters regarding priority access for populations that need accessible units, and is proposing relevant new language at Section 10337(b)(2) on page 95.

Recommendations that TCAC tie projects for persons with physical and sensory disabilities to populations transitioning out of nursing homes, developmental centers, hospitals, or other facilities would reasonably clarify the disabled populations referenced in the new language, and would further the de-institutionalization emphasis of the Olmstead decision. While TCAC hesitates to specify necessary associated services, specifying de-institutionalized persons would be consistent with the special needs emphasis on supportive housing.

Recommendations for alternative language related to homeless and other youth populations also have merit. TCAC is incorporating language from the State Department of Housing and Community Development's (HCD's) supportive housing program for transition aged youth. This would further clarity and consistency with other State housing programs for this population.

TCAC will continue to work in support of the federal transition of the HUD Section 811 program to a tax credit model. TCAC has cosponsored California's proposal for such a coordinated program, and will continue to work with other State and federal housing agencies in this effort.

Final Proposed Change:

- (4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are individuals living with physical, or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental, or mental health disabilities; ~~are developmentally disabled;~~ individuals who are survivors of physical abuse; individuals who are homeless as described in Section 10315(b); ~~have~~ are individuals with chronic illness, including HIV and mental illness; ~~are displaced teenage parents (or expectant teenage parents)~~ are emancipated homeless youth as defined in Government Code Section 11139.3(e)(2); ~~transitioning out of foster care;~~ or another specific group determined by the Executive Director to meet the intent of this housing type. The Executive Director shall have sole discretion in determining whether or not an application meets these requirements. In the case of a development that is less than 75% special needs, the non-special needs units must meet another housing type (for example, large family), although the project will be considered as a special needs project for purposes of Section 10325. The application shall meet the following additional threshold requirements:

Section 10325(g)(4)(G)

Initial Proposed Change:

- (4) Special Needs projects.

Note: No changes are proposed for paragraphs (g)(4)(A) through (F).

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

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10325(g)(5)(A)

Initial Proposed Change:

- (5) At-risk projects.

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

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(g)(2)

Initial Proposed Change:

- (2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission.
 - (A) Site control may be evidenced by:
 - (i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report;
 - (ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property; an executed disposition and development agreement between the applicant and a public agency; or,
 - (iii) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence that all extensions necessary to keep agreement current through the application filing deadline have been executed must be included in the application.
 - (B) A current title report (within 90 days of application) or, for tribal trust land, a title status report, shall be submitted with all applications for purposes of this threshold requirement.

Comments Received: None, but relevant comments under Section 10325(f)(2) urged TCAC to accept an attorney's letter for tribal land status.

Final Proposed Change:

- (2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission.
 - (A) Site control may be evidenced by:
 - (i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;
 - (ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property; an executed

disposition and development agreement between the applicant and a public agency; or,

- (iii) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence that all extensions necessary to keep agreement current through the application filing deadline have been executed must be included in the application.
- (B) A current title report (within 90 days of application) or, for tribal trust land, a title status report, shall be submitted with all applications for purposes of this threshold requirement.
-

Section 10326(g)(5)

Initial 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 of Sections 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 minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(2). The following documentation is required to be submitted at the time of application:
- (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
 - (B) for each of the following participants, a copy of a contract to provide services related to the proposed project:
 - (i) Attorney(s) and or Tax Professional(s)
 - (ii) Architect
 - (iii) Property Management Agent
 - (iv) Consultant
 - (v) Market Analyst

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(j)(3)

Initial Proposed Change:

- (3) Projects ~~receiving an allocation of private activity bonds after 1999~~ shall maintain at least 10% of the total units at rents affordable to tenants earning 50% or less of the Area Median Income, and shall maintain a minimum 30 year affordability period.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10326(k)

Initial Proposed Change:

Section 10326. Application Selection Criteria - Tax-exempt bond applications

Note: Other than the preceding non-substantive change to paragraph (j)(3), subsections (a)through (j) will remain unchanged.

- (k) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by Section 10322(i)~~(2)~~.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(c)(2)(C)

Initial Proposed Change:

- (2) Developer fee. The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis, or two million (\$2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:

Note: No changes are proposed for paragraphs (c)(2)(A) and (B).

- (C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis. Both the developer fee limitations in total project costs described in paragraphs (2) and (2)(B) above, and the developer fee limitations in basis described in (2)(A) and (2)(B) above apply to projects developed as multiple simultaneous phases.
- (D) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the

unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.

Comments Received: Three commenters objected to the proposed simultaneous phase provision as too sweeping considering the variety of circumstances under which a developer may be required to break a project into separate phases. One of the commenters stated that, at a minimum, TCAC should not be troubled by a project seeking both 9% and 4% credits for a single development. Another developer stated that current projects are reliant upon this structure, and should be grandfathered in.

Two other commenters also objected to the proposed change, each citing a combined 9%-4% deal that is very large. As a practical matter, TCAC's 9% award maximum provides inadequate equity for very large projects. A simultaneous combined 9% and 4% structure is sometimes the only way a project may be feasibly developed.

Another three commenters urged TCAC to clarify that the simultaneity policy would apply only to two or more 9% awards in the same round, and not to mixed 9%-4% projects. One of the commenters also suggested that TCAC define "simultaneous" to mean construction financing closings within one month of each other. The other commenter recommended that "simultaneous" mean that the credits were awarded at the same time, not overlapping construction periods.

One local governmental commenter endorsed the proposed policy applicability to simultaneous phases in paragraph (C), arguing that local subsidies are frequently sought to pay those additional developer fee expenses.

One commenter urged TCAC to update and raise its maximum permitted developer fees, which haven't been raised since 2003. Raising the 4% credit developer fee maximums would permit more basis, and induce in larger amounts of equity for projects.

Response to Comments: TCAC staff share commenters observations that simultaneous 9% and 4% tax credit awards to simultaneously phased projects should not trouble TCAC. That is, very large projects (exceeding the 150-unit 9% credit maximum size limit at Section 10325(f)(9)) may well need additional equity from a tax exempt bond and 4% credit structure. In addition, such a large project may warrant a larger combined developer fee, and may thus draw in more equity. Therefore, TCAC staff is proposing clarifying language imposing the simultaneous project developer fee limits on all-9% or all-4% tax credit projects.

In addition, TCAC acknowledges that the 4% credit developer fee limit has not been increased since 2003. Inflation alone has devalued the \$2.5 million developer fee maximum for 4% tax credit projects since its establishment in 2003. While 15 percent (15%) of a project's eligible basis remains a reasonable developer fee limit, TCAC recognizes that larger 4% projects may merit a larger developer fee than \$2.5 million. Therefore, staff will work with CDLAC to consider updating the maximum developer fee in cost and basis for 4% tax credit projects. An updated figure should account for the rate of inflation since the \$2.5 million limit was established in 2003. An updated developer fee may also induce more projects to seek a tax exempt bond with 4% credit financing structure, and may mitigate the need for simultaneous phasing.

Final Proposed Change:

- (2) Developer fee. The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis, or two million (\$2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:

Note: No changes are proposed for paragraphs (c)(2)(A) and (B).

- (C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis. Both the developer fee limitations in total project costs described in paragraphs (2) and (2)(B) above, and the developer fee limitations in basis described in (2)(A) and (2)(B) above apply to projects developed as multiple simultaneous phases using the same credit type (all 9% or all 4% credits) in both phases. Only when a phased project is using both credit types may simultaneously phased projects exceed the limitations in (2), (2)(A), and (2)(B) in the aggregate. For purposes of this limitation, "simultaneous" refers to projects consisting of a single building, or projects on the same or adjacent parcels with substantially the same construction start and completion dates.
- (D) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.

Section 10327(c)(5)(B)(4)

Initial Proposed Change:

- (4) Rehabilitated project buildings shall have eighty percent (80%) decrease in estimated ~~annual~~ TDV energy use (or improvement in energy efficiency) ~~in the building's Home Energy Rating System-II (HERS-II)-post rehabilitation as demonstrated using the appropriate performance module of CEC approved software.~~ Four percent (4%)

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(c)(5)(C)

Initial Proposed Change:

- (C) Additionally, for projects applying under Section 10326 of these regulations, ~~an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An~~ increase of two percent (2%) shall be available for every 1% of the project's units that will be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years (50 years for projects located on tribal trust land).

Comments Received: Eleven commenters urged eliminating this change if TCAC really wants developers to use a TE Bond/4% tax credit model more than they have been. Two commenters argued that 50% AMI income targeting and rents provide significant public benefit in many areas. One of those commenters also noted that while the additional basis only partially offsets the lost debt capacity of a rent-reduced unit, the additional equity helps deliver these more deeply-targeted units.

Another commenter noted that TE Bond/4% tax credit developments in San Mateo and Santa Clara Counties frequently need the elevated basis limits afforded by the 50% AMI targeting boost. The same commenter urged TCAC to further examine the underlying basis limits in that region to assure their appropriateness. Another commenter made the same argument for other high cost areas generally.

One commenter “vehemently disagrees” with the proposed change to the 50% AMI boost, explaining that it is critical in high-cost areas of the state.

Response to Comments: TCAC staff is persuaded by received comments regarding the merits of the existing credit ceiling boost. Therefore, TCAC staff is withdrawing its proposed change to the 50% AMI incentive for 4% tax credit applications.

Final Proposed Change:

- (D) Additionally, for projects applying under Section 10326 of these regulations, ~~an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An~~ increase of two percent (2%) shall be available for every 1% of the project's units that will be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years (50 years for projects located on tribal trust land).

Section 10327(c)(6)

Initial Proposed Change:

- ~~(6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 is required, except for FHA/HUD projects, RHS projects or~~

~~projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments.~~

Note: Subsequent paragraphs numbers 7, 8, and 9 would be renumbered 6, 7, and 8 in light of the proposed removal of paragraph 6.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(d)(2)

Initial Proposed Change:

- (d) Determination of eligible and qualified basis. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.
- (1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.
- ~~(2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven and one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.~~
- (2) Pursuant to Authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications proposing a project meeting the Special Needs housing type threshold requirements at Section 10325(g)(4) as a difficult development area (DDA).

Comments Received: Two commenters endorsed the proposed change.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(g)(1)

Initial 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. 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. Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes.

- (A) Special needs projects that are less than 100% special needs shall prorate the operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units. ~~Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes.~~

Comments Received: One commenter urged TCAC to exercise its authority under current regulations to establish operating expenses discounted below the reported portfolio averages. Specifically, the commenter recommended the 25th or 30th percentile as the underwriting minimum.

Another three commenters urged TCAC to permit using two percent (2%) income and three percent (3%) expense trending assumptions only where the project's lender or equity partner requires these assumptions. This would be the case with project updates submitted at carryover, readiness, and placed-in-service submittals when the lender and equity partner are in place.

Response to Comments: TCAC staff will carefully consider administratively using a lower benchmark than the local portfolio average to set its operating expense minimums for underwriting purposes. TCAC staff also sees merit to adhering to more conservative underwriting assumptions where other conventional lenders or equity partners are doing so.

Final 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. 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. Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes. However, where a private conventional lender and project equity partner use a 2% gross income and 3% operating expense increase underwriting assumption, CTCAC shall accept this methodology as well.

- (A) Special needs projects that are less than 100% special needs shall prorate the operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units. ~~Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes.~~

Section 10327(g)(2)

Initial Proposed Change:

- (2) Property tax expense minimums shall be one percent (1%) of total replacement cost, unless:
- (A) the verified tax rate is higher or lower; or,
 - (B) the proposed sponsorship of the applicant includes an identified 501(c)(3) corporate general partner which will pursue a property tax exemption; or
 - (C) the proposed sponsorship of the applicant includes a Tribe or tribally-designated housing entity.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10327(g)(6)

Initial Proposed Change:

- (6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except where a higher first year ratio is necessary to meet the requirements of subsection 10327(f), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during any one

of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service, must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

The reduction in maximum annual Federal Credit may not be increased subsequent to any adjustment made under this section.

Comments Received: One commenter supported the proposed standard of meeting the minimum debt service coverage ratio in one of the first three years.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10328(c) through (e)

Initial Proposed Change:

- (c) ~~Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation but who did not receive all 20 points in the Readiness to Proceed point category shall provide the Committee with a completed updated application no later than 180 days following Credit reservation. Final Reservations. No later than February 1 of the year that the building(s) must be placed in service pursuant to Section 42(h)(E)(i) of the Internal Revenue Code of 1986, as amended, the applicant shall provide the Committee a Final Reservation application providing the documentation for the project set forth in Section 10322(i)(1) of these regulations. Failure to provide the documentation at the time required may result in rescission of the Credit reservation and cancellation of a carryover allocation.~~

Upon receipt of the updated ~~Final Reservation~~ application ~~and supporting documentation~~, the Committee shall conduct a financial feasibility and cost reasonableness analysis for the proposed project, and determine if all conditions of the preliminary reservation have been satisfied. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. ~~If all conditions have been satisfied, a final reservation of Tax Credits shall be made in an amount not to exceed the maximum dollar amount of Tax Credits stated in the Preliminary Reservation. The Committee shall detail in the final reservation letter additional submission requirements necessary to receive tax forms for claiming Tax Credits.~~

- (d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i)(~~2~~) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted by October 31 of the year of the reservation, together with the applicable allocation fee, and all required documentation, except that the time for meeting the "10%

test” and submitting related documentation, and owning the land, will be no later than twelve (12) months after the date of the carryover allocation.

- (1) Additional documentation and analysis. The Executive Director may request, and the holder of a Credit reservation shall provide, additional documentation required for processing a carryover allocation. ~~Following submission of carryover allocation documents, the Executive Director shall conduct a financial feasibility and cost reasonableness analysis. Substantive changes to the approved application, in particular, changes to the financing plan or costs must be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. Once the analysis is satisfactorily concluded, a carryover allocation of Tax Credits shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation.~~
- ~~(2) For second round Credit reservations, a financial feasibility and cost reasonableness analysis may be conducted at the time Readiness documentation is submitted. Second round applicants not required to submit Readiness documentation are not exempt from this requirement.~~
- ~~(3)~~(2) In addition to the requirements of the Internal Revenue Code, to receive a carryover allocation an applicant shall provide evidence that applicant has maintained site control from the time of the initial application and, if the land is not already owned, will continue to maintain site control until the time for submitting evidence of the land’s purchase.

Comments Received: Three commenters supported eliminating the final reservation process, while one urged clarification of the retroactivity of the change. This would clarify that 2012 and 2013 allocation recipients would not be required to file a Final Reservation package.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10328(g)

Initial Proposed Change:

- (g) Reservation Exchange for High-Rise Projects. A High-Rise Project with a reservation of Federal Credit pursuant to Section 10325, and a carryover allocation pursuant to Section 10328(d) and IRC Code § 42(h)(1)(E), may elect to return all of the Federal Credit during the year immediately following the year in which the carryover allocation is made in exchange for a new reservation and allocation of Federal Credits. An election to return Federal Credits pursuant to this subsection may be made only during January of the calendar year directly following the year in which the initial reservation and carryover allocation are made, ~~except 2010 and 2011 award recipients may make this election in February 2012.~~ The reservation and carryover allocation of the Federal Credits returned pursuant to this subsection shall be deemed cancelled by mutual consent pursuant to a written agreement executed by the Committee and the applicant specifying the returned credit amount and the effective date on which the credits are deemed returned. The Committee shall concurrently issue a new reservation of Federal Credits to the project in the amount of the Federal Credits returned by the project to the Committee.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10337(a)(2)

Initial Proposed Change:

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

- (1) the Sponsor shall in good faith apply for and accept all renewals available;
- (2) if the project-based rental assistance or operating subsidy 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. Where possible, remedies shall include skewing rents higher on portions of the project in order to preserve affordability for units regulated by TCAC at extremely low income targeting. Any necessary rent increases shall be phased in as gradually as possible, consistent with maintaining the project's Financial Feasibility. If housing Special Needs populations, the property owner shall attempt to minimize disruption to existing households, and transition to non-Special Needs households only as necessary and upon vacancy whenever possible.

Comments Received: Six commenters supported this proposed change, with one explaining its helpfulness especially with Mental Health Services Act (MHSA) funded projects.

Another commenter urged TCAC to more explicitly prohibit evicting special needs residents, even where services must be discontinued due to lost financial support. Residents may be able to access services nearby, and still have a home to reside in.

Response to Comments: The proposed language clearly states the intent to “minimize disruption” for special needs households and to transition away from a special needs focus “only as necessary” and “upon vacancy.” TCAC will monitor instances when this provision is invoked to assure displacement of special needs population is minimized consistent with the proposed language.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10337(b)

Initial Proposed Change:

- (b) Responsibility of owner.
 - (1) Compliance. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Project owners are required to annually

certify tenant incomes in conformance with IRS regulation §1.42-5(c)(3) unless the project is a 100 percent (100%) tax credit property exempted under IRC Section 142(d)(3)(A). Owners of a 100% tax credit property must perform a first annual income recertification in addition to the required initial move-in certification. After initial move-in certification and first annual recertification, owners of 100% tax credit properties may discontinue obtaining income verifications. Owners of 100% tax credit properties must continue to check for full-time student status of all households during the entire tenancy of the households and throughout the initial compliance period, and continue recordkeeping in accordance with paragraph (1) of this subsection. These requirements continue if the tax credit property is sold, transferred, or under new management. Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.

- (2) Accessible Units/Units with Adaptive Features: Reasonable Accommodations. Projects with fully accessible units, or units with adaptive features (also commonly referred to as “adaptable” units), for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows. First preference (regardless of applicant pool) for those units shall be given to persons with disabilities who need such units, in conformity with federal civil rights laws. This preference applies to fully accessible units (e.g. in projects in which 5% of the total units are to be wheelchair accessible and 2% are to be communications accessible in accordance with applicable accessibility standards). This preference also applies in projects without fully accessible units but with adaptable units for persons with mobility impairments and/or hearing, vision or other sensory impairments. The preference applies to the adaptable units; however, such a preference is not required to exceed 5% (mobility) or 2% (sensory) of the total units within the project.

Comments Received: Three commenters supported the proposed change, but urged that TCAC increase accessibility requirements in all tax credit properties, and that the preference for persons with physical or sensory disabilities be for the accessible units (California Building Code Chapter 11(B) or Uniform Federal Accessibility Standards) only, not the adaptable units. Also, the priority ought to be at initial lease-up, upon vacancy, and upon a transfer request. TCAC should use federal preference language found at 24 CFR §8.26 and 8.27, and TCAC should establish strong marketing standards.

Another commenter asked if the proposed policy were consistent with fair housing law.

Three commenters commended the intent of the proposed lease-up priority for accessible units, but stated that TCAC should not apply the rule to adaptable units (virtually all new units). In addition, a household’s disability status is not always clear, and without clearer disability definitions households could attempt to inappropriately jump waiting lists.

Another commenter urged TCAC to hold on this change until the definition of disabled is more clearly defined. They posed hypothetical questions including: How would a property manager determine disability status? Would a doctor’s certificate be required? Would a new-comer to a very long waiting list have pre-emptive priority for the unit in every case? Would possession of a handicap placard be sufficient evidence of a disability?

One developer commenter stated that they currently employ the proposed policy and endorse it, but are concerned about the proposed policy in light of TCAC's proposed Universal Design changes in senior projects. Providing a pre-emptive priority to disabled households in all senior units would be unfair, and challenging since many disabled households earn less than \$15,000 annually.

One resident commenter recommended that TCAC require property owners to notify applicants as to their place on the project's waiting list. The same commenter urged TCAC to receive the waiting list each year. Also, existing project residents seeking a transfer should have priority over new applicant residents for a vacant unit.

Three commenters supported the proposed change, with two stating that it would cure a lease-up problem that is common among accessible units.

One commenter urged greater clarity as to whether the priority for disabled households would preempt income targeting, household size, and other targeting. For example, would a special needs project housing persons with mental health needs be required to lease to a household with mobility needs, regardless of their mental health status? Also, how would one confirm a household's disability status?

Response to Comments: Comments requesting additional clarity regarding the proposed policy have merit. New language would replicate provisions in federal regulation as suggested by a commenter, and conform to fair housing compliant practices. In addition, new edits would clarify that priority leasing would be for the accessible units, rather than for accessible and adaptable units.

TCAC would expect a property owner to reasonably reach out to and accommodate persons with disabilities who require the available accessibility features. TCAC would not expect a unit to be rented to a household that is not income qualified for that unit. However, if a similar sized unit could be switched so that the regulated unit mix is maintained and disabled persons are accommodated, TCAC would seek this outcome.

In identifying disabled persons requiring the accessible unit features, TCAC would urge property owners to reach out to local independent living centers and other organizations working with persons requiring accessible units.

TCAC agrees with the resident commenter that existing residents requiring the accessible units ought to receive priority consideration, and this concept is contained within federal program regulations. TCAC staff also agrees that waiting lists must be maintained and available for applicants upon request, but requiring annual submittal to TCAC and ongoing noticing to waiting list applicants is unnecessary.

Final Proposed Change:

(b) Responsibility of owner.

- (1) Compliance. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Project owners are required to annually certify tenant incomes in conformance with IRS regulation §1.42-5(c)(3) unless the project is a 100 percent (100%) tax credit property exempted under IRC Section 142(d)(3)(A). Owners of a 100% tax credit property must perform a first annual income recertification in addition to the required initial move-in certification. After initial move-in certification and first annual recertification,

owners of 100% tax credit properties may discontinue obtaining income verifications. Owners of 100% tax credit properties must continue to check for full-time student status of all households during the entire tenancy of the households and throughout the initial compliance period, and continue recordkeeping in accordance with paragraph (1) of this subsection. These requirements continue if the tax credit property is sold, transferred, or under new management. Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.

- (2) ~~Accessible Units/Units with Adaptive Features: Reasonable Accommodations. Projects with fully accessible units, or units with adaptive features (also commonly referred to as “adaptable” units), for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows. First preference (regardless of applicant pool) for those units shall be given to persons with disabilities who need such units, in conformity with federal civil rights laws. This preference applies to fully accessible units (e.g. in projects in which 5% of the total units are to be wheelchair accessible and 2% are to be communications accessible in accordance with applicable accessibility standards). This preference also applies in projects without fully accessible units but with adaptable units for persons with mobility impairments and/or hearing, vision or other sensory impairments. The preference applies to the adaptable units; however, such a preference is not required to exceed 5% (mobility) or 2% (sensory) of the total units within the project.~~
- (A) ~~First, to a current occupant of another unit of the same project having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or if no such occupant exists, then~~
- (B) ~~Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.~~

~~When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager shall require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.~~

~~Owners and managers shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit.~~

Section 10337(c)(3)

Initial Proposed Change:

- (3) Certification requirements. Under penalty of perjury, a Credit project owner is required to annually, during each year of the compliance period, meet the certification requirements of U.S. Treasury Regulations 26 CFR 1.42-5(c), ~~(which beginning January 1, 2001, includes~~ including certifications that no finding of discrimination under the Fair Housing Act, 42 USC 3601 occurred for the project), that the buildings and low income units in the project were suitable for occupancy taking into account local health, safety, and building codes, that no violation reports were issued for any building or low income unit in the property by the responsible state or local government unit, that the owner did not refuse to lease a unit to an applicant because the applicant had a section 8 voucher or certificate, and that except for transitional or single room occupancy housing, all low income units in the project were used on a nontransient basis. The following must also be certified to by the owner:

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10337(c)(4)

Initial Proposed Change:

- (4) Status report, file and on site physical inspection. ~~Beginning in 2001, the~~ The Committee or its agent will conduct file and on site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is placed-in-service, and once every three years thereafter. These physical inspections will be conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews will also be for at least 20% of the low-income units in each project, but may be conducted on site or off site. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose, while the units and tenant records to be inspected shall be randomly selected. Advance notice shall not be given of the Committee's selection process, or of which tenant records will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection.

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

Section 10337(d)

Initial Proposed Change:

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

Comments Received: None.

Final Proposed Change: Proceed with changes as initially proposed.

List of Commenters:

1. Cristian Ahumada, Clifford Beers Housing
2. Cristian Ahumada, Mike Alvidrez, Steve Clare, Dora Leong Gallo, Stephanie Klasky-Gamer, Nancy Lewis, Tod Lipka, Dean Matsubayashi, John Malloy, Anita Nelson, Lisa Watson, Supportive Housing Alliance
3. Peter Armstrong, Wakeland Housing and Development Corporation
4. Felix Auyeung, EAH Housing
5. Tara Barauskas, A Community of Friends
6. Evan E. Becker, Evan Becker Consulting
7. Laura Blosser, Little Tokyo Service Center
8. Michael Bodaken, National Housing Trust
9. Tiffany Bohee, City and County of San Francisco, Office of Community Investment and Infrastructure
10. Geoff Brown, USA Properties Fund
11. Frank Cardone, Related California
12. Peter Carey, Self-Help Enterprises
13. Assemblymember Wesley Chesbro, California Legislature
14. Assemblymember Roger Dickenson, California Legislature
15. Regina Dock, Modoc Lassen Indian Housing Authority
16. Kathleen Dreessen, Napa Valley Community Housing
17. Perla Eston, Inclusive Homes, Inc.
18. Karen Flock, Cabrillo Economic Development Corporation
19. Tim Fluetsch, Dawson Holdings, Inc.
20. John Galfione, RBC Capital Markets
21. Heather J. Gould, Goldfarb Lipman Attorneys
22. Jeff Graham, Civic San Diego
23. Alan Greenlee, Southern California Association of Nonprofit Housing
24. Rich Gross, Enterprise Community Partners
25. Britta Guerrero, Sacramento Native American Health Center
26. Robert Henderson, Henderson Consulting
27. Ed Holder, Mercy Housing California
28. William K. Huang, City of Pasadena
29. Jonathan Hunter, Corporation for Supportive Housing
30. Hunter Johnson, LINC Housing Corporation

31. Meea Kang, Domus Development
32. Alexis Laing, Thomas Safran & Associates
33. Karl Lauff, Abode Communities
34. Wes Larmore, Domus Development
35. William Leach, Palm Communities
36. Olson Lee, City and County of San Francisco, Mayor's Office of Housing and Community Development
37. Benjamin T. Lingo, BLH Construction
38. Clydean Lockette
39. Keri Lung, MidPen Housing
40. Richard Mandel, California Housing Partnership Corporation
41. Jyl Marden, California Consortium for Urban Indian Health
42. John A. Moe, Ferrari Moe, LLP
43. Orlando Nakai, Friendship House Association of American Indians, Inc. of San Francisco
44. Dolores Nason, Disabled Resources Center, Inc.
45. George Nesbit
46. Stephen Nnodim, USDA Multifamily Housing Program
47. Darci Palmer, The Core Companies
48. Cynthia Parker, BRIDGE Housing
49. Jordan Penn, Chelsea Investment Corporation
50. Lindsay Quackenbush, Affirmed Housing Group
51. Susan Riggs, San Diego Housing Federation
52. Caleb Roope, Pacific West Communities
53. Ben Rosen, Mercy Housing California
54. Lorelle Ross, Federated Indians of Graton Rancheria
55. Joel Rubenzahl, Kevin Knudtson, Elissa Dennis, Alice Talcott, Community Economics, Inc.
56. Patrick Sabelhaus, California Council for Affordable Housing
57. Dara Schur, Disability Rights California
58. Ruth Schwartz, Shelter Partnership
59. James Shields, Sacramento Housing Authority Repositioning Program, Inc.
60. Jose Simon III, Middletown Rancheria of Pomo Indians of California
61. Pascal Sisich, Burbank Housing Development Corporation

62. Diane J. Spaulding, the Nonprofit Housing Association of Northern California
63. Alan Toy, Westside Center for Independent Living
64. Travois, Inc.
65. Dana Trujillo, Skid Row Housing Trust
66. Rob Wiener, California Coalition for Rural Housing
67. Anne B. Wilson, Community Housing Works
68. Dan Wu, Charities Housing
69. Assemblymember Mariko Yamada, California Legislature
70. Brian Yopez, Northern Circle Indian Housing Authority