CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: October 25, 2019

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: 2019 Final Proposed Regulation Changes and Responses to Comments **REVISED**

On August 16, 2019, the California Tax Credit Allocation Committee (TCAC or the Committee) released proposed regulation changes. TCAC staff subsequently held a public hearing in Sacramento on September 11, 2019, which was available via live stream on the TCAC website to online users.

TCAC accepted written comments on these initial proposed regulation changes through Monday, September 16, 2019. Numerous individuals, organizations, and groups formally commented on the proposed regulation changes. TCAC staff carefully considered all comments received and has finalized the recommendations to the Committee for consideration and adoption on Monday, October 28, 2019.

Two documents accompany this memo: 1) a matrix with the public comments received; and 2) the final proposed regulation changes, staff's responses to comments including an explanation of the proposed revisions, in which revisions to the initially proposed changes are highlighted in yellow. This memorandum summarizes the revisions to the initially proposed changes using the original item numbers. **The October 25, 2019 revisions to the October 4, 2019 memo incorporate the reasons and responses within the memo, and provide additional information or clarification on staff responses to comments or reasons.**

The October 4, 2019 document also includes an initial statement of reasons for eight (8) additional emergency proposed regulation changes summarized below, and the final proposed regulation change document contains the language for these additional items also highlighted in yellow. **The October 25, 2019 document includes four (4) changes to proposed regulations, three clarifying and one related to the CalHFA Mixed-Income Program $200 million state credit set-aside: Sections 10305(h), 10317(i), 10326(b)(2), and 10326(g)(5), highlighted in green. In addition, a component of one proposed change is withdrawn: Section 10325(c)(6)(B)(i).**

Initial Proposed Changes Revised

2. Add language relating to the allocation of the $500M in State Tax Credits. Section 10305(h). Page 1-2.

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

   Response to Comments: In response to numerous comments and requests for clarification of how AB 101 will be implemented, TCAC staff proposes additional language below and in other corresponding sections. This section clarifies the requirement to begin construction within 180 days, and the $200,000,000 in state tax credits set aside for the CalHFA Mixed-Income Program.

   Generally comments were supportive, or were supportive and added additional suggestions. The additional suggestions were consistent with the synopsis of the opposing views below.

   Opposition was focused on (1) the need to avoid awarding on a first come, first served basis; (2) the need to provide per developer cap; and (3) the suggestion to adopt a competitive award system similar to the 9% program, which also includes geographical limits.

   Concerns (1) and (2) have been accepted and addressed elsewhere in the regulations. Suggestion (3) will be reconsidered in 2020 after analyzing the results of this pilot program.

3. Clarify the various eligible basis multipliers for calculating State Tax Credit. Section 10317(a). Page 2-3.

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

   Response to Comments: In response to numerous comments and requests for additional clarification, TCAC staff proposes additional language below pertaining to TCAC's existing standards for low appraised value and substantial rehabilitation. A commenter noted the references to subparagraphs (A) through (D) were not in Revenue and Taxation Code Sections 17058 and 23610.5. TCAC staff proposes to remove those references.

6. Clarify the requirements for State Tax Credit Allocations from the original $70M and new $500M. Clarify that projects applying for the State Tax Credit Allocations from the new $500M have or will have current year's tax-exempt bond allocations. Withdraw initial proposed change eliminating the requirement that projects applying for State Tax Credit Allocations comprise of 100% Tax Credit Units. Section 10317(g). Page 4-6.

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

Response to Comments: None of TCAC's existing programs require 100% LIHTC units except for this program, represented by $15 million worth of allocation (which is the only 4% plus state tax credit that can be used for acquisition and rehabilitation projects). One this one small program, staff had proposed bringing the income requirements in line with the other TCAC programs.

Responses were mixed, however a general decision has been made to maintain the current system to maximize benefits to low income tenants.

TCAC received comments both in support and opposition to the proposed change to eliminate the requirement for 100% tax credit units. Staff proposes to withdraw the proposal and continue to require 100% tax credit units for the 4% + state credit awarded during the 9% competitive rounds due to the public benefit of this requirement. In addition, staff is proposing to add clarifying language to this section which delineates the requirements in this section for the existing 4% plus state credit (15% of approximately $100 million per year) and the $500 million state credit for 2020. The requirement for 100% tax credit units is limited to the existing 4% plus state credit (15% of approximately $100 million per year) and does not include the $500 million state credit.

Added language in this section clarifies that projects requesting an allocation of the $500 million in state credit must receive a bond allocation in year of the tax credit allocation. While staff originally considered permitting a bond allocation in the year prior to the state tax credit allocation, it is TCAC staff's understanding that CDLAC will increase the threshold point score for 2020 beginning in October of this year. In fairness to all applicants of the $500 million state credits, requiring a bond allocation in the same year as the tax credit allocation will ensure that all bond applications to meet the same threshold scoring standard.

7. Separate parameters for State Tax Credit Allocations from original $70M and new $500M. Reduce scoring requirements for projects applying for State Tax Credit Allocations from the original $70M. Add requirement for projects applying for State Tax Credit Allocations from the new $500M meet the minimum requirements set forth in the CDLAC regulations. Clarify the readiness requirements for projects applying for State Tax Credit Allocations from the new $500M. Section 10317(i) through (k). Page 6-9.

Reason: The proposed change in subsection (j) differentiates the requirements of the State Credit Allocations from subsection (i) for State Tax Credit Allocations pursuant to subsections (g)(1)(A) and (B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code. Furthermore, the previous subsection (j) now becomes (k) and the previous subsection (k) becomes (l). Staff proposes to reduce the minimum point requirements for 4% plus state credit applications. Under the current system, these applications are required to compete under a point scoring system nearly identical to the 9% credit scoring system, but for fewer credits per project (4% credit versus 9% credit). Recent stakeholder input regarding increasing housing production and the financial feasibility of projects funded with 4% plus state credit proposed reducing the minimum point requirements for 4% plus state credit applications. The proposed change eliminates the scoring categories for service amenities and sustainable building and reduces the deeper income targeting point category requirement. The proposed change also clarifies that resyndication applications must comply with the requirement that any former service amenity requirements must continue for a period of 15 years as part of the resyndication.

Response to Comments: For subsection (j), in response to numerous comments and requests for clarification of how AB 101 will be implemented, TCAC staff proposes additional language referencing the CDLAC requirements to ensure applicant understanding that all AB 101 requirements must be met to receive the state credit allocation. In the final proposed change, staff proposes to cite the CDLAC regulation sections, including the minimum scoring threshold. Staff also proposes to add language clarifying how the requirement for readiness within 180 days will be documented, and the result of non-compliance. These changes encourage applications for projects that are truly ready to begin construction, as intended by AB 101. The large majority of commenters opposed the proposed change, with the strongest remarks addressed toward removing the service amenity point category. TCAC staff is also aware of other, earlier stakeholder recommendations to reduce the minimum point requirements for 4% plus state credit applications (15% of approximately $100 million per year). TCAC staff finds the comments regarding the importance of services compelling and proposes to retain the service amenities point scoring category for the existing 4% plus state credit (15% of approximately $100 million per year). In response to comments requesting competitive scoring be required for the $500 million state credit, staff believes the intent of AB 101 bars this type of requirement for the calendar year 2020. In response to the comment suggesting limiting the existing 4% plus state credit (15% of approximately $100 million per year) to projects eligible for a 95% state credit multiplier (see Section 10317(a)), the $500 million is available only to new construction units, and at this time TCAC staff is not proposing to limit rehabilitation project access to the existing 4% plus state credit awarded during competitive rounds.

8. Incorporate changes from SB 9 regarding Certificated State Tax Credits. Section 10317(l). Page 7-9.

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

Response to Comments: For subsection (l), commenters opposed the proposed language because there was an inadvertent typographical error. In the final proposal this has been corrected.

11. Allow non-competitive 4% projects to provide the applicable rental subsidy commitment within 180 days after credit reservation and add a reference to monthly contract rent. Section 10322(h)(22). Page 10-11.

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

Response to Comments: Most commenters supported this change, with one commenter urging that the tax-exempt bond projects with state credits be required to have committed rental subsidy in the application to avoid tying up the state credits if the applicant does not ultimately obtain the subsidy. While TCAC staff understands the commenters concerns, staff believes the large majority of applicants will have initiated the subsidy commitment process as of the TCAC application date in order to meet the 180 day deadline. To immediately address the concern, staff proposes to add the possibility of negative points penalty for failure to comply with the deadline. Additionally, if this does become an issue in the future, staff may propose a regulation change reverting back to the requirement for a commitment in the application. Staff also proposes to add a reference to monthly contract rent since most rental subsidy commitments are expressed in monthly rather than annual amounts.

12. Clarify that projects not meeting the 180/194-day Readiness to Proceed deadline or projects awarded State Tax Credits pursuant to Section 10317(j) unable to begin construction within 180 days of award shall result in rescission of credits or negative points. Add language relating to projects not meeting the requirements of Section 10322(h)(22). Section 10325(c)(2). Page 11-12.

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

    Response to Comments: One commenter supported this change, and one commenter asked for additional parameters to be set for rescission of tax credits given the financial implications of this. The proposed language is clarifying a current practice that staff is not proposing to change. Staff believes the proposed changes below will further spur rapid deployment of new units and encourages applications for projects that are ready to begin construction.

    Given that staff is providing new latitude in rental subsidy commitments, staff proposes to add to this section the option to assess negative points for failure to provide rental subsidy commitments within 180 days in non-competitive applications.

15. Updates the current scoring options to the equivalent energy measurement of the 2019 Building Energy Efficiency Standards. Clarify on the EDR calculation, which is total EDR. Section 10325(c)(5)(B)(i) and (ii). Page 14-17.

19. Updates the current energy measurement of the 2019 Building Energy Efficiency Standards, the reference from a discontinued calculator to the Expected Performance Based Buydown calculator, and the software reference for rehabilitation energy improvement measurement. Clarify on the EDR calculation, which is total EDR. Section 10325(c)(5)(G)3. through 6.(i). Page 18-21.

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

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

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

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

Response to Comments: TCAC received comments both in support and opposition to this change, with the majority of comments recommending the elimination of sustainable building point categories. One commenter requested clarification on the EDR calculation.

TCAC staff is not proposing to make substantive program changes for 2020, but will continue to review the energy efficiency and sustainability threshold and competitive requirements during the calendar year 2020. TCAC staff anticipates future program changes which will include balancing cost containment and reduction while continuing to produce energy efficient and sustainable housing for residents. Staff proposes to proceed with the changes as initially proposed, with additional clarification on the EDR calculation, which is total EDR, including the solar PV.

24. Clarify that substitution of funds requirements for Deferred-payment financing, grants and subsidies is post-reservation of tax credits. Clarify that residual receipts payment financing is held to the requirements of this regulation section. Section 10325(f)(8). Page 26-27.

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

Response to Comments: Commenters generally supported the clarification of 'like for like" substitution, with one commenter opposing. Some commenters believe there is no harm in substitution of public for private funds after reservation, but do not support substitution of private for public funding. The proposed change clarifies the existing requirement and does not propose to change that standard. During the 2019 9% application round, applicants indicated a lack of clarity that residual receipts payment financing were included in this section. Staff proposes to clarify that residual receipts payment financing is held to the requirements of this section to avoid such confusion in future applications.

27. Clarify language relating to the competitive requirements of the original $70M in State Tax Credits and remove language relating to reapplications. Section 10326(a). Page 29-30.

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

    Response to Comments: The single commenter suggested eliminating "(including reapplications)" as it is no longer applicable and TCAC staff concurs.

28. Remove requirement for current financial statements for general partners and an executed property management contract for 4% projects. Add requirement that State Tax Credit Allocations from the new $500M be limited to 33% of the amount available per round for any individual, entity, affiliate, and related entity. Section 10326(g)(5). Page 30-31.

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

    Response to Comments: Most commenters supported this change. In response to numerous comments and requests for clarification of how AB 101 will be implemented, TCAC staff proposes additional language in other corresponding sections. In this section, TCAC staff is limiting the percent of a round's state credit allocation ($500 million only) so that no more than 33% will be awarded to a single developer.

30. Clarify that the project's high-cost test factor may increase or decrease the Developer Fee at

the placed in service stage and that the base fee limit may not be increased from the initial application. Clarify that developer fee shall not be calculated using any unadjusted eligible acquisition basis where acquisition tax credits are not being requested. Section 10327(c)(2)(A). Page 32-35.

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

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

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

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

Response to Comments: This change does not remove the high-cost test factor in the developer fee, because it is still calculated at the placed in service stage. It does however remove the step of calculating the projected high-cost test factor at the application stage because such calculations are based upon projections and shifting assumptions, and do not tend to produce a useful number despite the extensive amount of staff time that this process requires at this early stage.

Commenters supported the proposed changes, with some suggesting eliminating the high-cost test developer fee calculation altogether. TCAC plans to review the regulations more extensively during 2020, likely making substantive program changes as a result. Changes to the high-cost test calculation may be considered at that time, and consequently staff propose to retain the high-cost test developer fee calculation for 2020. Staff plans to proceed with changes proposed, and add clarification to paragraph (2)(A) that if an applicant is not receiving acquisition credit, no developer fee may be calculated using acquisition basis.

31. Increase the amount of developer fee that may be included in eligible basis for 9% projects. Section 10327(c)(2)(A)(i)-(ii). Page 32-35.

SEE #30 ABOVE

33. Increase the base cash out developer fee for 4% projects. Section 10327(c)(2)(B)(i)-(ii). Page 33-35.

SEE #30 ABOVE

37. Remove minimum and maximum cash flow requirements at the placed in service stage for 4% projects and 9% projects without a HUD subsidy layering review and clarified the elimination of the requirement was retroactive to placed in service packages already received by TCAC. Section 10327(g)(6). Page 39-40.

Reason: TCAC now does a cash flow analysis at three different stages for all 9% projects. If such projects also have a HUD subsidy layering review, then TCAC is actually doing four cash flow analyses. For these projects TCAC is proposing to eliminate one of these reviews.

In addition, for all 4% projects TCAC currently does two cash flow analyses, except in cases where there is a HUD required subsidy layering review which causes the project to have three cash flow analyses. For these 4% projects, TCAC is proposing one less cash flow analysis.

So one less repetitive cash flow analysis will be performed, but TCAC will still be performing all of its other underwriting functions including analysis of sources and uses as well as budget analysis, and other reviews to ensure that the project is not over-subsidized.

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

Response to Comments: Comments were a mix of support and opposition, with more commenters opposing the change. Arguments in opposition generally stated concerns about eliminating a program control measure. Commenters acknowledged an ability to manipulate numbers to achieve compliance with this section, but also found the final underwriting retains value. One commenter stated that applicants who know the standard do quality control on their placed in-service applications and experience no delays. One commenter highlighted the federal requirement for 9% credit that TCAC perform three evaluations (which include consideration of the reasonableness of developmental and operational costs), and cited the inconsistency between this requirement and the proposed regulation change.

TCAC staff finds little value in the review of underwriting numbers with such acknowledged shortcomings, particularly when actual operational financial statements exist but are not utilized. In practice, it has been extremely rare that a numbers manipulation does not resolve cash flow limit errors and instead a correction results in actual tenant rent reductions or increases to permanent debt. In response to the comment regarding quality control in placed in service applications, TCAC staff can confirm that underwriting errors are widespread and do contribute to delays in issuance of tax forms. In response to the federal requirement, staff proposes to retain the existing requirement for 9% credit projects that will not have a federal subsidy layering review (HUD rental subsidy).

<u>Initial Proposed Changes Retained</u>

4. Remove clarifying references resulting from conforming change in Section 10317(d)(3). Section 10317(c). Page 3.

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

   Response to Comments: No comments were received.

5. Add authority to utilize the 130% basis increase with State Tax Credits allocated from the new $500M. Section 10317(d)(3). Page 3-4.

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

   Response to Comments: Commenters supported this change.

9. Eliminate the requirement that the Applicant Statement needs to be notarized. Section 10322(h). Page 9.

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

   Response to Comments: Commenters supported this change, which is intended to streamline the application process and reduce documentation requirements.

10. Remove references to redevelopment-related projects subject to Department of Finance (DOF) approval. Section 10322(h)(16). Page 10.

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

    Response to Comments: No comments were received.

16. Updates the Enterprise Green Communities point option to the current certification. Section 10325(c)(5)(C). Page 17.

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

    Response to Comments: No comments were received.

17. Updates a software reference for rehabilitation energy improvement measurement. Section 10325(c)(5)(D). Page 17-18.

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

    Response to Comments: TCAC received one comment in opposition to this change, recommending the elimination of sustainable building point categories. TCAC staff is not proposing to make substantive program changes for 2020, but will continue to review the energy efficiency and sustainability threshold and competitive requirements during the calendar year 2020. TCAC staff anticipates future program changes which will include balancing cost containment and reduction while continuing to produce energy efficient and sustainable housing for residents.

18. Increase the Water Efficiency point option from 3 points to 5 points in the Sustainable Building Methods point category. Section 10325(c)(5)(F). Page 18.

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

    Response to Comments: TCAC received comments supporting this change.

20. Removal of the environmental clearance requirement (NEPA and CEQA) in the Readiness to Proceed point category. Section 10325(c)(7)(B). Page 21-23.

Reason: The proposed change eliminates the readiness to proceed point category requirement that TCAC staff review and confirm environmental clearances (typically NEPA and CEQA). These are federal and state requirements not specifically imposed by TCAC. As applicants are required by other agencies to comply with various environmental clearances, staff proposes to leave the documentation verification to those agencies. This change will eliminate application documentation requirements and reduce staff time during the application review process.

Response to Comments: Although TCAC does inquire whether local entities have signed off on a project's CEQA and NEPA requirements, TCAC is not legally required to perform an additional CEQA or NEPA review. Such reviews tend to take excessive staff time. TCAC received comments both in support and opposition to this change, with most supporting the change regarding NEPA, and with many concerns expressed regarding the removal of CEQA clearance approval. To address concerns regarding CEQA and entitlement timing, TCAC staff will revise Attachment 26 going forward to include the CEQA process by requiring all discretionary reviews and any other entitlement requirements to be approved. Thus CEQA is still needed for readiness points.

21. Clarify that substitution of funds requirements for an Enforceable Financing Commitment is post-reservation of tax credits. Section 10325(f)(3). Page 23-24.

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

    Response to Comments: Commenters generally supported the clarification of 'like for like" substitution, with one commenter opposing. Some commenters believe there is no harm in substitution of public for private funds after reservation, but do not support substitution of private for public funding. The proposed change clarifies the existing requirement and does not propose to change that standard.

22. Remove requirement for current financial statements for general partners and executed property management company contracts for 9% projects. Section 10325(f)(6). Page 24-25.

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

Response to Comments: Most commenters supported this change, which is intended to streamline the application process and reduce documentation requirements.

23. Updates the CABEC CEA certification to the current certification standards. Section 10325(f)(7)(A). Page 25-26.

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

Response to Comments: No comments were received.

26. Clarify the exception for the 62 years of age requirement in the Senior housing type. Section 10325(g)(2)(A). Page 27-28.

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

Response to Comments: One commenter opposed the change because it limits flexibility for project-based rental subsidy vouchers. This highlights the need for the change, since it appears that project owners with project-based rental subsidy vouchers may have misunderstood the existing regulation requirement: unless a federal funding source is designated for a senior housing development and the federal program serves a different senior age group, the TCAC age definition is required.

29. Remove archaic dates for projects proposing Average Income Test and increase the average targeting from 59% to 60% for 4% projects. Section 10326(g)(9). Page 29.

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

Response to Comments: About an equal amount of commenters supported and opposed the proposed change, with opposing comments highlighting the tenant affordability gained by the 59% AMI average. Supporting comments indicated that this change would increase the number of eligible projects that will be able to apply for federal tax credits. Staff proposes this change in conformance to the federal standard. The existing state requirement that at least 10% of low income units be restricted to 50% AMI results in the 59% AMI average targeting for all 4% credit projects that do not utilize 70% and 80% AMI targeting. These projects are the majority of 4% credit applicants to TCAC, meaning the 59% AMI standard remains applicable to the majority of 4% credit projects receiving a tax credit allocation.

32. Remove developer fee requirements for projects receiving a waiver of the project size limitation. Section 10327(c)(2)(A)(iii). Page 33-35.

    SEE #30 ABOVE

34. Remove 39% limit for basis limit increases. Section 10327(c)(5)(A). Page 36.

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

    Response to Comments: Commenters supported this change.

35. Update the energy measurement to current Energy Design Rating (EDR) of the 2019 Building Energy Efficiency Standards for buildings permitted on or after January 1, 2020, and the reference from a discontinued calculator to the Expected Performance Based Buydown calculator. Section 10327(c)(5)(B). Page 36-38.

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

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

    Response to Comments: One commenter requested clarification on the EDR calculation. In response to the question from the commenter, the EDR scores in this section are EDR efficiency scores. Staff proposes to proceed with the changes as initially proposed.

36. Remove parking requirements relating to basis for 9% projects. Section 10327(c)(10). Page 38-39.

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

Response to Comments: Commenters supported this change.

<u>Initial Proposed Changes Withdrawn</u>

1. Clarify the definition for Scattered Site Projects that 100% of the units be comprised of Tax Credit Units. Section 10302(ll). Page 1.

   Reason: The proposed change incorporates the federal requirement that for scattered sites, all units must be rent-restricted as defined by IRC Section 42(g)(7), with the exception of any manager units.

   Response to Comments: Commenters did not agree with staff's interpretation of IRC Section 42(g)(7) and opposed the change, citing legal opinions that 100% rent-restricted but not 100% occupied by low-income households meet the federal requirement. In response to comments, staff withdraws the proposed change and will consult with the IRS regarding the meaning of Section 429(g)(7).

13. Eliminate requirement of a position description in the Service Amenities point category. Section 10325(c)(4)(B). Page 12-14.

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

    Response to Comments: TCAC received comments both in support and opposition to this change. Commenters opposing the change expressed strong concerns regarding ongoing and future quality of services due to the removal of these document requirements, while supporters felt the change would expedite the application process. As a result, TCAC staff is withdrawing the proposed change. In 2020, staff will continue to review the service amenity point category and documentation requirements for anticipated future changes that will streamline and simplify this point category while continuing to produce quality onsite service amenities for residents.

14. Eliminate requirement that the service provider have at least 24 months of experience providing services in the Service Amenities point category. Section 10325(c)(4)(B). Page 12-14.

    SEE #13 ABOVE

25. Remove requirement for outdoor play/recreational area for ages 13-17 in the Large

Family housing type. Section 10325(g)(1)(D). Page 27-28.

Reason: TCAC staff proposed to require specified play/recreational facilities only for children ages 2-12 years, eliminating the requirement to provide specific facilities or outdoor space for children ages 13-17. In general, the 13-17 year age group does not participate in active outdoor or recreational facilities, and developers have found this requirement challenging to implement and demonstrate. The regulation language was written broadly to allow applicants a variety of options; however, TCAC staff finds the proposed play/recreational facilities for this age group are often minimal and of little real value. Examples of amenities likely to be valued by this age group include access to internet, computers, and social service amenities, and these are options in TCAC's site and service amenity point categories. As a result, staff proposed to eliminate the requirement.

Response to Comments: About an equal amount of commenters supported and opposed the proposed change, with opposing comments suggesting a waiver process instead of elimination. TCAC staff does not propose to add a waiver process. The waiver process would move this consideration from the staff level to the Executive Director, which does not resolve the issue. Staff believes that adding detail to the requirement would not help because the wide range in site configuration, limitations, and building designs limit a meaningful standard that could be implemented by all projects. In response to the comments, TCAC staff is withdrawing the proposed change. In 2020, staff will continue to review the play/recreational facilities for children ages 13-17 for anticipated future changes.

<u>New Emergency Proposed Regulation Change Proposals</u>

38. Clarify appraisal requirements for projects involving leased land. Section 10322(h)(9). Page 41-42.

    Reason: During the 2019 9% application round, applicants indicated a lack of clarity regarding the applicability of this requirement to projects built on leased land. To avoid such confusion in future applications, staff proposes to add language clarifying the requirement.

39. Provide the Executive Director additional discretion related to incomplete and complete applications. Section 10322(d) and (e). Page 42.

    Reason: Staff proposes changes allowing the Executive Director additional options in accepting missing application documentation. The proposed changes are made to reduce the impact of clerical errors in applications of materially compliant projects.

40. Clarify the requirement for a letter from a local government official for projects requesting Revitalization Area Projects points in the Miscellaneous Federal and State Policies point category. Section 10325(c)(8)(E). Page 42-43.

    Reason: During the 2019 9% application round, applicants indicated a lack of clarity regarding the applicability of the letter from a local government official to all project location types. To clarify the grammatical ambiguity, staff proposes this change.

41. Clarify USDA committed contract rents are USDA Basic rents. Section 10325(c)(9)(A)(ii). Page 43-44.

    Reason: During the 2019 9% application round, applicants indicated a lack of clarity regarding the USDA contract rent rate applicability. Staff proposes to incorporate information from existing TCAC guidance into the regulations to avoid such confusion in future applications.

42. Establish a ranking system for projects applying for the new $500M in State Tax Credits. Establish multiple funding round for the allocation of the new $500M in State Tax Credits. Section 10326(b). Page 45.

    Reason: The first proposed change provides a system for ranking projects applying for the $500 million state tax credits. California Revenue and Taxation Code Section 12206(j)(4) does not permit use of the date of submission alone as an application preference. The state credit resource has been provided to address California's housing crisis and so staff proposes a ranking that rewards unit production.

    The second proposed change establishes multiple funding rounds for the state tax credits. This will assist with ensuring developers and stakeholders more equitable access to the state tax credits and will assist in TCAC staff's ability to process applications effectively.

43. Establish a complete application standard for projects applying State Tax Credit Allocations from the new $500M. Section 10326(c). Page 45-46.

    Reason: Staff proposes to utilize the complete application standard for applicants of the $500 million state credits. With the changes above providing greater flexibility in Sections 10322(d) and (e), staff believes this will encourage better quality applications than currently submitted to TCAC for 4% credit without unfairly disqualifying materially compliant projects.

44. Increase the current threshold to provide additional forbearance for minor financial errors. Section 10327(a). Page 46.

    Reason: During the 2019 9% application rounds, applicants continued to be disqualified for shortage of sources slightly above $50,000. Staff proposes to increase the current threshold to provide additional forbearance for minor financial errors, including adding an amount up to 50% of the construction contingency.

45. Increase the current threshold to provide additional forbearance for minor cash flow errors Section 10327(g). Page 46.

    Reason: During the 2019 9% application rounds, applicants continued to be disqualified for underwriting errors. Staff proposes to increase the current threshold to provide additional forbearance for minor errors, including adding an amount up to 0.5% of gross income to account for the variance between small and large projects.

Staff also proposes to allow an increase when the minimum operating expense per unit requirement is not met. When this error occurred in the past prior to adding the $5,000 correction, staff had made the proposed correction, which is often greater than $5,000. Staff believes the added $5,000 flexibility inadvertently eliminated a corrective measure and proposes to reinstate it.

2019 Proposed Regulation Changes with Reasons
October 25, 2019

For a summary of comments received for each change, refer to the Public Comment Matrix.

Initial Proposed Change:
Section 10302(ll)

ll) Scattered Site Project. A project in which the parcels of land are not contiguous except for the interposition of a road, street, stream or similar property. Pursuant to IRC Section 42(g)(7), a Scattered Site Project must be comprised of 100% Tax Credit Units.

Reason: The proposed change incorporates the federal requirement that for scattered sites, all units must be rent-restricted as defined by IRC Section 42(g)(7), with the exception of any manager units.

Response to Comments: Commenters did not agree with staff's interpretation of IRC Section 42(g)(7) and opposed the change, citing legal opinions that 100% rent-restricted but not 100% occupied by low-income households meet the federal requirement. In response to comments, staff withdraws the proposed change and will consult with the IRS regarding the meaning of Section 429(g)(7).

Final Proposed Change: None

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

Initial Proposed Change:
Section 10305(h)

(h) Notwithstanding any other provision of these regulations, the State Tax Credits allocated pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code shall be awarded to applicants for eligible projects receiving an allocation of State Ceiling from CDLAC and shall not be subject to a competition administered by the Committee during the calendar year 2020. Application selection criteria shall otherwise be applied in accordance with Section 10326.

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

Response to Comments: In response to numerous comments and requests for clarification of how AB 101 will be implemented, TCAC staff proposes additional language below and in other corresponding sections. This section clarifies the requirement to begin construction within 180 days, and the $200,000,000 in state tax credits set aside for the CalHFA Mixed-Income Program.

Generally comments were supportive, or were supportive and added additional suggestions. The additional suggestions were consistent with the synopsis of the opposing views below.

Opposition was focused on (1) the need to avoid awarding on a first come, first served basis; (2) the need to provide per developer cap; and (3) the suggestion to adopt a competitive award system similar to the 9% program, which also includes geographical limits.

Concerns (1) and (2) have been accepted and addressed elsewhere in the regulations. Suggestion (3) will be reconsidered in 2020 after analyzing the results of this pilot program.

Final Proposed Change:

(h) Notwithstanding any other provision of these regulations, the State Tax Credits allocated pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code shall be awarded to applicants for eligible projects receiving an allocation of State Ceiling from CDLAC and the applicant criteria shall be applied in accordance with Section 10326~~shall not be subject to a competition administered by the Committee during the calendar year 2020~~. Projects shall begin construction within 180 days of award pursuant to Section 10317(j). ~~Application selection criteria shall otherwise be applied in accordance with Section 10326~~. Up to two hundred million dollars ($200,000,000) shall be allocated for housing financed by CalHFA's Mixed-Income Program.

Initial Proposed Change:
Section 10317(a)

(a) General. In accordance with the R & T Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the "tax" (as defined by R & T Code Section 12201) a State Tax Credit for Federal Credit Ceiling projects pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Tax Exempt Bond Projects pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code in an amount equal to no more than 30 percent (30%) of ~~a credit ceiling~~ the project's requested construction-related eligible basis. Except for State Farmworker Credits and projects meeting subparagraphs (A) through (D) in subsection (c)(4) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, the maximum State Tax Credit award amount for a T~~t~~ax E~~e~~xempt B~~b~~ond P~~p~~roject pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 13 percent (13%) of that project's requested eligible basis. The maximum State Farmworker Credit award amount for a T~~t~~ax E~~e~~xempt B~~b~~ond P~~p~~roject, or basis described in paragraph (f) below, is 75 percent (75%) of that project's requested eligible basis. The maximum State Credit award for a project meeting subparagraphs (A) through (D) in subsection (c)(4) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 95 percent (95%) of that project's requested eligible basis. Award amounts shall be computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.

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

Response to Comments: In response to numerous comments and requests for additional clarification, TCAC staff proposes additional language below pertaining to TCAC's existing standards for low appraised value and substantial rehabilitation. A commenter noted the references to subparagraphs (A) through (D) were not in Revenue and Taxation Code Sections 17058 and 23610.5. TCAC staff proposes to remove those references.

Final Proposed Change:

(a) General. In accordance with the R & T Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the "tax" (as defined by R & T Code Section 12201) a State Tax Credit for Federal Credit Ceiling projects pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Tax Exempt Bond Projects pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code in an amount equal to no more than 30 percent (30%) of ~~a credit ceiling~~ the project's requested construction-related eligible basis. Except for State Farmworker Credits and projects meeting subparagraphs (A) through (D) in subsection (c)(4) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, the maximum State Tax Credit award amount for a T~~t~~ax E~~e~~xempt B~~b~~ond P~~p~~roject pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 13 percent (13%) of that project's requested eligible basis. The maximum State Farmworker Credit award amount for a T~~t~~ax E~~e~~xempt B~~b~~ond P~~p~~roject, or basis described in paragraph (f) below, is 75 percent (75%) of that project's requested eligible basis. The maximum State Credit award for a project meeting subparagraphs (A) through (D) in subsection (c)(4) of ~~Sections~~s 12206~~, 17058, and 23610.5, 17058, and 23610.5~~ of the Revenue and Taxation Code, or basis described in paragraph (f) below, is 95 percent (95%) of that project's requested eligible basis. Insufficient credits due to a low appraised value as described in Subparagraph (C) shall be evidenced as defined in Section 10322(h)(9)(A) of these Regulations: the sum of third party debt encumbering the seller's property exceeds the appraised value. Substantial rehabilitation as described in Subparagraph (D) shall be evidenced by Section 10326(g)(7) of these Regulations. Award amounts shall be computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.

Initial Proposed Change:
Section 10317(c)

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

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

Response to Comments: No comments were received.

Final Proposed Change: Proceed with change as initially proposed, which removes a redundant phrase.

Initial Proposed Change:
Section 10317(d)(3)

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

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

Response to Comments: Commenters supported this change.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10317(g)

(g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:

(1) ~~the project is comprised of 100% Tax Credit Units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to those programs' use restrictions. Projects under those circumstances may propose a lesser percentage of Tax Credit Units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;~~

~~(2)~~ one or more buildings is not eligible for the 130% basis adjustment, in which case the State Tax Credits shall be available only for the buildings not eligible for the 130% basis adjustment. This paragraph shall not apply to projects proposing a Special Needs housing type or applying for State Farmworker Credits;

~~(3)~~(2) the project has or will have a current year's tax-exempt bond allocation: That is, that State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and

~~(4)~~(3) the applicant must demonstrate, by no later than 10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for.

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

Response to Comments: None of TCAC's existing programs require 100% LIHTC units except for this program, represented by $15 million worth of allocation (which is the only 4% plus state tax credit that can be used for acquisition and rehabilitation projects). One this one small program, staff had proposed bringing the income requirements in line with the other TCAC programs.

Responses were mixed, however a general decision has been made to maintain the current system to maximize benefits to low income tenants.

TCAC received comments both in support and opposition to the proposed change to eliminate the requirement for 100% tax credit units. Staff proposes to withdraw the proposal and continue to require 100% tax credit units for the 4% + state credit awarded during the 9% competitive rounds due to the public benefit of this requirement. In addition, staff is proposing to add clarifying language to this section which delineates the requirements in this section for the existing 4% plus state credit (15% of approximately $100 million per year) and the $500 million state credit for 2020. The requirement for 100% tax credit units is limited to the existing 4% plus state credit (15% of approximately $100 million per year) and does not include the $500 million state credit.

Added language in this section clarifies that projects requesting an allocation of the $500 million in state credit must receive a bond allocation in year of the tax credit allocation. While staff originally considered permitting a bond allocation in the year prior to the state tax credit allocation, it is TCAC staff's understanding that CDLAC will increase the threshold point score for 2020 beginning in October of this year. In fairness to all applicants of the $500 million state credits, requiring a bond allocation in the same year as the tax credit allocation will ensure that all bond applications to meet the same threshold scoring standard.

Final Proposed Change:

(g) Tax-Exempt Bond Financing. Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations may apply for State Tax Credits if the following conditions are met:

(1) the project is comprised of 100% Tax Credit Units. Excepted from this rule are projects proposed for acquisition and rehabilitation that were developed under the HUD Section 236 or 202 programs, and are subject to those programs' use restrictions. Projects under those circumstances may propose a lesser percentage of Tax Credit Units to accommodate existing over-income residents who originally qualified under Section 236 or 202 income eligibility;

(2) one or more buildings is not eligible for the 130% basis adjustment, in which case the State Tax Credits shall be available only for the buildings not eligible for the 130% basis adjustment. This paragraph shall not apply to projects referenced in Section 10317(d) ~~proposing a Special Needs housing type or applying for State Farmworker Credits proposing a Special Needs housing type or applying for State Farmworker Credits~~;

(3) the project has or will have a current year's tax-exempt bond allocation: That is, that State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year; and

(4) the applicant must demonstrate, by no later than 10 business days after the tax credit preliminary reservation, that a tax-exempt bond allocation has been received or applied for.

Projects financed under the tax-exempt bond financing provisions of Section 42(h)(4)(b) of the IRC, subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and Section 10326 of these regulations applying for State Tax Credits must have or will have a current year's tax-exempt bond allocation: That is, that State Tax Credits will not be available to projects that have already received a reservation of 4% credit in the previous year.

Initial Proposed Change:
Section 10317(i)

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

(1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects. In the first round of each year, CTCAC shall make reservations, up to the 15% limit, for all projects receiving maximum point scores in order of final tiebreaker scores. CTCAC shall make reservations of any remaining State Tax Credits within this set-aside during the second round;

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

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

Response to Comments: The large majority of commenters opposed the proposed change, with the strongest remarks addressed toward removing the service amenity point category. TCAC staff is also aware of other, earlier stakeholder recommendations to reduce the minimum point requirements for 4% plus state credit applications (15% of approximately $100 million per year). TCAC staff finds the comments regarding the importance of services compelling and proposes to retain the service amenities point scoring category for the existing 4% plus state credit (15% of approximately $100 million per year). In response to comments requesting competitive scoring be required for the $500 million state credit, staff believes the intent of AB 101 bars this type of requirement for the calendar year 2020. In response to the comment suggesting limiting the existing 4% plus state credit (15% of approximately $100 million per year) to projects eligible for a 95% state credit multiplier (see Section 10317(a)), the $500 million is available only to new construction units, and at this time TCAC staff is not proposing to limit rehabilitation project access to the existing 4% plus state credit awarded during competitive rounds.

Final Proposed Change:

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

(1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects. In the first round of each year, CTCAC shall make reservations, up to the 15% limit, for all projects receiving maximum point scores in order of final tiebreaker scores. CTCAC shall make reservations of any remaining State Tax Credits within this set-aside during the second round;

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

Initial Proposed Change:
Section 10317(j) through (l)

(j) State Tax Credit Allocations pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code. For calendar year 2020, an amount equal to five hundred million dollars ($500,000,000) in total State Tax Credit authority will be available for new construction Tax Exempt Bond Projects subject to the minimum requirements of Section 10326 for projects that can begin construction within 180 days from award. Failure to begin construction within 180 days of award shall result in rescission of the Tax Credit Reservation and may result in assessment of negative points.

~~(j)~~(k) All projects that have received state credits shall comply with the limitations on cash distributions required pursuant to Sections 12206(d), 17058(d), and 23610.5(d) of the Revenue and Taxation Code.

~~(k)~~(l) (1) In the initial application, applicants requesting state credits shall make an ~~irrevocable~~ election to sell ("certificate") or not sell all or any portion of the state credit, as allowed pursuant to Revenue and Taxation Code Sections 12206(o), 17058(q), and 23610.5(r). The applicant for a certificated credit shall be a non-profit entity and the state credit price shall not be less than eighty (80) cents per dollar of credit. After a reservation is made, the applicant may only rescind an election to sell if the state credit pricing falls below the required 80 cents per dollar of credit and with the approval of the Executive Director. The applicant may, only once, revoke an election to sell at any time before CTCAC issues the Form(s) 3521A for the project, at which the point the election shall become irrevocable.

(2) An applicant who elects to sell any portion of the state credit and a buyer who later resells any portion of the credit ~~(credits may be resold only once)~~ shall report to CTCAC within 10 days of the sale of the credit, in a form specified by CTCAC, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the party or parties to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received for the sale of the credit. At the request of the owner, CTCAC shall reissue the Form(s) 3521A in the name of the buyer.

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

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

Response to Comments: For subsection (j), in response to numerous comments and requests for clarification of how AB 101 will be implemented, TCAC staff proposes additional language referencing the CDLAC requirements to ensure applicant understanding that all AB 101 requirements must be met to receive the state credit allocation. In the final proposed change, staff proposes to cite the CDLAC regulation sections, including the minimum scoring threshold. Staff also proposes to add language clarifying how the requirement for readiness within 180 days will be documented, and the result of non-compliance. These changes encourage applications for projects that are truly ready to begin construction, as intended by AB 101.

For subsection (l), commenters opposed the proposed language because there was an inadvertent typographical error. In the final proposal this has been corrected.

Final Proposed Change:

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

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

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

~~(j)~~(k) All projects that have received state credits shall comply with the limitations on cash distributions required pursuant to Sections 12206(d), 17058(d), and 23610.5(d) of the Revenue and Taxation Code.

~~(k)~~(l) (1) In the initial application, applicants requesting state credits shall make an ~~irrevocable~~ election to sell ("certificate") or not sell all or any portion of the state credit, as allowed pursuant to Revenue and Taxation Code Sections 12206(o), 17058(q), and 23610.5(r). The applicant for a certificated credit shall be a non-profit entity and the state credit price shall not be less than eighty (80) cents per dollar of credit. ~~After a reservation is made, the applicant may only rescind an election to sell if the state credit pricing falls below the required 80 cents per dollar of credit and with the approval of the Executive Director.~~ The applicant may, only once, revoke an election to sell at any time before CTCAC issues the Form(s) 3521A for the project, at which the point the election shall become irrevocable.

(2) An applicant who elects to sell any portion of the state credit and a buyer who later resells any portion of the credit ~~(credits may be resold only once)~~ shall report to CTCAC within 10 days of the sale of the credit, in a form specified by CTCAC, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the party or parties to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received for the sale of the credit. At the request of the owner, CTCAC shall reissue the Form(s) 3521A in the name of the buyer.

Initial Proposed Change:
Section 10322(h)(1)

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

(1) Applicant's Statement. A signed~~, notarized~~ statement signifying the responsibility of the applicant to:

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

Response to Comments: Commenters supported this change, which is intended to streamline the application process and reduce documentation requirements.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10322(h)(16)

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

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

Response to Comments: No comments were received.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10322(h)(22)

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

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

Response to Comments: Most commenters supported this change, with one commenter urging that the tax-exempt bond projects with state credits be required to have committed rental subsidy in the application to avoid tying up the state credits if the applicant does not ultimately obtain the subsidy. While TCAC staff understands the commenters concerns, staff believes the large majority of applicants will have initiated the subsidy commitment process as of the TCAC application date in order to meet the 180 day deadline. To immediately address the concern, staff proposes to add the possibility of negative points penalty for failure to comply with the deadline. Additionally, if this does become an issue in the future, staff may propose a regulation change reverting back to the requirement for a commitment in the application. Staff also proposes to add a reference to monthly contract rent since most rental subsidy commitments are expressed in monthly rather than annual amounts.

Final Proposed Change:

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

Initial Proposed Change:
Section 10325(c)(2), 10325(c)(2)(A) and (B)

(2) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(h)(5). Notwithstanding the foregoing and (B) below, failure to meet the requirements of Sections 10317(j) and 10325(c)(7) shall result in rescission of the Tax Credit Reservation or negative points. Negative points may be assessed for items including, but not limited to:

(A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;

(B) failure to utilize Tax Credits within program time guidelines, ~~including failure to meet the 180 day or 194 day, as applicable, readiness requirements,~~ unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;

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

Response to Comments: One commenter supported this change, and one commenter asked for additional parameters to be set for rescission of tax credits given the financial implications of this. The proposed language is clarifying a current practice that staff is not proposing to change. Staff believes the proposed changes below will further spur rapid deployment of new units and encourages applications for projects that are ready to begin construction.

Given that staff is providing new latitude in rental subsidy commitments, staff proposes to add to this section the option to assess negative points for failure to provide rental subsidy commitments within 180 days in non-competitive applications.

Final Proposed Change:

(2) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(h)(5). Notwithstanding the foregoing and (B) below, failure to meet the requirements of Sections 10317(j) and 10325(c)(7) shall result in rescission of the Tax Credit Reservation or negative points. Negative points may be assessed for items including, but not limited to:

(B) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;

(B) failure to utilize Tax Credits within program time guidelines, including failure to ~~meet the 180 day or 194 day, as applicable, readiness requirements~~provide a subsidy commitment within 180 days as required by Section 10322(h)(22), unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;

Initial Proposed Change:
Section 10325(c)(4)(B)

Special needs projects with less than 75% special needs units shall be scored proportionately in the service amenity category based upon (i) the services provided to special needs and non-special needs units, respectively; and (ii) the percentage of units represented by special needs and non-special needs units, respectively. Special needs projects with 75% or more but less than 100% special needs units shall demonstrate that all tenants will receive an appropriate level of services.

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

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

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

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

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

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

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

Response to Comments: TCAC received comments both in support and opposition to this change. Commenters opposing the change expressed strong concerns regarding ongoing and future quality of services due to the removal of these document requirements, while supporters felt the change would expedite the application process. Commenters opposing the change expressed concerns regarding ongoing and future quality of services due to the removal of these document requirements. As a result, TCAC staff is withdrawing the proposed change. In 2020, staff will continue to review the service amenity point category and documentation requirements for anticipated future changes that will streamline and simplify this point category while continuing to produce quality onsite service amenities for residents.

Final Proposed Change: None

Special needs projects with less than 75% special needs units shall be scored proportionately in the service amenity category based upon (i) the services provided to special needs and non-special needs units, respectively; and (ii) the percentage of units represented by special needs and non-special needs units, respectively. Special needs projects with 75% or more but less than 100% special needs units shall demonstrate that all tenants will receive an appropriate level of services.

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

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

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

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

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

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

Initial Proposed Change:
Section 10325(c)(5)(B)(i) and (ii)

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

(i) Energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the ~~2016~~2019 Title 24, Part 6, of the California Building Code (the ~~2016~~2019 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:

Low-Rise Multifamily		**High-Rise Multifamiliy**	
5 EDR Pts.	3 points	7 percent	3 points
8 EDR Pts.	5 points	12 percent	5 points

If the local building department has determined that building permit applications submitted on or before December 31, ~~2016~~2019 are complete, then energy efficiency beyond the requirements in the ~~2013~~2016 Title 24, Part 6, of the California Building Code (the ~~2013~~2016 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:

Low-Rise Multifamily		**High-Rise Multifamiliy**	
60 percent	3 points	~~9~~20 percent	3 points
65 percent	5 points	~~15~~25 percent	5 points

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

Offset of Tenants' Load	**Low-Rise Multifamily**	**High-Rise Multifamily**
~~20~~40 percent	3 points	4 points

~~30~~60 percent	4 points	5 points
~~40~~80 percent	5 points	

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

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

Response to Comments: TCAC received comments both in support and opposition to this change, with the majority of comments recommending the elimination of sustainable building point categories. One commenter requested clarification on the EDR calculation.

TCAC staff is not proposing to make substantive program changes for 2020, but will continue to review the energy efficiency and sustainability threshold and competitive requirements during the calendar year 2020. TCAC staff anticipates future program changes which will include balancing cost containment and reduction while continuing to produce energy efficient and sustainable housing for residents. Staff proposes to proceed with the changes as initially proposed, with additional clarification on the EDR calculation, which is total EDR, including the solar PV.

In response to a comment made at the October 16 TCAC meeting regarding the 60% and 65% energy efficiency levels, TCAC staff is proposing to withdraw a portion of this change. The commenter stated that increasing the percentages to 60 and 65% was not in line with TCAC's statement of updating the current scoring options with equivalent energy measurement. Since projects that received building permits under the 2016 Standards are held to those Standard's energy efficiency requirements and not the 2019 Standards, those projects should be scored against the 2016 Standards. This is consistent with TCAC's approach when the Building Energy Efficiency Standards were last updated from the 2013 to 2016 Standards, and so staff is withdrawing this portion of the proposed change.

Final Proposed Change:

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

(i) Energy efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in the ~~2016~~2019 Title 24, Part 6, of the California Building Code (the ~~2016~~2019 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:

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

If the local building department has determined that building permit applications submitted on or before December 31, ~~2016~~2019 are complete, then energy efficiency beyond the requirements in the ~~2013~~2016 Title 24, Part 6, of the California Building Code (the ~~2013~~2016 Standards) for the project as a whole shall be awarded as follows, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points:

9 percent	3 points
15 percent	5 points

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

Offset of Tenants' Load	**Low-Rise Multifamily**	**High-Rise Multifamily**
~~20~~40 percent	3 points	4 points
~~30~~60 percent	4 points	5 points
~~40~~80 percent	5 points	

Initial Proposed Change:
Section 10325(c)(5)(C)

(C) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; National Green Building Standard ICC / ASRAE – 700 silver or higher rating; or ~~2011~~2015 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

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

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

Response to Comments: No comments were received.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(c)(5)(D)

(D) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the project as a whole based on existing conditions, provided that each building, unless waived by the Executive Director, shall meet at least half of the percentage for which the project receives points. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. The project must undergo an energy assessment that meets the CTCAC Existing Multifamily Assessment Protocols. The report documenting the results of the Assessment must be submitted using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Report Template. Points are awarded based on the building(s) percentage decrease in estimated Time Dependent Valuation (TDV) energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the ~~appropriate~~Nonresidential (High-Rise Residential) performance module of California Energy Commission (CEC) approved software:

Improvement Over Current

15 percent	3 points
20 percent	5 points

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

Response to Comments: TCAC received one comment in opposition to this change, recommending the elimination of sustainable building point categories. TCAC staff is not proposing to make substantive program changes for 2020, but will continue to review the energy efficiency and sustainability threshold and competitive requirements during the calendar year 2020. TCAC staff anticipates future program changes which will include balancing cost containment and reduction while continuing to produce energy efficient and sustainable housing for residents.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(c)(5)(F)

(F) Water efficiency:
Use no irrigation at all, irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), or irrigate with reclaimed water, greywater, or rainwater in an amount that annually equals or exceeds 10,000 gallons or 150 gallons per unit, whichever is less. ~~3~~ 5 points

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

Response to Comments: TCAC received comments supporting this change.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(c)(5)(G)3. through 6.(i).

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

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

5. For rehabilitation project placed-in-service applications to receive points under section10325(c)(5)(D), the applicant must submit a completed Sustainable Building Method Workbook and the energy consumption and analysis report from the ~~appropriate~~ Nonresidential (High-Rise Residential) performance module of CEC approved software, completed by a CABEC certified CEA, which shows the pre- and post- rehabilitation estimated TDV energy use demonstrating the required improvement. The pre-rehabilitation conditions shall be established using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report Template, signed by a qualified HERS Rater.

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

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

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

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

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

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

Response to Comments: TCAC received comments both in support and opposition to this change, with the majority of comments recommending the elimination of sustainable building point categories. One commenter requested clarification on the EDR calculation.

TCAC staff is not proposing to make substantive program changes for 2020, but will continue to review the energy efficiency and sustainability threshold and competitive requirements during the calendar year 2020. TCAC staff anticipates future program changes which will include balancing cost containment and reduction while continuing to produce energy efficient and sustainable housing for residents. Staff proposes to proceed with the changes as initially proposed, with additional clarification on the EDR calculation, which is total EDR, including the solar PV.

Final Proposed Change:

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

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

5. For rehabilitation project placed-in-service applications to receive points under section10325(c)(5)(D), the applicant must submit a completed Sustainable Building Method Workbook and the energy consumption and analysis report from the ~~appropriate~~ Nonresidential (High-Rise Residential) performance module of CEC approved software, completed by a CABEC certified CEA, which shows the pre- and post- rehabilitation estimated TDV energy use demonstrating the required improvement. The pre-rehabilitation conditions shall be established using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report Template, signed by a qualified HERS Rater.

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

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

~~by CTCAC, for purposes of determining~~ to determine the solar values to be input into the CUAC calculator.

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

(7) Readiness to Proceed. 10 points will be available to projects that document items (A) through (B) below, and commit to begin construction within 180 days of the Credit Reservation (after preliminary reservation CTCAC will randomly assign a 180 day deadline for half of the projects receiving a Credit Reservation within each round and a 194 day deadline for remaining projects), as evidenced by submission, within that time, of: a completed updated application form along with a detailed explanation of any changes from the initial application, an executed construction contract, recorded deeds of trust for all construction financing (unless a project's location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction, a limited partnership agreement executed by the general partner and the investor providing the equity, an updated CTCAC Attachment 16, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 180 or 194 days, as applicable, after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

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

The 180-day or 194-day requirements shall not apply to projects that do not obtain the maximum points in this category. Failure to meet the 180-day or 194-day due date, if applicable, shall result in rescission of the Tax Credit Reservation or negative points.

Five (5) points shall be awarded for submittals within the application documenting each of the following criteria, up to a maximum of 10 points:

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

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

~~and applicable tribal land environmental reviews) necessary to begin construction, except for clearances related to loans with must pay debt service for which the applicant is not seeking tiebreaker benefit, are either finally approved or unnecessary. For 2019 first round projects that are federal funding recipients and demonstrate to CTCAC at application, in the form of a written timetable and explanation, that the federal government shutdown impacted the environmental review clearances process, all federal environmental review clearances necessary to begin construction as verified by the appropriate officials, except for clearances related to loans with must pay debt service for which the applicant is not seeking tiebreaker benefit, must be either finally approved or unnecessary by the 180-day or 194-day deadline~~.

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

Reason: The proposed change eliminates the readiness to proceed point category requirement that TCAC staff review and confirm environmental clearances (typically NEPA and CEQA). These are federal and state requirements not specifically imposed by TCAC. As applicants are required by other agencies to comply with various environmental clearances, staff proposes to leave the documentation verification to those agencies. This change will eliminate application documentation requirements and reduce staff time during the application review process.

Response to Comments: Although TCAC does inquire whether local entities have signed off on a project's CEQA and NEPA requirements, TCAC is not legally required to perform an additional CEQA or NEPA review. Such reviews tend to take excessive staff time. TCAC received comments both in support and opposition to this change, with most supporting the change regarding NEPA, and with many concerns expressed regarding the removal of CEQA clearance approval. To address concerns regarding CEQA and entitlement timing, TCAC staff will revise Attachment 26 going forward to include the CEQA process by requiring all discretionary reviews and any other entitlement requirements to be approved. Thus CEQA is still needed for readiness points.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(f)(3)

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

(A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;

(B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;

(C) have a term of at least fifteen (15) years if it is permanent financing;

(D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,

(E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and

(F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

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

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

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

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

Response to Comments: Commenters generally supported the clarification of 'like for like" substitution, with one commenter opposing. Some commenters believe there is no harm in substitution of public for private funds after reservation, but do not support substitution of private for public funding. The proposed change clarifies the existing requirement and does not propose to change that standard.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(f)(6)

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

~~(A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);~~
~~(B) a copy of a contract to provide property management services to the proposed project~~.

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

Response to Comments: Most commenters supported this change, which is intended to streamline the application process and reduce documentation requirements.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(f)(7)(A)

(A) Energy Efficiency. New construction and rehabilitation non-competitive applicants shall consult with the design team, a CABEC certified ~~2016~~2019 Certified Energy Analyst, and a LEED AP homes (low-rise and mid-rise), LEED AP BD+C (high-rise), NGBS Green Verifier, or GreenPoint Rater (one person may meet both of these latter qualifications) early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency, ~~or~~ generation, and energy storage measures beyond those required by this subsection. Prior to the meeting, the energy analyst shall complete an initial energy model based on either current Title 24 standards or, if the project is eligible, the California Utility Allowance Calculator using best available information on the project. All non-competitive applications to CTCAC shall include a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting. All rehabilitated buildings, both competitive and noncompetitive, shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report template. Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for the project as a whole, except that Scattered Site applications shall also document at least a 5% post-rehabilitation improvement over existing conditions energy efficiency achieved for each site. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. Furthermore, rehabilitation applicants must submit a completed Sustainable Building Method Workbook with their preliminary reservation application unless they are developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED), Passive House Institute US (PHIUS), Passive House, Living Building Challenge, National Green Building Standard ICC / ASRAE – 700 silver or higher rating or GreenPoint Rated Program. In addition, all applicants who will receive points from CDLAC pursuant to Sections 5230(k)(7) or (8) (for energy efficiency only) of the CDLAC regulations must submit a completed Sustainable Building Method Workbook with their preliminary reservation application.

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

Response to Comments: No comments were received.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10325(f)(8)

(8) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies shown in the application are "committed" at the time of application~~, except as permitted in subsection (E) below~~.

(A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant's acceptance in the case of privately committed loans.

(B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Tax Credits.

(C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.

(D) Substantiating evidence of the value of local fee waivers, exemptions or land writedowns is required.

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

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

Response to Comments: Commenters generally supported the clarification of ‘like for like” substitution, with one commenter opposing. Some commenters believe there is no harm in substitution of public for private funds after reservation, but do not support substitution of private for public funding. The proposed change clarifies the existing requirement and does not propose to change that standard. During the 2019 9% application round, applicants indicated a lack of clarity that residual receipts payment financing were included in this section. Staff proposes to clarify that residual receipts payment financing is held to the requirements of this section to avoid such confusion in future applications.

Final Proposed Change:

(8) Deferred-payment financing, residual receipts payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, residual receipts payment financing, grants and subsidies shown in the application are “committed” at the time of application~~, except as permitted in subsection (E) below~~.

(F) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds, as well as the applicant's acceptance in the case of privately committed loans.

(G) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Tax Credits.

(H) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.

(I) Substantiating evidence of the value of local fee waivers, exemptions or land writedowns is required.

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

Initial Proposed Change:
Section 10325(g)(1)(D)

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

Reason: TCAC staff proposed to require specified play/recreational facilities only for children ages 2-12 years, eliminating the requirement to provide specific facilities or outdoor space for children ages 13-17. In general, the 13-17 year age group does not participate in active outdoor or recreational facilities, and developers have found this requirement challenging to implement and demonstrate. The regulation language was written broadly to allow applicants a variety of options; however, TCAC staff finds the proposed play/recreational facilities for this age group are often minimal and of little real value. Examples of amenities likely to be valued by this age group include access to internet, computers, and social service amenities, and these are options in TCAC's site and service amenity point categories. As a result, staff proposed to eliminate the requirement.

Response to Comments: About an equal amount of commenters supported and opposed the proposed change, with opposing comments suggesting a waiver process instead of elimination. TCAC staff does not propose to add a waiver process. The waiver process would move this consideration from the staff level to the Executive Director, which does not resolve the issue. Staff believes that adding detail to the requirement would not help because the wide range in site configuration, limitations, and building designs limit a meaningful standard that could be implemented by all projects. In response to the comments, TCAC staff is withdrawing the proposed change. In 2020, staff will continue to review the play/recreational facilities for children ages 13-17 for anticipated future changes.

Final Proposed Change: None

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

Initial Proposed Change:
Section 10327(g)(2)(A)

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

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

Response to Comments: One commenter opposed the change because it limits flexibility for project-based rental subsidy vouchers. This highlights the need for the change, since it appears that project owners with project-based rental subsidy vouchers may have misunderstood the existing regulation requirement: unless a federal funding source is designated for a senior housing development and the federal program serves a different senior age group, the TCAC age definition is required.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10326(a)

(a) General. All applications (including reapplications) requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of Federal Tax Credits. However, those projects requesting State Tax Credits pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will be competitively scored as described in Section 10317(i)~~(2)~~. The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of this section.

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

Response to Comments: The single commenter suggested eliminating "(including reapplications)" as it is no longer applicable and TCAC staff concurs.

Final Proposed Change:

(a) General. All applications ~~(including reapplications)~~ requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of Federal Tax Credits. However, those projects requesting State Tax Credits pursuant to subsection (g)(1)(A) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code will be competitively scored as described in Section 10317(i)~~(2)~~. The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of this section.

Initial Proposed Change:
Section 10326(g)(5)

(5) Sponsor characteristics. Applicants shall provide evidence that as a Development Team, proposed project participants possess the knowledge, skills, experience and financial

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

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

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

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

Response to Comments: Most commenters supported this change. In response to numerous comments and requests for clarification of how AB 101 will be implemented, TCAC staff proposes additional language in other corresponding sections. In this section, TCAC staff is limiting the percent of a round's state credit allocation ($500 million only) so that no more than 33% will be awarded to a single developer.

Final Proposed Change:

(5) Sponsor characteristics. Applicants shall provide evidence that as a Development Team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Tax Credit Programs, or if additional Development Team members need be added to appropriately perform all program requirements. General partners and management companies lacking documented experience with Section 42 requirements using the minimum scoring standards at Section 10325(c)(1)(A) and (B) shall be required to complete training as prescribed by CTCAC prior to a project's placing in

service. The minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(1). Applicants need not submit the third party public accountant certification that the projects have maintained a positive operating cash flow.~~ The following documentation is required to be submitted at the time of application:~~

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

~~(D) a copy of a contract to provide property management services to the proposed project.~~ The State Tax Credit allocation pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code received by individuals, entities, affiliates, and related entities is limited to no more than thirty-three percent (33%) of any amount established per application review period as described in Section 10326(c) of these Regulations. This limitation is applicable to a project applicant, developer, sponsor, owner, general partner, and to parent companies, principals of entities, and family members. For the purposes of this section, related or non-arm's length relationships are further defined as those having control or joint-control over an entity, having significant influence over an entity, or participating as key management of an entity. Related entity disclosure is required at the time of application. This 33% limit is not applicable for reservations of State Tax Credits made after the month of May in each calendar year.

Initial Proposed Change:
Section 10326(g)(9)

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

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

Response to Comments: About an equal amount of commenters supported and opposed the proposed change, with opposing comments highlighting the tenant affordability gained by the 59% AMI average. Supporting comments indicated that this change would increase the number of eligible projects that will be able to apply for federal tax credits. Staff proposes this change in conformance to the federal standard. The existing state requirement that at least 10% of low income units be restricted to 50% AMI results in the 59% AMI average targeting for all 4% credit projects that do not utilize 70% and 80% AMI targeting. These projects are the majority of 4%

credit applicants to TCAC, meaning the 59% AMI standard remains applicable to the majority of 4% credit projects receiving a tax credit allocation.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10327(c)(2)(A)

(2) Developer fee.

(A) The maximum developer fee that may be included in project costs for a 9% competitive credit rehabilitation or adaptive reuse application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million ($2,000,000) dollars. The maximum developer fee that may be included in project costs for a 9% competitive credit new construction application shall be calculated as follows: The base fee limit shall be the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million two hundred thousand ($2,200,000) dollars. At placed in service,~~ To arrive at~~ the maximum developer fee shall be re-calculated~~, where~~ the application base fee limit shall ~~then ~~be multiplied by the difference between 2 and the project's high-cost test factor in the placed in service application, which equals the project's total eligible basis divided by its total adjusted threshold basis limits. In no case shall the base fee limit be increased from initial application. For purposes of this subparagraph, at placed in service TCAC shall use the higher of the unadjusted threshold basis limit from application or the year the project places in service.

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

(i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or ~~one ~~two million ~~four hundred thousand~~ ($~~1,400,000~~2,000,000) dollars for a rehabilitation or adaptive reuse project or two million two hundred thousand ($2,200,000) for a new construction project; or

(ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or ~~one ~~two million ~~four hundred thousand~~ ($~~1,400,000~~2,000,000) dollars~~; or.~~

~~(iii) the maximum developer fee that may be included in eligible basis for projects receiving a waiver of the project size limitations under section 10325(f)(9)(B) of these regulations is the lesser of 15% of the project's eligible basis or $1,680,000 for projects having between 201 and 250 Low-Income Units,~~

~~$1,750,000 for projects having between 251 and 300 Low-Income Units, and $1,820,000 for projects having more than 300 Low-Income Units.~~

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

(i) for new construction or rehabilitation only projects, the maximum developer fee that may be included in project costs and eligible basis is 15% of the project's unadjusted eligible basis. All developer fees in excess of ~~two~~ three million ~~five hundred thousand~~ ($~~2,500,000~~3,000,000) dollars plus $10,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.

(ii) the maximum developer fee that may be included in project costs and eligible basis for acquisition/rehabilitation projects is 15% of the unadjusted eligible construction related basis and 5% percent of the unadjusted eligible acquisition basis. All developer fees in excess of ~~two~~ three million ~~five hundred thousand~~ ($~~2,500,000~~3,000,000) dollars plus $10,000 per unit for each Tax Credit Unit in excess of 100 shall be deferred or contributed as equity to the project. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(4) or for other acquisition/rehabilitation projects whose hard construction costs per unit in rehabilitation expenditures are at least $25,000 or where the development will restrict at least 30% of its Low Income Units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

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

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

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

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

Response to Comments: This change does not remove the high-cost test factor in the developer fee, because it is still calculated at the placed in service stage. It does however remove the step of calculating the projected high-cost test factor at the application stage because such calculations are based upon projections and shifting assumptions, and do not tend to produce a useful number despite the extensive amount of staff time that this process requires at this early stage.

Commenters supported the proposed changes, with some suggesting eliminating the high-cost test developer fee calculation altogether. TCAC plans to review the regulations more extensively during 2020, likely making substantive program changes as a result. Changes to the high-cost test calculation may be considered at that time, and consequently staff propose to retain the high-cost test developer fee calculation for 2020. Staff plans to proceed with changes proposed, and add clarification to paragraph (2)(A) that if an applicant is not receiving acquisition credit, no developer fee may be calculated using acquisition basis.

Final Proposed Change:

(2) Developer fee.

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

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

(i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or the developer fee amount allowed in project costs ~~one million four hundred thousand ($1,400,000) dollars~~; or

~~(ii)~~ the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of unadjusted eligible construction related basis plus 5% of the unadjusted eligible acquisition basis, or the developer fee amount allowed in project costs~~one million four hundred thousand ($1,400,000) dollars; or~~.

~~(iii) the maximum developer fee that may be included in eligible basis for projects receiving a waiver of the project size limitations under section 10325(f)(9)(B) of these regulations is the lesser of 15% of the project's eligible basis or $1,680,000 for projects having between 201 and 250 Low-Income Units, $1,750,000 for projects having between 251 and 300 Low-Income Units, and $1,820,000 for projects having more than 300 Low-Income Units.~~

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

(i) for new construction or rehabilitation only projects, the maximum developer fee that may be included in project costs and eligible basis is 15% of the project's unadjusted eligible basis. All developer fees in excess of ~~two~~ three million ~~five hundred thousand~~ ($~~2,500,000~~3,000,000) dollars plus $10,000 per unit for each Tax Credit unit in excess of 100 shall be deferred or contributed as equity to the project.

(ii) the maximum developer fee that may be included in project costs and eligible basis for acquisition/rehabilitation projects is 15% of the unadjusted eligible construction related basis and 5% percent of the unadjusted eligible acquisition basis. All developer fees in excess of ~~two~~ three million ~~five hundred thousand~~ ($~~2,500,000~~3,000,000) dollars plus $10,000 per unit for each Tax Credit Unit in excess of 100 shall be deferred or contributed as equity to the project. A 15% developer fee on the acquisition portion will be permitted for at-risk developments meeting the requirements of section 10325(g)(4) or for other acquisition/rehabilitation projects whose hard construction costs per unit in rehabilitation expenditures are at least $25,000 or where the development will restrict at least 30% of its Low Income Units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

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

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

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

Response to Comments: Commenters supported this change.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10327(c)(5)(B)

(B) A further increase of up to ten percent (10%) in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that include one or more of the following energy efficiency/resource conservation/indoor air quality items:

(1) Project shall have onsite renewable generation estimated to produce 50 percent (50%) or more of annual tenant electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (2) only if the renewable generation used to calculate each basis increase does not overlap. Five percent (5%)

(2) Project shall have onsite renewable generation estimated to produce 75 percent (75%) or more of annual common area electricity use. If the combined available roof area of the project structures, including carports, is insufficient for provision of 75% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. A project not availing itself of the 90% roof area exception may also receive an increase under paragraph (1) only if the renewable generation used to calculate each basis increase does not overlap. Two percent (2%)

(3) Newly constructed project buildings shall be ~~fifteen percent (15%) or~~ more energy efficient than the ~~2016~~2019 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24) by at least 5, EDR points for energy efficiency alone (not counting solar); except that if the local building department has determined that building permit applications submitted on or before December 31, ~~2016~~2019 are complete, then newly constructed project buildings shall be fifteen percent (15%) or more energy efficient than the ~~2013~~2016 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). Four percent (4%)

(4) Rehabilitated project buildings shall have eighty percent (80%) decrease in estimated TDV energy use (or improvement in energy efficiency) post rehabilitation as demonstrated using the appropriate performance module of CEC approved software. Four percent (4%)

(5) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens) or irrigate with reclaimed water, grey water, or rainwater in an amount that annually equals or exceeds 20,000 gallons or 300 gallons per unit, whichever is less. One percent (1%)

(6) Community Gardens of at least 60 square feet per unit. Permanent site improvements that provide a viable growing space within the project including solar access, fencing, watering systems, secure storage space for tools, and pedestrian access. One percent (1%)

(7) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all kitchens, living rooms, and bathrooms (where no VOC adhesives or backing is also used). One percent (1%)

(8) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all interior floor space other than units (where no VOC adhesives or backing is also used). Two percent (2%)

(9) For new construction projects, meet all requirements of the U.S. Environmental Protection Agency Indoor Air Plus Program. Two percent (2%)

Compliance and Verification: For placed-in-service applications, in order to receive the increase to the basis limit, the application shall contain a certification from a HERS, GreenPoint, NGBS Green Verifier, PHIUS, Passive House, or Living Building Challenge Rater, or from a LEED for Homes Green Rater verifying that item(s) listed above have been incorporated into the project, except that items (5) through (8) may be verified by the project architect. For item (1), the applicant must submit a Sustainable Building Method Workbook, a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project's solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter. The applicant shall use the ~~California Energy Commission's Photovoltaic Calculator or, for existing residential buildings, the~~ Expected Performance Based Buydown (EPBB) calculator with monthly scalars to be determined by CTCAC, for purposes of determining the solar values to be input into the CUAC calculator. For item (2), the energy analyst shall provide documentation of the load serving the common area and the output calculations or the photovoltaic generation. For items (3) and (4), the applicant must submit a Sustainable Building Method Workbook with the original application and the placed-in-service application. For item (5), the Rater, architect, landscape architect, or water system engineer shall certify that reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property to meet the standards under normal conditions. Failure to incorporate the features, or to submit the appropriate documentation may result in a reduction in credits awarded and/or an award of negative points.

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

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

Response to Comments: One commenter requested clarification on the EDR calculation. In response to the question from the commenter, the EDR scores in this section are EDR efficiency scores. Staff proposes to proceed with the changes as initially proposed.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10327(c)(10)

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

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

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

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

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

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

Response to Comments: Commenters supported this change.

Final Proposed Change: Proceed with change as initially proposed.

Initial Proposed Change:
Section 10327(g)(6)

(6) Minimum and Maximum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed with hard debt by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except for projects in which less than 50% of the units are Tax Credit Units or where a higher first year ratio is necessary to meet the requirements of subsection 10327(f) (under such an exception the year-15 cash flow shall be no more than the greater of 1) two percent (2%) of the year-15 gross income or 2) the lesser of $500 per unit or $25,000 total), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during each of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at ~~placed in service~~ initial application, application at 180 days or 194 days pursuant to Section 10328(c), and application at subsidy layering review must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Gross income includes rental income generated by proposed initial rent levels contained with the project application. Effective October 16, 2019, CTCAC underwriting requirements for placed in service applications currently under review pursuant to Section 10322(i) are eliminated.

Reason: TCAC now does a cash flow analysis at three different stages for all 9% projects. If such projects also have a HUD subsidy layering review, then TCAC is actually doing four cash flow analyses. For these projects TCAC is proposing to eliminate one of these reviews.

In addition, for all 4% projects TCAC currently does two cash flow analyses, except in cases where there is a HUD required subsidy layering review which causes the project to have three cash flow analyses. For these 4% projects, TCAC is proposing one less cash flow analysis.

So one less repetitive cash flow analysis will be performed, but TCAC will still be performing all of its other underwriting functions including analysis of sources and uses as well as budget analysis, and other reviews to ensure that the project is not over-subsidized.

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

Response to Comments: Comments were a mix of support and opposition, with more commenters opposing the change. Arguments in opposition generally stated concerns about eliminating a program control measure. Commenters acknowledged an ability to manipulate numbers to achieve compliance with this section, but also found the final underwriting retains value. One commenter stated that applicants who know the standard do quality control on their placed in-service applications and experience no delays. One commenter highlighted the federal requirement for 9% credit that TCAC perform three evaluations (which include consideration of the reasonableness of developmental and operational costs), and cited the inconsistency between this requirement and the proposed regulation change.

TCAC staff finds little value in the review of underwriting numbers with such acknowledged shortcomings, particularly when actual operational financial statements exist but are not utilized. In practice, it has been extremely rare that a numbers manipulation does not resolve cash flow limit errors and instead a correction results in actual tenant rent reductions or increases to permanent debt. In response to the comment regarding quality control in placed in service applications, TCAC staff can confirm that underwriting errors are widespread and do contribute to delays in issuance of tax forms. In response to the federal requirement, staff proposes to retain the existing requirement for 9% credit projects that will not have a federal subsidy layering review (HUD rental subsidy).

Final Proposed Change:

(6) Minimum and Maximum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed with hard debt by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except for projects in which less than 50% of the units are Tax Credit Units or where a higher first year ratio is necessary to meet the requirements of subsection 10327(f) (under such an exception the year-15 cash flow shall be no more than the greater of 1) two percent (2%) of the year-15 gross income or 2) the lesser of $500 per unit or $25,000 total), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during each of the first three years of project operation. ~~Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at must demonstrate that this limitation is not exceeded during the first three years of the project's operation.~~ Gross income includes rental income generated by proposed initial rent levels contained with the project application.

9% credit applications without a HUD subsidy layering review: A pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at initial application; application at 180 days or 194 days pursuant to Section 10328(c); and placed in service application review must demonstrate that this limitation is not exceeded during the first three years of the project's operation.

All other applications: A pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at initial application; application at 180 days or 194 days pursuant to Section 10328(c); and if applicable, application at subsidy layering review must demonstrate that this limitation is not exceeded during the first three years of the project's operation. For these applications, effective November 1, 2019 CTCAC underwriting requirements for placed in service applications currently under review pursuant to Section 10322(i) are eliminated.

New Emergency Proposed Regulation Change Proposals with Reasons

Proposed Change:
Section 10322(h)(9)

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

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

(i) the highest and best use value of the proposed project as residential rental property, taking into account any on-going recorded rent restrictions;
(ii) the Sales Comparison Approach, and Income Approach valuation methodologies except in the case of an adaptive reuse or conversion, where the Cost Approach valuation methodology shall be used;
(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;
(iv) a value for the land of the subject property "as if vacant";
(v) an on site inspection; and
(vi) a purchase contract verifying the sales price of the subject property.

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

(B) New construction applications. Projects for which an appraisal is required above shall provide an "as-is" appraisal with a date of value that is within 120 days before or after the execution of a purchase contract (or, for leased land, an executed development agreement negotiated between the land owner and the applicant or developer) or the transfer of ownership by all the parties, or within one year of the application date if the latest purchase contract was executed within that year, prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee.

Reason: During the 2019 9% application round, applicants indicated a lack of clarity regarding the applicability of this requirement to projects built on leased land. To avoid such confusion in future applications, staff proposes to add language clarifying the requirement.

Proposed Change:
Sections 10322(d) and (e)

Incomplete application. Determination of completeness, compliance with all Basic and Additional Thresholds, and ~~and~~ the scoring of the application, and any application submission requirements pursuant to these regulations and the application form shall be based ~~entirely~~ ~~entirely~~ on the documents contained in the application as of the final filing deadline. Application omissions may be accepted after the application-filing deadline pursuant to Section 10322(e) if the Executive Director, at his or her sole discretion, determines that the deficiency is an application omission of either a document existing as of the application-filing deadline, or a document certifying to a condition existing at the time of the application-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,~~~~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,~~these requirements 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.

Complete application. No additional documents pertaining to: the Basic or Additional Threshold Requirements;~~,~~ or ~~or~~ scoring categories; and any application submission requirements pursuant to these regulations and the application form shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is an application omission of either a document existing as of the application-filing deadline, or a document certifying to a condition existing at the time of the application-filing deadline. ~~clear scanning error in which no more than half of the pages in a document are missing or an obviously transposed number.~~ ~~clear scanning error in which no more than half of the pages in a document are missing 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 application omissions, the Executive Director may request additional clarifying information from third party sources, such as local government entities, or the applicant, but this is entirely at the Executive Director's discretion. 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 clarify the application. The third party sources shall certify that all evidentiary documents deemed to be missing from the application had been executed, and were in the third-party source's possession, 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.

Reason: Staff proposes changes allowing the Executive Director additional options in accepting missing application documentation. The proposed changes are made to reduce the impact of clerical errors in applications of materially compliant projects.

Proposed Change:
Section 10325(c)(8)(E)

(E) Revitalization Area Project. The project is located within one of the following: a Qualified Census Tract (QCT), a census tract in which at least 50% of the households have an income of less than 60% of the area median income, or a federal Promise Zone. Additionally, ~~and and~~ the development ~~would would~~ must 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

Reason: During the 2019 9% application round, applicants indicated a lack of clarity regarding the applicability of the letter from a local government official to all project location types. To clarify the grammatical ambiguity, staff proposes this change.

Proposed Change:
Section 10325(c)(9)(A)(ii)

(e) Public funds. "Public funds" include federal, tribal, state, or local government funds, including the outstanding principal balances of prior existing public debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction. Outstanding principal balances shall not include any accrued interest on assumed loans even where the original interest has been or is being recast as principal under a new loan agreement. Public funds shall include assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, local government fee reductions established in ordinance and not required by federal or state law that are available only to rental affordable housing for lower-income households and affordable ownership housing for moderate income households, or the value of land and improvements donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement negotiated between a public entity and an unrelated private developer. The value of land leased by a public entity shall be discounted by the sum of up-front lease pre-payments and all mandatory lease payments in excess of $100 per year over the term of the lease, exclusive of residual receipt payments. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be counted as public funds, unless the loans have a designated repayment commitment from a public source other than rental or operating subsidies, such as the HUD Title VI Loan Guarantee Program involving Native American Housing Assistance and Self Determination

Act (NAHASDA) funds. Land and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreement, must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(h)(9). The appraised value is not to include off-site improvements. For Tribal apportionment applications, donated land value and land-purchase funding shall not be eligible. However, unsuccessful Tribal apportionment applicants subsequently competing within the rural set-aside or tribal applicants competing in a geographic region shall have such donated land value and land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

Loans must be “soft” loans, having terms (or remaining terms) of at least 15 years, and below market interest rates and interest accruals, and are either fully deferred or require only residual receipts payments for at least the first fifteen years of their terms. Qualified soft loans may have annual fees that reasonably defray compliance monitoring and asset management costs associated with the project. The maximum below-market interest rate allowed for tiebreaker purposes shall be the greater of four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt in spite of a debt service requirement. Further, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. Seller carryback financing and any portion of a loan from a public seller or related party that is less than or equal to sale proceeds due the seller, except for a public land loan to a new construction project that is not replacing affordable housing within the footprint of the original development, shall be excluded for purposes of the tiebreaker. Projects that include both new construction and rehabilitation or affordable housing replacement shall have the land loan value prorated based on units.

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

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

Reason: During the 2019 9% application round, applicants indicated a lack of clarity regarding the USDA contract rent rate applicability. Staff proposes to incorporate information from existing TCAC guidance into the regulations to avoid such confusion in future applications.

Proposed Change:
Section 10326(b)

(b) Applicable criteria. Selection criteria for applications reviewed under this Section shall include those required by IRC Section 42(m), this Section, and Sections 10300, 10302, 10305, 10320, 10322, 10327, 10328(e), 10330, 10335, and 10337 of these regulations. Other sections of these regulations shall not apply.

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

~~(1)~~(2) For State Tax Credits pursuant to Section 10317(j) of these Regulations, at least ~~three (3)~~ two (2) funding rounds shall be established. Applications with financing by CalHFA's Mixed-Income Program will be accepted in any funding round, subject to request by CalHFA and agreement of the Executive Directors of CalHFA and CTCAC, until the reserved amount of $200,000,000 is exhausted. The first funding round shall be for a reservation of Tax Credits in January 2020 following an application review period pursuant to subsection (c). For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the first funding round. For applications without financing by CalHFA's Mixed-Income Program, State Tax Credit allocations shall be limited to no more than $150,000,000 in the second funding round. ~~State Tax Credit allocations shall be reserved in the amount of $200,000,000 in the third funding round for housing financed by CalHFA's Mixed-Income Program.~~Any remaining State Tax Credits shall be allocated in subsequent funding rounds during calendar year 2020.

Reason: The first proposed change provides a system for ranking projects applying for the $500 million state tax credits. California Revenue and Taxation Code Section 12206(j)(4) does not permit use of the date of submission alone as an application preference. The state credit resource has been provided to address California's housing crisis and so staff proposes a ranking that rewards unit production.

The second proposed change establishes multiple funding rounds for the state tax credits. This will assist with ensuring developers and stakeholders more equitable access to the state tax credits and will assist in TCAC staff's ability to process applications effectively.

Proposed Change:
Section 10326(c)

(c) Application review period. The Committee may require up to forty-five (45) days to review an application, and an additional fifteen (15) days to consider the application for a reservation of Tax Credits. Applicants must deliver applications no less than sixty (60) days prior to the CTCAC Committee meeting in which they wish to obtain a decision. Applications requesting State Tax Credits allocated pursuant to subsection (g)(1)(B) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code and not in compliance with the application completeness requirements of Sections 10322(d) and (e) of these Regulations shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete.

Reason: Staff proposes to utilize the complete application standard for applicants of the $500 million state credits. With the changes above providing greater flexibility in Sections 10322(d) and (e), staff believes this will encourage better quality applications than currently submitted to TCAC for 4% credit without unfairly disqualifying materially compliant projects.

Proposed Change:
Section 10327(a)

(a) General. Applicants shall demonstrate that the proposed project is financially feasible as a qualified low income housing project. Development and operational costs shall be reasonable and within limits established by the Committee, and the Committee may adjust these costs and any corresponding basis at any time prior to issuance of tax forms. Approved sources of funds shall be sufficient to cover approved uses of funds, except that initial application errors resulting in a shortage of sources up to the higher of $~~50,000$50,000~~100,000 or 50% of the contingency line item ~~or less or less~~ shall be deemed covered by the contingency line item. If it is determined that sources of funds are insufficient, an application shall be deemed not to have met basic threshold requirements and shall be considered incomplete. Following its initial and subsequent feasibility determinations, the Committee may determine a lesser amount of Tax Credits for which the proposed project is eligible, pursuant to the requirements herein, and may rescind a reservation or allocation of Tax Credits in the event that the maximum amount of Tax Credits achievable is insufficient for financial feasibility.

Reason: During the 2019 9% application rounds, applicants continued to be disqualified for shortage of sources slightly above $50,000. Staff proposes to increase the current threshold to provide additional forbearance for minor financial errors, including adding an amount up to 50% of the construction contingency.

Proposed Change:
Section 10327(g)

(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. The Committee shall allow initial applicants to correct cash flow shortages or overages up to the higher of $~~5000500~~25,000 or 0.5% of gross income ~~or less~~ at placed in service~~;:~~. In addition, if the operating expenses are below the published amount pursuant to subparagraph (1), the CTCAC Executive Director may correct the error by increasing the operating expenses to the published amount, provided the increase maintains compliance with all other feasibility and underwriting criteria.

Reason: During the 2019 9% application rounds, applicants continued to be disqualified for underwriting errors. Staff proposes to increase the current threshold to provide additional forbearance for minor errors, including adding an amount up to 0.5% of gross income to account for the variance between small and large projects.

Staff also proposes to allow an increase when the minimum operating expense per unit requirement is not met. When this error occurred in the past prior to adding the $5,000 correction, staff had made the proposed correction, which is often greater than $5,000. Staff believes the added $5,000 flexibility inadvertently eliminated a corrective measure and proposes to reinstate it.