

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: November 21, 2007
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Proposed Regulation Changes for 2008

Attached for public review and comment are the California Tax Credit Allocation Committee (TCAC) staff's proposed regulation changes for 2008. This summary memorandum highlights what TCAC staff proposes to present to the Committee for their adoption in January, 2008. TCAC staff will conduct public hearings to discuss and solicit comments as follows:

- December 7, 2007 **Los Angeles**
Junipero Serra State Building
320 W. Fourth Street, Los Angeles
7th Floor Conference Room
10:00 a.m. to 1:00 p.m.

- December 10, 2007 **San Diego**
CalTRANS
4050 Taylor Street, Room 134 Gallegos
1:00 p.m. to 4:00 p.m.

- December 11, 2007 **Sacramento**
State Treasurer's Office Conference Rm. 587
1:00 p.m. to 4:00 p.m.

- December 12, 2007 **Fresno**
State Office Building
2550 Mariposa Mall, Room 1036
10:00 a.m. – 1:00 p.m.

- December 14, 2007 **Oakland**
Elihu Harris State Office Building
1515 Clay Street, Room 15
10:00 a.m. – 1:00 p.m.

In summary the proposed changes are as follows:

Substantive Regulation Changes:

1. Implement a new methodology for establishing unadjusted basis limits, relying upon TCAC portfolio database, rather than HUD 221(d)(3) limits. **Section 10302(nn); page 1 of the attached draft.**
2. Establish homeless assistance as the preemptive competitive priority within the 9 percent credit competition's nonprofit set-aside. The homeless assistance apportionment within the nonprofit set-aside would be discontinued. **Section 10315(b); page 2.**
3. Reserve 9 percent credit for the full nonprofit set-aside, and deduct these reserved credits from the amount used to apportion among geographic regions. This would make credits available for nonprofit set-aside awards rather than drawing from the geographic region where the nonprofit sponsored project is proposed. **Section 10315(k); page 4.**
4. Regulate 9 percent re-syndications of existing tax credit projects by limiting sales prices and prohibiting acquisition basis. **Section 10322(k); page 6.**
5. Extend date by which projects in master planned communities in newly developing areas must have amenities in place for competitive points. **Section 10325(c)(5)(A), page 7.**
6. Add three (3) additional means for obtaining sustainable building methods points, including by building to LEED standards. **Section 10325(c)(8); page 9.**
7. Eliminate the exception to discounting the third tiebreaker denominator by specified loans and equity contributions. **Section 10325(c)(12), page 11.**
8. Alter the 9 percent credit funding order within geographic apportionments to fund a single project in each region, then cycle back through the regions funding additional projects each cycle until the credits are exhausted per regulation. **Section 10325(d)(2), page 12.**
9. Require that proposed General Partner or developer loans in the application be truly available and remain committed and delivered to the project. **Section 10325(f)(3); page 14.**
10. Raise rehabilitation standard by which developers garner larger developer fees in eligible basis. **Section 10327(c)(2)(B); page 16.**
11. Provide a basis limit boost for significantly exceeding State energy standards, and eliminate corrective basis limit boosts that currently offset the faulty 221(d)(3) based system, and establish a new boost for 4 percent applicants who propose deeper income targeting and longer compliance periods. **Section 10327(c)(5); page 17.**
12. Simplify and tier basis limit boosts available for photovoltaic design features. **Section 10327(c)(5)(F); page 20.**
13. Limit to 50 percent the amount of developer fee an applicant may propose to defer. **Section 10327(d)(2); page 20.**

14. Implement a portfolio data-based method for establishing operating cost minimums for tax credit projects. **Section 10327(g)(1); page 21.**

Clarifying Regulation Changes:

1. Correct reference to homeless assistance apportionment applications consistent with substantive change #2 below. **Section 10315(g); page 3 of attached draft.**
2. Cross-reference regulatory language permitting TCAC to adjust excessive figures within application down to program maximums, to no scoring benefit. **Section 10322(f); page 5.**
3. Delete application form requiring information regarding syndicators contacted for credit pricing. **Section 10322(h)(2); page 5.**
4. Clarify that services contracts must be provided within the application, that points are available for direct client services, and that the service coordinator may be a social worker. **Section 10325(c)(5)(B); page 8.**
5. Delete “homeless assistance apportionment” reference from funding sequence discussion to maintain consistency with substantive change #2 below. **Section 10325(d)(1); page 11.**
6. Clarify that TCAC may fund up to 125 percent of a geographic apportionment when funding the highest-scoring application from that region. Thereafter, applications will be funded only when at least 50 percent of the requested amount of credits remains in the apportionment. **Section 10325(d)(2); page 12.**
7. Eliminate unnecessary application forms and submittals. **Section 10325(f)(6); page 14, and Section 10326(g)(5); page 16.**
8. Delete erroneous historic language describing the four percent (4%) plus State credit tiebreaker. **Section 10326(a), page 15.**
9. Clarify that seismic or environmental costs may warrant an increase in basis limits, rather than basis. **Section 10327(c)(5)(E); page 20.**
10. Clarify that cash flow after debt service is limited to the higher of the two stated standards, not both standards. **Section 10327(g)(7), page 23.**

Attachment

**2008 Proposed Regulation Changes with Reasons
November 21, 2007**

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, 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. ~~mortgage limits published by the U. S. Department of Housing and Urban Development for the 221(d)(3) program.~~ Local Development Impact Fees as defined in section 10302 of these regulations shall be excluded from this calculation if the fees are documented in the application submission by the entities charging such fee.

Reason:

The proposed change would substitute a portfolio data-based system for calculating eligible basis limits for both 9 percent and 4 percent tax credit applications. Over the years, TCAC staff has received numerous complaints about the current HUD 221(d)(3) mortgage limits as an indicator of development costs in the various regions throughout the state. Specifically, complainants have noted (1) the disparate affect across regions of the 221(d)(3)-based system, and (2) the unreasonably constraining affect of the current limits on certain high-cost areas around the state.

Staff has developed a data-based methodology that more accurately establishes average multifamily development costs throughout the state, and creates greater cross-regional fairness. The methodology has been explained in detail on the TCAC website, and has been modified pursuant to public review and comment. The iteration currently on the TCAC website would likely be the initial maximums under the proposed regulation change.

Relying upon actual portfolio data more accurately establishes average costs by region, and permits reasonable maximums to be derived statistically. The initial proposed limits pursuant to the proposed change will establish a 9 percent basis limit that is ½ Standard Deviation (SD) above the arithmetic mean cost, by region. The initial proposed limits on 4 percent applications will be one (1) full SD above the mean.

Sections 10315(b)

Proposed Change:

Section 10315. Set-asides and Apportionments

- (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 Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:~~
- ~~First, projects with McKinney Act, or State Mental Health Services Act (MHSA), or State Supportive Housing Program Homelessness Initiative funding committed.~~
 - Second, projects with rental 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.
 - Other qualified homeless ~~apportionment~~ assistance projects.

To compete ~~in this apportionment~~ as a homeless assistance project, at least fifty percent (50%) of the units within the project must house households:

- (1) Moving from an emergency shelter; or
- (2) Moving from transitional housing; or
- (3) Currently homeless which means:
 - (A) An individual who lacks a fixed, regular, and adequate nighttime residence; or
 - (B) An individual who has a primary nighttime residence that is:
 - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or
 - (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

- (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

Reason:

Although reliable homeless population counts are difficult, in 1997 as many as 360,000 Californians were believed to be homeless. According to the State Department of Housing and Community Development, an estimated 80,000 to 95,000 children are homeless in California. This would make the percentage of homeless children in the State the largest since the Great Depression. Many homeless persons are employed, but cannot find permanent affordable housing. TCAC has funded many housing developments that successfully house and provide services to homeless populations. The current homeless apportionment makes approximately \$3.7 million in annual federal credit available to such projects.

In light of the availability of MHSA funding in 2008 and beyond, TCAC anticipates increased demand for 9 percent credits for homeless assistance projects. In addition, the State Department of Housing and Community Development (HCD) has changed its policy prohibiting using Supportive Housing Program (SHP) loans with 9 percent Low Income Housing Tax Credits. Proposition 1C apportioned \$195 million in loan funds for SHP, and TCAC expects many project sponsors to seek 9 percent credits to develop SHP projects.

Establishing homeless assistance applications as “a first priority” within the nonprofit set-aside means that these applications would receive awards even with a lower score than other nonprofit-sponsored applications. Only if no more eligible homeless assistance applications remained would an other nonprofit-sponsored application be funded.

If the entire nonprofit set-aside were awarded to homeless assistance projects, the State of California would be allocating 10 percent (10%) of its 9 percent credits to house homeless populations throughout the state. This would make approximately \$7.4 million available for such projects as a priority in 2008.

Section 10315(g)

Proposed Change:

- (g) Special Needs/SRO set-aside. In addition to the homeless assistance apportionment in subsection (b) above, two percent (2%) 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 as Special Needs or Single Room Occupancy projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the ~~homeless assistance~~

~~apportionment~~ Nonprofit Set Aside but is not funded, will be eligible to be considered under this Special Needs/SRO set-aside.

Reason:

This change reflects the elimination of the homeless assistance set-aside in Section 10315(b) above. The proposed change maintains the policy of homeless assistance applications cascading to the Special Needs/SRO set aside to compete.

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 ~~homeless assistance~~, rural, and special needs/SRO have been made.

Reason:

This change would complement the proposed changes to Section 10315(a) and (b) above by deducting the entire nonprofit set-aside from the credits made available within each geographic apportionment. The current regulations deduct only the homeless assistance portion of the nonprofit set-aside from the geographic apportionment calculation, the proposed change. Current regulations only “fill the bucket” for the homeless assistance portion of the nonprofit set-aside. Therefore, when general nonprofit set-aside awards are made, TCAC draws credits out of the project’s geographic apportionment, rather than the set-aside itself.

The homeless assistance apportionment “bucket” is filled at the beginning of the year because addressing homeless anywhere in the state is viewed as a general good to the state. Since the entire nonprofit set-aside will now fund homeless assistance projects as a preemptive priority, the same logic now applies to the entire set-aside. (See also the proposed change to Section 10325(d)(1) on page 9 below.)

The proposed change would allow TCAC to draw from the set-aside and not reduce the amount remaining in the geographic apportionment where the project is proposed. This would eliminate some of the uncertainty facing geographic apportionment competitors each round.

Section 10322(f)

Proposed Change:

- (f) Application changes. An application may not be changed, nor may any additional information with respect to scoring or meeting the Basic or Additional Threshold Requirements be submitted subsequent to the application filing deadline, except as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never improve the score of the application as submitted, and may reduce the application's score and/or credit amount.

Reason:

Section 10327(a) states that: "Development and operational costs shall be reasonable and within limits established by the Committee, and may be adjusted by the Committee, at any time prior to issuance of tax forms." While the current language appears to permit TCAC to adjust figures that exceed program limits, the applicability of this paragraph to costs proposed within competitive applications is unclear in light of current Section 10322(f). The proposed change would (a) clarify that TCAC may adjust application figures down where they exceed program limits, and (b) stipulate that an application's score may be harmed, but never improved by such a change. In addition, the proposed change would restate the provision in Section 10322(f) that such adjustments may also result in less credit being awarded, if the application competes successfully.

Section 10322(h)(2)

Proposed Change:

- (2) The Application form. Completion of all applicable parts of Committee-provided application forms which shall include, but not be limited to:
- (A) General Application Information
- (i) Credit amounts requested
 - (ii) minimum set-aside election
 - (iii) application stage selection
 - (iv) set-aside selection
 - (v) housing type
- (B) Applicant Information
- (i) applicant role in ownership
 - (ii) applicant legal status
 - (iii) developer type
 - (iv) contact person
- (C) Development Team Information
- (D) Subject Property Information
- (E) Proposed Project Information
- (i) project type
 - (ii) Credit type
 - (iii) building and unit types
- (F) Land Use Approvals
- (G) Development Timetable

- (H) Identification and Commitment Status of Fund Sources
- (I) Identification of Fund Uses
- (J) Calculation of Eligible, Qualified and Requested Basis
- (K) Syndication Cost Description
- ~~(L) Syndicator Contacts~~
- (ML) Determination of Credit Need and Maximum Credit Allowable
- (NM) Project Income Determination
- (ON) Restricted Residential Rent and Income Proposal
- (PO) Subsidy Information
- (QP) Operating Expense Information
- (RQ) Projected Cash Flow Calculation
- (SR) Basic Threshold Compliance Summary
- (TS) Additional Threshold Selection
- (UT) Tax-exempt Financing Information
- (VU) Market Study

Reason:

This regulatory requirement is no longer necessary in light of TCAC's credit pricing floor within the application, and in light of the competitive pricing market for credits.

Section 10322(k)

Proposed Change:

- (k) Applicants for nine percent (9%) Low Income Housing Tax Credits to acquire and/or rehabilitate existing tax credit properties still regulated by and extended use agreement shall:
- (1) certify that the property sales price is no more than the current debt balance secured by the property, and
 - (2) be prohibited from receiving any tax credits derived from acquisition basis.

Reason:

The Tax Credit Allocation Committee recognizes that under some circumstances awarding 9% tax credits to continuously-regulated tax credit properties is sound public policy. The committee is interested in helping project sponsors who genuinely need the 9% credits, rather than four percent (4%) credits along with tax exempt bond financing. In part, the committee does not want 9% re-syndications comprise a significant portion of the annual 9% credit funded project pool. Therefore, projects with significant rehabilitation needs are welcome to apply for funding, but sponsors should not be motivated by equity out upon sale or by significant developer fee derived from acquisition basis. The proposed language would assure that only bona-fide projects in need of significant rehabilitation would apply for 9% rather than 4% credits.

This provision does not affect 9% applications for at-risk projects as defined by state statute and regulation, including at-risk projects having received earlier tax credit allocations.

Section 10325(c)(5)(A)

Proposed Change:

- (A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application, except under the Balanced Communities Subsection, where the funds for the amenity must be committed and the amenity is planned to be complete when the project is placed in service.

Projects proposed in master planned communities within newly developing areas, and applying for Balanced Communities points, may describe planned amenities that will be in-place and operational within two years of the project's placed in service date. Where transit services will not be available by the placed in service date, the applicant must provide evidence that alternative transportation will be available to residents at transit rates until the local transit is operational at the level of regularity claimed in the application. The Development Team shall be held responsible under Section 10325(c)(3)(A) for the availability of amenities to the residents by the end of the two year period following project's placed in service date.

Distances must be measured using a standardized radius from the development site determined by the Committee but must not include physical barriers. No more than 15 points will be awarded in this category. Applicants must certify to the accuracy of their submissions and will be subject to negative points in the round in which an application is considered, as well as subsequent rounds, if the information submitted is found to be inaccurate. For each amenity, color photographs, a contact person and a contact telephone must be included in the application. The Committee may employ third parties to verify distances or may have staff verify them. Only one point award will be available in each of the subcategories (1-9) listed below. Amenities may include:

Reason:

Current TCAC policy recognizes the value of developing projects where prospective residents would have immediate access to nearby amenities. Current regulations require that the amenities be in place at the time of application except for projects where points are sought under the Balanced Communities scoring criteria (Section 10325(c)(7)). In those cases, amenities must be available by the project's placed in service date.

The proposed change would award site amenity points for the same listed amenities so long as (1) the project applicant sought points under the Balanced Communities scoring criteria, and (2) the amenities would be available no later than two years following the placed in service date.

TCAC is concerned that forecasting the arrival of amenities in newly developing areas is speculative at best. Communities frequently do not develop as planned and amenities are delayed for long periods of time. However, TCAC staff recognizes the value of developing deeply income-targeted rental housing within new growth areas simultaneously with the market-rate development. The public policy benefits include reduced NIMBYism, a broadening of competitive, developable sites within a community, and economic integration within newly developing areas.

The proposed change would extend out the timeline for the arrival of the amenities for projects in areas seeking Balanced Communities points.

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, along with service provider experience, evidence that physical space will be provided, and a budget reflecting how the services will be paid for must be included in the application. 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. ~~Contracts for~~ 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:

The proposed changes clarify that (a) where services are being contracted, those contracts must be provided within the application, (b) the services garnering points under item 5 are direct services, rather than service coordination as described in item 6, and (c) a service coordinator may be a social worker.

Section 10325(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 routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. 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

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 with any one of the following programs: Leadership in Energy Design (LEED); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

Reason:

TCAC recognizes that various organizations have developed energy efficient and green building standards that, if followed, would result in beneficial public policy outcomes. These standards are roughly equivalent to one another, and to the 8-point standard represented by TCAC's existing menu of sustainable building project features. In recognition of these other, more generally recognized standards, the proposed change would add the three standards as alternative strategies to garnering the available 8 points under this scoring category.

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, 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, ~~unless the loan is the permanent loan for the development.~~ 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 existing third-tiebreaker language excludes from the ratio's denominator general partner or sponsor loans or equity contributions, or such loans or equity contributions from the limited partners. The exception language was intended to accommodate permanent loans on the presumption that such loans are beneficial in a way that offsets the concern regarding their legitimacy and viability. Permanent general partner or sponsor loans to developments are rare, and enforcing their origination and retention over time is difficult. Therefore, in order to eliminate opportunities for abuse in this key competitive factor, staff proposes eliminating the exception to the discounting for such loans.

Section 10325(d)(1)

Proposed Change:

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

(1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside ~~(including the homeless assistance apportionment)~~, 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 general non-profit set-aside (but not in the non-profit homeless assistance portion of that set-aside),~~ 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:

See explanation for Section 10315(k), page 3 above.

Section 10325(d)(2)

Proposed Change:

- (2) Geographic Areas selection. Tax Credits remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round. The funding order shall be followed by funding the highest scoring application, if any, in each region. Then, TCAC shall award the second highest scoring project in each region, if any, and continue cycling through the regions, filling each geographic area's apportionment. TCAC shall assure and assuring that each geographic area receives funding for at least one project in each funding round to the extent that by funding a that first project in a geographic area, that area will not have exceeded 125% of the amount available in that funding round for the geographic area. Following the first award within an area's apportionment, projects Projects will be funded in order of their rank so long as at least 50% of the Tax Credits to be awarded to any single project are available under the applicable Geographical Apportionment, ~~and the 125% limit for the Apportionment as a whole is not exceeded.~~ Credits allocated in excess of the Geographic Apportionments by the application of the 125% and 50% rules 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.

Reason:

The proposed change would alter the sequence by which project are funded within the geographic apportionments. Rather than fully awarding a region's credits before proceeding to the next region, TCAC would fund a single project in each region, they return to the top of the geographic sort and fund a second application in each region. TCAC would repeat this cycle, as appropriate, until each region's credits were exhausted.

By altering the sequencing as proposed, those regions in the middle of the apportionment list (particularly the Inland Empire and Orange County regions) would no longer bear the brunt of the first tiebreaker. The first tiebreaker rewards applications proposing a housing type whose percentage goal has yet to be met in the current funding round (Section 10325(c)12)). Typically, during a portion of the funding sequence, the senior-only housing goal (15 percent of the federal credits) will have been met, while the large family goal (65 percent) has not. Therefore, family projects will be funded under the first tiebreaker rather than a proposed senior-only project. This competitive advantage for family projects frequently takes effect in the middle of the geographic apportionment scoring process.

The proposed change would vary where the large-family tiebreaker becomes critical during the funding process. The first tiebreaker would often take effect during the second pass through funding the regions. Therefore, top scoring applicants within a region would be decided by tiebreakers other than housing type within their regions. This could result in both family and senior project competing successfully within each region, instead of the current process where senior projects are rarely funded in the Inland Empire and Orange County regions.

Additional proposed changes clarify the procedure for awarding credits from a geographic apportionment. The proposed text clarifies that the 125 percent (125%) limit applies only to the first project funded from that apportionment. Thereafter, only the 50 percent (50%) limit applies. For example, assuming a regional apportionment of \$1 million in credits, the top competing application may request and receive an award of up to \$1.25 million. Alternatively, if the first award made in that same region is only \$500,000, then a second application could be funded for up to \$1 million, since at least 50% of the requested credits, or \$500,000 would remain in the apportionment. This example is consistent with current TCAC practice, and the proposed changes clarify that practice.

Section 10325(f)(3)

Proposed Change:

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application. For projects using FHA-insured debt, the submission of a multifamily accelerated processing invitation letter from the U.S. Department of Housing and Urban Development, together with the submission of a multifamily accelerated processing firm commitment application will suffice to satisfy the requirements of this enforceable financing commitment requirement:

Reason:

The proposed change would require applicants who commit General Partner or developer loans to the project to demonstrate that they have funds available at the time of application to lend to the project. Additional proposed language would also ensure that such loan representations are, in fact, made in the stated amounts. This change assures that such loans represented in the application are genuine. In addition, the proposed language would prohibit applicants from using such loans as a “placeholder” to be substituted out with alternative financing after preliminary reservation. Such practices would circumvent Sections 10325(c)(1)(A), Cost Efficiency; (c)(10)(A) Readiness to Proceed; and (c)(12), the third tiebreaker.

Section 10325(f)(6)

Proposed Change:

- (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 all participants, a description of other Credit and all other affordable, multifamily rental project involvement in California or other states, on forms provided by the Committee together with a release form permitting inquiry into the status of such developments;~~

- (~~B~~) for each of the following participants, a copy of a contract to provide services related to the proposed project:
 - (i) Attorney(s) and or Tax Professional(s)
 - (ii) Architect
 - (iii) Property Management Agent
 - (iv) Consultant
 - (v) Market Analyst
- (~~D~~) ~~for the applicant and all other members of the Development Team, a description of any circumstances that would require negative points to be assessed by the Committee and any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.~~

Reason:

TCAC staff receives and reviews detailed information regarding the project sponsor or general partner, and need not receive detailed information about each member of the development team. Similarly, TCAC receives a legal status report from the sponsor or general partner, which provides key information regarding defaults, foreclosures, and other legal actions, if any.

Section 10326(a)

Proposed Change:

- (a) General. All applications (including reapplications) requesting Federal Tax Credits under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis (including land) of which is financed at least fifty percent (50%) by tax-exempt bonds, shall be eligible to apply under this Section for a reservation and allocation of Federal Tax Credits. However, those projects requesting State Tax Credits will be competitively scored as described in Section 10317(h)(2). ~~The competitive scoring system used shall be that delineated in Section 10325(e)(2) through (5) and (8) through (12), except that the only tie breaker shall be the lowest requested eligible basis per bedroom.~~ The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credit, without regard to any set-asides or geographic areas, provided that they meet the threshold requirements of this section.

Reason:

The proposed change clarifies the four percent (4%) plus State Credit scoring system by cross referencing existing descriptive language and deleting outdated, erroneous language.

Section 10326(g)(5)

Proposed Change:

- (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 all participants, a description of other Credit and all other affordable, multifamily rental project involvement in California or other states, on forms provided by the Committee together with a release form permitting inquiry into the status of such developments;~~
 - (C) for each of the following participants, a copy of a contract to provide services related to the proposed project:
 - (i) Attorney(s) and or Tax Professional(s)
 - (ii) Architect
 - (iii) Property Management Agent
 - (iv) Consultant
 - (v) Market Analyst
 - ~~(D) for the applicant and all other members of the Development Team, a description of any circumstances that would require negative points to be assessed by the Committee and any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.~~

Reason:

TCAC staff receives and reviews detailed information regarding the project sponsor or general partner, and need not receive detailed information about each member of the development team. Similarly, TCAC receives a legal status report from the sponsor or general partner, which provides key information regarding defaults, foreclosures, and other legal actions, if any.

Section 10327(c)(2)(B)

Proposed Change:

- (B) For 4% projects applying under Section 10326 of these regulations that do not apply for State Tax Credits, the maximum developer fee that may be included in project costs is the lesser of 15% of the project's eligible basis or two million five

hundred thousand dollars (\$2,500,000). A cost limitation on developer fees that may be included in eligible basis, shall be as follows:

- (i) the maximum developer fee that may be included in eligible basis for a new construction or rehabilitation only project is the lesser of 15% of the project's unadjusted eligible basis, or two million five hundred thousand (\$2,500,000) dollars; or
- (ii) the maximum developer fee that may be included in eligible basis for acquisition/rehabilitation projects is the lesser of 15% of the unadjusted eligible construction related basis and five (5%) percent of the unadjusted eligible acquisition basis, or two million five hundred thousand (\$2,500,000) dollars. 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 costs per unit in rehabilitation expenditures of at least ~~\$15,000~~ \$30,000 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.

Reason:

The current regulation affords a larger developer fee to be included in the tax credit basis calculation if the project involves a significant level of rehabilitation. As written, the rule permits a developer fee equal to 15 percent (15%) of the rehabilitation basis, and 15% of the acquisition basis if the rehabilitation costs exceed \$15,000 per unit. For acquisition and rehabilitation projects involving less rehabilitation than the stated standard, the developer fee is restricted to 5 percent (5%) of the acquisition basis plus the 15% of rehabilitation basis costs.

TCAC staff proposes raising the \$15,000-per-unit threshold to \$30,000 to reflect an amount of rehabilitation that is significant enough to warrant a larger developer fee in basis. Consistent with the original intent of the existing provision, a significant amount of rehabilitation exposes the developer to more risk, that may be accounted for in a larger developer fee in basis and potentially a larger tax credit award to offset those costs.

The current standard permits a more significant developer fee in basis for relatively modest rehabilitation projects, which is inconsistent with the original intent of the provision.

Section 10327(c)(5)

Proposed Change:

Exceptions to limits.

- (A). Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum

increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed ~~twenty-nine (29%)~~ thirty-four percent (34%)

A twenty percent (20%) increase to the unadjusted eligible basis for a development that is required to pay state or federal prevailing wages;

A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not “tuck under” parking);

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

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

A five percent (5%) increase to the unadjusted eligible basis for an infill development at 60 units per acre or greater.

- (B) A further four percent (4%) increase in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that either (a) exceed Title 24 standards by at least 35 percent, or (b) include three of the following energy efficiency/resource conservation/indoor air quality items:

Exceed Title 24 standards by at least 15%.

Use tankless water heaters, a high efficiency condensing boiler (92% AFUE or greater), or a solar thermal domestic hot water pre-heating system.

Use a Minimum Efficiency Report Value (MERV) 8 or higher air-filter for HVAC systems that introduce outside air.

Irrigation system using only reclaimed water and/or captured rainwater.

Recycle at least 75% of construction and demolition waste (measured by either by weight or volume).

Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).

Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all living rooms or 50% of all common areas.

Install CRI Green Label Plus Carpet, or no carpet, in all bedrooms.

Vent kitchen range hoods to the exterior of the building in at least 80% of units.

Use at least four recycled products listed in the Construction, Flooring, or Recreation section of the California Integrated Waste Management Boards Recycle Content Products Database www.ciwmb.ca.gov/RCP.

- (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 to 50 percent (50%) of Area Median Income. In addition, ~~of up to 100% will be permitted, and where more than 50% of the units will be income and rent restricted to Tax Credit levels, the basis limits can be exceeded by 120% in addition to all other adjustments permitted under these regulations. In order to qualify for either of the aforementioned adjustments to the threshold basis limits, the applicant must agree to maintain the affordability period of the project for 55 years.~~~~

~~(D) Applications under Section 10325 shall be permitted a ten percent (10%) increase in threshold basis limit when proposing a project within a region where development costs frequently exceed the published limit. The increase shall be calculated from the threshold basis limit without adjustments. The Committee staff shall annually establish a list of regions where this increase is available, and shall base the list upon the immediate prior year's application data. Where half or more of the region's prior year's applications have threshold basis exceeding the applicable limit without adjustment, the Committee shall include that region for the 10% limit increase. Any such boosts would be available to projects proposed within the region, including rural set-aside applicants.~~

Reason:

Paragraph (A) proposes a basis limit boost for high-density infill projects due to the higher associated costs including commercial prevailing wages, construction staging limitations, steel framing costs in many instances, and elevators. Accordingly, the aggregate permissible boost would be raised by 5 percent to help defray these additional costs.

Paragraph (B) establishes conditions for receiving a four percent (4%) adjustment to the eligible basis limits. The Committee recognizes the public purpose value of both generating energy on-site, as well as designing a project to consume less energy. The proposed amendment to paragraph (B) would acknowledge the public benefit, and additional cost, of developing a very energy-efficient rental project. In addition, the proposed change would acknowledge that exceeding the State's energy requirements (Title 24) by a significant percentage achieves an outcome equivalent to any three techniques listed within paragraph (B).

Paragraphs (C) and (D) were attempts to offset the inadequacies of the 221(d)(3)-based system for establishing unadjusted eligible basis limits. The regional inequities addressed by paragraph (D) are mitigated by the data-based methodology being proposed in Section 10302(nn) above. The large across the board basis limit adjustments in paragraph (C) are also generally unnecessary under the new, more accurate basis limit methodology. However, the new paragraph (C) language continues to reward 4 percent tax credit applications that propose deeper income targeting and 55-year regulatory terms. As a practical matter, all 4 percent credit applications would be able to claim a 10 percent (10%) adjustment to the project's basis limits by virtue of the mandatory income targeting required by Section 10326(j)(3).

Section 10327(c)(5)(E) and (F)

Proposed Change:

- (E) 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 certifies in the application to the costs associated with such work.
- (F) Projects may receive an additional increase in the basis limit for providing electricity-generating systems as follows: If on-site generation would provide 50 percent of a project's common area electrical needs, a basis limit increase of 2.5 percent (2.5%) shall be permitted. If on-site generation would additionally provide for at least 50 percent of the residential units' electrical needs, then a 5 percent (5%) basis limit increase shall be permitted. Further, the Executive Director, in his/her sole discretion, may permit a further increase in basis limits to a maximum of 5%, where distributive energy technologies such as microturbines and/or renewable energy sources such as solar will be implemented. To obtain this increase, an applicant must submit evidence of the cost of the system and the operating cost savings to be created through the use of the technology, throughout the time of the compliance period.

Reason:

The correction to paragraph (E) is clarifying and non-substantive.

Under paragraph (F), the Committee recognizes the public interest in residential projects becoming more energy self-sufficient. In addition, the Committee encourages improvements that will save costs to the low-income residents of tax credit projects. To this end, TCAC proposed offsetting installation costs by providing percentage boosts to the amount of basis a project may count toward the calculation of tax credit eligibility. A larger percentage boost (5%) would be available for projects installing larger systems that would not only cover common area electrical usage, but at least half of the anticipated residential unit usage as well. The use of proportionate percentages add predictability for the applicant in seeking a basis limit boost, and proportionately rewards project sponsors for defraying more of the project's electrical expenses and benefiting the residents.

Section 10327(d)(2)

Proposed Change:

- (d) Determination of eligible and qualified basis. Eligible and qualified basis shall be as defined by the Internal Revenue Code and these regulations. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public

Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.

- (1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.
- (2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. 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.

Reason:

TCAC believes a reasonable developer fee is warranted and expected in real estate development. Proposing to defer more than half of an anticipated developer fee and other project costs eliminates the availability of those funds for project cost overruns or other unexpected funding shortfalls. TCAC is concerned that applicants may present such a large deferral within an application as a “placeholder” for more typical, rational financing that is not yet committed at the time of application. The clear intent of TCAC’s application requirement is that at least half of all anticipated financing, and all subsidy financing, be committed at the time of application. The proposed change is consistent with that regulatory intent.

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 ~~following~~ 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 and the permanent lender 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.

	SRO/SPN	FAMILY	SENIOR	AT RISK
High Density Projects				
50 or Less Units	\$3,500	\$3,400	\$3,000	\$3,200
51 to 100 Units	\$3,500	\$3,200	\$2,800	\$3,000
More Than 100 Units	\$3,400	\$3,000	\$2,600	\$2,800
Other Projects				
50 or Less Units	\$3,400	\$3,000	\$2,600	\$2,800
51 to 100 Units	\$3,400	\$2,800	\$2,400	\$2,600
More Than 100 Units	\$3,300	\$2,600	\$2,200	\$2,400
Rural Projects				
50 or Less Units	\$3,400	\$2,500	\$2,100	\$2,300
51 to 100 Units	\$3,400	\$2,400	\$2,000	\$2,200
More Than 100 Units	\$3,300	\$2,300	\$1,900	\$2,100

- (A) ~~High density projects. High density rural projects must comply with the high density minimums. For purposes of this subsection, "high density projects" shall be those:~~
- (i) ~~located in census tracts wherein fifteen (15) or more persons per acre reside, as determined by the most recent U.S. Census; or, projects designed primarily for families that propose twenty-five (25) or more units per acre, projects designed exclusively for seniors that propose thirty-five (35) or more units per acre, and projects designed primarily for special needs or other populations that propose thirty (30) or more units per acre.~~
- (B) ~~Rural projects. For purposes of this subsection, "rural projects" shall be projects located in rural areas as defined in H & S Code Section 50199.21.~~
- (C) ~~At risk projects that do not meet the criteria of being either family or senior projects shall use the at risk column for operating expenses.~~
- (D) ~~Special needs projects that are less than 100% special needs shall prorate the operating expense minimums, using the special needs operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units.~~

Reason:

The current minimums contained in regulation are outdated and unreasonably low. Rather than displaying minimums in regulation, the proposed change required an annually published chart showing minimums by region and by project type. In addition, the proposed change specifies that the minimums will be calculated from averages derived from TCAC existing portfolio of reporting projects.

Section 10327(g)(7)

Proposed Change:

(7) "Cash flow after debt service," shall be limited to the higher of twenty-five percent (25%) of the anticipated annual debt service payment or eight percent (8%) of gross income, during any one of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service, must demonstrate that ~~these two limits are~~ 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. The reduction in maximum annual Federal Credit may not be increased subsequent to any adjustment made under this section.

Reason:

The proposed change adds internal consistency to paragraph (g)(7) by clarifying that one must not exceed the standard, which is the higher of the two stated limits.
