



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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Mark Stivers

DATE: December 1, 2016

TO: Tax Credit Stakeholders

FROM: Mark Stivers, Executive Director

SUBJECT: 2016 Final Proposed Regulation Changes and Responses to Comments

On September 15, 2016 the California Tax Credit Allocation Committee (TCAC or the Committee) released proposed regulation changes. TCAC staff subsequently held four public hearings on the following dates:

- Oakland, October 4, 2016
- San Diego, October 5, 2016
- Los Angeles, October 6, 2016
- Sacramento, October 7, 2016

TCAC accepted written comments on these initial proposed regulation changes through Monday, October 31, 2016. 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 Wednesday, December 14, 2016.

Attached are two documents: 1) The final proposed regulation changes; and 2) a matrix with the comments received and staff's responses to those comments, including an explanation of the proposed revisions. 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. For any items not referenced, staff continues to propose those changes without revision.

**New Items [Item 110 is proposed on an emergency basis. Items 111 and 112 respond to comments made in relation to Item 11.]**

110. Give the Executive Director flexibility for 2016 reservations only to not rescind an award or impose negative points for failure to meet a 90-day letter of intent or 180- or 194-day closing deadline if the circumstances were entirely outside of the applicant's control. Section 10325(c)(8). Page 24.

111. Provide that initial application errors resulting in a shortage of sources of \$50,000 or less shall be deemed covered by the contingency line item. Section 10327(a). Page 38.

112. Allow applicants to correct cash flow shortages or overages of \$5000 or less at placed in service. Section 10327(g). Page 45.

### **Items Withdrawn**

18. Allow existing projects receiving awards from the Multifamily Affordable Housing Solar Roofs Program to utilize the CUAC. Section 10322(h)(21).
29. Provide that a project's tie-breaker shall not be reduced for off-site costs if the total off-site costs are less than or equal to \$100,000. Section 10325(c)(1)(C).
46. Allow rehabilitation projects seeking points for photovoltaic generation to meet the certification requirements from the new Multifamily Affordable Housing Solar Roofs Program (MAHSRP). Section 10325(c)(6)(G) 6. (i). Page 34.
73. Prohibit new construction, large-family, competitive tax credit projects in areas of low-opportunity unless the project is part of a concerted community revitalization program involving the local government and significant investment outside of the project. Section 10325(g)(1)(J).

### **Items Revised**

2. With respect to the first priority for homeless assistance projects in the nonprofit setaside: 1) continue to reference CalHFA's Local Government Special Needs Housing Program and HCD's No Place Like Home Program in the list of enumerated programs receiving priority but also add the Governor's Homeless Initiative; 2) continue to combine the first priority (projects with funding from enumerated programs) and second priority (projects with rental or operating assistance funding); and 3) alter the proposed targeting requirement for homeless assistance units to A) apply it only to projects seeking the combined first priority, B) require applicants to reserve units only for 60 days, C) replace the reference to "the relevant Continuum of Care from a list of most of vulnerable persons" with a reference to "the relevant coordinated entry or access system," D) additionally allow referrals from the relevant behavioral health department from a list of persons with chronic behavioral health conditions who require supportive housing; and E) require applicants to enter into an MOU with the relevant department or system administrator prior to placing in service. Section 10315. Page 1.
5. Continue to address the over-allocation of state credits by using DDA status but alter the method by which this is accomplished. Instead of making the substitution during the sort and prior to reservation, TCAC post reservation will implement a mandatory exchange of state credits for federal credits for those projects for which there are insufficient state credits. The revisions further use clearer "shall designate" language and clarify that the exchange will yield equal equity. Section 10317(c). Page 5.
8. Continue to enact regulation changes necessary to implement SB 837 allowing for the outright sale ("certification") of state credits but 1) require applicants for certificated state credits to be non-profit entities; and 2) delete the paragraph seeking to clarify the statutory requirement that the buyer be or have been an investor in state or federal tax credits for any other California project. Section 10317(k). Page 6.

11. Continue to eliminate the “reproduction or applicant assembly error” exception to the requirement that TCAC shall not accept additional documentation from the applicant after the application deadline but allow for clear scanning errors in which no more than half of the pages in a document are missing. Section 10322(e). Page 9.
12. Continue to clarify that neither scores nor credit amounts can increase but can decrease as a result of allowable staff adjustments to development and operational costs but remove the reference to tiebreakers. Section 10322(f). Page 10.
13. Further clarify the types of applications that must submit an appraisal. Section 10322(h)(9). Page 10.
17. Continue to require all market studies to calculate the project’s lifetime rent benefit but clarify that failure to provide this calculation at application will not result in disqualification, provided that the applicant provides the calculation prior to reservation. Section 10322(h)(10). Page 11.
20. Continue to eliminate the ability of a project sponsor to perform a capital needs assessment but restore the ability of a project architect to do so. Section 10322(h)(26)(B). Page 12.
21. Further clarify that TCAC requires a pre-rehabilitation reserve study. Section 10322(h)(26)(B). Page 12.
27. Continue to delete an outdated reference to the “pilot” Native American apportionment but also clarify that tribal funds are public funds and delete further obsolete language relating to 2015 VHHP and AHSC awards. Section 10325(c)(1)(C). Page 16.
28. Continue to alter how rental assistance is valued for purposes of both point scoring and the tiebreaker in 2018 and beyond but 1) amend the tranche B formula to calculate the rent differential based on the difference between the contract rent and 40% AMI rents (30% AMI rents for special needs/SRO projects), as opposed to 50% AMI rents (40% AMI rents for special needs/SRO projects); 2) restore tiebreaker credit for operating subsidies and calculate the value of the operating subsidies by using the same tranche B formula except that the annual rent differential 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. Section 10325(c)(1)(C). Page 16.
30. With respect to applicant experience points, continue to require accountant to certify positive cash flow based on a project’s last financial statement, as opposed to a statement less than one year old, but also create an exemption from the 60-day requirement such that a general partner or key person who has no current projects which are eligible for points may submit a cash flow certification dated after the date on which the general partner or key person separated from the last eligible project. Section 10325(c)(2)(A)(i). Page 18.
37. Continue to allow five sustainability points for new construction projects for certification from the PHIUS, Passive House, and Living Building Challenge programs and one point for WELL certification and further allow five points for National Green Building Council silver or higher rating. Section 10325(c)(6)(A). Page 21.

38. Continue to reference the 2016 building codes in the energy efficiency point standards but 1) reduce the efficiency thresholds from 15% and 9% over 2013 codes to 12% and 7% over 2016 codes; and 2) continue to hold projects for which the local building department has determined that building permit applications submitted on or before December 31, 2016 are complete to the 2013 standards and point thresholds. Section 10325(c)(6)(B). Page 21.
39. Continue to require that each building in a new construction project receive at least half the percentage of energy efficiency improvement for which the project is seeking points but allow a waiver. Section 10325(c)(6)(B). Page 21.
40. Further clarify the definition of “high-rise multifamily” for purposes of energy efficiency points by referring to the Energy Code. Section 10325(c)(6)(B). Page 21.
41. Continue to allow five sustainability points for rehabilitation projects for certification from the PHIUS, Passive House, and Living Building Challenge programs and one point for WELL certification and further allow five points for National Green Building Council silver or higher rating. Section 10325(c)(6)(C). Page 22.
42. Continue to require that each building in a rehabilitation project receive at least half the percentage of energy efficiency improvement for which the project is seeking points but allow a waiver. Section 10325(c)(6)(D). Page 23.
43. Continue to establish a minimum of 30% reduction in tenant loads to receive points photovoltaic generation but correct a drafting error. Section 10325(c)(6)(E) 1. Page 23.
44. Allow water efficiency points for projects that use no irrigation at all, that irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), or that 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. Section 10325(c)(6)(F). Page 24.
47. Continue to allow a water system engineer, HERS Rater, GreenPoint Rater, or LEED Rater to certify compliance with water efficiency point requirements and 1) further allow a landscape architect or NGBS Green Verifier to certify; and 2) conform the language to reflect the revised requirements of item 44. Section 10325(c)(6)(G) 7. Page 24.
49. Continue to exempt hard loans for which the applicant is not seeking public funds points or tiebreaker benefit from the readiness point requirement to have all environmental review complete and further clarify that tranche B loans are also exempt. Section 10325(c)(8). Page 24.
50. With respect to the tiebreaker in 2018 and beyond, discount the value of assumed or recycled loan proceeds by 50% only for projects in the rural set-aside that do not have existing regulatory agreements that limit average rents to 45% AMI or less or that have rental assistance above these rents. Further clarify that bridge loans less than five years old shall not be considered assumed loans for this purpose. Section 10325(c)(10)(A). Page 26.

51. Continue to exclude seller carryback notes or loans that derive directly or indirectly from sale proceeds from tiebreaker benefit in 2018 and beyond but restore tiebreaker benefit for public seller carryback land loans to new construction projects. Section 10325(c)(10)(A). Page 26.
52. Further clarify that land donations or soft financing will not receive tiebreaker credit if they come from a partner or proposed partner in the limited partnership and that land donations shall not involve land that has been owned previously by a related party or a partner or proposed partner, except as specified. Section 10325(c)(10)(A). Page 26.
61. Continue to allow the CABEC Certified Energy Analyst to have a 2013 or 2016 certification and further allow consultation with NGBS Green Verifiers. Section 10325(f)(7)(A). Page 30.
62. Continue to exempt projects with Passive House Institute US (PHIUS), Passive House, or Living Building Challenge certification from the sustainable building methods workbook requirement and further exempt projects with National Green Building Council silver or higher certification. Section 10325(f)(7)(A). Page 30.
63. Re-correct a mistaken cross-reference to the CDLAC regulations. Section 10325(f)(7)(A). Page 30.
65. Continue to clarify accessibility requirements for both new construction and rehabilitation projects and further correct a drafting error. Section 10325(f)(7)(K). Page 31.
66. Allow the Director to approve a waiver to accessibility requirements if the applicant and architect can demonstrate impracticality or undue financial burden, as opposed to just excessive expense. Section 10325(f)(7). Page 31.
67. Continue to update the documentation requirements relating to verification of compliance with minimum construction standards at placed in service and further reference NGBS silver or higher certification and correct a cross-reference. Section 10325(f)(7). Page 31.
70. Further define “play/recreational facilities” required for the large family housing type and allow a waiver for rehabilitation projects with existing facilities. Section 10325(g)(1)(D). Page 33.
80. Continue to require a 9% resyndication project to provide a similar level of services as to what was required under the previous regulatory agreement and allow waivers under specified circumstances but 1) clarify that a project obtaining maximum TCAC service points has met the requirement, and 2) expand the hardship provision to projects exhibiting cash flow of less than \$20,000 in each of the last three years and to projects that will have no hard debt and fail to break even in year 15 with services. Section 10325(i)(11)(A). Page 35.
83. Continue to require resyndication applicants to demonstrate in their capital needs assessment that the project has a specified rehabilitation need within the next seven years but reduce the threshold from \$20,000 per unit to \$15,000 per unit. Section 10326(g)(7). Page 37.
84. Continue to require a 4% resyndication project to provide a similar level of services as to what was required under the previous regulatory agreement and allow waivers under specified circumstances but 1) clarify that

a project obtaining maximum CDLAC service points has met the requirement, and 2) expand the hardship provision to projects exhibiting cash flow of less than \$20,000 in each of the last three years and to projects that will have no hard debt and fail to break even in year 15 with services. Section 10326(g)(8). Page 37.

88. Continue to correct a mistaken cross-reference and further delete a sentence in conflict with other portions of the regulations. Section 10327(c)(5). Page 40.
89. Continue to clarify that the architect certification for threshold basis limit increases must be included in both the initial and placed in service application and further update incorrect terminology. Section 10327(c)(5)(A). Page 40.
91. Continue to reflect the new 2016 building code in the threshold basis limit increase for energy efficiency but continue applying the 2013 building code to projects for which the local building department has determined that building permit applications submitted on or before December 31, 2016 are complete. Section 10327(c)(5)(B)(3). Page 41.
92. Alter the minimum offset to receive the threshold basis limit increase for water efficiency to 100% of irrigation needs, 20,000 gallons annually, or 300 gallons per unit, whichever is less. Section 10327(c)(5)(B)(5). Page 42.
93. For threshold basis limit increases related to sustainability, allow certification PHIUS, Passive House, or Living Building Challenge raters and further include NGBS Green Verifiers on the list. Section 10327(c)(5)(B). Page 42.
94. For threshold basis limit increases verified with the sustainable building methods workbook, continue to delete the requirement for the applicant to also submit the energy consumption and analysis report and further clarify how the percentage offset of the tenant load is calculated. Section 10327(c)(5)(B). Page 42.
95. Continue to allow a water system engineer to certify achievement of the water efficiency threshold basis limit increase requirements and further allow a landscape architect to do so. Further refine the language regarding what the verifier must certify. Section 10327(c)(5)(B). Page 42.
98. Continue to provide a 10% threshold basis limit increase for projects in high-opportunity areas, as defined, and further correct terminology. Section 10327(c)(5)(F). Page 43.
99. Continue to relocate and rework the underwriting standards for land and improvement values and further clarify 1) that for non-competitive projects with donated land no appraisals are required and the land value shall be zero; and 2) that related party transactions shall be underwritten using the lesser of the current purchase price or appraised value associated with the tax credit transfer. Section 10327(c)(6). Page 43.
101. Alter the proposed requirement that new construction projects exceeding the AB 744 parking ratios exclude the cost of the excess parking spaces from basis by 1) applying the requirement only to 9% projects; 2) grandfathering in projects that received land use entitlements on or before December 31, 2016; 3) increasing the threshold to 1 space per unit for both large family TOD projects and senior projects outside of TOD areas; and 4) clarifying the ratios for special needs projects with non-special needs units. Section 10327(c)(10). Page 44.

103. Alter the language designating 9% applications seeking state credits for which there are insufficient state credits as DDA projects . Section 10327(d)(3). Page 45.

**2016 Final Proposed Regulation Changes  
December 1, 2016**

**[Note: See Comment Matrix for Responses to Comments]**

**Section 10302(ff)**

**Final Proposed Change:**

10302(ff) “Qualified Capital Needs Assessment” shall mean a capital needs assessment for a property subject to a Transfer Event dated within one hundred eighty (180) days of the proposed Transfer Event which (i) meets the requirements of (a) the Fannie Mae Multifamily Instructions for the PNA Property Evaluator, (b) Freddie Mac’s Property Condition Report requirements in Chapter 14 of the Small Balance Loan Addendum, (c) HUD’s Multifamily Capital Needs Assessment section in Appendix 5G of the Multifamily Accelerated Process Guide, or (d) Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Designation E 2018-08) utilizing a recognized industry standard to establish useful life estimates for the replacement reserve analysis, and (ii) clearly sets forth (a) the capital needs of the project for the next ~~two (2)~~three (3) years (the “Short-Term Work”) and the projected costs thereof, and (b) the capital needs of the project for the subsequent ~~thirteen (13)~~twelve (12) years (the “Long Term Work”) and the projected contributions to reserves that will be needed to accomplish that work.

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**Section 10315**

**Final Proposed Change:**

10315 Set-asides and Apportionments

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

(a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).

(b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4) in the following priority order:

- First, projects with 1 McKinney-Vento Homeless Assistance Act, MHP-Supportive Housing Program, HCD Veterans Housing and Homeless Prevention Program, ~~or~~ Mental Health Services Act (MHSA), CalHFA Local Government Special Needs Housing Program, Governor’s Homeless Initiative, or HCD No Place Like Home development capital funding



committed. ~~The for which the~~ amount of development capital funding committed shall be at least \$500,000 or \$10,000 per unit for all units in the project (irrespective of the number of units assisted by the referenced programs), whichever is greater; or 2).

- ~~Second,~~ projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity. For all projects seeking this first priority, the applicant shall commit to reserving vacant homeless assistance units for 60 days for occupancy by persons or households referred, where such systems or lists exist, by either 1) the relevant coordinated entry or access system, 2) the relevant county health department from a list of frequent health care users; or 3) the relevant behavioral health department from a list of persons with chronic behavioral health conditions who require supportive housing. The applicant shall enter into a memorandum of understanding with the relevant department or system administrator prior to placing in service unless a reasonable memorandum is refused by the department or administrator.
- ~~Other~~ Second, other qualified homeless assistance projects.

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

- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - (A) Has a primary nighttime residence that is a public or private place not meant for human habitation;
  - (B) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
  - (C) Is exiting an institution and resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
- (2) Individual or family who will imminently lose their primary nighttime residence, provided that:
  - (A) Residence will be lost within 14 days of the date of application for homeless assistance;
  - (B) No subsequent residence has been identified; and
  - (C) The individual or family lacks the resources or support networks needed to obtain other permanent housing.
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - (A) Are defined as homeless under the other listed federal statutes;
  - (B) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
  - (C) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and

(D) Can be expected to continue in such status for an extended period of time due to special needs or barriers.

(4) Any individual or family who:

(A) Is fleeing, or is attempting to flee, domestic violence;

(B) Has no other residence; and

(C) Lacks the resources or support networks to obtain other permanent housing.

~~To compete as a homeless assistance project, the applicant shall commit to reserving vacant homeless assistance units for occupancy by persons or households referred by either 1) the relevant Continuum of Care from a list of most of vulnerable persons, or 2) the relevant county health department from a list of most frequent health care users, where either of such lists exists.~~

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

(c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. For purposes of implementing Section 50199.21(a), an area is eligible under the Section 515 program on January 1 of the calendar year in question if it either resides on the Section 515 designated places list in effect the prior September 30, or is so designated in writing by the USDA Multifamily Housing Program Director. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current year. In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.

Within the rural set-aside competition, the first tiebreaker shall be applied as described in Section 10325(c)(10), except that the Senior housing type goal established by Section 10315(gh) shall be calculated relative to the rural set-aside dollars available each round, rather than against the total credits available statewide each round. In this way, other housing types would be advantaged once the specified percentage of the rural set-aside had been committed to Senior housing type projects.

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

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

(2) Native American apportionment. One million dollars (\$1 million) in annual federal credits shall be available during the first round and, if any credits remain, in the second round for applications proposing projects on land to be owned by a Tribe, whether the land is owned in fee or in trust, provided that if the land is off reservation occupancy will be legally limited to tribal households. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by TCAC under Section 10305(h). In addition, tribal communities shall garner the minimum points available for General Partner/Management Company Characteristics under Section 10325(c)(2) or shall partner or contract with a developer and with a property management entity that would garner the minimum points available for General Partner/Management Company Characteristics under Section 10325(c)(2), except that the management company minimum scoring cannot be obtained through the point category for a housing tax credit certification examination.

(d) "At-Risk" set-aside. After accounting for the second supplemental set-aside described in (g), ~~f~~Five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify and apply as an "At risk" housing type pursuant to subsection (gh) below. Any proposed project that applies and is eligible under the Nonprofit set-aside but is not awarded credits from that set-aside shall be eligible to be considered under this At-Risk set-aside if the project meets the housing type requirements.

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

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

(g) Second supplemental set-aside. For each calendar year an amount of the Federal Credit Ceiling determined by the Executive Director, calculated as of February first of the calendar year, shall be held back to fund projects designated as a DDA project pursuant to Section 10327(d)(3).

(h) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable "additional threshold requirements" of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(10) in an effort to assure that no

single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

**Housing Type Goal**

- Large Family 65%
- Special Needs 25%
- Single Room Occupancy 15%
- At-Risk 15%
- Seniors 15%

(h<sub>1</sub>) Geographic Apportionments. Annual apportionments of Federal and State Credit Ceiling shall be made in approximately the amounts shown below:

<b>Geographic Area</b>	<b>Apportionments</b>
City of Los Angeles	17.6%
Balance of Los Angeles County	17.2%
North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)	10.8%
Central Valley Region (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	8.6%
San Diego County	8.6%
Inland Empire Region (San Bernardino, Riverside, Imperial Counties)	8.3%
Orange County	7.3%
Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)	6.7%
South and West Bay Region (San Mateo, Santa Clara Counties)	6.0%
Central Coast Region (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5.2%
San Francisco County	3.7%

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

**Section 10317(c)**

**Final Proposed Change:**

10317(c) Limit on Credit amount. Except for Special Needs applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area (DDA). Once

~~CTCAC has awarded all state credits available for credit ceiling applications, CTCAC shall not award state credits to any additional credit ceiling projects but shall consider remaining projects seeking state credits as a difficult development area (DDA) pursuant to Section 10327(d)(3). In the event that reservations of state credits to credit ceiling applications exceed the amount of state credits available, CTCAC post-reservation shall designate applications for which there are insufficient state credits as difficult development area (DDA) projects pursuant to Section 10327(d)(3) and exchange state credits for federal credits in an amount that will yield equal equity.~~

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## Section 10317(d)

### Final Proposed Change:

10317(d) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(F)(ii), 17058(b)(2)(E)(ii), and 23610.5(b)(2)(E)(ii), applications for Special Needs projects within a QCT or DDA may request the federal 130% basis boost and may also request State credits, provided that the applicant does not voluntarily reduce basis related to federal tax credits except to reduce the credit request to the amount available in the project's geographic region or the \$2.5 million limit. Under authority granted by Internal Revenue Code Section 42(d)(5)(B)(v), CTCAC designates Special Needs housing type applicants for credit ceiling credits as Difficult Development Area projects, regardless of their location within a federally-designated QCT or DDA.

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## Section 10317(j)

### Final Proposed Change:

10317(j) 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.

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## Section 10317(k)

### Final Proposed Change:

10317(k)(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. 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.

(2) At the request of the owner at placed in service, TCAC shall issue the Form 3521A tax forms to a non-profit general partner member of the partnership, which shall not be considered a sale of the credits to another taxpayer or other party.

(23) 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 3521A in the name of the buyer.

(3) CTCAC shall deem, including but not limited to, the following persons to meet the statutory requirement that a buyer of a certificated state credit be a taxpayer allowed the state low-income housing tax credit for the taxable year of the purchase or any prior taxable year or be a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code for the taxable year of the purchase or any prior taxable year:

(A) a syndication fund operated by a sponsor who has operated other funds allowed the state or federal credit.

(B) a syndication fund of which at least 25% is owned by taxpayers allowed the state or federal credit.

(C) An investor in either of the funds described in paragraphs (A) and (B).

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## Section 10320(b)(2)

### Final Proposed Change:

10320(b)(2) In addition to any applicable requirements set forth in Section 10320(b)(1), all Transfer Events shall be subject to the prior written approval of the Executive Director. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(M), in addition to other remedies. The following requirements apply to all Transfer Events for which approval is requested on or after October 21, 2015:

(A) Prior to a Transfer Event, the owner of the project shall submit to the Executive Director a Qualified Capital Needs Assessment. In the case of a Transfer Event in which a third-party lender is providing financing, the Qualified Capital Needs Assessment shall be commissioned by said third-party lender.

(B) The entity which shall own the project subsequent to the Transfer Event (the "Post Transfer Owner") shall covenant to the Committee (the "Capital Needs Covenant") that the Post Transfer Owner (and any assignee thereof) shall:

(i) set aside at the closing of the Transfer Event adequate funds to perform the Short Term Work (the "Short Term Work Reserve Amount");

(ii) perform the Short Term Work within ~~two (2)~~three (3) years from the date of the Transfer Event;

(iii) make deposits to reserves as are necessary to fund the Long Term Work, taking into account any balance in replacement reserve accounts upon the conclusion of the Transfer



Event beyond those required by clause (i). Notwithstanding the foregoing, the Post Transfer Owner shall have no obligation to fund any reserve amount from annual operations to the extent that the funding of the reserve causes the project to have a debt service coverage ratio of less than 1.00 to 1.00. In calculating the debt service coverage ratio for the purposes herein, the property management fee shall not exceed the greater of (a) 7% the project's effective gross income, or (b) such amount approved by HUD or USDA, as applicable. Any property management fee in excess of these limitations shall be subordinate to the funding of the required reserves and shall not be considered when calculating the debt service coverage ratio; and

(iv) complete the Long Term Work when required, or prior thereto, pursuant to the Qualified Capital Needs Assessment.

~~(C) The requirements of Section 10337(a)(3), if applicable, are satisfied.~~

The Executive Director may waive or modify the requirements of this Section 10320(b)(2)(A) and (B) if the owner can demonstrate that the Transfer Event will not produce, prior to any distributions of Net Project Equity to parties related to the sponsor, developer, limited partner(s) or general partner(s), sufficient Net Project Equity to fund all or any portion of the work contemplated by the Qualified Capital Needs Assessment. There shall be a presumption that a Transfer Event has insufficient Net Project Equity (and the requirements of this Section 10320(b)(2)(A) and (B) shall be waived) if no Net Project Equity from the Transfer Event is distributed to parties related to the sponsor, developer, general partner(s) or limited partner(s) of the owner other than a distribution or a payment to the limited partner(s) of the selling entity in the amount equal to, or less than, all federal, state, and local taxes incurred by the limited partner(s) as a result of the Transfer Event.

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## Section 10320(b)(4)

### Final Proposed Change:

10320(b)(4) If a projects seeks to receive a new reservation of 9% or 4% tax credits concurrently with a Transfer Event or during the time that the project is subject to a Capital Needs Covenant, the following provisions shall apply in lieu of paragraph (2):

(A) The applicant shall submit a Qualified Capital Needs Assessment. In cases in which a third-party lender is providing financing, the Qualified Capital Needs Assessment shall be commissioned by said third-party lender.

(AB) The underwriting for the new reservation of 9% or 4% credits shall include a capitalized replacement reserve in an amount equal to the cost of any Short Term Work which will not be performed as of the date of the syndication of the new 9% or 4% tax credits reserved for the project. The rehabilitation scope of work shall include all of the Short Term Work. The applicant may receive eligible basis for the costs of the Short Term Work only if the applicant can demonstrate that the Short Term Work was funded by one of the following:

(i) a credit from the seller of the project equal to the costs of Short Term Work.

(ii) a reduction in the purchase price of the project as compared to the purchase price of the project had the project not been subject to the Transfer Event requirement, as shown by an appraisal that calculates the impact of the Short Term Work requirement on value.

(iii) general partner equity.

(iv) developer fee contributed to the project (a deferred developer fee does not qualify).

(BC) After the Transfer Event giving rise to the covenant required pursuant to Section 10320(b)(2)(B) (the “Initial Transfer”), if the project will be subsequently transferred in connection with the closing of the new reservation of 9% or 4% credits (a “Subsequent Transfer”), any increase in acquisition price (if the Initial Transfer was a sale) or the project valuation (if the Initial Transfer was a refinancing) between the Initial Transfer and the Subsequent Transfer which is attributable to a reduction in the amount of annual deposits into the replacement reserve account from those required pursuant to Section 10320(b)(2)(B)(iii) because all or a portion of the Long Term Work will be performed in connection with the new reservation of 9% or 4% credits, must be evidenced in the form of (i) a seller carryback note or (ii) a general partner equity contribution.

(CD) Upon the closing of the syndication of the new 9% or 4% credits reserved for the project, ~~the any~~ Capital Needs Covenant shall automatically terminate without any further action of the project owner and/or the Committee.

The Executive Director shall waive or modify the requirements of this Section 10320(b)(4) if the owner can demonstrate that the Transfer Event will not produce, prior to any distributions of Net Project Equity to parties related to the sponsor, developer, limited partner(s) or general partner(s), sufficient Net Project Equity to fund all or any portion of the work contemplated by the Qualified Capital Needs Assessment. There shall be a presumption that a Transfer Event has insufficient Net Project Equity if no Net Project Equity from the Transfer Event is distributed to parties related to the sponsor, developer, general partner(s) or limited partner(s) of the owner other than a distribution or a payment to the limited partner(s) of the selling entity in the amount equal to, or less than, all federal, state, and local taxes incurred by the limited partner(s) as a result of the Transfer Event.

~~The Executive Director shall have the authority to waive or modify the requirements of this Section 10320(b)(4) if the owner can demonstrate to the reasonable satisfaction of the Executive Director that the requirements of Section 10320(b)(4) would be overly burdensome or would not be in the best interest of the project. Sections 10320(b)(4)(AB) and 10320(b)(4)(BC) shall not be applicable to any project with an existing tax credit regulatory agreement with a remaining term of five (5) or less years.~~

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## Section 10322(e)

### Final Proposed Change:

Section 10322(e) No additional documents pertaining to the Basic or Additional Threshold Requirements or scoring categories shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is ~~a clear reproduction or application assembly error,~~ **a 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 ~~threshold application~~ omissions ~~other than reproduction or assembly errors~~, the Executive Director may request additional clarifying information from third party sources, such as local government entities, 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 applicant may be required to certify that all evidentiary documents deemed to be missing from the application had been executed on or prior to, the application-filing deadline. If required documents are not submitted within the time provided, the application shall be considered incomplete and no appeal will be entertained.

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## Section 10322(f)

### Final Proposed Change:

10322(f) Application changes. Only the Committee may change an application as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never ~~improve-increase~~ the score, ~~tiebreaker, or credit amount~~ of the application as submitted, and may reduce the application's score, ~~tiebreaker,~~ and/or credit amount.

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## Section 10322(h)(9)

### Final Proposed Change:

10322(h)(9) Appraisals. Appraisals are required for all ~~rehabilitation applications except as noted in (A), for all~~ competitive applications except for ~~tribal trust land and~~ new construction projects ~~that are on tribal trust land or that~~ that have ~~a~~ third party purchase ~~contracts-contract with,~~ or evidence of a purchase from, ~~an unrelated~~ third party, ~~and for all applications seeking competitive points or tiebreaker credit for donated or leased land, and for all new construction applications involving a land sale from a related party.~~ ~~If land is donated or leased from a public entity or available through a related party purchase, an appraisal is required to establish value for competitive scoring.~~

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

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

~~Except as described below, the “as if vacant” land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values shall be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.~~ 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 10322(h)(9) section~~ and use an acquisition basis 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 An** “as-is” appraisal with a date of value that is within 120 days before or after the execution of a purchase contract 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.

~~All applications, including those funded with tax-exempt bond financing, must include a land cost or value in the Sources and Uses budget. A nominal cost will not be accepted, and costs shall be evidenced by sales agreements, purchase contracts, or appraisals. Tribal trust land is excluded from this requirement. However, existing improvement values must be supported by an appraisal pursuant to this section.~~

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## Section 10322(h)(10)

### Final Proposed Change:

10322(h)(10) Market Studies. A full market study prepared within 180 days of the filing deadline by an independent 3rd party having no identity of interest with the development’s partners, intended partners, or any other member of the Development Team described in Subsection (5) above. The study must meet the current market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. CTCAC shall publicly notice any changes to its market study guidelines and shall take public comment consistent with the comment period and hearing provisions of Health and Safety Code Section 50199.17. For scattered site projects, a market study may combine information for all sites into one report, provided that the market study has separate rent comparability matrices for each site.

A market study shall be updated when either proposed subject project rents change by more than five percent (5%), or the distribution of higher rents increases by more than 5%, or 180 days have passed since the first site inspection date of the subject property and comparable properties. CTCAC shall not accept an updated market study when more than twelve (12) months have passed between the earliest listed site inspection date of either the subject property or any comparable property and the filing deadline. In such cases, applicants shall provide a new market study. If the market study does not meet the guidelines or support sufficient need and demand for the project, the application may be considered ineligible to receive Tax Credits. Except where a waiver is obtained from the Executive Director in advance of a submitted application, CTCAC shall not reserve credits for a rural new construction application if a tax credit or other publicly-assisted new construction project housing the same population either (a) already has a tax credit reservation from CTCAC, (b) is a higher ranking

project that will receive a reservation in the same funding round, or (c) is currently under construction within the same market area. The Executive Director may grant a waiver for subsequent phases of a single project, where newly constructed housing would be replacing specific existing housing, or where extraordinary demand warrants an exception to the prohibition.

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

- All of the buildings in the project are subject to existing federal or state rental assistance or operating subsidies, an existing TCAC Regulatory Agreement, or an existing regulatory agreement with a federal, state, or local public entity.
- The proposed tenant-paid rents and income targeting levels shall not increase by more than five percent (5%) (except that proposed rents and income targeting levels for units subject to a continuing state or federal project-based rental assistance contract may increase more and proposed rents and income targeting levels for resyndication projects shall be consistent with Section 10325(f)(11) or Section 10326(g)(8)).
- The project shall have a vacancy rate of no more than five percent (5%) (ten percent (10%) for Special Needs and SRO projects) at the time of the tax credit application.

All market studies, including the streamlined written statement described above, shall calculate the project's lifetime rent benefit as follows: 1) find the aggregate difference between current monthly market rents and the project's proposed target rents; 2) multiply the difference by 12 to arrive at an annual rent difference; and 3) multiply the annual rent difference by 55 years. A project that fails to provide this calculation at application shall not be disqualified, provided that the applicant provides the calculation prior to reservation.

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### **Section 10322(h)(25)(B)**

#### **Final Proposed Change:**

10322(h)(25)(B) an applicant statement that the acquisition is exempt from, or a third party tax professional's-attorney's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,

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### **Section 10322(h)(26)(B)**

#### **Final Proposed Change:**

10322(h)(26)(B) A Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will-shall also include a pre-rehabilitation 15-year reserve study, indicating anticipated dates and costs of future replacements of all current major building components ~~that~~

~~are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary and financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.~~

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## Section 10322(i)

### Final Proposed Change:

10322(i) Placed-in-service application. Within one year of completing construction of the proposed project, the applicant-project owner shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs or changes to the services amenities, must be explained by the applicant-project owner in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:

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

- (A) reflect all costs, in conformance with 26 CFR §1.42-17, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan. Projects developed with general contractors who are Related Parties to the developer must be audited to the subcontractor level;
- (B) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan; and
- (C) certify that the CPA has not performed any services, as defined by AICPA and SEC rules, that would impair independence;
- (3) an itemized breakdown of placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date(s) on the certificate(s) of occupancy, a detailed explanation is required;
- (4) photographs of the completed building(s);
- (5) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
- (6) a certification from the investor or syndicator of equity raised and syndication costs in a Committee-provided format;
- (7) an updated application project ownership profile on a Committee-provided form;
- (8) an owner-sponsor-signed certification documenting the services currently being provided to the residents, including identifying service provider(s), describing services provided, stating services dollar value, and stating services funding source(s) (cash or in-kind), with attached copies of contracts and MOUs for services;
- (9) a copy of any cost certification submitted to, required by and/or and approved by RHS or any other lender the project owner limited partnership agreement;
- (10) a list of all amenities provided at the project site including any housing type requirements of Section 10325(g) committed to in the Tax Credit application, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided; housing type requirements must be completed. In addition, the sponsor-project owner must provide a list of any project amenities not included in basis for which the property owner intends to charge an optional fee to residents;
- (11) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;
- (12) if applicable, a certification from a third party tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
- (13) all documentation required pursuant to the Compliance and Verification requirements of Sections 10325(f)(7) and 10326(g)(6);
- (14) all documentation required pursuant to the Compliance and Verification requirements of Section 10327(c)(5)(B);

- (15) if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;
- (16) a certification from the project architect or, in the case of rehabilitation projects, from an architect retained for the purpose of this certification, that the physical buildings are in compliance with all ~~applicable building codes and~~ applicable fair housing laws. ~~In the case of rehabilitation projects proceeding without an architect, the entity performing the Capital Needs Assessment shall note necessary fair housing improvements, and the applicant shall budget for and implement the related construction work;~~
- (17) all documentation required pursuant to the Compliance and Verification requirements of Section 10325(c)(6), if applicable;
- (18) evidence that the project is in compliance with any points received under Section 10325(c)(9);
- ~~(1819)~~ a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(21) of these regulations. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS rater, in accordance with current HERS regulations; and
- ~~(1920)~~ for tribal trust land, the lease agreement between the Tribe and the project owner.
- ~~(2021)~~ Evidence that the subject property is within the control of the applicant project owner in the form of an executed lease agreement, a current title report (within 90 days of application) showing the applicant project owner holds fee title, a grant deed, or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status.
- (22) Evidence that the project is in compliance with the provisions of the CDLAC resolution, if applicable;

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

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## Section 10325(c)

### Final Proposed Change:

(c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. Point scores shall



be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.

Scattered Site Projects shall be scored proportionately in the site and service amenities category based upon (i) each site's score, and (ii) the percentage of units represented by each site, except that for scattered site projects of less than 20 units, service amenities shall be scored in the aggregate across all sites.

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

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## Section 10325(c)(1)(C)

### Final Proposed Change:

10325(c)(1)(C) Public funds. For purposes of scoring, "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 points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be scored as public funds under this scoring factor. ~~Current IL~~and and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreements negotiated between public entities and private developers, must be supported by an independent, third party appraisal; ~~conducted within one year of the tax credit application, and otherwise~~ consistent with the guidelines in Section 10322(h)(9). Building values shall be considered only if to the extent that those existing buildings are to be retained for the project, and the appraised value is not to include off-site improvements. All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded. For Tribal ~~pilot~~ apportionment applications, land purchased with public funds shall not be eligible for public funds points. However, unsuccessful

Tribal pilot program applicants subsequently competing within the rural set-aside competition could have such tribal land-purchase funding counted competitively as public funding if the land value is established in accordance with the requirements of this paragraph.

To receive points under this subsection for loans, those loans must be “soft” loans, having terms (or remaining terms) 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 scoring purposes shall be four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt for scoring purposes in spite of a debt service requirement. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. ~~For 2015 competitive tax credit applications with Veterans Housing and Homeless Prevention (VHHP) and Affordable Housing and Sustainable Communities (AHSC) included as funding sources, a project’s recommendation by state program staff may be substituted for evidence that the funding has been firmly committed, provided that the applicant receives a VHHP or AHSC award prior to the CTCAC award.~~

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, ~~or 3) the off-site costs total less than or equal to \$100,000.~~

~~On or before December 31, 2017, Private-private~~ “tranche B” loans underwritten based upon rent differentials attributable to rent subsidies shall also be considered public funding for purposes of the final tiebreaker. The amount of private loan counted for scoring purposes would be the lesser of the private lender commitment amount, or an amount based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

~~On or after January 1, 2018 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 50 percent (50%) 40 percent (40%) AMI levels (40% 30% AMI for Special Needs/SRO projects or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source. 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.

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**Section 10325(c)(2)(A)(i)**

**Final Proposed Change:**

10325(c)(2)(A)(i) For projects in operation for over three years, submit a certification from a third party certified public accountant that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development's last financial statement has been prepared ~~(which must be effective no more than one year prior to the application deadline)~~ and have funded reserves in accordance with the partnership agreement and any applicable loan documents. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the number of years that the project was owned by that general partner. To obtain points for projects previously owned, the ending date of ownership or participation must be no more than 10 years from the application deadline. This certification must list the specific projects for which the points are being requested. The certification of the third party certified public accountant may be in the form of an agreed upon procedure report that includes funded reserves as of the report date, which shall be dated within 60 days of the application deadline, unless the general partner or key person has no current projects which are eligible for points in which case the report date shall be after the date from which the general partner or key person separated from the last eligible project. Where there is more than 1 general partner, experience points may not be aggregated; rather, points will be awarded based on the highest points for which 1 general partner is eligible.

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

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

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

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

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

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**Section 10325(c)(2)(B)(ii)**

**Final Proposed Change:**

10325(c)(2)(B)(ii) Management companies ~~that do not meet the California Low Income Housing Tax Credit project requirement above~~ managing less than two (2) active California Low-Income Housing Tax Credit projects for more than three years, and management companies for projects ~~requesting points under the special needs categories of subparagraph (i) above and managing no active California Low-Income Housing Tax Credit projects for more than three years,~~ shall contract with a bona-fide management company currently managing two (2) California Low Income Housing Tax Credit projects for more than three years and which itself earns a minimum combined total of two (2) points at the time of application.

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**Section 10325(c)(3)(M)**

**Final Proposed Change:**

10325(c)(3)(M) failure to properly notify CTCAC and obtain prior approval of Transfer Events, general ~~or limited~~ partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit;

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**Section 10325(c)(3)(V)**

**Final Proposed Change:**

10325(c)(3)(V) Submitting a check which CTCAC, after reasonable efforts to correct, cannot deposit.

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**Section 10325(c)(4)**

**Final Proposed Change:**

10325(c)(4) Housing Needs. (Points will be awarded only in one category listed below except that acquisition and/or rehabilitation Scattered Site Projects ~~shall~~ may, at the applicant's election, be scored either in the aggregate or proportionately based upon (i) each site's score, and (ii) the percentage of units represented by each site.) The category selected hereunder (which shall be the category represented by the highest percentage of units in a proportionally scored project) shall also be the project category for purposes of the tie-breaker described in subsection 10325(c)(10) below.

Large Family Projects	10 points
Single Room Occupancy Projects	10 points
Special Needs Projects	10 points
Seniors Projects	10 points
At-Risk Projects	10 points

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**Section 10325(c)(5)(A) 1.**

**Final Proposed Change:**

10325(c)(5)(A) 1. Transit Amenities

The project is located where there is a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop within 1/3 mile from the site with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station or ferry terminal) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday, and the project's density will exceed 25 units per acre. 7 points

The site is within 1/3 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station or ferry terminal) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. 6 points

The site is within 1/2 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop with service at least every 30 minutes (or at least two departures during each peak period for a commuter rail station or ferry terminal) during the hours of 7-9 a.m. and 4-6 p.m., Monday through Friday. 5 points

The site is located within 1/3 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop. (For Rural set-aside projects, full points may be awarded where van or dial-a-ride service is provided to tenants, if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided) 4 points

The site is located within 1/2 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop. 3 points

In addition to meeting one of the proximity categories described above, the applicant commits to provide to residents free transit passes or discounted passes priced at no more than half of retail cost. Passes shall be made available to each Rent-Restricted Unit for at least 15 years.

At least one pass per Tax Credit unit 3 points

At least one pass per each 2 Tax Credit units 2 points

“Light rail station” or “commuter rail station” or “ferry terminal” includes a planned rail station or ferry terminal whose construction is programmed into a Regional or State Transportation Improvement Program to be completed within one year of the scheduled completion and occupancy of the proposed residential development.

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

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**Section 10325(c)(5)(B) 5. and 6.**

**Final Proposed Change:**

10325(c)(5)(B) 5. Licensed child care. Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least ~~30~~25% of units are three bedrooms or larger). 5 points

6. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. (Only for large family projects or other projects in which at least ~~30~~25% of units are three bedrooms or larger).

10 hours per week, offered weekdays throughout school year	5 points
6 hours per week, offered weekdays throughout school year	3 points
4 hours per week, offered weekdays throughout school year	2 points

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**Section 10325(c)(6)(A)**

**Final Proposed Change:**

10325(c)(6)(A) New Construction and Adaptive Reuse Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs:

Leadership in Energy & Environmental Design (LEED); Green Communities; Passive House Institute US (PHIUS); Passive House; Living Building Challenge; National Green Building Council (NGBS) silver or higher rating; or the GreenPoint Rated Program. 5 points

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

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**Section 10325(c)(6)(B)**

**Final Proposed Change:**

10325(c)(6)(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 ~~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:

<del>9-7</del> percent	3 points
<del>15-12</del> percent	5 points



**Section 10325(c)(6)(D)**

**Final Proposed Change:**

10325(c)(6)(D) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) 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 performance module of California Energy Commission (CEC) approved software:

Improvement Over Current	
15 percent	3 points
20 percent	5 points

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**Section 10325(c)(6)(E) 1.**

**Final Proposed Change:**

10325(c)(6)(E) 1. Projects shall include either:

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

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

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

2 points

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## Section 10325(c)(6)(F)

### Final Proposed Change:

10325(c)(6)(F) Water efficiency:

~~Use no irrigation at all, irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens), provided that the offset of potable water equals or exceeds 10,000 gallons annually~~ 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 points

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## 10325(c)(6)(G) 1.

### Final Proposed Change:

For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building methods of Section 10325(c)(6) have been incorporated into the project, if applicable. For applications incorporating the requirements of subsections (A) and (C) Green Communities or WELL option, and for applications incorporating the requirements of subsections (B), (D), and (E) above, applicants must include a completed Sustainable Building Method Workbook.

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## 10325(c)(6)(G) 7.

### Final Proposed Change:

10325(c)(6)(G) 7. For placed in service applications to receive points under Section 10325(c)(6)(F), the project architect, landscape architect, water system engineer, HERS Rater, GreenPoint Rater, National Green Building Council (NGBS) Green Verifier, or LEED for Homes Green Rater shall certify that the project has been designed and constructed to achieve the standards and that, if applicable, reclaimed water, greywater, or rainwater systems have been installed and are functioning to supply sufficient irrigation to the property ~~(excepting water used for Community Gardens)~~ to meet the standards under normal conditions and that the systems offset at least 10,000 gallons of potable water annually.

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## Section 10325(c)(8)

### Final Proposed Change:

10325(c)(8) Readiness to Proceed. 15 points will be available to projects that document items (A) through (C) 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, a construction lender trade payment breakdown of approved construction costs, recorded deeds of trust for all construction financing (unless a project's location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement 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 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet the 90 day due date, or the 180-day or 194-day due date if applicable, shall result in rescission of the Tax Credit Reservation or negative points unless, for 2016 reservations only, the Executive Director determines that the circumstances were unforeseen and entirely outside the of the applicant's control.

Five (5) points shall be awarded for submittals within the application documenting each of the following criteria, up to a maximum of 15 points. The 180-day or 194-day requirements shall not apply to projects that do not obtain the maximum points in this category. Within the preliminary reservation application, the following must be delivered:

(A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);

(B) evidence, as verified by the appropriate officials, ~~of site plan approval and~~ that all ~~local land use~~ environmental review clearances (CEQA, 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 public funds points or tiebreaker benefit (except the Tranche B calculation). are either finally approved or unnecessary; and

(C) evidence of all necessary public or tribal land use approvals subject to the discretion of local or tribal elected officials ~~(other than those covered by (B)).~~

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



## Section 10325(c)(10)(A)

### Final Proposed Change:

10325(c)(10)(A) Leveraged soft resources, as described below, defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, leveraged soft resources shall be discounted by the proportion of the project that is non-residential. Leveraged soft resources shall be demonstrated through documentation including but not limited to funding award letters, committed land donations, or documented project-specific local fee waivers.

Leveraged soft resources shall include all of the following:

- (i) public funds, as described in Section 10325(c)(1)(C), except that on or after January 1, 2018 1) within the rural set-aside only outstanding principal balances of prior existing public debt or subsidized debt more than five years old that has been or will be assumed or recycled shall be discounted by one-half for purposes of the tiebreaker, unless the project is subject to an existing regulatory agreement that limits average rents to 45% AMI or less and does not receive rental assistance income in excess of those rents, and 2) 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, shall be excluded for purposes of the tiebreaker.
- (ii) soft loans that meet the criteria described in Section 10325(c)(1)(C) (except that terms shall be of at least 55 years), or grants, from unrelated non-public ~~entities~~ parties that are not covered by subparagraph (i) and that do not represent Financing available through the National Mortgage Settlement Affordable Rental Housing Consumer Relief programs. The ~~entity~~ party providing the soft loans or grants shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. The application shall include (1) a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the leveraged soft resource(s) is from an unrelated non-public entity(ies), that the unrelated non-public entity(ies) shall not receive any benefit from a related party to the project, and that the leveraged soft resource(s) is available and not committed to any other project or use; and (2) a narrative from the applicant regarding the nature and source of the leveraged soft resource(s) and the conditions under which it was given. On or after January 1, 2018, seller carryback financing and any portion of a loan from a non-public seller or related party that is less than or equal to sale proceeds due the seller shall be excluded for purposes of the tiebreaker
- (iii) the value of donated land and improvements that are not covered by subparagraph (i), that meet the criteria described in Section 10325(c)(1)(C), and that are contributed by an unrelated entity (unless otherwise approved by the Executive Director), so long as the contributed asset has been held by the entity for at least 5 years prior to the application due date. The party providing the donation shall not be a partner or proposed partner in the limited partnership (unless the partner has no ownership interest and only the right to complete construction) and shall not receive any benefit from a related party to the project. In addition, the land shall not have been owned previously by a related party or a partner or proposed partner (unless the partner has no ownership interest and only the right to complete construction).

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

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

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

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

On or before December 31, 2017, ~~t~~The numerator of projects with public operating- or rental- subsidies may be increased by 25 percent (25%) of the percentage of proposed tax credit assisted units benefitting from the subsidy. Such subsidies must be received from one or more of the following programs: Project Based Section 8; PRAC (Section 202 and 811); USDA Section 521 Rental Assistance; Shelter Plus Care; McKinney Act Supportive Housing Program Grants; Native American Housing Block Grant (IHBG); California Mental Health Services Act operating subsidies; California Department of Health Care Services; and Public Housing Annual Contributions contracts. Applicants seeking scoring consideration for other public sources of operating- or rent- subsidies must receive written Executive Director approval prior to the application due date.

On or after January 1, 2017, the numerator of projects of 50 or more newly constructed Tax Credit units shall be multiplied by a size factor equal to seventy five percent plus the total number of newly constructed Tax Credit units divided by 200 (75% + (total newly constructed units/200)).

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## **Section 10325(d)**

### **Final Proposed Change:**

10325(d) Application selection for evaluation. Except where CTCAC staff determines a project to be high cost, staff shall score and rank projects as described below. Staff shall identify high cost projects by comparing each scored project's total eligible basis against its total adjusted threshold basis limits. CTCAC shall calculate total eligible basis consistent with the method described in Section 10325(c)(1)(A). A project would be designated "high cost" if a project's total eligible basis exceeds its total adjusted threshold basis limits by 30%. Staff shall not

~~recommend such project for credits, but shall advise the project's sponsors that they may petition the Committee to award the project credits in spite of its cost. Such petitioners shall be calendared to appear before the Committee prior to the application deadline, if possible, but in no case later than the first meeting after the application deadline. Prior to the Committee meeting, staff shall provide the Committee with available data on the costs of any similar projects developed within the project's community, as well as any other mitigating information provided within the application, along with a recommendation. Petitioners must explain in writing the project's unusual cost features, and explain why awarding credits would be sound public policy in spite of those costs. In addition, petitioning sponsors must be accompanied by a representative from the relevant local public entity who must also endorse awarding the credits and explain the compelling reason why the Committee should award the requested credits. Only if the Committee acts to authorize consideration of the application in the current competition would the project be considered for credits.~~ Any project that receives a reservation on or after January 1, 2016, regardless of whether or not it is considered high cost at preliminary reservation, may be subject to negative points if the project's total eligible basis at placed in service exceeds the revised total adjusted threshold basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher) by 40%. A project to which the Committee has awarded credits in spite of its cost may be subject to negative points if the project's ratio of total eligible basis at placed in service to the revised total adjusted threshold basis limits for the year the project is placed in service (or the original total eligible threshold basis limit if higher) exceeds the ratio of total eligible basis to the revised total adjusted threshold basis limits that the Committee approved at application by 10%.

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

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## Section 10325(d)(2)

### Final Proposed Change:

10325(d)(2) Geographic Areas selection. Tax Credits remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round. The funding order shall be followed by funding the highest scoring application, if any, in each of the ~~ten~~ eleven regions. After each region has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. Projects will be funded in order of their rank so long as the region's last award does not cause the region's aggregate award amount to exceed 125 percent (125%) of the amount originally available for that region in that funding round. Credits allocated in excess of the Geographic Apportionments by the application of the 125% rule described above will be drawn from the second round apportionments during the first round, and from the Supplemental Set Aside during the second round. However, all Credits drawn from the Supplemental Set Aside will be deducted from the Apportionment in the subsequent round.

When the next highest-ranking project does not meet the 125% rule then the Committee shall skip over the next highest-ranking project to fund a project requesting a smaller credit award that does meet the 125% requirement. However, no project may be funded by this skipping

process unless it (a) has a point score equal to that of the first project skipped, and (b) has a final tiebreaker score equal to at least 75% of the first skipped project's final tiebreaker score.

To the extent that there is a positive balance remaining in a geographic area after a funding round, such amount will be added to the amount available in that geographic area in the subsequent funding round. Similarly, to the extent that there is a deficit in a geographic area after a funding round, such amount will be subtracted from the funds available for reservation in the next funding round. Any unused credit from the geographic areas in the second funding round will be added back into the Supplemental Set-Aside. Tax credits reserved in all geographic areas shall be counted within the housing type goals.

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### **Section 10325(f)(2)(A)**

#### **Final Proposed Change:**

10325(f)(2)(A) Site control may be evidenced by:

(i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report or an attorney's opinion regarding chain of title and current title status;

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

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

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

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### **Section 10325(f)(6)**

#### **Final Proposed Change:**

10325(f)(6) 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) ~~for each of the following participants,~~ a copy of a contract to provide property management services related to the proposed project:

~~(i) Attorney(s) and or Tax Professional(s)~~

- (ii) Architect
  - (iii) Property Management Agent
  - (iv) Consultant
  - (v) Market Analyst
- 

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

### Final Proposed Change:

10325(f)(7)(A) Energy Efficiency. New construction and rehabilitation non-competitive applicants shall consult with the design team, a CABEC certified 2013 or 2016 Certified Energy Analyst, and a LEED Green Rater, National Green Building Council (NGBS) Green Verifier, or GreenPoint Rater (one person may meet all of these qualifications) early in the project design process to evaluate a building energy model analysis and identify and consider energy efficiency or generation 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. ~~The All non-competitive~~ applications to CTCAC shall include a copy of the model results, meeting agenda, list of attendees, and major outcomes of the meeting. All rehabilitated buildings, both competitive and non-competitive, shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions documented using the Sustainable Building Method Workbook's CTCAC Existing Multifamily Assessment Protocols and reported using the CTCAC Existing Multifamily Assessment Report template. Rehabilitated buildings shall document at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for the project as a whole, except that Scattered Site applications shall also document at least a 5% post-rehabilitation improvement over existing conditions energy efficiency achieved for each site. In the case of projects in which energy efficiency improvements have been completed within five years prior to the application date pursuant to a public or regulated utility program or other governmental program that established existing conditions of the systems being replaced using a HERS Rater, the applicant may include the existing conditions of those systems prior to the improvements. Furthermore, rehabilitation applicants must submit a completed Sustainable Building Method Workbook with their preliminary reservation 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 Council (NGBS) silver or higher certification, or GreenPoint Rated Program. In addition, all applicants who will receive points from CDLAC pursuant to Sections 5230(k) ~~(7), (9), or (10)(6), or (8) (for energy efficiency only), or (9)~~ of the CDLAC regulations must submit a completed Sustainable Building Method Workbook with their preliminary reservation application.

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## Section 10325(f)(7)(E)

### Final Proposed Change:

10325(f)(7)(E) Appliances. Except for SRO units, all units shall provide a stove and refrigerator. Refrigerators, dishwashers, clothes washers and dryers provided or replaced within Low-



Income Units and/or in on-site community facilities shall be ENERGY STAR rated appliances, unless waived by the Executive Director.

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### Section 10325(f)(7)(K)

#### Final Proposed Change:

10325(f)(7)(K) All ~~tax credit recipient~~new construction projects shall adhere to the provisions of California Building Code (CBC) Chapter 11(B) regarding accessibility to privately owned housing made available for public use. ~~Tax credits shall be viewed as invoking those requirements as applicable, including in all respects except as follows: 11B-233.3.1.1 is amended to require~~ a minimum of ten percent (10%) of the units with mobility features, and ~~and 11B 233.3.1.3 is amended to require~~ four percent (4%) with communications features. These units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project consistent with 24 CFR Section 8.26.

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

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### Section 10325(f)(7)

#### Final Proposed Change:

10325(f)(7) Except ~~of for~~ paragraph (J) and (K), if a rehabilitation applicant does not propose to meet the requirements of this subsection, its Capital Needs Assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive. The Executive Director may approve a waiver to paragraph (J) for a new construction or rehabilitation project, provided that tenants will have equivalent access to management services. The Executive Director may approve a waiver to paragraph (K) for a rehabilitation project, provided that the applicant and architect demonstrate that full compliance would be impractical or excessively expensive create an undue financial burden. All waivers must be approved in advance by the Executive Director.

Compliance and Verification: For placed-in-service applications, applicants with rehabilitation projects, with the exception of applicants developing a project in accordance with the minimum requirements of LEED, PHIUS, Passive House, Living Building Challenge, National Green Building Council (NGBS) silver or higher certification, or GreenPoint Rated Program who will not receive points pursuant to Section 5230(k)(9)(8) (for energy efficiency only) of the CDLAC regulations, or applicants with new construction projects that will receive points from CDLAC pursuant to Section 5230(k)(~~76~~) or (8) of the CDLAC regulations must submit ~~either (a) the appropriate California Energy Commission (CEC) compliance form for the project which shows~~

~~the necessary percentage improvement better than the appropriate Standards, or (b) a completed CUAC analysis establishing the total tenant energy load, and documentation of the PV output using CEC's PV Calculator, which shows the necessary percentage of tenant energy load offset from renewable energy. For subsection (A), applicants with rehabilitation projects must submit the energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation estimated Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service package. With the exception of applicants developing a project in accordance with the minimum requirements of LEED or GreenPoint Rated Program who will not receive points pursuant to Section 5230(k)(9) or (10) of the CDLAC regulations, applicants must submit a completed Sustainable Building Method Workbook for subsection (A). For subsections (B) through (K) applicants shall submit LEED, PHIUS, Passive House, Living Building Challenge, National Green Building Council (NGBS) silver or higher, or GreenPoint Rated Program certification or third party certification documentation from one of the following sources confirming the existence of items, measures, and/or project characteristics compliance from one of the following: a certified HERS Rater, a certified GreenPoint rater, a US Green Building Council certification, or the project architect. For Subsection (K), the project architect shall provide third party documentation confirming compliance. Failure to produce appropriate and acceptable third party documentation for ~~(A) through (K) of this subsection~~ may result in negative points.~~

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## **Section 10325(g)**

### **Final Proposed Change:**

(g) Additional Threshold Requirements. To qualify for Tax Credits as a Housing Type as described in Section 10315(~~gh~~), to receive points as a housing type, or to be considered a "complete" application, the application shall meet the following additional threshold requirements:

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

### **Final Proposed Change:**

10325(g)(1)(B) One-bedroom units must include at least ~~500~~450 square feet and two-bedroom units must include at least ~~750~~700 square feet of living space. Three-bedroom units shall include at least ~~4,000~~900 square feet of living space and four-bedroom units shall include at least ~~4,200~~1,100 square feet of living space, unless these restrictions conflict with the requirements of another governmental agency to which the project is subject to approval. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director prior to the application submission. Bedrooms shall be large enough to accommodate two persons each and living areas shall be adequately sized to accommodate families based on two persons per bedroom;

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

### Final Proposed Change:

(D) The project shall provide ~~outdoor~~ play/recreational facilities suitable and available to all tenants, ~~for-including~~ children of all ages, except for small developments of 20 units or fewer. The minimum square footage of 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 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 ~~outdoor~~ play or recreational facilities suitable for children ages 13-17. Square footage of a community building cannot be included in the minimum square footage 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 dedicated as a play/recreational facility for children. An onsite day care center or an after school program pursuant to Section 10325(c)(5)(B) is not a recreational facility for purposes of this section.

Rehabilitation projects with existing outdoor play/recreational facilities may request a waiver of the minimum square footage requirement if outdoor play/recreational facilities of a reasonable size and type currently exist onsite. The written waiver must be approved prior to the application submission.

The Executive Director, in her/his sole discretion may waive this requirement upon demonstration of nearby, readily accessible, recreational facilities;

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## Section 10325(g)(1)(E)

### Final Proposed Change:

10325(g)(1)(E) The project shall provide an appropriately sized common area(s). For purposes of this part, common areas shall include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1000 square feet; projects from 61 to 100 total units, at least 1400 square feet; projects over 100 total units, at least 1800 square feet. Small developments of 20 units or fewer are exempt from this requirement. At the discretion of the Executive Director, these limits may be waived for rehabilitation projects with existing common area prior to the application submission;

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### Section 10325(g)(1)(G)

#### Final Proposed Change:

10325(g)(1)(G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 10 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each unit; ~~subject to the further provision that gas connections for dryers shall be provided where gas is otherwise available at the property;~~

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### Section 10325(g)(2)(E)

#### Final Proposed Change:

10325(g)(2)(E) One-bedroom units must include at least ~~500~~450 square feet and two-bedroom units must include at least ~~750~~700 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director, prior to application submission;

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### Section 10325(g)(2)(G)

#### Final Proposed Change:

10325(g)(2)(G) Common area(s) shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall be allowed to include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments of 20 units or fewer are exempt from this requirement. These limits may be waived, at the discretion of the Executive Director, for rehabilitation projects with existing common area;

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### Section 10325(g)(2)(I)

#### Final Proposed Change:

10325(g)(2)(I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units ~~subject to the further provision that gas connections for dryers shall be provided where gas is otherwise available at the property;~~

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## Section 10325(g)(3)(B)

### Final Proposed Change:

10325(g)(3)(B) SRO units are efficiency units that may include a complete private bath and kitchen but generally do not have a separate bedroom, unless the configuration of an already existing building being proposed to be used for an SRO dictates otherwise. The ~~maximum size for an SRO unit shall be 500 square feet, while the~~ minimum size for ~~new construction~~ SRO units shall be 200 square feet. At, and at least 90% of the SRO units in the project must meet these requirements shall not exceed 500 square feet. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director;

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## Section 10325(g)(4)

### Final Proposed Change:

10325(g)(4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental or mental health disabilities; individuals who are survivors of physical abuse; individuals who are homeless as described in Section 10315(b); individuals with chronic illness, including HIV; homeless youth as defined in Government Code Section 11139.3(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; or another specific group determined by the Executive Director to meet the intent of this housing type. The Executive Director shall have sole discretion in determining whether or not an application meets these requirements. In the case of a development that is less than 75% special needs the non-special needs units must meet the large family, senior, or SRO housing type (although the project will be considered as a special needs project for purposes of Section ~~40325~~10315) or consist of at least 20% one-bedroom units and at least 10% larger than one-bedroom units. Studio or SRO units must include at least 200 square feet, one-bedroom units must include at least 500 square feet, and two-bedroom units must include at least 750 square feet of living space. These bedroom and size requirements may be waived for rehabilitation projects or for projects that received entitlements prior to January 1, 2016 at the discretion of the Executive Director. The application shall meet the following additional threshold requirements:

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## Section 10325(i)(11)(A)

### Final Proposed Change:

10325(i)(11)(A) Existing tax credit projects applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility. In

addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.

(B) If the regulatory agreement for an existing tax credit project applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) contains a requirement to provide service amenities, even if that requirement has expired, the project shall provide a similar or greater level of services for a period of at least 15 years under the new regulatory agreement. A project obtaining maximum TCAC points for services shall be deemed to have met this requirement. If the project has exhibited negative cash flow of less than \$20,000 for at least each of the last three years, will have no hard debt and fail to break even in year 15 with services, or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the service expenditures shall be the maximum that project feasibility allows.

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## Section 10326(g)(5)

### Final Proposed Change:

10326(g)(5) Sponsor characteristics. Applicants shall provide evidence that as a Development Team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Tax Credit Programs, or if additional Development Team members need be added to appropriately perform all program requirements. General partners and management companies lacking documented experience with Section 42 requirements using the minimum scoring standards at Section 10325(c)(2)(A) and (B) shall be required to complete training as prescribed by CTCAC prior to a project's placing in service. The minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(2). 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) ~~for each of the following participants,~~ a copy of a contract to provide property management services related to the proposed project:.

~~(i) Attorney(s) and or Tax Professional(s)~~

~~(ii) Architect~~

~~(iii) Property Management Agent~~

~~(iv) Consultant~~

~~(v) Market Analyst~~

## Section 10326(g)(7)

### Final Proposed Change:

10326(g)(7) Minimum Rehabilitation Project Costs. Projects involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:

(A) \$15,000 in hard construction costs per unit; or

(B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).

In addition, for existing tax credit projects applying for additional tax credits for acquisition and/or rehabilitation (i.e., resyndication), the capital needs assessment shall demonstrate a rehabilitation need of at least ~~\$20,000~~\$15,000 per unit over the first seven years of the 15-year reserve study. Projects with ten years or less remaining on the CTCAC regulatory agreement are exempt from this requirement.

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## Section 10326(g)(8)

### Final Proposed Change:

10326(g)(8)(A) Existing tax credit projects applying for additional tax credits for acquisition and/or rehabilitation (i.e., resyndication) shall maintain the rents and income targeting levels in the existing regulatory contract for the duration of the new regulatory contract. If the project has exhibited negative cash flow for at least each of the last three years or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the new rents and income targeting levels shall be as low as possible to maintain project feasibility. In addition, the Executive Director may approve a reduction in the number of units for purposes of unrestricting a manager's unit, adding or increasing service or community space, or for adding bathrooms and kitchens to SRO units, provided that the existing rent and income targeting remain proportional.

(B) If the regulatory agreement for an existing tax credit project applying for a new reservation of tax credits for acquisition and/or rehabilitation (i.e., resyndication) contains a requirement to provide service amenities, even if that requirement has expired, the project shall provide a similar or greater level of services for a period of at least 15 years under the new regulatory agreement. A project obtaining maximum CDLAC points for services shall be deemed to have met this requirement. If the project has exhibited ~~negative~~ cash flow of less than \$20,000 for at least each of the last three years, ~~has no hard debt and fails to break even in year 15 with services,~~ or within the next five years will lose a rental or operating subsidy that was factored into the project's initial feasibility, the Executive Director may alter this requirement, provided that the service expenditures shall be the maximum that project feasibility allows.

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## Section 10326(j)(5)

### Final Proposed Change:

10326(j)(5) Projects intended for eventual tenant homeownership must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

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## Section 10327(a)

### Final Proposed Change:

10327(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 be adjusted by the Committee, 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 of \$50,000 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.

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## Section 10327(c)(2)

### Final Proposed Change:

10327(c)(2) Developer fee. ~~The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis, or two million (\$2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:~~

(A) The maximum developer fee that may be included in project costs for a 9% competitive credit rehabilitation 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. To arrive at the maximum developer fee, the base limit shall then be multiplied by the difference between 2 and the project's high-cost test factor, which equals the project's total eligible basis divided by its total adjusted threshold basis limits.

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:~~the following limitations shall apply:~~

(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 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 one million four hundred thousand (\$1,400,000) dollars; or 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)(C) 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 units, \$1,750,000 for projects having between 251 and 300 units, and \$1,820,000 for projects having more than 300 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 million five hundred thousand (\$2,500,000) 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 million five hundred thousand (\$2,500,000) 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)(5) or for other acquisition/rehabilitation projects whose hard construction costs per unit in rehabilitation expenditures are at least \$20,000 or where the development will restrict at least 30% of its units for those with incomes no greater than 50% of area median and restrict rents concomitantly.

(C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis, except that the adjustment factor related to costs described in paragraph (A) shall be recalculated at placed in service where applicable. Both the developer fee limitations in total project costs described in paragraphs (2) and (2)(B) above, and the developer fee limitations in basis described in (2)(A) and (2)(B) above apply to projects developed as multiple simultaneous phases using the same credit type (all 9% or all 4% credits) in both phases. Only when a phased project is using both credit types may simultaneously phased projects exceed the limitations in (2), (2)(A), and (2)(B) in the aggregate. For purposes of this limitation,



“simultaneous” refers to projects consisting of a single building, or projects on the same or adjacent parcels with construction start dates within six months of each other, or completion dates that are within six months of each other.

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

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

#### **Final Proposed Change:**

(5) Threshold Basis Limits. The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Tax Credits to amounts published on its website in effect at the time of application, and in accordance with the definition in Section 10302(narr) of these regulations. ~~This limitation shall not apply for purposes of calculating the final Credit amount upon issuance of tax forms, including projects that have already received Reservation or allocations of Tax Credits.~~

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

#### **Final Proposed Change:**

10327(c)(5)(A) Increases in the ~~threshold~~ basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the ~~unadjusted eligible basis of a development limits~~ permitted under this subsection shall not exceed thirty-nine percent (39%).

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

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



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

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

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

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

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### **Section 10327(c)(5)(B)(1) and (2)**

#### **Final Proposed Change:**

10327(c)(5)(B)(1) Project shall have onsite renewable generation estimated to produce 50 percent (50%) or more of annual tenant electricity use ~~(dwelling unit and common area meters combined)~~. 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%)

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### **Section 10327(c)(5)(B)(3)**

#### **Final Proposed Change:**

10325(c)(5)(B)(3) 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), except that if the local building department has determined that

building permit applications submitted on or before December 31, 2016 are complete, then newly constructed project buildings shall be fifteen percent (15%) or more energy efficient than the 2013 Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). Four percent (4%)

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

#### Final Proposed Change:

10327(c)(5)(B)(5) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens); ~~provided that the offset of potable water equals or exceeds 20,000 gallons annually~~ or irrigate with reclaimed water, greywater, or rainwater in an amount that annually equals or exceeds 20,000 gallons or 300 gallons per unit, whichever is less. One percent (1%)

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

#### Final Proposed Change:

10327(c)(5)(B) 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 ~~the a HERS Rater, a GreenPoint Rater,~~ National Green Building Council (NGBS) Green Verifier, PHIUS, Passive House, or Living Building Challenge Rater, or from an ~~accredited~~ 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 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 for purposes of determining the solar values to be input into the CUAC calculator.~~ For items (3) and (4), the applicant must submit ~~the energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation estimated Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service application. Applicants must submit a Sustainable Building Method Workbook with the original application and the placed-in-service application. Additionally, for item (6) a management plan must be submitted and must be available to onsite staff.~~ For item (5), the Rater, architect, landscape architect, or water system engineer shall ~~confirm the annual offset of potable water~~ 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.

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## Section 10327(c)(5)(D)

### Final Proposed Change:

10327(c)(5)(D) Projects requiring seismic upgrading of existing structures, and/or projects requiring toxic or other environmental mitigation may be permitted an increase in basis limit equal to the lesser of the amount of costs associated with the seismic upgrading or environmental mitigation or 15% of the project's unadjusted eligible basis to the extent that the project architect or seismic engineer certifies in the application to the costs associated with such work.

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## Section 10327(c)(5)(F)

### Final Proposed Change:

10327(c)(5)(F) A ten percent (10%) increase to the unadjusted eligible project's threshold basis limit for a development located in in an area that meets all of the following criteria:

(i) is within a city with a population of at least 50,000 or that, when combined with abutting cities, has a population of at least 50,000.

(ii) is within a county that has a 9% threshold basis limit for 2-bedroom units equal to or less than \$300,000.

(iii) is deemed to have the highest opportunity by the UC Davis Regional Opportunity Index for Places (see the dark green shaded areas on the "Place" map at <http://interact.regionalchange.ucdavis.edu/roi/webmap/webmap.html>).

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## Section 10327(c)(6)

### Final Proposed Change:

10327(c)(6) Acquisition costs. All applications must include the cost or value of land and improvements in the Sources and Uses budget, except that projects on tribal trust land need only provide an improvement cost or value. If the acquisition for a new construction project involves a Related Party, the applicant shall disclose the relationship at the time of initial application. All applications seeking competitive points or tiebreaker credit for donations shall include values for land and improvements, if any, that are not nominal. Except as allowed pursuant to Section 10322(h)(9)(A) for rehabilitation projects basing value on assumed debt, the "as if vacant" land value and the existing improvement value established at application for all projects, as well as the eligible basis amount derived from those values, shall not increase during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.

(A) New Construction. The value of land acquired through a third party transaction with an unrelated party shall be evidenced by a sales agreement, purchase contract, or escrow closing statement. The value of land acquired from a Related Party shall be underwritten using the lesser of the current purchase price or appraised value pursuant to Section 10322(h)(9). For competitive projects, the value of donated land, including land donated as part of an

inclusionary housing ordinance, must be evidenced by an appraisal pursuant to Section 10322(h)(9). For non-competitive projects, the value of donated land shall be zero.

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

For tax-exempt bond-funded properties receiving credits under Section 10326 only or in combination with State Tax Credits and exercising the option to forgo an appraisal pursuant to Section 10322(h)(9)(A), applications including acquisition and rehabilitation costs for existing the improvements shall be underwritten using the sales price that is no more than the greater of the amount of debt encumbering the property or the value established by a third-party appraisal consistent with Section 10322(h)(9). If the purchase price is greater than the appraised value, the additional basis shall be prorated between the land and improvements based on the ratio in the appraisal. If the sales price is no more than the amount of debt encumbering the property and the applicant foregoes an appraisal pursuant to Section 10322(h)(9), no sales agreement or purchase contract is required, and TCAC shall approve a reasonable proration of land and improvement basis value consistent with similar projects in the market area.

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### **Section 10327(c)(9)**

#### **Final Proposed Change:**

10327(c)(9) Self-syndication. If the applicant or a Related Party intends to be the sole or primary tax credit investor in a project ~~seeking Federal Credit Ceiling~~, the project shall be underwritten using a tax credit factor (i.e., price) of \$1 for each dollar of federal tax credit and \$.65 dollars for each dollar of State Tax Credit, unless the applicant proposes a higher value.

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

#### **Final Proposed Change:**

10327(c)(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 applicable following ratios described in those paragraphs.:

(A) 0.3 spaces per unit for special needs projects, except that 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 in a special needs project.

(B) 0.5 spaces per unit for non-large family 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.

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### Section 10327(d)(1)

#### Final Proposed Change:

10327(d)(1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations. Pursuant to Authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications relating to sites that have lost their difficult development area or qualified census tract status within the previous 12 months as a difficult development area (DDA).

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### Section 10327(d)(3)

#### Final Proposed Change:

10327(d)(3) Pursuant to authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications seeking state credits, after CTCAC has awarded all state credits available for credit ceiling applications, for which there are insufficient state credits as a difficult development area (DDA).

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### Section 10327(g)

#### Final Proposed Change:

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 of \$5000 or less at placed in service:

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## Section 10327(g)(6)

### Final Proposed Change:

10327(g)(6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except 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, must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

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

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## Section 10327(g)(7)

### Final Proposed Change:

10327(g)(7) The income from the residential portion of a project shall not be used to support any negative cash flow of a commercial portion. Alternatively, the commercial income shall not support the residential portion ~~without evidence that adequate security will be provided to substitute for commercial income deficits that may arise~~. Applicants must provide an analysis of the anticipated commercial income and expenses.

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## Section 10330(b)

### Final Proposed Change:

10330(b) Timing. The appeal must be submitted in writing and received by the Committee no later than seven (7) calendar days following the transmittal date of the Committee staff's point or disqualification letter. The appeal shall identify specifically, based upon previously submitted application materials, the applicant's grounds for the appeal. Staff will respond in writing to the appeal letter within 7 days after receipt of the appeal letter. If the applicant is not satisfied with the staff response, the applicant may appeal in writing to the Executive Director within seven days after receipt of the staff response letter. The Executive Director will respond in writing no more than seven (7) days after receipt of the appeal. If the applicant is not satisfied with the Executive Director's decision and wishes to appeal the Executive Director's decision, a final appeal may be submitted to the Committee no more than



seven days following the date of receipt of the Executive Director's letter. An appeal on any given project, when directed to the Executive Director or the Committee, must be accompanied by a one time, five hundred dollar (\$500) non-refundable fee payment payable ~~by cashier's check~~ to CTCAC. No appeals will be addressed without this payment. The appeal review shall be based upon the existing documentation submitted by the applicant when the application was filed.

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## Section 10335

### Final Proposed Change:

#### 10335. Fees and Performance Deposit

(a) Application fee. Every applicant, including tax-exempt bond project applicants, shall be required to pay an application filing fee of \$2,000. This fee shall be paid ~~in a cashier's check payable~~ to the Committee and shall be submitted with the application. This fee is not refundable. Applicants reapplying in the same calendar year for an essentially similar project on the same project site shall be required to pay an additional \$1,000 filing fee to be considered in a subsequent funding round, regardless of whether any amendments are made to the re-filed application. At the request of the applicant and upon payment of the applicable fee by the application filing deadline, applications remaining on file will be considered as is, or as amended, as of the date of a reservation cycle deadline. It is the sole responsibility of the applicant to amend its application prior to the reservation cycle deadline to meet all application requirements of these regulations, and to submit a "complete" application in accordance with Section 10322.

(1) Local Reviewing Agency. One-half of the initial application filing fee shall be provided to an official Local Reviewing Agency (LRA) which completes a project evaluation for the Committee. The Local Reviewing Agency may waive its portion of the application filing fee. Such waiver shall be evidenced by written confirmation from the LRA, included with the application. An application that includes such written confirmation from an LRA may remit an application filing fee of \$1,000.

(b) Allocation fee. Every applicant who receives a reservation of Tax Credits, except tax-exempt bond project applicants, shall be required to pay an allocation fee equal to four percent (4%) of the dollar amount of the first year's Federal Credit amount reserved. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the required fee paid ~~by cashier's check made payable~~ to the Committee prior to execution of a carryover allocation or issuance of tax forms, whichever comes first. ~~Preliminary reservation recipients receiving any competitive readiness points under Section 10325(c)(8) must pay one-half of the allocation fee within 90 days of the preliminary reservation, and the balance as described above.~~ This fee is not refundable.

(c) Appeal fee. Any applicant submitting an appeal to the Executive Director and/or the Committee with respect to CTCAC's action on a given application will pay a one time fee to CTCAC. This fee, in the amount of five hundred dollars (\$500) must be paid ~~by cashier's check payable~~ to CTCAC, and must accompany the original appeal letter.



(d) Reservation fee. Tax-exempt bond project applicants receiving Credit reservations shall be required to pay a reservation fee equal to one percent (1%) of the annual Federal Tax Credit reserved. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the required fee within twenty (20) days of issuance of a tax-exempt bond reservation or prior to the issuance of tax forms, whichever is first.

(e) Performance deposit. Each applicant receiving a preliminary reservation of Federal, or Federal and State, Tax Credits shall submit a performance deposit equal to four percent (4%) of the first year's Federal Credit amount reserved. Notwithstanding the other provisions of this subsection, an applicant requesting Federal Tax Credits not subject to the Federal housing Credit Ceiling and requesting State Tax Credits, shall be required to submit a performance deposit in an amount equal to four percent (4%) of the first year's State Credit amount reserved for the project. Notwithstanding the other provisions of this Section, an applicant requesting only Federal Tax Credits not subject to the Federal Credit Ceiling, shall not be required to submit a performance deposit.

(1) Timing and form of payment. The performance deposit shall be ~~submitted in a cashier's check payable~~paid to the Committee within twenty (20) calendar days of the Committee's notice to the applicant of a preliminary reservation.

(2) Returned Tax Credits. If Tax Credits are returned after a reservation has been accepted, the performance deposit is not refundable, with the following exceptions. Projects unable to proceed due to a natural disaster, a law suit, or similar extraordinary circumstance that prohibits project development may be eligible for a refund. Requests to refund a deposit shall be submitted in writing for Committee consideration. Amounts not refunded are forfeited to the Committee. All forfeited funds shall be deposited in the occupancy compliance monitoring account to be used to help cover the costs of performing the responsibilities described in Section 10337.

(3) Refund or forfeiture. To receive a full refund of the performance deposit, the applicant shall do all of the following: place the project in service under the time limits permitted by law; qualify the project as a low-income housing project as described in Section 42; meet all the conditions under which the reservation of Tax Credits was made; certify to the Committee that the Tax Credits allocated will be claimed; and, execute a regulatory agreement for the project. If the Committee cancels a Credit because of misrepresentation by the applicant either before or after an allocation is made, the performance deposit is not refundable. If the project is completed, but does not become a qualified low-income housing project, the performance deposit is not refundable.

(4) Appeals. An applicant may appeal the forfeiture of a performance deposit, by submitting in writing, a statement as to why the deposit should be refunded. The appeal shall be received by the Committee not later than seven (7) calendar days after the date of mailing by the Committee of the action from which the appeal is to be taken. The Executive Director shall review the appeal, make a recommendation to the Committee, and submit the appeal to the Committee for a decision.

(f) Compliance monitoring fee. The Committee shall charge a \$410 per low-income unit fee to cover the costs associated with compliance monitoring throughout the extended-use period. Generally, payment of the fee shall be made prior to the issuance of Federal and/or State tax forms. Assessment of a lesser fee, and any alternative timing for payment of the fee, may be approved at the sole discretion of the Executive Director and shall only be considered where convincing proof of financial hardship to the owner is provided. Nothing in this subsection shall

preclude the Committee from charging an additional fee to cover the costs of any compliance monitoring required, but an additional fee shall not be required prior to the end of the initial 15 year compliance period.

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## **Section 10337(f)**

### **Final Proposed Change:**

10337(f)(1) CTCAC may establish a schedule of fines for violations of the terms and conditions, the regulatory agreement, other agreements, or program regulations. In developing the schedule of fines, CTCAC shall establish the fines for violations in an amount up to five hundred dollars (\$500) per violation or double the amount of the financial gain because of the violation, whichever is greater. Except for serious violations, a first-time property owner violator shall be given at least 30 days to correct the violation before a fine is imposed. A violation that has occurred for some time prior to discovery is one violation, but fines may be a recurring amount if the violation is not corrected within a reasonable period of time thereafter, as determined by the Committee.

(2) CTCAC shall adopt and may revise the schedule of fines by resolution at a public general Committee meeting.

(3) A person or entity subject to a fine may appeal the fine to the Executive Director and, thereafter, to the Committee pursuant to Section 10330(b), except that CTCAC shall not collect a fee for the appeal to the Executive Director.

(4) The Executive Director may approve a payment plan for any fines.

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