

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**

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*Department of Finance*  
  
John Chiang  
*State Controller*

DATE: December 10, 2008  
TO: Low Income Housing Tax Credit Stakeholders  
FROM: William J. Pavão, Executive Director  
SUBJECT: Proposed Regulation Changes for 2009

Attached for public review and comment are the California Tax Credit Allocation Committee (TCAC) staff's proposed regulation changes for 2009. This summary memorandum highlights what TCAC staff proposes to present to the Committee for their adoption in February, 2009. TCAC staff will conduct public hearings to discuss and solicit comments as follows:

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| Monday<br>January 26, 2009    | <b>Los Angeles</b><br>Junipero Serra State Building<br>320 W. Fourth Street, Los Angeles<br>7 <sup>th</sup> Floor Conference Room<br>10:00 a.m. to 1:00 p.m. |
| Wednesday<br>January 28, 2009 | <b>Sacramento</b><br>EDD Auditorium<br>722 Capitol Mall, Sacramento,<br>9:00 a.m. to 12:00 noon  |
| Friday<br>January 30, 2009    | <b>Oakland</b><br>Elihu Harris State Office Building<br>1515 Clay Street, Room 2<br>10:00 a.m. – 1:00 p.m.   |

Note: TCAC staff is likely to propose additional changes in December, pending consideration of proposals by the stakeholder community. Those changes will be made available and posted in a manner similar to this notice and transmittal.

In summary, the proposed changes are as follows:

**Substantive Regulation Changes:**

1. Add State of California credits to the calculation of housing type goals in the nine percent (9%) credit competition. **Section 10315(i), page 3 of the attached draft.**
2. Account for credits for all set-asides and discontinue drawing from geographic apportionments for small development and at-risk set-aside awards. **Section 10315(k), page 4, and 10325(d)(1), page 19.**

3. Incorporate new state credit farmworker housing set-aside provisions into TCAC regulations pursuant to SB 1247 (Ch. 521, Stats. of 2008), including establishing a competitive system for awarding credits. **Section 10317(h); page 5.** Establish the California Energy Commission’s California Utility Allowance Calculator as the acceptable energy consumption model permitted under federal regulations. **Section 10322(h)(20), page 6.**
4. Require a relocation plan where resident displacement, including economic displacement, may occur during a residential rehabilitation or demolition. **Section 10322(i)(6), page 9.**
5. Establish a five-mile-diameter range for scattered site 9% credit applications. **Section 10325(c), page 9.**
6. Eliminate, under specified circumstances, the requirement that at least two (2) points out of the available 20 “Leveraging” points be earned within the credit reduction category. **Section 10325(c)(1), page 10.**
7. Establish an annual services budget floor of \$10,000 to receive competitive points, and require a proposed annual budget displaying annual services income and expenses. **Section 10325(c)(5)(B), page 12.**
8. Delete the Neighborhood Revitalization and Balanced Communities scoring factors from the 9% competitive scoring system. **Section 10325(c)(6) and (7), page 14.**
9. Add the use of Historic Tax Credits as a one-point scoring option under Sustainable Building Methods to comply with new federal law. **Section 10325(c)(8), page 16.**
10. Eliminate a 150-day loan closing exception for AHP and MHP construction funding sources under “Readiness to Proceed” scoring; allow local approval appeal periods to run up to 30 days beyond application due dates; and allow the Executive Director to make a specific finding and extend the 150-day readiness deadline by up to 90 days. **Section 10325(c)(10), page 17.**
11. Change the second tiebreaker to apply to only where QCT competitors are tied, with the advantage going to applications with a local government letter describing neighborhood revitalization plans. **Section 10325(c)(12); page 19.**
12. Increase the per-project credit award maximum to \$2.5 million. **Section 10325(f)(9)(D), page 21.**
13. Reflect the federal discontinuation of the annual tenant income recertification requirement for 100 percent tax credit projects. Also, require that one annual recertification be done for each household, with no further annual recertifications required thereafter. **Section 10337(b), page 24.**

**Clarifying Regulation Changes:**

1. Define farmworker housing and other changes incorporating State Farmworker Credit set-aside of state credits. **Section 10302(p) and (kk), page 1; Section 10310(b)(2)(C) and (D), page 2; of the attached draft.**
2. Delete Neighborhood Revitalization Area definition since it would no longer be required with the removal of that scoring factor. **Section 10302(bb), page 1.**

3. Clarify location of basis limit information provided by TCAC. **Section 10302(nn), page 2.**
4. Delete archaic reference to information regarding rural census tracts. **Section 10315(c), page 3.**
5. Delete archaic references to RHS Section 538 Guaranteed Rural Rental Housing Loan Programs. **Section 10315(d), page 3.**
6. Permit State Farmworker Credits to be used without federal credits as described in new state statute. **Section 10317(b), page 5.**
7. Clarify that placed-in-service applications are due to TCAC for all projects within one year of project completion. **Section 10322(i)(2), page 7.**
8. Require an updated utility allowance at placed-in-service for accurate underwriting. **Section 10322(i)(2)(Q), page 8.**
9. Require a tax professional's opinion that a project is exempt from the federal 10-year rule, if applicable. **Section 10322(i)(3), page 8.**
10. Explicitly state that negative points may be levied where a project sponsor fails to conduct tenant income recertifications as required under federal law and under TCAC regulations. **Section 10325(c)(3)(H), page 11.**
11. Clarify that point-garnering libraries must lend books and, if within a branch system, allow inter-branch lending. **Section 10325(c)(5)(A)(3), page 12.**
12. Clean-up change regarding the small development and at-risk set asides, complementing substantive change number 2 above. **Section 10325(d)(1), page 19.**
13. Clarify that, following a 9% credit reservation a project may only increase a previously committed funding source. In addition, new funding may be added to cover additional costs only with TCAC's pre-approval. Finally, proposed changes remove an archaic reference to a former CalHFA program. **Section 10325(f)(8)(E) and (F), page 20.**
14. Incorporate new federal minimum rehabilitation standards. **Section 10325(f)(10), page 21.**
15. Clarify income target includes 50% AMI households, rather than households "below 50%." **Section 10326(c)(5)(C), page 21.**
16. Clarify basis limit information is available on TCAC's website, rather than within an application supplement. **Section 10327(c)(5), page 22.**
17. Clarify that operating expense provisions for both 9% and 4% credit applications. Operating expenses below TCAC's published minimums require Executive Director approval where an equity investor and lender are in place and approve the lower operating cost estimates. **Section 10327(g)(1), page 22.**
18. Incorporate the new federal twelve (12) month period following carryover allocation by which a sponsor must demonstrate they have met the federal 10% expenditure test. **Section 10328(d), page 23.**

19. Clarify that placed-in-service documentation is due to TCAC within one year of the project being placed in service. **Section 10328(e), page 23.**
20. Clarify application appeals and responses are due within seven (7) calendar days. **Section 10330(c), page 24.**
21. Incorporate federal utility allowance changes into record-keeping regulations. **Section 10337(b)(1), page 25.**

Attachment

**2009 Proposed Regulation Changes with Reasons  
December 10, 2008**

**Section 10302(p)**

**Proposed Change:**

p) Farmworker Housing. A development of permanent housing exclusively for agricultural workers (as defined by California Labor Code Section 1140.4(b)) that is available to, and occupied by, only farmworkers and their households.

pd) Federally Subsidized. As defined by IRC Section 42(i)(2).

**Reason:**

The Farmworker Housing Assistance Tax Credit Program (FWHAP) was amended by California Senate Bill 1247 (SB 1247), chaptered September 28, 2008 and effective January 1, 2009. SB 1247 repealed the FWHAP and instead requires that TCAC set aside state tax credits for farmworker projects.

Complementary consistency changes would include renumbering subsequent paragraphs (q) through (aa).

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**Section 10302 (bb)**

**Proposed Change:**

~~bb) Neighborhood Revitalization Area. An area, other than one in the Rural set aside, that is part of a neighborhood revitalization strategy area designated by the U.S. Department of Housing and Urban Development, an Empowerment Zone, Enterprise Community, Renewal Community, is part of an area designated by the California Department of Housing and Community Development as a State Enterprise Zone, or an area that has been designated by a local agency to be the focus of revitalization or similar efforts.~~

**Reason:**

TCAC staff is proposing to eliminate the neighborhood revitalization scoring factor at 10325(c)(6), eliminating the need to define what is a neighborhood revitalization area.

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**Section 10302(kk)**

**Proposed Change:**

kk) State Credit. The Tax Credit for low-income rental housing provided by the Revenue and Taxation Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, including the State Farmworker Credit, formerly the Farmworker Housing Assistance Program provided by the Revenue and Taxation Code Sections 12206, 17058, and 23610.5 and by the Health and Safety Code Sections 50199.2 and 50199.7.

**Reason:**

The proposed change comports with California SB 1247, chaptered September 28, 2008 and effective January 1, 2009. SB 1247 repealed the FWHAP, and instead requires that TCAC set aside farmworker state tax credits and CTCAC to continue to administer these credits.

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## Section 10302 (nn)

### Proposed Change:

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

**Reason:** This change would correctly reference where interested parties could locate TCAC's basis limit information.

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## Section 10310(b)(2)(C) and (D)

### Proposed Change:

- (2) Amount of State Tax Credits. The amount of State Tax Credits available for reservation in a reservation cycle shall be equal to:
- (A) the amount authorized by law for the year, less any amount set-aside for use with certain tax-exempt bond financed projects, plus the unused State Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
  - (B) the amount of State Credit Ceiling returned, and available, by the date that is thirty days following the application deadline for said cycle; plus,
  - (C) additional amounts of State Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations: and,
  - (D) five hundred thousand dollars (\$500,000) per calendar year in State Farmworker Credits to provide Farmworker Housing, plus any returned and unused State Farmworker Credit balance from the preceding calendar year.

### Reason:

Prior to SB 1247, a Farmworker Housing Assistance Tax Program existed, with separately enacted regulations. SB 1247 repealed the FWHAP and instead requires TCAC to set aside \$500,000 as State Farmworker Credits. This regulation conforms to that 2008 legislation.

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### Section 10315(c)

#### Proposed Change:

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. ~~Projects located in a census tract marked with an asterisk are subject to confirmation by RHS and approval by CTCAC as to their rural status.~~ All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless:

#### Reason:

This phrase refers to application materials that are no longer applicable.

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### Section 10315(d)

#### Proposed change:

- (d) RHS program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available for new construction projects which have a funding commitments from RHS of at least \$1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, or RHS's Section 515 Rural Rental Housing Loan Program, ~~or RHS's Section 538 Guaranteed Rural Rental Housing Loan Programs~~, in the following priority order:
- First, to projects with RHS funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance for at least 50% of the project units (excluding non-restricted management units);
  - Second, to projects for which the Section 514, or 515, ~~or 538~~ funding commitment is an "obligation" (as that term is used by RHS);
  - Third, to projects for which the Section 514, or 515, ~~or 538~~ funding commitment is a "NOFA selection for further processing" but not an "obligation" (as those terms are used by RHS.)

Any amount reserved under this subsection for which RHS funding does not become available in the calendar year in which the reservation is made, or any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.

~~Beginning the second round of 2006, the presence of a Section 538 funding commitment alone will not enable a project to compete under the RHS program apportionment. Rather, such projects will compete under the general rural set-aside.~~

#### Reason:

The deleted language is archaic.

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### Section 10315(i)

#### Proposed Change:

- (i) 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 attempt to fund Federal and State Credit awards in each funding round in the approximate following percentages:

<u>Housing Type</u>	<u>Goal</u>
Large Family	65%
Single Room Occupancy	10%
“At-Risk”	5%
Special Needs	5%
Seniors	15%

**Reason:**

The regulatory intent was to ensure that each housing type receive its share of the available tax credit resources. TCAC awards both federal and state credits during its 9% credit competition, and should account for both resources in tallying toward meeting the goals. Accounting for federal credits only could deliver a smaller portion of the aggregate resources to a given housing type than envisioned by the original rule.

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**Section 10315(k)**

**Proposed Change:**

- (k) 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 the Supplemental Set-Aside has been deducted from the annual Credit Ceiling and the Set-Aside calculations for non-profit, rural, and special needs/SRO have been made CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

**Reason:**

The proposed change would clearly cross-reference the regulatory set-asides contained in Section 10315. This change would account for the small development and the at-risk set-asides before apportioning credits to the geographic regions. Current regulations require TCAC to set-aside two percent (2%) of the annual federal credit ceiling for small development projects and five percent (5%) of the annual credit ceiling for at-risk projects. However, Section 10315(k) does not permit TCAC to account for these set-asides before apportioning credits to the regions. Section 10325(d)(1) also requires TCAC to count awards from these two set-asides against the region wherein the project would be located.

In essence, the at-risk and small development awards are funded out of the regional allocations. When awards are made from those set-asides, TCAC draws credits from the relevant geographic apportionment, rather than the set-aside itself. TCAC is proposing a complementary change to Section 10325(d)(1) to eliminate accounting for these awards in the regional apportionments.

The proposed change would also eliminate the dilemma arising when a rural project competes within the small development and at-risk set-aside. Section 10315(c)(1) permits rural projects to apply under the small development and at-risk set-asides instead of the rural set-aside. However, the Section 10325(d)(1) funding order requires TCAC to award the rural set-aside prior to awarding credits in the small development and at-risk set-asides. Historically, the rural set-aside is

over-subscribed, leaving no remaining credits in that “bucket”. This means that a rural project applying under the small development or at-risk set-asides would have no credits available to draw from in the rural region and could not be funded. By capitalizing the two set-asides, the regulatory dilemma would be resolved.

The proposed change would eliminate uncertainty within the geographic apportionment competitions each round. A geographic competitor would no longer be concerned that a small or at-risk development with a lower score would preemptively receive their region’s credits.

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### **Section 10317(b) and (c)**

#### **Proposed Change:**

- (b) Allocation of Federal Tax Credits required. State Tax Credit recipients shall have first been awarded Federal Tax Credits, or shall qualify for Tax Credits under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and the R & T Code Section 12206(b)(1)(A). State Farmworker Credits are exempt from this requirement.
- (c) Limit on Credit amount. The combined amount of Federal and State Tax Credits allocated to a building shall be limited to the lesser of the amount of State Credits pursuant to R & T Code Section 12206(c) plus the amount of Federal Tax Credits allocated under Section 42 computed on one hundred percent (100%) of the qualified basis of the building, or the amount sufficient for financial feasibility.

**Reason:** The proposed regulation language conforms to new statutory provisions pursuant to SB 1247, chaptered September 28, 2008 and effective January 1, 2009. The change in paragraph (c) is a non-substantive typographical correction.

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### **Section 10317(h)**

#### **Proposed Change:**

- (h) State Farmworker Credit. Applicants may request State Tax Credits for eligible Farmworker Housing in combination with federal credits, or they may request State Farmworker Credits only. Applicants may apply only during competitive rounds as announced by CTCAC. If seeking a federal Credit Ceiling reservation along with State Tax Credits for eligible Farmworker Housing, applicants shall compete under the provisions of Section 10325(c) et. seq. If requesting State Tax Credits and federal credits for use with tax exempt bond financing, or State Farmworker Credits only, applicants shall compete under the provisions of Section 10317(h)(2). State Farmworker Credits shall be awarded as follows:
  - (1) CTCAC shall award State Farmworker Credits to the highest scoring successful Farmworker Housing application requesting either (a) four percent (4%) federal credits in combination with State Tax Credits, or (b) State Farmworker Credits only.
  - (2) If State Farmworker Credits remain after awards made under paragraph (h)(1) above, then CTCAC shall award State Farmworker Credits to the highest scoring Farmworker Housing application requesting nine percent (9%) federal credits in combination with State Tax Credits.
  - (3) If available State Farmworker Credits are inadequate to fully fund a pending request for eligible Farmworker Housing, CTCAC may reserve a forward commitment of subsequent year’s State Farmworker Credits for that project alone.

~~(h)~~(i) Allocations. The following parameters apply:

- (1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects;
- (2) The project will be competitively scored under the system delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the third tie-breaker enumerated at Section 10325(c)(12) of these regulations;
- (3) The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credits, without regard to any set-asides or geographic areas, provided they meet the threshold requirements of Section 10326;
- (4) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;
- (5) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for tax-exempt bond financed projects if State Credits remain available after funding of competitive projects in the second funding round.

**Reason:**

In 2008, SB 1247 was chaptered and requires TCAC to set aside state farmworker tax credits and make them available for qualified farmworker projects. The proposed changes would establish rounds for state farmworker credit applications paralleling those used to allocate TCAC's other competitive credits. Proposed language establishes a scored competition in anticipation of an oversubscription of this very limited resource.

Where applications seek state farmworker credits along with 9% federal credits, applications would be scored under the 9% system. Where applications seek state farmworker credits with 4% federal credits, or state farmworker credits alone, they would be scored under the 4%-plus-state credit scoring system. These scoring systems are familiar to tax credit applicants, and will provide consistency with TCAC's other competitive systems.

The proposed rule would establish 4%-plus-state farmworker credits, and state farmworker credits alone applications as a priority over 9%-plus-state farmworker credit applications. This priority would reward the more efficient use of tax credit resources.

Finally, the proposed language would permit TCAC to forward commit subsequent year's state farmworker credits for a final application to exhaust the available credits and fully fund the project. This policy parallels TCAC's practice in allocating federal 9% credits and state low income housing tax credits generally.

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**Section 10322(h)(20)**

**Proposed Change**

- (20) Utility allowance estimates. ~~Current utility allowance estimates in the form of a letter from the local public housing authority, verifying that the proposed project is located in its jurisdiction and that the utility allowance schedule provided is current (ref: IRS Final Regulations T.D. 8520), consistent with 26 CFR Section 1.42-10. For buildings that are using an energy consumption model utility allowance estimate, the estimate shall be calculated using the most recent version of the California Utility Allowance Calculator (CUAC) developed by the California Energy Commission. The CUAC estimate shall be~~

signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Plans Examiner (CEPE) who is also either a California licensed Mechanical or Electrical Engineer, or a certified Home Energy Rating System (HERS) rater. 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. The applicant must indicate which components of the utility allowance schedule apply to the project.

**Reason:**

The proposed change would permit applicants and ultimately project sponsors to use the California Energy Commission's California Utility Allowance Calculator for tax credit projects. If applicants have not yet settled on design features that permit the use of the CUAC, they may plug in a public housing authority utility allowance. At placed-in-service, the sponsor may then use figures derived from the CUAC.

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**Section 10322(i)(2) and (2)(Q)**

**Proposed Change:**

- (2) Placed-in-service application. ~~Upon completion of~~ Within one year of completing construction of the proposed project, the applicant shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs, must be explained by the applicant in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:
- (A) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Tax Credits are requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;
  - (B) an audited certification, prepared by a Certified Public Accountant under generally accepted accounting principles, with all disclosures and notes. This certification shall:
    - (1) reflect all costs, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan; and
    - (2) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.
  - (C) an itemized breakdown of placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date(s) on the certificate(s) of occupancy, a detailed explanation is required;
  - (D) photographs of the completed building(s);
  - (E) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
  - (F) a certification from the syndicator of equity raised and syndication costs in a Committee-provided format;
  - (G) a project ownership profile on a Committee-provided form;
  - (H) a detailed description of the services currently provided to tenants including copies of contracts for such services. If services are not available at the time of submission, a description of the proposed services and a timetable for the provision of those services;

- (I) a copy of any cost certification submitted to, required by and/or and approved by RHS or any other lender;
- (J) a list of all amenities provided at the project site, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided;
- (K) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;
- (L) If applicable, a certification from a tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
- (M) a certification from the owner that all of the minimum construction standards of Sections 10325(f)(7) and 10326(g)(6) have either been met or waived pursuant to these regulations;
- (N) 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;
- (O) a certification from the project architect that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws; and
- (P) a certification from the project architect that the sustainable building methods of section 10325 (c) (8) have been incorporated into the project, if applicable.
- (Q) a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(20) 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.

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

**Reason:**

The proposed change to paragraph (2) would require project owners to submit to TCAC a placed-in-service package within one year of project completion. This explicit requirement would conform to the negative points portion of the program regulations (Section 10325(c)(3)(C)). By federal law, TCAC is required to physically visit and monitor a completed project within two years of the placed-in-service date. Late placed-in-service filings have caused significant delays, especially among four percent projects, in TCAC learning of a project's completion.

Proposed new paragraph (Q) would explicitly require that utility allowances be updated when the project is placed in service. The change references federal rule changes and complementary proposed changes within the TCAC regulations.

**Section 10322(i)(3)**

**Proposed Change**

- (3) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:
  - (J) a chain of title report;
  - (K) a tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
  - (L) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).

**Reason:**

The Housing and Economic Recovery Act of 2008 amended the ten year rule to except projects assisted or operated under programs administered by the federal Department of Housing and Urban Development or Rural Housing Service. In addition, federal law extends the exception to “other similar state programs.” This change would require a tax professional to opine in writing regarding such an exception.

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**Section 10322(i)(6)**

**Proposed Change:**

- (6) Tenant relocation plan. Applicants proposing rehabilitation or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source, and. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. ~~where~~ Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.

**Reason:**

The Committee has become increasingly concerned about acquisition and rehabilitation projects that displace very low income residents. This includes economic displacement caused by significant rent increases faced by existing extremely low income households. The proposed language would assure that the property owner is explicitly advising TCAC of such a prospect, and planning to mitigate the effects to the extent possible.

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**Section 10325(c)**

**Proposed Change:**

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

**Reason:**

The additional regulatory language would establish a proximity criterion upon eligible scattered site projects seeking 9 percent credits. TCAC has observed that projects with distant sites are not truly being managed as a single project. For example, a single resident manager at one of the multiple sites cannot effectively manage the other properties if the distances are too great. Staff has observed deferred maintenance and criminal activity at distant sites lacking an on-site manager. Services frequently cannot be readily available for the far-flung site residents, and files and records at a distant site tend to be less complete and less well-maintained. Setting a maximum distance for scattered site properties, eliminates applicant uncertainty, and enables TCAC staff to effectively monitor projects to assure sound, thorough property management.

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**Section 10325(c)(1)**

**Proposed Change:**

- (1) Leveraging
  - (A) Cost efficiency. A project application for a new construction or an At-Risk development, or a substantial rehabilitation development where the hard costs of rehabilitation are at least \$40,000 per unit, whose total eligible basis is below the maximum permitted threshold basis limits after permitted adjustments, shall receive 1 point for each percent by which its eligible basis is below the maximum permitted adjusted threshold basis limit.
  - (B) Credit reduction. A project that reduces the amount of Tax Credits it is requesting shall receive 1 point for each percent that its qualified basis is reduced. In order to receive points in this category, committed funds must be part of the permanent sources for the development and remain in place for at least ten years.
  - (C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior direct federal debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, 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. Land and building values must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(i)(4)(A). All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded. To receive points under this subsection for loans, loans must be "soft" loans, having terms in excess of 15 years, and below market interest rates, interest accruals, residual receipts payments or other preferred terms for at least the first fifteen years of their terms. Points for donated or leased land shall be calculated based on the lesser of the purchase price or appraised value, except that points for land owned by the public entity for more than three years prior to the application filing deadline shall be calculated based on its appraised value. 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. Similarly, if the principal balances of any prior publicly

funded or subsidized loans are to be assumed in the course of a proposed acquisition, verification of approval of the loan assumption or other required procedure by the agency initially approving the subsidy will be needed to satisfy the commitment requirements.

A maximum of 20 points shall be available in combining the cost efficiency, credit reduction, and public funds categories. However, in order to score the full 20 points, at least 2 points must be achieved by each applicant in the credit reduction category, unless the requirement is waived by the Executive Director upon making the finding specified in Section 10325(c)(8).

**Reason:**

The proposed change would allow applicants to receive the full 20 points in the leveraging category without having to request fewer tax credits than otherwise warranted by the projects eligible basis, if the Executive Director finds that the larger equity market and/or credit market deficiency. Under such circumstances, applicants could still elect to garner points by voluntarily reducing their credit requests, but would no longer be required to in order to garner the full 20 points for leverage. In light of current credit pricing deflation, requiring a reduction in credit requested is not helpful in assuring financially feasible projects. Leveraging public funds and realizing cost efficiencies are equally beneficial as a public policy in this economic environment. Only if a sponsor believes the project can absorb it financially need the sponsor choose credit reduction to garner the full leverage points.

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**Section 10325(c)(3)(H)**

**Proposed Change:**

- (3) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(g)(5) for items including, but not limited to:
- (A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (B) failure to utilize Tax Credits within program time guidelines, including failure to meet the 150 day readiness requirements, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed;
  - (D) removal or withdrawal under threat of removal as general partner from a housing tax credit partnership;
  - (E) failure to provide physical amenities or services or any other item for which points were obtained (unless funding for a specific services program promised is no longer available);
  - (F) failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California;
  - (G) repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;

- ~~(H)~~ failure to perform a tenant income recertification upon the first anniversary following the initial move-in certification for all one-hundred percent (100%) tax credit properties, or failure to conduct ongoing annual income certifications in properties with non-tax-credit units.
- ~~(H)~~(I) material misrepresentation of any fact or requirement in an application;
- ~~(H)~~(J) failure of a building to continuously meet the terms, conditions, and requirements received at its certification as being suitable for occupancy in compliance with state or local law, unless it is demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside the control of the owner;
- ~~(J)~~(K) failure to submit a copy of the owner's completed 8609 showing the first year filing;
- ~~(K)~~(L) failure to properly notify CTCAC and obtain prior approval of general or limited partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit; or
- ~~(L)~~(M) certification of site amenities, distances or service amenities that were, in the Executive Director's sole discretion, inaccurate or misleading.

**Reason:**

The proposed change to the negative points section establishes consequences for failure to adhere to the TCAC requirement that owners perform a single annual income recertification for all households within a 100% tax credit property. The federal Housing and Economic Recovery Act of 2008 eliminated the federal requirement that all such households undergo an annual income recertification. Proposed new paragraph (H) would emphasize that one annual recertification is required in California. Failure to conduct a single annual income recertification would not violate federal rules, so a State consequence for noncompliance is necessary.

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**Section 10325(c)(5)(A)(3)**

**Proposed Change:**

- 3. The site is within 1/4 mile of a book-lending public library that also allows for inter-branch lending (when in a multi-branch system) (1/2 mile for Rural set-aside projects) 3 points  
or within 1/2 mile (1 mile for Rural set-aside projects) 2 points

**Reason:**

The clarifying change reflects the original intent that the point-garnering library be a lending library of general use by the project's proposed resident population. The proposed change would ensure that residents could access a broader range of information near where they live. The points would be awarded for public libraries where residents could check out books from their local library branch and have access to books from other branches through an inter-branch system where available.

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**Section 10325(c)(5)(B)**

**Proposed Change:**

- (B) Service Amenities: Amenities must be appropriate to the tenant population served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the project's placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenants free of charge,

except for day care services. Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. Referral services will not be eligible for points. Contracts with service providers, ~~must be provided in the application, and service provider experience, and evidence that physical space will be provided, must be documented within the application, and a budget reflecting how the services will be paid for must be included in the application.~~ To receive points for services, the application must propose a combined annual expenditure of at least \$10,000 for those services. Any donated services must be assigned a dollar value by the provider of those services. To receive services points, applications must contain a detailed budget clearly displaying all anticipated income and expenses associated with the projects services program. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:

1. High speed internet service provided in each unit (as stated above, free of charge to the tenants) 5 points
2. After school programs of an ongoing nature for school age children 5 points
3. Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above. 5 points
4. Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development 5 points
5. Direct client services, such as assistance with activities of daily living, or provision of counseling services, where a contract is in place at the time of application (only for senior, SRO and Special Needs Projects) 5 points
6. Bona fide service coordinator/social worker available 5 points

**Reason:**

This proposed change would establish a threshold minimum services expenditure of \$10,000 in order to garner any competitive services points. TCAC arrived at the \$10,000 floor through consultation with services providers, and through direct observation of project services during property monitoring visits.

Establishing a minimum service budget would eliminate ambiguity and the practice of applicants proposing insignificant services for competitive credit. While TCAC acknowledges that a minimum expenditure does not assure quality services, it does assure a minimal level of seriousness to the services proposal. TCAC intends to develop more explicit criteria in the future for comparatively evaluating meaningful services packages.

In addition, the proposed change would explicitly require a detailed services budget be submitted with the application. Requiring specific budget data would allow TCAC to more accurately assess the services program quality, and monitor to the application.

## Section 10325(c)(6) and (c)(7)

### Proposed Change:

- ~~(6) Neighborhood Revitalization. These points will not be available to projects applying under the Rural set-aside.~~

~~A development must be located in a Neighborhood Revitalization area, as defined in Section 10302(bb) of these regulations where demonstrable evidence, satisfactory to the Executive Director, is submitted showing that a neighborhood revitalization plan has been adopted and specific efforts towards achieving the plan's goals have occurred. Plans should be specific to the neighborhood, and efforts undertaken may include, but are not limited to, existing partnership coalitions with public entities, private sector enterprises, and/or nonprofit community organizations; financing commitments for work to be done in the neighborhood; and/or commencement of a specific neighborhood project. Each application for neighborhood revitalization points must include a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. Applications that have received HOPE awards from the U.S. Department of Housing and Urban Development, or located in federally designated Renewal Communities, Empowerment Zones, or Enterprise Communities, or are planned military base re-use projects, or are for projects located on tribal lands, or are located in a State Enterprise Zone will automatically be granted the full maximum points in this category without meeting any other conditions for Neighborhood Revitalization points. Base re-use, as used in this subsection, refers to projects that are located on a military base. Generally, such projects will involve, at least in part, the rehabilitation of already existing buildings on such a base. A project requesting neighborhood revitalization points will not be eligible to receive points in the balanced communities section below.~~

~~Points for neighborhood revitalization will be awarded as follows, to a maximum of~~

~~9 points:~~

~~Location in a locally designated revitalization area as evidenced by submission of a plan adopted by the jurisdiction, including evidence that the plan for neighborhood revitalization is still in effect, and a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. The plan should include findings of need or identification of problems requiring revitalization efforts. 2 points~~

~~3rd party letters from governmental entities or from non-profit organizations, documenting and substantiating funds committed or expended within the past five years in the neighborhood, as they specifically relate to the revitalization of the neighborhood where the project will be located. Up to 2 points~~

~~A narrative explaining precisely the nature and extent of the neighborhood's revitalization efforts, how the applicant's project will fit into that framework, and how the proposed project is critical to the neighborhood's revitalization. 2 points~~

~~A letter from an official in the jurisdiction that delineates the various neighborhood revitalization efforts in the immediate vicinity of the proposed development, both already undertaken and planned, and the funds that have been committed and expended for projects within that immediate neighborhood. Up to 3 points~~

- ~~(7) Balanced communities. These points will not be available to projects applying under the Rural set-aside.~~

~~If a development does not request neighborhood revitalization points, if the local government is providing funds equal to at least 5% of total project costs for the project,~~

~~and if it meets the other requirements of this subsection, the applicant may request points for balanced communities. For purposes of this scoring factor, land donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline will be the equivalent of a local government providing funds. Points will be awarded, to a maximum of 9, as follows:~~

~~Submission of evidence from the local government that it has formally adopted initiatives to encourage the creation of affordable rental housing in new growth and/or high income areas and that the project is consistent with those locally adopted initiatives. Such initiatives may include inclusionary zoning ordinances and fair share requirements, as examples, but must include more than adoption of a housing element. 3 points~~

~~Evidence that the project will actually be built adjacent to housing owned and occupied by upper income families, to be shown by either the specific plan demonstrating the proximity of land uses and comparable sales data verifying that average sales prices for homes within a 1/2 mile radius of the site are above 100% of area sales prices, or census data demonstrating that the average income of that census tract is at or above 100% of area median. 2 points~~

~~The project will reserve at least 10% of its units for tenants with incomes not exceeding 30% of area median income. 2 points~~

~~The project will reserve at least 20% of its units for tenants with incomes not exceeding 30% of area median income. 3 points~~

~~The project will reserve at least 30% of its units for tenants with incomes not exceeding 30% of area median 4 points~~

**Reason:**

The proposed change would eliminate Neighborhood Revitalization and Balanced Communities scoring from the competitive 9 percent (9%) tax credit scoring system. This change to the 9% scoring system would affect applications for non-rural projects, resulting in a 146-point scoring system for both rural and non-rural applications. In addition, the proposed change would make the 9% competitive system more similar to the 4%-plus-state credit competitive system.

The neighborhood revitalization scoring factor was meant to reward projects proposed within specified areas, or areas designated by a local agency to be the focus of revitalization or similar efforts. In this way, the State intended Low Income Housing Tax Credit (LIHTC) projects to benefit, and benefit from, local efforts to reinvest in areas with histories of disinvestment. In response to local governmental interest in affordable housing developments outside of disinvested, poverty-impacted areas, the California Tax Credit Allocation Committee (TCAC) added the Balanced Communities scoring alternative. This scoring factor enabled applicants to garner 9 alternative points by proposing a project in a new growth or upper income area.

Combined, the two alternative scoring factors acknowledge beneficial outcomes from affordable housing developments in either revitalizing or new growth, upper income areas. The proposed change would acknowledge projects that do not fall within the terms of either scoring factor, but that would nonetheless be meritorious and beneficial to both the community and the project's low income residents.

Deleting the two alternative scoring factors would permit developers, working with the local governmental agencies, to identify appropriate project locations throughout the community. This change is proposed in the context of complementary emphasis on local public funding to ensure that local governments participate in project location decisions. Finally, TCAC will retain its

emphasis on proximity to amenities, to assure project sites are near appropriate resources beneficial to the residents.

Note: Complementary consistency changes would include renumbering remaining paragraphs (c)(8) through (12), to (c)(6) through (10).

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## Section 10235(c)(8)

### Proposed Change:

- (8) Sustainable building methods. Maximum 8 points
- A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. (4 points)-
- For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period. 2 points
- Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems. 2 points
- Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less). 1 point
- Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit. 2 points
- Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less). 1 point
- Use of no-VOC interior paint (5 g/l or less). 1 point
- Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less. 1 point
- Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer. 2 points
- Use of formaldehyde-free insulation. 1 point
- Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%). 1 point
- Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period. 1 point
- Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas. 2 points

Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. 1 point

The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 1 point

The project proposes to use Historic Tax Credits 1 point

To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.

Develop and commit to certifying the project any one of the following programs: Leadership in Energy & Environmental Design (LEED for Homes); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

**Reason:**

The federal Housing and Economic Recovery Act of 2008 (H.R. 3221) amended Internal Revenue Code Section 42(m)(1)(C) to require State allocating agencies to use the historic nature of the project as a selection criterion. Rehabilitating historic structures preserves and enhances an existing resource. Including a scoring option for historic rehabilitation within the Sustainable Building Methods scoring category comports with the federal requirement and acknowledges the benefits derived from preserving an existing, valuable resource.

Awarding one (1) point to projects utilizing Historic Tax Credits in combination with LIHTCs would ensure that a project is listed in the National Register of Historic Places, and would be rehabilitated to appropriate standards. The new criteria would provide an additional option for garnering one of the eight (8) Sustainable Building Methods points.

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**Section 10325(c)(10)**

**Proposed Change:**

~~(40)~~(8) Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 150 days of the Credit Reservation, as evidenced by submission, within that time, of recorded deeds of trust for all construction financing, ~~except for AHP and MHP funds~~, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 150 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. Failure to meet this timeline will result in rescission of the Tax Credit Reservation. The following must be delivered:

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

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

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 150-day requirements shall not apply to projects that do not obtain the maximum points in this category, for any items for which points are not awarded.

The Executive Director, at his or her sole discretion, may make a finding that a market-wide lack of investor equity or systemic credit market illiquidity warrants a general extension to the 150-day readiness deadline. The Executive Director may extend the deadline at any time for no more than an additional 90 days beyond the original deadline.

**Reason:**

The readiness scoring factor is meant to competitively favor project sponsors who have completed various development steps prior to application and who commit to completing other specified steps within 150 days of reservation. The listed recordation exceptions for AHP and MHP, as opposed to other public funding sources for construction are unwarranted. MHP is not a construction period funding source, and AHP contains no unique feature that sets it apart from other construction period funding sources. TCAC does receive applications where AHP is committed at the time of application, and TCAC sees no reason why such committed funding sources cannot close within 150 days.

In addition, some confusion has arisen among program applicants as to whether AHP must be committed at the time of application to garner readiness points. The current regulations provide no scoring forbearance for AHP commitments. The exception from recordation within 150 days has led to the practice of projects with uncommitted AHP financing receiving readiness points. Eliminating the exceptions will also eliminate such confusion in the future.

The new paragraph following paragraph (D) would permit applicants to demonstrate readiness with local approvals still in an appeal period. The proposed rule would award points to projects where an appeal period has run out without appeal within 30 days following the application due date. Alternatively, the applicant must demonstrate that any filed appeals were resolved within that 30-day period.

The final new paragraph would allow the Executive Director to extend the 150-day deadline by up to 90 days if he/she finds that the equity and credit markets generally are not investing in Low Income Housing Tax Credits. This extremely rare event is occurring in late 2008 and may continue into 2009. Such discretion may permit second-round 2008 projects additional time if the markets do not improve sufficiently to make equity available to those projects. If market conditions continued any longer, the Executive Director would retain the authority to extend

deadlines in the greater interest of developing pending meritorious projects promptly, rather than recapturing credits and restarting a development clock with a new sponsor.

Finally, the renumbering change reflects the earlier proposed deletion of subsections (c)(6) and (c)(7).

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### **Section 10325(c)(12)**

#### **Proposed Change:**

##### (12) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed: first, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; second, only if each of the tied score applications are within a qualified census tract (QCT), the application providing a local governmental letter describing how the project contributes to a concerted neighborhood revitalization plan; ~~for other than Rural set-aside applications, to fund an application for a project located in a qualified census tract or a federally designated Renewal Community, Empowerment Zone, or Enterprise Community or State Enterprise Zone that has demonstrated that it will contribute to a concerted neighborhood revitalization plan, as evidenced by a score of at least eight (8) points, or a project not located in such an area that has received nine (9) points under section 10325(c)(6) or (7) of these regulations;~~ third, the application with the lowest ratio of requested unadjusted eligible basis to total residential project costs, excluding developer fee, total land cost, general partner/sponsor equity/loans or loans from the equity provider. This ratio must not have increased when the project is placed-in-service or negative points will be awarded, and the Tax Credit award may be reduced.

#### **Reason:**

The proposed change modifies the second tiebreaker by evaluating, for QCT projects only, whether a local governmental official has provided a written description of how the project will contribute to a neighborhood revitalization plan for the area. Such a preference is required by federal law (IRC Section 42(m)(1)(B)(ii)(III)). This change also reflects the proposed elimination of the Neighborhood Revitalization and Balanced Communities scoring factors (see proposed change to Sections 10325(c)(6)( and (c)(7) above).

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### **Section 10325(d)(1)**

#### **Proposed Change:**

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS program apportionment first), the Small Development set-aside, the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits reserved. No more than one project in a market area as determined by the Committee will be funded in the Rural set-aside during any calendar year. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in that set-

aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. ~~Tax Credits reserved in the small development set-aside, and in the at-risk set-aside shall count within the geographic areas in which the projects funded therein are located.~~ Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.

**Reason:**

Consistent with proposed changes to Section 10315(k), the small development and at risk set asides would now have credits available from within those set-asides, and need not be counted against the geographic region containing the project. This change would eliminate confusion and uncertainty regarding how geographic apportionment credits would be awarded, by taking these two set-asides out of the geographic award process. The proposed change would treat the small development and at risk set asides in a manner consistent with the other three regulatory set asides.

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**Section 10325(f)(8)(E) and (F)**

**Proposed Change:**

- (E) Substitution or an increase of such funds may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. Funds from a previously committed source may be increased only in an amount necessary to achieve project feasibility. Adding new funding sources to cover additional, unanticipated costs requires TCAC pre-approval. This provision shall include projects that have already received a reservation or allocation of Tax Credits in prior years.
- (F) Funds anticipated but not yet awarded under the following programs shall be exempt from the provisions of this subsection: the Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; RHS Section 514, 515 or 538 programs; ~~California Housing Finance Agency's Proposition 1A school facility fee reimbursement program;~~ the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's Mental Health Services Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction, or to projects receiving Housing Tax Credits in 1999 and thereafter and funding under the Department of Housing and Community Development's Multifamily Housing Program.

**Reason:**

Proposed amendments to paragraph (E) clarify that credit reservation recipients may increase funding from a source reflected in the original application, or may add new sources with TCAC's prior approval. This accommodates unforeseen development cost increases while maintaining the integrity of the readiness scoring factor in TCAC's competitive scheme. This amendment would clarify the conditions under which additional funding could be added to the project after award.

The proposed paragraph (F) change eliminates an archaic program reference.

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### **Section 10325(f)(9)(D)**

#### **Proposed Change:**

- (D) The maximum annual Federal Tax Credits available for award to any one project in any funding round shall not exceed ~~Two Million (\$2,000,000) Dollars, except for projects receiving a waiver of unit size under subsection (C) above, in which case the maximum annual Federal Tax Credits reserved to any one project in any one funding round shall not exceed~~ Two Million Five Hundred Thousand (\$2,500,000) Dollars.

#### **Reason:**

The current \$2 million maximum credit award has been in place since 2004, prior to the significant escalation in development costs that began in 2005. With continuing high, albeit stabilizing, development costs and declining credit prices, the \$2 million maximum constrains developers of even standard sized developments. The proposed change would permit all sponsors to request up to \$2.5 million so long as such a request is warranted by the permitted requested basis in the project.

TCAC awards approximately four to six projects the \$2 million maximum annual credit amount, and would reasonably not expect that volume to increase significantly under the proposed higher maximums. If, under the new rule, TCAC funded the same number at the full new maximum, TCAC could fund one or two fewer projects annually due to this change.

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### **Section 10325(f)(10)**

#### **Proposed Change:**

- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to complete a minimum of:
- (A) \$20,000 in hard construction costs per unit (except for those projects defined as “at risk” pursuant to these regulations, which must complete a minimum of \$10,000 in hard construction costs per unit-); and
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).

#### **Reason:**

The proposed changes incorporate the federal change to the minimum rehabilitation requirement referenced in IRC Section 42(e)(3)(A)(ii)(I) as a result of The Housing and Economic Recovery Act of 2008 (H.R. 3221).

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### **Section 10326(c)(5)(C)**

#### **Proposed Change:**

- (C) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project’s units that will be income and rent restricted at or below 50 percent (50%) but

above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the project's units that will be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years.

**Reason:**

This would enact a clarifying change to include 50 percent of AMI households.

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**Section 10326(g)(7)**

**Proposed Change**

- (7) Projects involving rehabilitation of existing buildings shall be required to complete a minimum of:
- (A) \$10,000 in hard construction costs per unit; and
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).

**Reason:**

The proposed changes incorporate the federal change to the minimum rehabilitation requirement referenced in IRC Section 42(e)(3)(A)(ii)(I) as a result of H.R. 3221.

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

**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 ~~in its Application Supplement~~ on its website in effect at the time of application, and in accordance with the definition in Section 10302(nn) 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.

**Reason:**

The proposed change would correctly reference the location of basis limit information.

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**Section 10327(g)(1)**

**Proposed Change:**

- (1) Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published by the Committee staff annually. The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to TCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. ~~If the permanent lender(s) and equity investor are in place and present evidence to the Committee that they have agreed to lesser operating expenses, the operating expenses~~

~~required by this subsection may be reduced by up to 15%. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting applications submitted under Section 10326 of these regulations, when the credit enhancer equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities.~~

**Reason:**

The proposed change clarifies that the discretion to use operating cost assumptions for underwriting that are below the established minimums rests with the TCAC Executive Director. Current regulations make this explicit with regard to four percent credit applications, but leave ambiguity regarding nine percent applications. This change clearly establishes that an equity investor and lender must agree to the lower cost figures, and that the ultimate underwriting decision rests with the Executive Director.

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**Section 10328(d)**

**Proposed Change:**

- (d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i)(2) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted by October 31 of the year of the reservation, together with the applicable allocation fee, and all required documentation, except that the time for meeting the “10%” test” and submitting related documentation, and owning the land, will be no later than ~~six (6)~~ twelve (12) months after the date of the carryover allocation.

**Reason:**

The federal Housing and Economic Recovery Act of 2008 extended the permissible deadline for meeting the ten-percent expenditure test to twelve (12) months. That is, sponsors would have 12 months following a carryover allocation to incur more than 10 percent of the reasonably expected project costs.

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**Section 10328(e)**

**Proposed Change:**

- (e) Placed-in-service. ~~Upon~~ Within one year following the project's completion of construction of the proposed project, the applicant shall submit documentation required by Section 10322(i)(2).

**Reason:**

Conforms to proposed changes in Section 10322(i)(2) above.

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**Section 10330(c)**

**Proposed Change:**

- (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.
- ~~(c) Review. The initial appeal should be delivered to staff within five days after receipt of the scoring letter.~~ 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 ~~five~~ 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 ~~five~~ 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.

**Reason:**

The first sentence of paragraph (c) contradicts the preceding paragraph (b). The proposed changes move all timelines to seven (7) calendar days. The conventional use of five days has confused program users who understood the term to refer to "working days" rather than calendar days. All references in this section are to calendar days, avoiding deadlines landing on weekends.

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**Section 10337(b)**

**Proposed Change:**

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

**Reason:**

The federal Housing and Economic Recovery Act of 2008 (H.R. 3221) eliminated the requirement that owners of 100 percent (100%) tax credit properties perform annual tenant income recertifications. TCAC has found that approximately 90 percent (90%) of all over-income noncompliance is discovered in the first annual recertification paperwork. The utility of the first

annual recertification in assuring initial move-in compliance with federal requirements would be lost if the State did not continue to require a first-anniversary recertification in 100% tax credit properties.

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**Section 10337(b)(1)**

**Proposed Change:**

- (1) Record keeping. The owner of a Credit project is required to keep records for each qualified low income building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms, and unit size in square feet); the percentage of residential rental units in the building that are low-income units; the rent charged for each unit; (including a current utility allowance as specified in 26 CFR Section 142.10(c) and Section 10322(h)(20) of these regulations (for buildings using an energy consumption model utility allowance, that allowance must be calculated using the most recent version of the CUAC); the number of household members in each unit; notation of any vacant units; move-in dates for all units; tenant's (i.e., household) income; documentation to support each household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the Credit period; and, the character and use of any nonresidential portion of the building included in the building's eligible basis.

**Reason:**

The proposed change incorporates recent federal changes and the California Utility Allowance Calculator described in Section 10322(h)(20) into the compliance portion of the program's regulations.